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**RECORD NO. 19-1952**

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*In The*  
**United States Court of Appeals**  
*For The Fourth Circuit*

**GAVIN GRIMM,**

*Plaintiff – Appellee,*

v.

**GLOUCESTER COUNTY SCHOOL BOARD,**

*Defendant – Appellant.*

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
AT NEWPORT NEWS**

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**JOINT APPENDIX  
VOLUME III OF IV  
(Pages 758 – 1195)**

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**David P. Corrigan  
Jeremy D. Capps  
M. Scott Fisher, Jr.  
George A. Somerville  
HARMAN CLAYTOR  
CORRIGAN & WELLMAN  
Post Office Box 70280  
Richmond, Virginia 23255  
(804) 747-5200**

*Counsel for Appellant*

**Joshua A. Block  
Leslie Cooper  
AMERICAN CIVIL LIBERTIES UNION  
125 Broad Street, 18th Floor  
New York, New York 10004  
(212) 549-2593**

*Counsel for Appellee*

**Eden Brooke Heilman  
Jennifer Marie Safstrom  
Nicole Gloria Tortoriello  
AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION OF VIRGINIA  
701 East Franklin Street, Suite 1412  
Richmond, Virginia 23219  
(804) 532-2152**

*Counsel for Appellee*

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## Gloucester High School



6680 Short Lane  
Gloucester, VA 23061

Mr. T. Nathan Collins  
Principal

TO: Mrs. Deirdre Grimm

FROM: Mr. T. Nathan Collins *mc*

DATE: October 14, 2014

RE: Restroom use for Gavin Grimm at GHS

CC: Ms. T. Durr, Gavin Grimm

This is a follow up of our meeting from this morning in reference to Gavin Grimm having accommodations for restroom use at GHS. In attendance were: Mr. T. Nathan Collins, Mrs. Deirdre Grimm, Gavin Grimm, and Ms. Durr.

Effective Monday October 20, 2014

- *Restroom Use:*  
Gavin may go to any male student restroom at Gloucester High School. He will need a restroom stall with a door, one which will be selected by Gavin. Gavin will notify Ms. Durr if and when this need changes.
- *Responding to verbal harassment, threatening behavior, and other conflicts:*  
Gavin will ignore, or respond to questions with an appropriate response. Gavin will attempt to remove himself from the situation immediately. If Gavin believes a verbal harassment and or threatening language/behavior has been directed toward him, or if there is any other conflict, he will notify Ms. Durr immediately.
- *Other needs:*  
No other needs are needed at this time.



From: "Dr. Walter R. Clemons" <wclemons@gc.k12.va.us>  
Date: October 22, 2014 7:31:18 PM  
To: "Randy Burak" <georgeburak@cox.net>; "Kevin Smith" <kevin.smith@rivhs.com>;  
"Kimberly Hensley" <kimberlyehensley@gmail.com>; "Anita Parker"  
<Anita.Parker@gc.k12.va.us>; "Charles Records" <charles.records@gc.k12.va.us>; "Carla  
Hook" <hookc@cox.net>; "Troy Andersen" <troyandersengp@cox.net>  
Subject: **Transgender Issue & GHS Pep Rally**

Attachments:

Just FYI. Two issues that I would like to discuss with you tomorrow in closed session include a transgender issue at GHS as well as student behaviors at the GHS pep rally last week. Contact has been made (to Mr. Collins and some Board members) regarding these issues and I want us all to be on the same page in our responses. Also, the paper has contacted Mr. Collins and a Board member (GloQuips) regarding student consequences as a result of student behavior from the pep rally last week. Mr. Collins informed me that some student actions were inappropriate and that he has shared with students that student behavior will be taken in consideration for future events. However, there has not been any action taken against any students at this time stemming from last week. Mr. Collins said he is still trying to identify some students for inappropriate conduct. Finally, I will forward you some literature on the transgender issue that Elizabeth Ewing (VSBA) sent to me when we had a discussion on this issue previously. Furthermore, I will have Mr. Collins present tomorrow evening so he can fill you in on his actions thus far relating to these issues. Have a great day!

**Dr. Walter R. Clemons**

---

**From:** Nate Collins  
**Sent:** Thursday, October 23, 2014 12:05 PM  
**To:** Dr. Walter R. Clemons  
**Cc:** Tiffany Durr  
**Subject:** transgender info  
**Attachments:** GHS transgender.docx; bathroom plan.docx

Dr. Clemons,

Please find attached background information related to use of GHS restrooms by a transgender student: a memo with background information and a copy of the written plan developed regarding bathroom use. Please let me know if you need additional information.

Thanks,

Nate

October 23, 2014

To: Dr. Walter R. Clemons, Superintendent  
From: Mr. Nate Collins, Gloucester High School Principal  
Subject: Transgender Student Background Information

This is in reference to a tenth grade student at Gloucester High School who is transgender, and identifies as male and his use of male restrooms at GHS. GHS school counseling staff provided information included here.

The student's middle school and ninth grade counselors reported meeting with the student frequently in eighth and ninth grade due to anxiety he experienced related to his identity. In ninth grade, because of the severe anxiety he experienced, the student was placed on homebound mid-year until the end of the 2013-2014 school year.

During the summer of 2014 the student provided the School Counseling Department at Gloucester High School with proof of a legal name change, in which the student's name was changed on school documents. The student stated by changing his name his identity is more accurately reflected. In addition to changing his name, the student requested that other students and staff identify him as "he" in oppose to "she". During the current academic school year, the student continues to report experiencing anxiety. The student has stated fear of not being identified by the correct pronoun(s) and possible lack of understanding by students and staff contributes to his anxiety at school. The student has also reported using the women's bathrooms is a concern as it relates to his identity.

At the beginning of the school year, a plan was put in place to accommodate the student's bathroom use concerns. An administrative decision was made and the student was informed by his school counselor he may use the bathroom in the school clinic. In the case of an emergency the student was given permission to use a staff bathroom on the D wing of the school, in which the majority of his classes are located. At the beginning of the school year, the student and his mother reported the student will begin hormone therapy during the month of October. In early October, prior to the anticipated date of the student beginning hormone therapy, the student met with his school counselor and requested permission to use male student bathrooms either before or once he begins hormone therapy. This request was brought to my attention. I consulted with Dr. Clemons and with school counseling staff members to review available legal references. Redacted

Redacted During a meeting with the school principal, school counselor, the student, and the student's mother, the student was informed by the school principal he may begin using student male bathrooms at Gloucester High School on October 20, 2014 and a written plan for doing so was developed.

**Subject:** Re: Issue at GHS  
**From:** Carla Hook <hookc@cox.net>  
**Date:** 10/27/2014 2:29 PM  
**To:** REDACTE @cox.net

I do not believe any plans exist to send home notification to parents.

Legal counsel is Reed Smith in Richmond. Like you, I questioned what legal basis there is to require this. This was an oral opinion given to the superintendent. We have asked for written opinion citing chapter and verse.

Thanks--Carla

On 10/27/2014 1:52 PM, REDACTED @cox.net wrote:

More thoughts:

1. Is the SB planning on formally notifying the parents of these boys that they are sharing their bathroom with a female? They have the right to know!
2. Exactly what "legal counsel" was questioned? What law or precedent was their decision based upon as I find no such precedent or law within VA?

Every parent except 1 that I have spoken to is OUTRAGED over this. A formal notice should be sent out from GHS informing the families at GHS what is occurring.

REDACTE

---- Carla Hook <hookc@cox.net> wrote:

Hi REDAC n.

As of right now, transgendered students are allowed to use the restroom of their self-identifying gender. This decision was made at the building level and before the issue was brought to the attention of the school board. However, the building administrators did consult with executive staff in the superintendent's office before making any decision (ie the superintendent and assistants). They in turn consulted legal counsel. When this was brought to the attention of the school board, the majority declined to take any action at this time but did agree to seek a formal written opinion from legal counsel.

Hope that helps clarify.

Carla

On 10/24/2014 2:07 PM, REDACTED @cox.net wrote:

First of all, let me thank you for replying. I have sent 2 emails and you are the ONLY person decent enough to take the time to reply. To say the least, I am disappointed in the lack of response from GHS, Clemons and the entire school board.

Certainly wish this brought me peace but it certainly does not. I appreciate your response and understand the steps that need to be taken.

However, on Wednesday I emailed Principal Collins and have yet to receive any response. My email was simple and was only asking for an answer to whether this young lady is using the boys bathroom. And if so, who gave her permission. I would appreciate those questions being answered as they are not confidential regarding a single student but impacts my son as he is in the boys bathroom.

Many thanks,

REDACTE



---- Carla Hook <hookc@cox.net> wrote:

Thanks REDACTED. The Board has taken no action on this issue as of this time. However, we have requested a legal opinion from counsel as to our legal obligations to transgendered students. There has been some suggestion that we may be legally obligated to allow cross-gendered use of restroom facilities. I find that difficult to believe, but we are checking into it.

I will also say that I oppose cross-gendered use of restroom facilities; however, mine is not the only opinion on the Board in this regard. I would strongly encourage you to attend the next meeting during public comment period, as well as any others concerned about this issue.

Thanks--Carla

On 10/24/2014 10:37 AM, REDACTED @cox.net wrote:

Carla,

Just following up with you as you suggested regarding last night's meeting and what ultimately became of the situation at GHS.

Thanks,  
REDACTED

---- Carla Hook <hookc@cox.net> wrote:

There is nothing on the agenda tonight whereby this issue will be discussed in open session, and as I stated a policy change must be done in open session. We do have some student matters to discuss in closed session (after the regular work session) and given these emails and calls it is safe to assume such a student issue will be discussed.

As a work session, there is no public comment time, but there will be public comment time during our regular meeting in November.

Again, I would encourage you to contact us after the meeting. We cannot discuss specific students, but will be able to discuss policy implementation.

Carla

On 10/23/2014 10:49 AM, REDACTED @cox.net wrote:

Carla,

Thanks for replying. Will this be discussed tonight? If so, will it be open or closed session? I would love to be a part of that conversation but both of my kids of athletic activities tonight. This is not a road we need to go down.

Thanks,  
REDACTED

---- Carla Hook <hookc@cox.net> wrote:

REDACTED

Thank you for your email. I had not heard about this particular issue until a phone call from another parent last night.

While it is true that we only discuss specific students in closed session, any issues of a policy nature are only done in open session. If this rumor is true, I can assure you it is of tremendous concern to me as well. As you know, I also have two sons. Rumors, particularly among teenagers, can take on a life of their own, so I look forward to

getting all the facts.

I would encourage you to contact me or other Board members again after our meeting tonight.

Thanks--Carla

On 10/23/2014 9:57 AM, REDACTE@cox.net wrote:

I have been told by numerous individuals that there is currently a young lady either using the boys bathroom or requesting permission to use the boys bathroom. Apparently this young lady is uncomfortable in the girls bathroom and was allowed to use a private admin bathroom last year as she wants to be a boy.

Words can not express how dumbfounded I will be if this proves true. For respect of this email I will have to assume it is and express my utmost concern on this issue. I am the mother of a GHS son and an elementary aged daughter. This should not be allowed to happen for reasons I would assume would be obvious:

When does 1 students comfort level or rights come before an entire student body?

If she is still biologically a female she should be using the female restroom. There is certainly more privacy in there than they boys.

Have you considered the possible reactions of what could transpire with her in the boys bathroom? She could be humiliated or physically assaulted by boys in the bathroom. That is certainly a possibility in todays world and a can of worms I would pray you would try to avoid. She could also accuse of boy or boys of a verbal of physical assault that never happened and I am smart enough to know that boy would be guilty until proven innocent!

Are you ok with letting a boy in the same circumstance enter the girls bathroom with his God given genitalia?

What's next the locker rooms? Why not let a boy claiming to be a female trapped in a girls body change close and shower with the girls in their respective locker room? Why don't we send the same young lady in question into the boys locker room to change, She doesn't need a private area. She could certainly use their restroom, change in the presence and shower with them, right?

Please consider all aspects of this issue before making any judgment. This school system has SO many important issues and failures to deal with and correct that I would certainly hope this should be an easy decision to deny this young ladies request. When you start treating one child different and allowing special treatment for one over all others that is an ugly path that you won't want to go down.

Respectfully,  
REDACTED

**Subject:** Re: GHS Restrooms  
**From:** Carla Hook <hookc@cox.net>  
**Date:** 10/31/2014 8:34 AM  
**To:** REDACTED @gmail.com>

There was no vote in this matter, as we are not allowed to vote in closed session. The closed session last night was to discuss a particular student. Nonetheless, a majority has still declined to intervene in the current practice at the high school. I was in the minority in that regard with Mr. Records. I believe that females should use the female restroom and males should use the male restroom. If there is a student that has difficulty with this arrangement, I believe there are other appropriate alternatives that take into consideration the needs of all students.

However, we will be seeking a public vote on this practice at our next regularly scheduled meeting, Nov. 11 at TCW.

Thanks for checking--Carla

On 10/31/2014 7:46 AM, REDACTED wrote:

Good Morning, Carla,

I received an email from Charles Records this morning regarding the transgender restroom situation. For the record, as obviously, I disagree with this outcome, I would like to know precisely how you voted on this matter, as Charles mentioned the decision was not unanimous.

REDACTED

**Diane Gamache**

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**From:** Diane Gamache  
**Sent:** Wednesday, November 05, 2014 10:47 AM  
**To:** 'Carla Hook'; John Hutchinson; JoAnne Wright; Betty Jane Duncan; Anita Parker; Charles Records; Dr. Walter R. Clemons; Kevin Smith; Kevin's Phone; Kimberly Hensley; Randy Burak; Troy Andersen  
**Cc:** Carol Dehoux; Randy@Office  
**Subject:** Proceeding w/Agenda  
**Importance:** High

As I now understand it, **REDACTED** following the 10-30 closed meeting -- **REDACTED**  
**REDACTED**

I believe that the Chair plans to determine if a majority of the Board wishes to revisit the matter, and if so, he will notify me of such. For now, I am going to proceed with publishing the agenda without the discussion being added.

Diane

---

**From:** Carla Hook [mailto:hookc@cox.net]  
**Sent:** Tuesday, November 04, 2014 8:01 PM  
**To:** Diane Gamache; John Hutchinson; JoAnne Wright; Betty Jane Duncan; Anita Parker; Charles Records; Dr. Walter R. Clemons; Kevin Smith; Kevin's Phone; Kimberly Hensley; Randy Burak; Troy Andersen  
**Cc:** Shirley Chirch  
**Subject:** Re: Draft Agenda for November 11th Monthly SB Meeting

I think we need to add appropriate use of restroom/locker room facilities to the agenda, discuss and vote and be done with this issue for now.

On 11/4/2014 1:16 PM, Diane Gamache wrote:

Please let me know if you would like any additions or changes made as I plan to publish this tomorrow (Wednesday, November 5, 2014). Thanks!

Diane



**Dr. Walter R. Clemons**

---

**From:** Caria Hook <hookc@cox.net>  
**Sent:** Sunday, November 09, 2014 9:32 PM  
**To:** Anita Parker; Charles Records; Kevin Smith; Kimberly Hensley; Randy Burak; Troy Andersen; Dr. Walter R. Clemons  
**Subject:** FYI  
**Attachments:** motion.docx

Whereas the GCPS recognizes that some students question their gender identities, and

Whereas the GCPS encourages such students to seek support and advice from parents, professionals and other trusted adults, and

Whereas the GCPS seeks to provide a safe learning environment for all students and to protect the privacy of all students, therefore

It shall be the practice of the GCPS to provide male and female restroom and locker room facilities in its schools, and the use of said facilities shall be limited to the corresponding biological genders, and students with sincere gender identity issues shall be provided an alternative private facility.

## **Gloucester (Va.) County School Board**

### **PRESS RELEASE**

**FOR IMMEDIATE RELEASE ON DECEMBER 3, 2014**

**CONTACT:** George R. (Randy) Burak, Chairperson

**Phone:** (804) 695-6399

**Email:** Georgeburak@cox.net

### **Gloucester School Board prepares to discuss, likely vote at Dec. 9 meeting on restroom/locker room use for transgender students**

**Gloucester, Va.** -- As the Gloucester County School Board members prepare to discuss and likely vote on how to handle the use of school restrooms and locker rooms by transgender students, they continue to seek guidance and input from many sources around the county, state and nation.

“Issues around transgender students are facing schools districts across the country, and we are seeking to learn from the best resources available,” said School Board Chair George (Randy) Burak. “This issue is not about one student; rather, it’s about all our students. We as a Board are seeking to do what’s best for our district in an open, transparent manner.”

#### **Process and Perspectives**

The Gloucester School Board has received legal guidance from several sources, both locally and around the state. It has reviewed guidance from the U.S. Department of Education’s Office for Civil Rights, along with a variety of literature from interested organizations around the country.

The Board has received a great deal of input from the local public through emails, phone calls, comments at the Nov. 11 School Board meeting, and community meetings. Several Board members and Superintendent Walter Clemons recently attended the Virginia School Boards Association’s annual conference in Williamsburg, which had an entire working session, “Transgender Protections in Public Schools: Recent Developments,” presented by a law firm.

**Burak said: “Our Gloucester School Board has undergone a very detailed, professional, and deliberative process, examining many differing opinions and guidance viewpoints. I believe that our district will become stronger for all our students as a result of the research we’ve done, the discussions we’ve had, and the ultimate conclusions we’ll reach.”**

## **Current Situation and Options**

While the Gloucester County Public School district adheres to general non-discrimination principles similar to most U.S. school districts, it currently does not have guidelines specifically addressing gender identity and the use of restrooms and locker rooms.

That means that the School Board could decide to adopt specific guidelines to address these issues; or the Board could further define what fully accommodating transgender students would look like and how it would operate on a daily basis.

## **Good news for all students**

One positive outcome of all the discussion is that the District is planning to increase the privacy options for all students using school restrooms, according to Superintendent Dr. Walter Clemons.

Plans include adding or expanding partitions between urinals in male restrooms, and adding privacy strips to the doors of stalls in all restrooms. The District also plans to designate single-stall, unisex restrooms, similar to what's in many other public spaces, to give all students the option for even greater privacy.

**“This situation has created the opportunity for us to make things better for all our students and to make our school buildings more accommodating to a wide variety of needs,”** said Dr. Clemons. **“We have listened to what our parents, students, and other constituents have told us, and we are working to act on their suggestions for the benefit of everyone.”**

## **Background**

This issue of restroom use consistent with gender identity first came to the attention of Gloucester schools in October when a transgender student asked campus leaders to use the bathroom of that student's gender identity. Due to student privacy concerns, the issue was initially handled confidentially, and the School Board was informed immediately afterward. While the Board is not legally required to act on the matter, the Board is taking the opportunity to consider developing new guidelines, or further defining the current general practice of non-discrimination.

Since that time, the Board has been reviewing the various options and determining how to best meet the needs of all students in Gloucester schools.

## **Next Steps**

The Board will discuss and likely make a decision at their upcoming monthly meeting at **7 p.m. Tuesday, Dec. 9, at the T.C. Walker Auditorium.** As always, the public is invited to attend.

Anyone interested in expressing views on this or other matters to School Board members can email [SchoolBoard@gc.k12.va.us](mailto:SchoolBoard@gc.k12.va.us), or call (804) 693-1424 to leave a message.

### **About the Gloucester (Va.) School Board**

The Gloucester School Board is the official policy-making body for Gloucester County Public Schools. The elected Board is composed of seven members representing the five magisterial districts, along with two who serve at large. The 2014 School Board members are Randy Burak, chair; Kevin Smith, vice-chair; Troy Andersen; Kimberly Hensley; Carla Hook; Anita Parker; and Charles Records.

**More information about the Gloucester School Board and the Gloucester County Schools may be found at <http://gets.gc.k12.va.us/>.**

**RECORDED MINUTES OF THE  
GLOUCESTER COUNTY SCHOOL BOARD  
GLOUCESTER, VIRGINIA**

**DECEMBER 9, 2014**

The regular monthly meeting of the Gloucester County School Board was held on Tuesday, December 9, 2014. The Chairperson called the meeting to order at 5:30 pm at the Thomas Calhoun Walker Education Center.

**I. ROLL CALL**

Roll call was taken by the Acting Clerk, and the following persons were recorded as present: George R. (Randy) Burak, Chairperson, Troy M. Anderson, Kimberly (Kim) E. Hensley, Carla B. Hook, Anita F. Parker, Charles B. Records, and Kevin M. Smith, Members. Also present for the closed meeting: Walter R. Clemons, Ph.D., Superintendent of Schools, and John E. Hutchinson, Assistant Superintendent for Administrative Services and Acting Clerk.

**II. CALL FOR CLOSED MEETING**

At 5:42 pm, a motion was made by Mr. Records, seconded by Ms. Parker, and unanimously approved to adjourn for a closed session, pursuant to Code of Virginia, 1950, as amended, Section 2.2-3711 (A), Subsection 1, for the discussion of personnel matters (monthly appointments, resignations, etc.). At 6:32 pm, the Chairperson declared a recess, and the meeting was relocated to the Thomas Calhoun Walker Education Center auditorium.

**III. RETURN TO OPEN MEETING/CERTIFICATION**

Note: Ms. Diane Clements Gamache, Clerk, recorded the remainder of the meeting. The Clerk noted that all members were present for the open meeting.

At 7:00 pm, a motion was made by Mr. Smith to reconvene the meeting into open session and certify that the Gloucester County School Board, while in closed session, discussed only public matters lawfully exempted from open meeting requirements provided in Subsection A of Section 2.2-3711 and that only public business matters that were identified in the motion convening the closed session were heard, discussed or considered. The motion was seconded by Ms. Hensley and approved as follows:

Mr. Andersen	<u>Aye</u>	Mr. Records	<u>Aye</u>
Ms. Hensley	<u>Aye</u>	Mr. Smith	<u>Aye</u>
Mrs. Hook	<u>Aye</u>	Mr. Burak	<u>Aye</u>
Ms. Parker	<u>Aye</u>		

**IV. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE** – Ms. Campbell Farina, SAC representative, led the Board and citizens in a moment of silence followed by the Pledge of Allegiance to the flag of the United States of America.

**V. PERSONNEL ITEMS**

A. Approval of Monthly Personnel Actions — A motion was made by Mr. Records, seconded by Mr. Andersen, and unanimously adopted to approve the monthly listing of personnel appointments, staff leave, and contract changes (**approved copies attached to minutes**).

**RECORDED MINUTES OF THE DECEMBER 9, 2014  
GLOUCESTER COUNTY SCHOOL BOARD MEETING**

**VI. ADDITIONS/CHANGES/ADOPTION OF AGENDA**

Dr. Clemons recommended the following changes to the *revised* agenda (**attached to minutes**) as published: Moving policy, File JHCH from Consent to Item C under Administrative Services' Items; and re-ordering School Board Members Items' immediately following Citizens' Comment Period. A motion was made by Mr. Smith, seconded by Mr. Records, and unanimously adopted to approve the agenda as amended.

**VII. APPROVAL OF ITEMS CONTAINED IN THE CONSENT AGENDA**

A motion was made by Mr. Smith to approve the Consent Agenda as amended (listed below). Motion was seconded by Mr. Andersen and approved with a roll call vote:

Mr. Andersen	<u>Aye</u>	Mr. Records	<u>Aye</u>
Ms. Hensley	<u>Aye</u>	Mr. Smith	<u>Aye</u>
Mrs. Hook	<u>Aye</u>	Mr. Burak	<u>Aye</u>
Ms. Parker	<u>Aye</u>		

**ITEMS CONTAINED WITHIN THE CONSENT AGENDA:**

- A. Approval of Minutes of November 5, 2014 Special (3-Member Panel Hearing) Meeting
- B. Approval of Minutes of November 11, 2014, Monthly Meeting
- C. Approval of Policy Manual Update
  - a. IF-R: Program of Studies (revision)
- D. Informational Central Food Service Financial Report as of October 31, 2014
- E. Informational Membership Report as of November 21, 2014
- F. Informational Suspension Report for November, 2014
- G. Informational Visiting Teachers Report for November, 2014
- H. Informational Transportation Report for November, 2014

**VIII. STAFF PRESENTATIONS/RECOGNITIONS**

A. Presentation of Diplomas to GHS Winter Graduates – Dr. Toni Childress, GHS Staff, Mr. Nate Collins, GHS Principal, and Mr. Burak awarded diplomas to the GHS winter graduates. Students present who received their diplomas were: Rebecca Gayle Allen, John Raye Gaddis, Ashley Michelle Kearns, Alexandra Judith Rodriguez, Sebastian Leigh Sain (Advanced Diploma), Justin Raye Schultz, and Tavor Jameel Wilson. Three other graduates were not present: Cassidy Reid Preston, James Jack Spence, and Keith Randall Thrift, Jr.

B. Recognition of Mr. Rusty West, Project Lead the Way Teacher – Dr. Wagner congratulated Rusty West for receiving the Project Lead the Way National Teacher of Excellence Award. Mr. West was one of six instructors recognized on the national level for their outstanding commitment to educating students in the STEM disciplines and preparing them with the skills to be successful in college and their careers.

C. Updates on Boards/Commissions by School Board Members – There were none.



**RECORDED MINUTES OF THE DECEMBER 9, 2014  
GLOUCESTER COUNTY SCHOOL BOARD MEETING**

**PAGE 3 of 7**

**IX. CITIZENS' COMMENT PERIOD**

Mr. Burak asked if there were any persons present who wished to address the Board. He asked that all persons state their name, the district in which they reside and to limit their remarks to two (2) minutes or less. He stated that Mr. Ted Wilmot, County Attorney, would act as the official time-keeper. The following citizens came forward to speak:

Steve Sikes-Nova (teacher/GEA spokesperson)  
Brian McGovern (President of GEA)  
Ralph VanNess (Ware)  
Donna Pierce Freeman (teacher/Ware)  
Pastor Fred Carter (Gloucester)  
Gavin Grimm (student)  
Deirdre Grimm (Gloucester)  
Jacklynn Lehiff (Abingdon)  
Scott Williams (Abingdon)  
Savannah Williams (Abingdon)  
Kathryn Lindsay (Abingdon)  
Dianne Carter deMayo (Hayes)  
Andrew Palas (Gloucester Point)  
Amy VonFossen (Ware)  
Adam Carpenter (Gloucester Point)  
Campbell Farina (Abingdon)  
Karen Pauley (White Marsh)  
Barbara King (Abingdon)  
Mike Enz (Abingdon)  
Catherine Foley (Abingdon)  
Marc Farina (Abingdon)  
Reese Williams (Ware)  
Howard Mowry (Gloucester Point)  
Paul Martin (Gloucester Point)  
Janet West  
Linda Wall (Buckroe Beach)  
Don Mitchell (York)  
David Wilcox (York)  
Terry Brennan (Abingdon)  
Michelle Larson (York)  
Maritza Cooper (Petsworth)  
Ira Johnson (Petsworth)  
Gabrielle Johnson (Ware)  
Christina Klein (Hayes)  
Alex Westfall (Gloucester)  
Jacob Hangdahl (Hayes)  
Kelly Williams (Gloucester Point)

*Note: Change in Order of Items*

**XII. SCHOOL BOARD MEMBERS ITEMS**

A. VSBA Capital Conference – Monday, January 26, 2015 at the Richmond Marriott @ \$170 per person. Board members should contact the Clerk for pre-registration purposes if they would like to attend.



**RECORDED MINUTES OF THE DECEMBER 9, 2014  
GLOUCESTER COUNTY SCHOOL BOARD MEETING**

**XII. SCHOOL BOARD MEMBERS ITEMS – continued**

B. Adoption of Resolution re: Funding of Public Education in Virginia – Mr. Burak stated that a resolution proposed in conjunction with the Virginia School Boards Association and the Virginia Association of School Superintendents, was included in the agenda regarding calling upon the Virginia General Assembly to immediately increase the state’s share of funding for public education to the level of quality that is prescribed by them in the Standards of Quality and expected by all of the Commonwealth’s citizens. A motion was made by Mr. Andersen and seconded by Ms. Parker to adopt the resolution as presented. The Clerk recorded the following vote:

Mr. Smith	<u>Aye</u>	Ms. Parker	<u>Aye</u>
Mr. Records	<u>Aye</u>	Ms. Hensley	<u>Aye</u>
Mr. Andersen	<u>Aye</u>	Mr. Burak	<u>Aye</u>
Mrs. Hook	<u>Aye</u>		

C. Other Matters as brought up by Board Members

1. Discussion of Use of Restrooms/Locker Room Facilities – Mr. Burak stated that a motion had been postponed at the November 11, 2014, until the December 9, 2014, meeting and was in order for consideration at this time. He read the motion to be considered as recorded in the November 11, 2014 minutes:

“Mrs. Hook read the following resolution and made a motion to adopt said resolution:

Whereas the GCPS recognizes that some students question their gender identities, and  
Whereas the GCPS encourages such students to seek support, advice, and guidance from parents, professionals and other trusted adults, and  
Whereas the GCPS seeks to provide a safe learning environment for all students and to protect the privacy of all students, therefore  
It shall be the practice of the GCPS to provide male and female restroom and locker room facilities in its schools, and the use of said facilities shall be limited to the corresponding biological genders, and students with gender identity issues shall be provided an alternative appropriate private facility.

The motion was seconded by Mr. Records.”

A motion was made by Mr. Records, and seconded by Mr. Andersen to bring the original motion back to the table for a vote.

Mr. Andersen stated that he would like to politely request from one Board member to another that anyone recuse themselves from voting if they felt they had a conflict of interest, pursuant to Code of Va, 1950, as amended, Section 2.2-3100 or Board policy, File BBFA.

Following comments by each Board member, the Clerk polled on the postponed motion under consideration (carried 6 to 1):

Ms. Parker	<u>Aye</u>	Mr. Smith	<u>Aye</u>
Ms. Hensley	<u>Naye</u>	Mr. Records	<u>Aye</u>
Mrs. Hook	<u>Aye</u>	Mr. Burak	<u>Aye</u>
Mr. Andersen	<u>Aye</u>		

**RECORDED MINUTES OF THE DECEMBER 9, 2014  
GLOUCESTER COUNTY SCHOOL BOARD MEETING**

**PAGE 5 of 7**

**X. STUDENT ADVISORY COMMITTEE (SAC) ITEMS** – Ms. Farina had no items.

**RECESS** – At 9:18 pm, the Chair called for a 5-10 minute recess. At 9:28 pm, he called the meeting back to order.

**XI. SUPERINTENDENT'S ITEMS**

A. Comprehensive Plan Update/Reminder of Next Meeting Date – Dr. Clemons reminded Board members and the public that the next Comprehensive Plan development meeting would be held on Wednesday, December 17, 2014, 7:00 pm at the Thomas Calhoun Walker Education Center. He stated that the School Board would have the final decision on the Comprehensive Plan.

B. Discussion of Possible Additional Budget Meeting with Board of Supervisors – Dr. Clemons stated that he would speak with Ms. Brenda Garton, County Administrator, about the possibility of holding another joint budget work session with the Board of Supervisors, as this was discussed at the September joint meeting and the School Board was again receptive.

Mrs. Hook asked if it might be possible to hold a 1-hour meeting with the local and state legislators prior to the opening of the General Assembly, and Dr. Clemons stated that he would check into it and get back to the Board.

**XIII. HUMAN RESOURCES ITEMS**

A. Monthly Departmental Report – Dr. Juanita Smith, Director of Human Resources, presented information on the activities of the department during the month, and expressed her appreciation to her staff. She also announced that Ms. Ashley Field had recently earned Nationally Board Certified Teacher status and Mr. Andersen asked that she be recognized at the January Board meeting.

**XIV. ADMINISTRATIVE ITEMS**

A. Monthly Departmental Report – Mr. Hutchinson reviewed departmental activities accomplished during the month.

B. Update on Redistricting Plans – Mr. Hutchinson stated that preliminary numbers would suggest that attendance zones would remain the same for middle schools when Page opens; however, they are continuing to monitor elementary school numbers.

Mr. Records asked if information on previous studies on the Page site, etc. had been sent to the Board of Supervisors. Dr. Clemons and Mr. Hutchinson both noted that they would check.

C. Policy JHCH: School Meals and Snacks (new) – A motion was made by Mr. Smith, seconded by Mr. Records and unanimously approved to adopt File JHCH: School Meals and Snacks as a first and second reading.

Mrs. Hook asked if Food Service could make a 10 minute presentation on the status of the School Lunch Act at a future work session, and Mr. Hutchinson agreed to pursue this.

**XV. INSTRUCTIONAL ITEMS**

A. Monthly Departmental Report – Dr. Wagner reviewed highlights of the month from Instructional Services.

**RECORDED MINUTES OF THE DECEMBER 9, 2014  
GLOUCESTER COUNTY SCHOOL BOARD MEETING**

**PAGE 6 of 7**

**XV. INSTRUCTIONAL ITEMS – continued**

Mrs. Hook asked that a report be given to the Board in January on the Adaptive Tests for 6<sup>th</sup> graders.

B. Continued Discussion on Field Trip Policy (Policy ICA) – Dr. Wagner stated that a VML supplemental policy might be available on an annual basis to cover international travel but stated that there were several options available. It was agreed that he would present different options for the Board at a work session in January or February.

C. Update on Naviance: College and Career Readiness Solutions – Dr. Wagner informed the Board that staff would pursue using Naviance as a sole source since no others were available as a result of the RFP/bid process.

**XVI. BUDGET AND FINANCE ITEMS**

A. Monthly Departmental Report – Ms. Joanne Wright, Director of Budget and Finance, highlighted tasks and accomplishments of the Budget and Finance Office, and expressed her appreciation to her staff.

B. Acceptance of Donations -- Ms. Wright highlighted the donations received by the division totaling \$564.44. A motion was made by Mr. Records and seconded Mr. Smith to accept with grateful appreciation the donations as outlined. The Clerk polled the Board as follows:

Ms. Parker	<u>Aye</u>	Mr. Smith	<u>Aye</u>
Ms. Hensley	<u>Aye</u>	Mr. Records	<u>Aye</u>
Mrs. Hook	<u>Aye</u>	Mr. Burak	<u>Aye</u>
Mr. Andersen	<u>Aye</u>		

C. Financial Reports – Ms. Wright presented the following reports that were accepted by the Board as information:

1. October 30, 2014 Financial Report
2. November 25, 2014 Construction Financial Report
3. November 25, 2014, HVAC/Roof Financial Report

**XVII. PUBLIC ANNOUNCEMENTS**

Mr. Burak read the following public announcements:

- A. Next GCPS Comprehensive Plan Meeting – Wednesday, December 17, 2014, 7:00 pm @ the Thomas Calhoun Walker Education Center (Cafeteria)
- B. Winter Break-Division Closed – Monday-Friday, December 22, 2014-January 2, 2015 – Note: Monday-Tuesday, December 22 (Full)-23 (Half), 2014, are 12-Month Employee Work Days
- C. Teachers/Students Return from Winter Break – Monday, January 5, 2015
- D. Next Monthly and Annual Organizational School Board Meeting – Tuesday, January 13, 2015, 7:00 pm @ the Thomas Calhoun Walker Education Center (Auditorium)

Mr. Burak asked Board members to consider leadership roles for the January 13, 2015, organizational meeting and let others know if they were interested the Chair/Vice Chair position.

**RECORDED MINUTES OF THE DECEMBER 9, 2014  
GLOUCESTER COUNTY SCHOOL BOARD MEETING**

**PAGE 7 of 7**

Mr. Burak requested additional information on the use of a PR consultant for such items as redistricting, the new Page Middle School and the budget process. Dr. Clemons stated that he would bring back a recommendation to the Board.

Mr. Records asked if Dr. Clemons would be prepared to give an assessment/synopsis of his first 90 days at the January meeting and Dr. Clements assured him that he would.

**XVIII. CALL FOR ADJOURNMENT**

At 10:10 pm, there being no further business, a motion was made by Ms. Parker, seconded by Mrs. Hook, and unanimously approved to adjourn the regular monthly meeting of December 9, 2014, until the next monthly and annual organizational meeting at 7:00 pm on Tuesday, January 13, 2015, at the Thomas Calhoun Walker Education Center (Auditorium).

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George R. (Randy) Burak, Chairperson

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Diane Clements Gamache, Clerk

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John E. Hutchinson, Acting Clerk

**Attachments (3): To be bound with the official minutes once approved.**

1. Bound Agenda for December 9, 2014, Monthly Meeting
2. Revised Agenda for December 9, 2014, Monthly Meeting
3. Approved Monthly and Supplemental Personnel Listing

**END**  
**DCG/JEH:bjd**  
**MIN-12-09-14**



## Gloucester High School

6680 Short Lane  
Gloucester, VA 23061



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Mr. T. Nathan Collins  
Principal

December 10, 2014

Mr. and Mrs. David and Deirdre Grimm  
3624 Fox Haven Drive  
Gloucester, Virginia 23061

Dear Mr. and Mrs. Grimm,

This letter will provide notice to you that the Gloucester County School Board at its regularly scheduled meeting on December 9, 2014, adopted the following resolution: "It shall be the practice of the Gloucester County Public Schools to provide male and female restroom and locker room facilities in its schools, and the use of said facilities shall be limited to the corresponding biological genders, and students with gender identity issues shall be provided an alternative private facility."

As a result, Gavin will no longer be able to use the male restrooms at Gloucester High School effective immediately. I will work with you regarding Gavin and options for his restroom usage at GHS.

Please contact me at 804.693.2026 or at [ncollins@gc.k12.va.us](mailto:ncollins@gc.k12.va.us) if you have any questions.  
Thank you.

Sincerely,

T. Nathan Collins



From: "Amy Bergh" <abergh@gc.k12.va.us>  
Date: November 19, 2014 12:22:31 PM  
To: "Nate Collins" <ncollins@gc.k12.va.us>  
Subject: **Restrooms**

Attachments:

I am writing to express my deep concern for the planned changes to C-Hall restrooms. I am not sure that the decision makers are aware of the high usage of those restrooms. With the exception of between first and second block the woman's restroom typically is fully occupied and has a line of several women waiting to use the facilities. I understand the faculty men's room is fairly heavily used also. On first glance there may not appear to be that many staff members on C-Hall. It is easy to forget that we house a high number of Special Education students with a high number of support staff. It's not just the teachers; but also the paraprofessionals, therapist, drivers that use the C-Hall restrooms. C-Hall is also frequently used by Page staff during the day. Simply using the student restroom does not alleviate the issue as there is almost always a line in there between classes. Most of C-Hall teachers have at least one day that we have no opportunities to use the restroom other than the five minutes during class changes from before 8:00 a.m. with school starting until our lunch at 12:30 p.m. That is a very long time for anyone to wait but pretty impossible for faculty on diuretics. Of course we could always call security to cover our classes but that seems to be a very poor use of our resources; a loss of instructional time; and they are not always available.

I am very aware of what a difficult issue this is but I truly feel that in the rush to fix one problem we are creating another. Perhaps other options could be more fully examined prior to a final decision being made.

- \*I know there is a plan for A -Hall and that does make a little more sense because they have six faculty restrooms and two student restrooms.
- \*The B-Hall restrooms are not even used during the day. Perhaps the doors could be adjusted to accommodate this problem.
- \*I don't know if anyone is currently using the old Childcare "restroom" C162; perhaps that could be converted as a long term solution.
- \*The main office has three staff restrooms not counting the principal's; perhaps a door to the hall could be added to the back restroom.
- \*I believe the custodians even have two private restrooms in their locker rooms; is that still a need?

I know there is no easy solution to this problem but please consider that it is much easier to give a student a hall pass to travel across the school then for a staff member to use the restroom.

Thank you for your considerations,  
Amy

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NEWPORT NEWS DIVISION

----- x

GAVIN GRIMM, :

Plaintiff, :

v. : Case No.

GLOUCESTER COUNTY SCHOOL : 4:15-cv-54

BOARD, :

Defendant. :

----- x

Deposition of GAVIN GRIMM  
Richmond, Virginia  
Friday, October 19, 2018  
9:40 a.m.

Job No.: 207940  
Pages: 1 - 177  
Reported By: Leslie D. Etheredge, RMR, CCR

Transcript of Gavin Grimm  
Conducted on October 19, 2018

2

1           Deposition of GAVIN GRIMM, held at the  
2 offices of:

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4

ACLU OF VIRGINIA

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701 East Franklin Street, Suite 1412

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Richmond, Virginia 23219

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804.523.2157

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Pursuant to Notice, before Leslie D.

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Etheredge, Registered Merit Reporter, Certified

14

Court Reporter and Notary Public in and for the

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Commonwealth of Virginia.

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Transcript of Gavin Grimm  
Conducted on October 19, 2018

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A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

JOSHUA A. BLOCK, ESQUIRE

SHAYNA MEDLEY-WARSOFF, ESQUIRE

AMERICAN CIVIL LIBERTIES UNION

125 Broad Street, 18th Floor

New York, New York 10004

212.549.2627

and

EDEN HEILMAN, ESQUIRE

NICOLE TORTORIELLO, ESQUIRE

JENNIFER SAFSTROM

ACLU OF VIRGINIA

701 East Franklin Street, Suite 1412

Richmond, Virginia 23219

804.523.2157

Transcript of Gavin Grimm  
Conducted on October 19, 2018

4

1 ON BEHALF OF THE DEFENDANT:

2 DAVID P. CORRIGAN, ESQUIRE

3 HARMAN, CLAYTOR, CORRIGAN & WELLMAN

4 4951 Lake Brook Drive, Suite 100

5 Glen Allen, Virginia 23060

6 804.747.5200

7

8

9 ALSO PRESENT:

10 Tracey R. Dunlap, VML Insurance Programs

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PLANET DEPOS

888.433.3767 | WWW.PLANETDEPOS.COM

Transcript of Gavin Grimm  
Conducted on October 19, 2018

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C O N T E N T S		
EXAMINATION OF GAVIN GRIMM		PAGE
BY MR. CORRIGAN		6
BY MR. BLOCK		168
BY MR. CORRIGAN		172

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## E X H I B I T S

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(Attached to transcript)

12

## GAVIN GRIMM DEPOSITION EXHIBITS PAGE

13

Exhibit 1      October 28, 2014 email      92

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from Amy Bergh

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Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 P R O C E E D I N G S

2 Whereupon,

3 GAVIN GRIMM,

4 being first duly sworn to testify to the truth,  
5 the whole truth, and nothing but the truth, was  
6 examined and testified as follows:

7 EXAMINATION BY COUNSEL FOR THE DEFENDANT

8 BY MR. CORRIGAN:

9 Q Would you state your full name, please.

10 A Gavin Grimm.

11 Q No middle name?

12 A Sorry. Gavin Elliot Grimm.

13 Q E-L-L-I-O-T-T?

14 A O-T.

15 Q One T. Okay. Gavin, we have met before.

16 I am going to be asking you questions related to  
17 this lawsuit, and, typically, in a situation like  
18 this, I like to lay out two rules, which I think  
19 you have already gone over with your counsel.

20 The first one is, if your answer is yes or  
21 no, please say yes or no and not uh-huh, huh-uh,  
22 or shake and nod your head. Fair enough?

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 A Yes, sir.

2 Q Second one, you just did it, let me finish  
3 before you start, I will let you finish before I  
4 start, so we are not speaking at the same time, so  
5 the court reporter can get everything down. Okay?

6 A Yes, sir.

7 Q Thank you. What is your current address?

8 A 20047 Stanton Avenue, Castro Valley,  
9 California.

10 Q It doesn't matter. The zip doesn't  
11 matter.

12 A Okay.

13 Q And who do you live with there?

14 A Three housemates.

15 Q How long have you lived there?

16 A Approximately 2 months.

17 Q Where were you living before that?

18 A Berkeley, California.

19 Q Do you remember the address?

20 A 1709 Shattuck Avenue.

21 Q S-H --

22 A A-T-T-U-C-K.

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 Q Okay.

2 A And that is Berkley, California.

3 Q Who did you live with there?

4 A I lived at varying times with different  
5 roommates and on my own.

6 Q Is that a house, a freestanding house?

7 A It is an apartment complex.

8 Q Okay. How many bedroom apartment was  
9 yours?

10 A One. Yes, one.

11 Q Before the Shattuck Avenue address in  
12 Berkley, where did you live?

13 A Gloucester, Virginia.

14 (Interruption at the door and discussion  
15 held off the record.)

16 Q What was the address in Gloucester?

17 A 3624 Foxhaven Drive, Gloucester, Virginia.

18 Q Who did you live with there?

19 A My brother, father and brother.

20 Q Their names?

21 A David, my father; Deirdre, my mother; and  
22 David, my brother.

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 Q And how long did y'all live at that  
2 particular address?

3 A From birth until moving to California.

4 Q What is your date of birth?

5 A [REDACTED] 1999.

6 Q Are you currently employed?

7 A I am not on an official payroll, I do some  
8 freelance activism.

9 Q So what does that mean? What is freelance  
10 activism?

11 A I may be invited to speak at a college or  
12 at a conference, and sometimes there is monetary  
13 compensation.

14 Q What determines whether there is monetary  
15 compensation?

16 A The ability of the requester.

17 Q So give me an example of what you are  
18 talking about.

19 A For example, should a middle school invite  
20 me to talk to their GSA, I would never ask for  
21 financial compensation, but should I go to a more  
22 professional event, which would probably have a



Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 larger budget, they may -- pardon me -- they may  
2 offer me some kind of compensation.

3 Q What is the range of compensation, when  
4 you are compensated, for your freelance activism?

5 A It is hugely variable, anywhere from 50  
6 dollars to more than that.

7 Q 50 up to what?

8 A I -- sorry. I am trying to accurately  
9 recall it.

10 Q Sure. If it is a ball park, I --

11 A A ball park of like a thousand dollars.

12 Q Okay.

13 A It is not frequently more than that or  
14 even that.

15 Q Okay. How often are you engaged in  
16 freelance activism?

17 A I would say average a few times a month, a  
18 few times a month. Sometimes more often,  
19 sometimes less.

20 Q Since you have been in California, has  
21 your freelance activism been restricted to  
22 California?

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 A No.

2 Q Where have you been?

3 A Most recently, it was somewhere on the  
4 East Coast, Philadelphia. Virginia at one point.  
5 Beyond that, I can't recall any more individual  
6 states.

7 Q Where in Virginia?

8 A I believe it was -- Actually, I don't  
9 recall well enough to say with certainty.

10 Q Okay. Do you remember where you flew into  
11 or where you -- how you traveled?

12 A I traveled by plane. It was not -- I  
13 recall it was not close enough that it would have  
14 been possible to visit home so it was probably --  
15 well, in fact, pardon me. I won't speculate.

16 Q Okay.

17 A I just recall that I have been to Virginia  
18 for business since moving to California.

19 Q Where did you fly into when you did  
20 business in Virginia?

21 A I can't recall.

22 Q You don't remember whether it was Reagan

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 or Dulles or Richmond?

2 A I really don't recall, sir.

3 Q Okay. Are you currently in school?

4 A Yes, sir.

5 Q Where are you attending?

6 A Berkley City College.

7 Q Until you said that yesterday, I had never  
8 heard of Berkley City College. Is that part of  
9 the state community college system or is it a  
10 local private school?

11 A It is a community college.

12 Q Okay. How long have you been going there?

13 A Since -- since the start of this current  
14 semester, I don't recall what month it began.

15 Q So September or August, fall semester kind  
16 of thing?

17 A Yes, sir.

18 Q Okay. Before attending Berkley City  
19 College, did you attend any other college?

20 A No.

21 Q From the time -- when did you leave  
22 Gloucester approximately?

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1 A January of this year.

2 Q 2018?

3 A Yes, sir.

4 Q You graduated Gloucester High School June  
5 of 2017.

6 A Yes, sir.

7 Q Is that correct? What did you do from  
8 June of 2017 until January of 2018, when you moved  
9 to California? When I say what did you do, were  
10 you working, were you going to school?

11 Let me ask you this. Were you living at  
12 home?

13 A Yes.

14 Q So what were you doing in terms of work or  
15 anything like that?

16 A I was not working, I was also not in  
17 school.

18 Q So what were you spending your time doing?

19 A I suppose -- well, rather, I won't  
20 suppose. I -- I spent time with friends or stayed  
21 around the house.

22 Q Your brother is a twin; is that right?

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1 A Yes, sir.

2 Q And the full family is your mom, your dad,  
3 your brother and you?

4 A In the household?

5 Q Yes.

6 A Yes, sir.

7 Q Are there other family members?

8 A There are extended family members, which  
9 are not directly involved with my current family  
10 life.

11 Q Okay. Are there any of the others blood  
12 siblings or parents?

13 A I have three blood half-siblings.

14 Q Okay. The half-siblings are the children  
15 of your mom or your dad?

16 A Two of them are children of my father and  
17 one of them is a child of my mother.

18 Q Are they in the Gloucester area, the  
19 children, your half-siblings?

20 A I do not know the whereabouts of either on  
21 my father's side; however, the half sibling on my  
22 mother's side lives not in the Gloucester area.

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1 Q Tell me which schools you attended  
2 starting as soon as you went to school.

3 A I do not recall the pre-K institutions I  
4 went to; however, I started public school in  
5 Bethel Elementary, I then went to Peasley Middle  
6 School, and then Gloucester High School.

7 Q Peasley is P-E --

8 A A-S-L-E-Y.

9 Q So elementary was K to?

10 A 5.

11 Q 5, and middle was 6 to 8?

12 A Yes, sir.

13 Q Gloucester High School was 9 to 12?

14 A Yes.

15 Q Was your brother in your class, not in the  
16 actual classes, but in the same grade as you  
17 throughout?

18 A Yes.

19 Q Did he also graduate?

20 A Yes.

21 Q All right. Let's go to the elementary  
22 school. At any time when you were in the

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1 elementary school, at Bethel Elementary, did you  
2 have -- I want to use the right terms and not in  
3 any way sound like I am trying to be difficult;  
4 but during that time, from kindergarten through  
5 5th grade, did you at any time have the beginnings  
6 of what you now perceive to be gender identity  
7 issues?

8 A Absolutely.

9 Q Just tell me about that. When did that  
10 first start? When do you first have any  
11 recollection of thinking or believing or feeling  
12 like you were male and not female?

13 A I believe myself to be a boy in my  
14 internal dialogue until the point that I recognize  
15 that there were -- that society perceives larger  
16 differences between men and women, I suppose more  
17 accurately when I entered school age and  
18 recognized that men and women have different  
19 expected societal roles.

20 At that point I had an understanding that  
21 the one assigned to myself, of course, the female  
22 social and physical role, was inaccurate; however,

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1 I did not have the language at that time to  
2 vocalize those feelings.

3 Q If I can try to express what you just  
4 said, is it true that before you went to school,  
5 you were not aware one way or the other, it was  
6 like when you went to school is when it kind of  
7 became I see, girls are one way, boys are  
8 different, boys are treated differently?

9 A Not -- not exactly. If I can -- I  
10 understood myself to be a boy in the sense that my  
11 internal self-perception was that way in the sense  
12 that the male cartoon characters, you know, that I  
13 idolized, I felt that I was, you know, like them  
14 in the sense of gender; however, when I hit an age  
15 where social gender expectations came into play, I  
16 recognized that other people perceived me as a  
17 girl.

18 Q When was it that you first realized that  
19 others perceive you as a girl?

20 A That would have been when I entered  
21 school.

22 Q As we sit here today and you look back on



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1 it, do you say -- I mean a moment, was there a  
2 moment when a teacher said something or somebody  
3 said something and you went she thinks I am a  
4 girl?

5 A There were points in my childhood where I  
6 would request to do something and get --  
7 Gloucester is a socially conservative place, so  
8 there were points in time, when I was younger,  
9 where I would request to do something or show an  
10 interest in doing something, which was  
11 traditionally reserved for boys, and would be  
12 refused, rejected, and at that point that was the  
13 point in which I realized there were differences  
14 and that I was assumed to be on sort of the wrong  
15 side of the line there.

16 Q Let me ask you this. What specific  
17 refusals or rejections are you referring to? I  
18 mean what are we talking about?

19 A On one occasion, I wanted to walk down to  
20 my friend's house, who was a 5-minute walk away on  
21 the same street, he and I -- he -- he, myself and  
22 my brother were all friends, and at one point my

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1 father told me I could no longer go over to his  
2 house, whereas my brother could, the reason being  
3 I was, in his opinion, at the time a girl.

4 So examples like that. When I wanted to  
5 do sports --

6 Q Let me interrupt you for a second.

7 A Yes, sir.

8 Q That specific occasion, when your father  
9 said you can't go to the friend's house but your  
10 brother can, how old were you?

11 A I was between 6 and 8. Well, I was  
12 probably 8. I don't imagine they would have  
13 allowed me to walk that far when I was 6, so  
14 around 8.

15 Q What was your understanding of the reason  
16 that you couldn't go and your brother could?

17 A I don't think I had a good understanding  
18 of why that was a reasonable declaration.

19 Q Yes.

20 A However, I do --

21 Q With regards to whether it was reasonable,  
22 what was the reason?

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1           A Well, pardon. What I was saying, I  
2 suppose, is I was not given a reason, it was -- it  
3 was just that I was not allowed to and my brother  
4 was.

5           Q And this was your father?

6           A Yes.

7           Q So that's one example of a refusal or  
8 denial. What were the others?

9           A The most pertinent additional memory that  
10 I have is when I wanted to play baseball and my  
11 only options were softball on a female team, and  
12 that caused me so much distress that, despite  
13 already having bought a mitt and a ball, I did not  
14 actually enter the sport.

15          Q How old were you at that point? Again,  
16 approximately.

17          A Approximately 10.

18          Q It was little league?

19          A Oh, I don't recall.

20          Q Did your brother play baseball?

21          A I don't recall. I don't recall.

22          Q Did your brother play athletics as a child

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1 or after childhood into high school and things?

2 A My brother -- Growing up, we both did tee  
3 ball and he went on to play football later.

4 Q How far did he go in playing football?

5 A There is a league, the Gloucester Knights,  
6 I believe, and he went up until the point of  
7 beginning high school, I believe, that was when he  
8 stopped playing football.

9 Q Okay. Did you ever express an interest in  
10 playing football?

11 A Absolutely.

12 Q And what happened?

13 A I was told I could not.

14 Q And who told you that?

15 A Both of my parents at the time.

16 Q Did they tell you why?

17 A They said it was because I was a girl.

18 Q Any other examples of refusals or denials,  
19 because of your perceived being female, that you  
20 can think of besides we have talked about walking  
21 to your friend's house, we have talked about  
22 baseball versus softball and deciding not to play,

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1 we have talked about not playing football.

2 A Can you clarify what time frame we are  
3 looking at with this?

4 Q Any time.

5 A Any time. There are. There are quite a  
6 few instances where, once I cut my hair short, I  
7 was 12, I was told that it was not a style  
8 appropriate for me. All throughout my childhood,  
9 I would request boys' clothing and was told that  
10 that was also not appropriate for me. Eventually,  
11 I began to wear boys' clothing and was, of course,  
12 told it was not appropriate for me, so I would say  
13 that consistently throughout my life, I have  
14 expressed masculinity and have been told that it  
15 was inappropriate for the gender that I was  
16 perceived as at the time.

17 Q All right. Let's talk about those. You  
18 mentioned specifically your haircut. Who told you  
19 it was not appropriate for you?

20 A People in -- people that I interacted  
21 with. I could not recall individual names, I just  
22 do recall that there were many comments, mostly

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1 peers and family members.

2 Q Did that family members include your mom  
3 and dad?

4 A My father, however, the other family  
5 members are extended -- estranged family.

6 Q Okay. So your father did tell you you  
7 shouldn't wear your hair short like that?

8 A Yes.

9 Q Did your mother say that?

10 A My mother was not excited about the  
11 haircut, but she supported it.

12 Q How about your brother?

13 A He didn't -- we didn't -- he didn't have  
14 an expression one way or the other that I recall.

15 Q What about the clothing, wearing what you  
16 described as boys' clothes. Who expressed to you  
17 that you shouldn't be wearing boys' clothes? Did  
18 your father?

19 A My father and then my mother was perhaps  
20 the primary person, as she was the one that would  
21 most often take me clothes shopping.

22 Q So you would be shopping with her and you

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1 would be saying I want these, and she'd say no,  
2 you can't have those, you have to get these other  
3 ones?

4 A Yes.

5 Q Okay. So did you end up buying what you  
6 perceived to be girls' clothes instead of boys'  
7 clothes?

8 A When I was younger and had a lesser degree  
9 of control over what I was wearing, I conceded  
10 more often than not; however, as soon as I was old  
11 enough to know how to argue with my parents, I  
12 was, you know, fighting for the boys' aisle.

13 Q Once you started fighting for the boys'  
14 aisle, did they eventually give in and let you  
15 wear boys' clothes?

16 A They did.

17 Q When was that approximately?

18 A I have been wearing pretty much  
19 exclusive -- well, I have been wearing exclusively  
20 clothes from the boys' section since I was 11 or  
21 12.

22 Q So that's approximately when you learned

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1 how to argue with your parents?

2 A Well, no. I argued far before that.

3 Q But you got better at it?

4 A Yes, I would say so.

5 Q Okay. Let's talk about your friends  
6 during the same time frame, and let's go to just  
7 around age 11 or 12, when you are now -- I mean  
8 tell me if I am wrong, you are not presenting  
9 yourself more as a boy than a girl. Is that true  
10 or not?

11 A Everyone still understood -- everyone  
12 still assumed that I was a girl, I had not at that  
13 time discovered the word transgender and how that  
14 related to who I was. However, outwardly, I did  
15 present very masculinely, and that was not  
16 something that was unnoticed by peers and friends.

17 Q And in that time frame, age 11 to 12,  
18 what -- when you say it was noticeable, what  
19 notice -- what awareness did you have of the  
20 notice that people were taking?

21 A Well, I was bullied pretty seriously in --  
22 throughout all of my school career, but elementary



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1 and middle including. Part of this bullying was  
2 centered around the fact that I was not  
3 traditionally feminine.

4 Q The word bullying can cover a broad range  
5 of activities, depending on the -- I am sure there  
6 is a definition but there is also perceptions.

7 What did you consider to be bullying?  
8 What bullying occurred?

9 A People threw things at me, people called  
10 me horrible names, people would refuse to sit near  
11 me, people would exclude me from activities.

12 Q Now, these people that you are talking  
13 about, are those your peers?

14 A Yes.

15 Q Members of your age group?

16 A Yes.

17 Q Where would these things occur?

18 A Primarily in school.

19 Q What ages did this activity occur, like  
20 what grades?

21 A Yes, sir. I have been bullied my entire  
22 school career, so all of them.

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1 Q Okay. K through 5, those things occurred?

2 A Absolutely.

3 Q 6 through 8, that occurred?

4 A Absolutely.

5 Q 9 through 12, those things occurred?

6 A Absolutely.

7 Q What would be the frequency you would say  
8 with which those things occurred?

9 A In high school, I would say -- pardon. I  
10 would say -- I mean I would say it was pretty  
11 consistent. I had probably a daily event that  
12 made me feel unsafe or unhappy, at least one thing  
13 would happen pretty consistently, minor to major,  
14 so the frequency was high.

15 Q K through 5, 6 through 8, 9 through 12,  
16 every day --

17 A Yes.

18 Q -- something happened?

19 A Yes.

20 Q Okay.

21 A And to clarify -- pardon me. I'm sorry.

22 Q No. That's fine.

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1           A   That it was not necessarily that a major  
2   event would happen every day, but there was  
3   something that made me feel unsafe or -- or  
4   disliked for sure every day.

5           Q   So let's talk about major.  What would you  
6   perceive as major in the area of bullying?

7           A   Well, when I -- I would say major would be  
8   either an example where I have had something  
9   thrown at me or a particularly public bout of  
10  ridicule or cases where a group would ridicule me  
11  publicly or perhaps a case where a chair was  
12  pulled out from under me.  Those are examples that  
13  I can recall of things I consider more serious.

14          Q   And how about what would be something that  
15  was not major, that was minor, and yet made you  
16  feel, as you said, unsafe or disliked?

17          A   I was -- I was called names with such  
18  frequency that I would consider an insult a minor  
19  thing.  I could expect to be called some kind of  
20  unkind name at least once or twice a day in  
21  school.

22          Q   What kind of names?  Look, I am sorry I am

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1 asking you all these questions. I think it is all  
2 relevant, and so that's why I am asking the  
3 questions.

4 A Okay.

5 Q So what kind of names?

6 A Faggot, dike, homo, weirdo, references to  
7 my weight.

8 Q Did you feel like there was any particular  
9 group of people who were the ones more likely to  
10 pick on you? I mean was it more boys than girls  
11 who were picking on you, was it more -- and, you  
12 know, we all went to high school, jocks versus  
13 whoever, or did you feel like it was any -- any  
14 identifiable group of people?

15 A I wouldn't know those people personally  
16 enough to identify with groups they belong to.

17 Q So these are people that you don't  
18 actually know?

19 A Well, I went to school with them. They  
20 weren't my friends.

21 Q Right. So let's go in the other  
22 direction. In K through 5, did you have friends?

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1 A Very few.

2 Q How about middle school?

3 A Also very few.

4 Q How about high school?

5 A I had a very strong core group of friends  
6 in high school.

7 Q In elementary school, were you and your  
8 brother -- would you consider you and your brother  
9 to be friends?

10 A No.

11 Q Middle school?

12 A No.

13 Q High school?

14 A No.

15 Q I might focus on the high school, but let  
16 me just ask you about the elementary and middle  
17 school. Did you -- I mean who were your friends?  
18 How were -- how did you become -- The few friends  
19 that you had, how did you feel like that worked,  
20 that you became friends with those people?

21 Was there any particular activity or thing  
22 that kind of helped you associate with them and

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1 helped them associate with you?

2 A I had friends that were friends of mine  
3 because our mothers were close, I didn't really  
4 have personal friends, people that I bonded with  
5 like organically and could spend time with.

6 Q But, in high school, these people actually  
7 were your friends?

8 A Yes.

9 Q Okay. Can you tell me who those people  
10 were?

11 A Do you need first and last names?

12 Q I would like first and last names, but if  
13 you know them, sure.

14 A Evelyn Hronec.

15 Q Help me with Hronec.

16 A H-R-O-N-E-C. Olivia Pohorence,  
17 P-O-H-O-R-E-N-C-E. Camille Gibson.

18 Q C-A-M-M-I-L-E?

19 A L-L. C-A-M-I-L-L-E.

20 Q That's what I wrote, it is not what I  
21 said.

22 A And then Gibson.

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1 Q Right.

2 A Alec Earwood, E-A-R-W-O-O-D. Caroline  
3 Cox, that is just C-O-X. And I think that -- that  
4 is sufficient for my core group.

5 Q That's the core group?

6 A Yes, sir.

7 Q How about in terms of the people at the  
8 school, were there any people at the school that  
9 you felt like were your supporters and people --  
10 in particular, I am asking about the high school.

11 A In terms of staff or students?

12 Q I am asking about staff and faculty now  
13 that were supporters of yours.

14 A Supporters of mine in what way?

15 Q Just personally, like you felt like they  
16 were there to help you and supported you in terms  
17 of whatever you were going through.

18 A Yes, I felt that there were a few staff  
19 that were -- that served that role.

20 Q Who were they?

21 A The nurses.

22 Q Names?

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1           A I am trying to recall. Beverly Sabourin  
2 and Niki -- I just knew her as Miss Niki. The  
3 three librarians as well, whose names escape me at  
4 the moment.

5           And although I don't recall names, I do  
6 recall that the office staff were always friendly  
7 and kind, the women at the front desk.

8           Q What about the counselors and the  
9 counseling staff?

10          A I would say Matthew Board would be one  
11 person who I felt was a kind resource.

12          Q Who was assigned -- Who were you assigned  
13 to or was assigned to you, freshman, sophomore,  
14 junior, senior year?

15          A I don't really recall.

16          Q For sure, we know Tiffany Durr, sophomore  
17 year; right?

18          A Yes, but I do not recall for the other  
19 years.

20          Q Somebody named Neblett?

21          A John Neblett?

22          Q Yes. Was he ever your counselor?



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1           A I don't recall. I recall having spoken to  
2 him but not about what or why.

3           Q How about your senior year, did anybody  
4 talk to you about going to college or where you  
5 were going to college or, you know, any type of  
6 counseling-type role like that?

7           A I really -- I don't recall.

8           Q With respect to Miss Durr, what do you  
9 recall in terms of any interactions you had with  
10 her?

11          A I really don't. I just recall that we had  
12 spoken at various points. Oh, may I correct  
13 myself?

14          Q Yes.

15          A Miss --

16          Q You can always correct yourself, just so  
17 you know.

18          A Miss Durr was the person that my mother  
19 and I contacted ahead of beginning sophomore year.

20          Q Right. I was going to talk to you about  
21 that, and we will talk in detail about that.  
22 Other than that, do you remember you and her

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1 having conversations, her being supportive,  
2 nonsupportive, helpful, not helpful, or how did  
3 you perceive things between you and her during  
4 that sophomore year, when she was, according to  
5 her, assigned to you?

6 A I don't ever recall her being malicious;  
7 however, I also cannot recall any individual  
8 conversations that we had.

9 Q So would you say it was neutral, or would  
10 you say it was unhelpful or just kind of just  
11 really nothing?

12 A I would say that I don't recall.

13 Q Okay. Let's go to the specific  
14 conversation at the start of sophomore year, which  
15 you mentioned you and your mom and Miss Durr.  
16 What do you recall about that?

17 A I recall that my mother and I approached  
18 her and informed her that I am a boy and my name  
19 is Gavin and had a discussion about what that  
20 meant for starting the school year.

21 Q What do you recall about the discussion,  
22 what was said?

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1 A I really don't recall anything else.

2 Q And did you speak?

3 A I don't recall.

4 Q How was the meeting arranged, if you  
5 recall?

6 A I don't. I'm sorry.

7 Q What was the result of the meeting, at  
8 least your understanding of the result of the  
9 meeting?

10 A I cannot recall clearly.

11 Q Any aspect that you recall?

12 A No. I am sorry, I can't.

13 Q At some point, you were -- it was agreed  
14 that you would go to school as Gavin.

15 A Yes.

16 Q Is that correct?

17 A Yes.

18 Q And that you would be called by male  
19 pronouns?

20 A Yes.

21 Q What else is your understanding  
22 eventually, when school started, in terms of what

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1 were the terms? I mean you would be starting  
2 school related to this request.

3 A As I -- as I understood it, I would be  
4 starting school as Gavin and with male pronouns, I  
5 was assured that malicious intentional  
6 misgendering was not going to be permitted and  
7 that -- well, that malicious misgendering would  
8 not be permitted, and I at that time had requested  
9 use of the nurse's office bathroom and was  
10 permitted to have access to that as well.

11 Q The term malicious, or excuse me,  
12 intentional misgendering, what does that mean?

13 A Someone choosing to still refer to me with  
14 female pronouns with the knowledge that that was  
15 not appropriate.

16 Q And you were assured that that was not --  
17 that they would make every effort to make sure  
18 that didn't happen?

19 A Yes.

20 Q And tell me what happened. Did it happen?

21 A By peers, yes, absolutely.

22 Q So peers would intentionally misuse the

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1 wrong gender?

2 A Yes.

3 Q How about any staff or faculty?

4 A I don't recall any intentional examples.

5 Q Do you recall any accidental examples? I  
6 mean the thing that was mentioned previously was  
7 that maybe your name was still another name on a  
8 piece of paper and someone said that name, not  
9 knowing, and then -- but that would not be  
10 intentional.

11 A Right. I recall that there were a few  
12 instances of what I assumed to be unintentional  
13 misgendering or deadnaming; however, I do not  
14 recall who or in what year that those things  
15 occurred.

16 Q Deadnaming?

17 A For example, referring to me with the name  
18 that was given to me at birth.

19 Q That's called deadnaming?

20 A Yes, sir.

21 Q So just to make sure we are clear, to your  
22 recollection, there was no staff or faculty who

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1 intentionally misgendered toward you?

2 A Not to my recollection.

3 Q In terms of students doing that,  
4 intentional misgendering toward you, how frequent  
5 was that?

6 A Daily.

7 Q Without asking you to repeat the litany of  
8 things that they called you, what would that look  
9 like other than name calling, if it wasn't name  
10 calling, how would it happen?

11 A They would make a point to greet me by, of  
12 course, the dead name.

13 Q Right.

14 A Or make a point to identify me as a girl,  
15 for example, by saying isn't that a girl?  
16 Things -- things designed to deliberately point  
17 out the fact that I am transgender.

18 Q Again, were there any particular people or  
19 groups of people who were doing this?

20 A It was, generally speaking -- well, I --  
21 it was plenty of different people.

22 Q Okay. I guess what I am trying to figure

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1 out is this. There is how many people in the  
2 school, like 1800 students, 9 through 12?

3 A I don't know.

4 Q I think that's right. Are we talking  
5 about 3 handfuls of people who did this, or is it  
6 hundreds of people would do this? That's all I am  
7 trying to figure out.

8 A It tended to be just groups, small groups  
9 of people known to be unkind to others.  
10 Particularly -- I just -- I really just would  
11 rather not characterize --

12 Q I appreciate that. I don't like  
13 stereotyping anybody either, it is not what we are  
14 about. I am just trying to figure out, if you are  
15 walking down the hall and you go I need to be over  
16 here because I don't want to deal with those  
17 people, or is it literally like anybody out of  
18 nowhere could come up to you and all of a sudden  
19 say something to you and like I don't even know  
20 who that person is.

21 A It was traditionally the same group of  
22 people. It wasn't three people, but it was also

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1 not something that I expected from the entire  
2 student body.

3 Q So most people would walk by and just mind  
4 their own business?

5 A Yes.

6 Q But there were certain people that didn't?

7 A Yes.

8 Q I got it. I am going to talk about 9th  
9 grade. You entered 9th grade, the records were  
10 that you were female and you had not officially  
11 made any request otherwise. Tell me about your  
12 9th grade year in terms of how you functioned and  
13 at some point you left school and that kind of  
14 thing.

15 A My 9th grade year was difficult, I  
16 understood myself at that point, I understood that  
17 I was a boy but did not feel able to reveal that  
18 to others, and so the pressure of pretending to be  
19 someone who I was not and of being recognized as a  
20 girl, when that was incredibly distressing to me,  
21 made that year very difficult.

22 Q And in terms of being, as you say,



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1 recognized as a girl, how often in the course of a  
2 day would something happen that you would be --  
3 feel like you were being recognized as a girl?

4 I mean, if you are in math class and  
5 somebody says what is the answer to question  
6 number 4, you are not recognized as a boy or a  
7 girl, you are just a student, you are being asked  
8 a question.

9 So how often was it that something would  
10 happen and you would think I am being treated like  
11 a girl as opposed to just a person?

12 A When I would be referred to as ma'am in  
13 class, when I would raise my hand to answer the  
14 question and the response would be yes, ma'am, for  
15 example, when peers and teachers would refer to me  
16 with a female name, for example.

17 Q So the name at some point became, I will  
18 use the term a burden for you, I mean the fact  
19 that was your name. I am not going to say it, we  
20 agreed not to use it. Is that right, the name?

21 A Yes, the name from the -- the name has  
22 always, because of its femininity, caused

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1 distress.

2 Q When you say always, since when?

3 A I recall being very young, and although  
4 not having the thought I am a boy, having the  
5 thought this name is far too feminine for me, I  
6 think I like Alex better, things like that, erring  
7 towards neutral things.

8 Q Right. When do you think you first  
9 expressed that concern about the name?

10 A I do not think it was something I ever  
11 vocalized something to family; however, in  
12 imaginary play, when I was very young, I was  
13 always in a male role with a neutral name or a  
14 male name, so that was an anxiety from very early.

15 Q So is there anything in particular that  
16 happened in 9th grade that resulted in you  
17 deciding that you couldn't stay at the school?  
18 Was there a triggering event or was it just a  
19 cumulative effect?

20 A I cannot recall if there was or was not a  
21 triggering event; however, I do recall that the  
22 cumulative stress was very -- was very great.

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1 Q How would you describe how you felt at  
2 that point in time?

3 A What point in time, sir?

4 Q When you made the decision that you were  
5 going to not continue going full-time to school in  
6 the 9th grade, or however that came about. I  
7 don't even know how it came about.

8 Tell me how it came about I guess would be  
9 a better foundation question.

10 A I am sorry. Do you mind reframing the  
11 question?

12 Q Sure. At some point in time, in the  
13 spring semester of your 9th grade year, you  
14 stopped attending school daily; is that true?

15 A Yes.

16 Q How did that come about?

17 A My ability to function became so  
18 diminished, that it was not actually possible for  
19 me to continue to go to school.

20 Q So tell me what that means.

21 A It means I was -- I -- I was experiencing  
22 major depression, my social anxiety related to

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1 being gendered incorrectly was so bad that I was  
2 afraid to go outside, where I might encounter  
3 other people, for example. I academically could  
4 not focus, I was just -- I was miserable.

5 Q And what occurred? What steps, as best  
6 you can recall, occurred in terms of communicating  
7 that with the school or with your parents  
8 communicated, your father or mother?

9 A I really don't recall.

10 Q How long a period of time was it that you  
11 were not attending school on a daily basis at that  
12 9th grade spring semester?

13 A I can't recall. I -- I don't recall if it  
14 was for the duration of the rest of that year or  
15 not, I don't recall.

16 Q What was the level of support you were  
17 receiving from your mother at that point in time  
18 in terms of trying to help you through this?

19 A Regarding my difficulties at school or my  
20 gender expression?

21 Q Just your ability to function, period,  
22 whether it was difficulty at school or gender

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1 expression or anything else?

2 A Well, at that time my mother was, of  
3 course, willing to pull me out of school and allow  
4 me to do an alternative program.

5 Q What is your recollection of the  
6 alternative program? Was it home school?

7 A It -- it -- I think it was referred to as  
8 homebound schooling and was online.

9 Q So did you complete your 9th grade classes  
10 online?

11 A As far as I recall.

12 Q Did you -- Did the school, to your  
13 understanding, have any understanding -- I'll  
14 start over on that one.

15 What was your understanding of the  
16 school's perception of what your issue was?

17 MR. BLOCK: Objection.

18 A I don't recall.

19 Q Did you speak to anybody in the  
20 administration with respect to why it was that you  
21 were going to go to an alternative program?

22 A I don't recall.

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1 MR. CORRIGAN: We have been going a while.  
2 Why don't we take a minute.

3 (Recess from 10:28 a.m. to 10:45 a.m.)

4 A Sir, I have recalled a few different  
5 details to share with you.

6 Q Sure.

7 A The first being that, when I did meet with  
8 Tiffany Durr, I do not think it is accurate that I  
9 requested the use of the nurse's restroom, I --  
10 more accurately, I believe it was an option  
11 offered to me, which I then accepted.

12 Additionally, I have a few antidotes from,  
13 you know, growing up, which follows the line of  
14 inquiry about, you know, male expressions.

15 The first being in middle school -- I  
16 expressed that I didn't really have friends in  
17 middle school, and the group of friends I  
18 mentioned in high school, we met in middle school;  
19 however, at that point they had not become my core  
20 groups of friends, which was why I phrased that  
21 the way I did; however, at some point in --  
22 actually, pardon me. Do you -- does --

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1           When we were -- When Peasley was taken out  
2 by a tornado and we went to school in a trailer,  
3 this was when that happened, so actually this  
4 could have been 9th grade. In fact, it was 9th  
5 grade, so this was not middle school at all.

6           9th grade, my -- my friends and I, two of  
7 my friends, I don't recall who of the two, we were  
8 walking, and at that time I was presenting fully  
9 as male, although I had not revealed that, I had  
10 not revealed my gender identity to any of my  
11 friends, and one of my friends saw a student,  
12 presumably assigned male at birth, and made the  
13 comment that looks like the male version of Gavin,  
14 but using, of course, the name they knew me as at  
15 the time; and my other friend said, in response,  
16 Gavin is the male version of Gavin.

17           So on another occasion, when my sister got  
18 married, one of -- the half sister on my mother's  
19 side, my -- my mother insisted I wear a dress, and  
20 that was a process that took hours and countless  
21 stores because I would walk in, take one look,  
22 nope, not doing any of them, hate them all, and

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1 then we'd go to the next one.

2 I -- I really fought hard to not wear a  
3 dress and eventually, after lots of tears and  
4 fights, came to agree to wear one that was just  
5 like completely black, was just like a square with  
6 straps, and I was incredibly distressed, and at  
7 the wedding the first thing that I greeted my  
8 relatives with was please don't call me pretty,  
9 please don't call me pretty, because I did not  
10 want to be referred to in a femininely-aligned  
11 way, and I do not recall what year my sister got  
12 married, but that would have been probably -- I  
13 was probably prepubescent at the time.

14 Q So 11, 12?

15 A Around, or perhaps earlier, I was -- it  
16 was, yes, it was around in that range.

17 Q Okay.

18 A And then there was one example where, as a  
19 class, I can't remember the parameters, but we  
20 were asked to line up boy, girl, boy, girl. Or,  
21 in fact, I -- so I don't recall the setting, if  
22 this was gym or what have you or whatever, but I



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1 remember that I had been just assigned to like  
2 stand in line with the boys because visually,  
3 looking at me, the person had assumed I was or  
4 correctly determined that I was a boy, although at  
5 the time I was still understood socially to be a  
6 girl, and that was a moment of great joy for me,  
7 so that's another sort of transitional antidote.

8 Q And that last antidote was at school?

9 A I believe so. Actually, I will say I  
10 don't recall just because I can't say with  
11 certainty.

12 Q But it was somewhere where you and other  
13 children at the time were being asked to line up  
14 and the adult in charge identified you as a boy?

15 A Yes.

16 Q And that was a source of joy for you?

17 A Yes.

18 Q How old approximately were you?

19 A I was -- I was -- this would have been  
20 before transition, so I was in the range of 9 to  
21 12.

22 Q But you don't recall whether that was

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1 school or somewhere else?

2 A I don't.

3 Q Spring semester of 9th grade is kind of  
4 where we left off. Physically, did you have any  
5 facial hair at that time, in spring semester of  
6 9th grade?

7 A I -- well, perhaps more than was common  
8 for someone assigned female at birth, but it was  
9 not -- pardon. At that time, I had not begun  
10 hormone replacement therapy, but I -- yes, I did  
11 have a little rat 'stache I was proud of.

12 Q I assume a rat 'stache --

13 A Pardon me.

14 Q -- is some hair on your upper lip?

15 A Just a tiny patchy little thing that I  
16 just was -- I loved to not shave.

17 Q With that semester in school, you had not  
18 come out to the school itself?

19 A The school itself, no; however, by the end  
20 of that year, some of my friends knew.

21 Q And how did that happen? How did they  
22 know?

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1           A   I -- I just informed them that, going  
2 forward, I would like them to refer to me with  
3 male pronouns and Gavin.

4           Q   Where did the name Gavin come from?

5           A   My mother chose it for me.

6           Q   What do you recall about how that  
7 occurred?

8           A   Well, I -- I don't recall the moment where  
9 Gavin was decided upon, but I just recall the  
10 process was that my mother would be how about  
11 this? No. How about this? Absolutely not. And  
12 eventually we came to a point where I was okay  
13 with what she had chosen.

14          Q   Were you suggesting names to her as well  
15 and getting her feedback?

16          A   I don't recall. It was established at  
17 that point that, in fact, she had made the  
18 statement that she -- if I did not allow her to  
19 choose my name, that it would not be changed. She  
20 was --

21          Q   Eventually, you were okay with that, as  
22 long as you approved of the name?

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1           A I would have preferred to self-identify;  
2 however, I am not unhappy with the name Gavin.

3           Q Okay.

4           A They're -- well --

5           Q What were you going to say?

6           A It is -- I am not entirely sure how  
7 relevant it is, it is just the name actually -- I  
8 had given the name to a turtle my brother found in  
9 the York River, I had called the turtle Gavin, and  
10 my mother insists that she was not aware that that  
11 was what the turtle's name was, because my brother  
12 called it Bubba; however, I am somewhat of the  
13 belief that I am named after a turtle.

14          Q Your mother swears that's not so?

15          A She will say that it is not so.

16          Q Okay. Did your brother or your father  
17 participate in this renaming discussion?

18          A No.

19          Q At what point did you begin any type of  
20 treatment which you understood as treatment for --  
21 and eventually the term gender dysphoria is what  
22 is identified. At what point did any treatment

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1 for that occur, as your best recollection?

2 A Are you referring to specifically medical  
3 steps or the beginning of like my attempts to  
4 alleviate that dysphoria?

5 Q The beginning of your attempts to  
6 alleviate.

7 A I was -- I believe I cut all of my hair  
8 off when I was 12, which was one of the first  
9 things that I did to begin a transition.  
10 Following that, when I was 13, I purchased a  
11 garment, which would flatten my breasts, and then,  
12 when I was 14, I revealed to my mother that I was  
13 a boy, and by the time I was I believe 15, I had  
14 begun hormone replacement therapy in the form of  
15 testosterone injections. Or perhaps, actually, I  
16 believe I -- did I say 15?

17 Q Yes.

18 A Yes, sir, so that's correct.

19 Q At the time you cut your hair off, were  
20 you seeing any healthcare provider who was  
21 providing you with any sort of guidance with  
22 respect to this question of what ultimately was

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1 determined to be gender dysphoria?

2 A Are you asking if I was under any mental  
3 healthcare at the time or if I was specifically  
4 seeing someone for gender dysphoria?

5 Q I am asking if you had discussed anything  
6 with regard to this with any healthcare provider.

7 A No.

8 Q When did that first occur? It doesn't  
9 have to be a psychologist, it could have been your  
10 family doctor, it could have been just any  
11 healthcare provider.

12 A I actually want to correct myself. I had  
13 a therapist when I was 8, who I at the time  
14 expressed -- I did not use the language that I was  
15 transgender; but I had expressed that I felt like  
16 a boy, and that didn't go anywhere. It was a  
17 religious counseling institution, and so it was  
18 dissuaded rather than encouraged, or not  
19 encouraged, but rather than respected, I suppose,  
20 and so I did not vocalize that to a professional  
21 after that point until -- until after I cut my  
22 hair, I believe.

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1 Q So sometime after you were 12 years old,  
2 after you got --

3 A Yes, after I was 12.

4 Q Do you remember who you first spoke to  
5 about it, healthcare provider?

6 A I --

7 MR. BLOCK: After he cut his hair?

8 MR. CORRIGAN: Yes.

9 Q After you cut your hair.

10 A There was one therapist, who I cannot  
11 place on a timeline, it -- I don't recall when I  
12 saw this person, and I also do not recall the name  
13 of the doctor because I had a nickname for --  
14 which I never said to her, but a nickname that  
15 just was a feature of hers, that was helpful for  
16 me to remember what doctor that was, but I don't  
17 recall her name, and she was the first provider  
18 that I had mentioned that to.

19 But the first provider that I actually  
20 sought gender specific care from was Dr. Lisa  
21 Griffin.

22 Q The person before Dr. Lisa Griffin, was

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1 that someone in the Gloucester community?

2 A She was more local than Dr. Lisa Griffin,  
3 but I cannot recall if she was within Gloucester  
4 or outside of Gloucester.

5 Q When you say more local, it might have  
6 been York, it might have been Hampton Roads,  
7 Hampton or Newport News or --

8 A I -- I really don't recall. It was not --  
9 for -- for example, Richmond would have been an  
10 hour and a half of a drive, and it was much, much  
11 less than that --

12 Q Right.

13 A -- from my home in Gloucester, so sort of  
14 in that kind of 30-minute driving circle, that was  
15 where they practiced.

16 Q This person, what were you seeing them  
17 for?

18 A I -- at the time, what I recall of the  
19 stated reasons was, of course, because at that  
20 point, my mother was the one who contacted the  
21 doctors --

22 Q Right.



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1           A -- and communicated these things. The  
2 understanding at the time was that the treatment  
3 was for generalized anxiety and severe depression.

4           Q Who is it, as best you know, who referred  
5 you to Dr. Lisa Griffin?

6           A I really don't recall. I -- I know that  
7 it was, of course, somebody in the know of the  
8 transgender community, but I do not recall who  
9 that person was.

10          Q The term transgender you have said several  
11 times, when you were younger, you didn't know that  
12 term. When did you first learn that term?

13          A I was around 12, I would say, when I  
14 discovered that term.

15          Q About the time you cut your hair?

16          A Probably; however, it was not -- I did not  
17 immediately recognize that label as being  
18 accurate, because it was something that was -- it  
19 was not a concept that I had been introduced to in  
20 a positive light, and that had caused anxiety  
21 relating to my knowledge that that was accurate.

22          Q Right. So how was it, if it wasn't a

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1 positive light, what light was it that the term  
2 transgender was open to you?

3 A Well, my home environment as well as the  
4 community environment was very conservative, and I  
5 also grew up in an environment, which was very  
6 religious and specifically religious in such a way  
7 where the teachings of those churches were that,  
8 for example, being gay is wrong and evil, and so  
9 it was just in context of those sorts of things.

10 Just -- you know, my understanding of  
11 trans people were that they were strange or bad,  
12 or up until that point or that life, you know, is  
13 difficult, and I don't think I ever held those  
14 convictions personally but was fearful of the  
15 reception of others.

16 Q So the term transgender, I mean did you  
17 hear it at church, did you hear it at Sunday  
18 school, did you hear it in your house, or was it  
19 at school, or where was the first time that  
20 someone said transgender and you went I know what  
21 that means, I think that's what I am feeling?

22 A Yes. It was a YouTube video, it was an

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1 individual on YouTube who made videos where they  
2 would dress up as a character from a show I liked  
3 at the time, and in one video that I saw, they  
4 appeared physically female and in another video I  
5 saw, which I later realized was dated a year after  
6 the first one, they appeared physically male, and  
7 I was totally -- I was just ecstatic that that was  
8 something people could do.

9 Q Who was the individual, do you remember?

10 A The channel was called Twin Fools.

11 Q T-W-I-N, F-O-O-L-S?

12 A Yes. I don't know if it is still active  
13 or anything like that.

14 Q And the individual was they were on a show  
15 or it was just a video that they had done  
16 themselves?

17 A They just made YouTube videos.

18 Q Okay. Do you know who the person was?

19 A No, not personally. It was --

20 Q Do you remember their name, did they have  
21 a stage name?

22 A Oh, I have no idea. I don't know. I was

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1 quite young.

2 (Discussion held off the record.)

3 Q So how old were you the first time you saw  
4 Dr. Lisa Griffin?

5 A I believe 15.

6 Q So was that the spring of your 9th grade  
7 year or was it later?

8 A I -- I did not -- I did not tell my mother  
9 who I was until the summer before or the summer  
10 after my 9th grade year, so that would have been  
11 later.

12 (Discussion held off the record.)

13 Q Let's talk about telling your mother who  
14 you were. When and where was that?

15 A My mother knows the calendar date, I do  
16 not. I believe we were in the kitchen at my home  
17 and she had said the word transgender, which is  
18 not a word I knew or I was aware that she was  
19 aware of, and I had previously downloaded a PDF  
20 about what it means to be a transgender on a Nook,  
21 and so when she said the word transgender, I ran  
22 off to find the Nook, I couldn't find it, so I

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1 came back and told her; and at that time she told  
2 me that I was not allowed to tell my extended  
3 family or the rest of my family.

4 Q So you told her I'm a boy, I'm a  
5 transgender boy?

6 A Yes.

7 Q And what was her reaction other than --  
8 Before she said don't tell anybody else, what was  
9 her reaction?

10 A She hugged me and said she loved me and we  
11 would get through this, those sorts of things.

12 Q Okay. Then she said we are not going to  
13 tell your father, your brother or anybody else?

14 A Yes.

15 Q At what point in time did your father and  
16 your brother become aware of this?

17 A Back to the turtle, at my 15th birthday  
18 party, I -- you know, I was still sort of under  
19 that gag order, and so I was prepared to  
20 experience a birthday as a birthday girl again --

21 Q Right.

22 A -- which was intensely traumatic as a

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1 concept, and so the morning of the party, I had --  
2 I was nearly just totally catatonic with my grief  
3 and anxiety.

4 And I had locked myself in my bedroom  
5 because -- because I mean I didn't -- I wasn't  
6 going to experience a birthday as a birthday girl,  
7 that was my position, and so my father had knocked  
8 on the door after that point and asked me what the  
9 problem was; and I had informed him, I said well,  
10 Mom said I am not allowed to tell you, and so, of  
11 course, he goes outside, asks Mom what it is that  
12 I am not allowed to tell him, and she told him and  
13 then called all of my relatives.

14 Q Your mother did?

15 A Yes. Yes. Yes, sir. My mother told my  
16 father that I was a boy, called all my relatives,  
17 who were mostly on the way already, said that I  
18 was a boy, and then later, at the party, was when  
19 my brother found out, the name Gavin had been  
20 written on the birthday cake, in lieu of the  
21 incorrect name that had originally been there, my  
22 mother had wiped the wrong one off and had written

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1 Gavin, and my brother came down the stairs and  
2 asked everyone why the turtle's name was on the  
3 cake, because he was aware that the turtle's name  
4 was Gavin but not that my name was Gavin, and so I  
5 had to take him in the other room and explain, and  
6 so basically everyone found out on the day of my  
7 15th birthday.

8 Q And how did it go with you and your  
9 brother with you explaining that to him?

10 A Well, I said that's not the turtle's name,  
11 that's my name, I'm a boy, and he said no, you're  
12 not, and he ran out of the room, but he didn't  
13 mention the turtle after that.

14 And following that was supportive to  
15 whatever degree. I mean he was never rah-rah  
16 trans.

17 Q Right.

18 A However, he respected me as a man, as with  
19 male pronouns, with the name Gavin. That was not  
20 a point of negotiation in my household.

21 Q What was not?

22 A It was not an option for anybody living

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1 under that roof to misgender me or dead name me  
2 intentionally. It was something that my mother  
3 had made very clear that she would not tolerate.

4 Q So would you say, from that point forward,  
5 that your father and brother were supportive or  
6 not, unsupportive?

7 A I would say not, unsupportive, remained  
8 the dynamic for a little while there,  
9 transitioning into just it's everyday life now and  
10 he is my brother, he is my son, and that's the  
11 extent of the conversation.

12 Q Okay. At what point do you think it  
13 became he's my brother, he's my son?

14 A Perhaps after a few months of getting used  
15 to it, and I -- and especially once I had began  
16 hormone replacement therapy and they recognized  
17 that it was something I was serious about.

18 Q How did that affect you when they -- when  
19 it became he is my brother, he is my son, instead  
20 of merely not, unsupportive?

21 A You know, being in a hostile environment  
22 in the home is incredibly detrimental to one's



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1 mental health, so having the shift from mild  
2 hostility, you know, begrudging acceptance to, you  
3 know, you are my brother, you are my son, greatly  
4 alleviated some of my anxiety.

5 Q So approximately when would you say -- to  
6 me, you identified three stages there just now of  
7 mildly unsupportive, whatever you said, and then  
8 kind of neutral, and then actually you are my  
9 brother, you are my son.

10 A Yes.

11 Q Over what period of time do you think  
12 those three stages occurred?

13 A I would say that full evolution was over  
14 the course of perhaps a year.

15 Q So tell me about your relationship with  
16 your brother before any of this came into being.  
17 What -- how would you describe your relationship  
18 with your brother?

19 A He -- we didn't have a relationship. He  
20 and I ran in different circles, and we just didn't  
21 communicate very often.

22 Q Okay. Let's go back to the meeting. I am

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1 now going to get into the details of the case,  
2 like from this point forward.

3 All right. The first meeting with the  
4 guidance counselor, did you also meet with the  
5 principal at the same time or did you just meet  
6 first with the guidance counselor?

7 A As I recall, it was first with just the  
8 guidance counselor.

9 Q That was Miss Durr?

10 A Yes.

11 Q Do you remember having an initial meeting  
12 at some point in time with the principal Nate  
13 Collins?

14 A I do remember speaking to him, yes. I do  
15 not recall, however, if that was before the school  
16 year began or after the school year began.

17 Q Okay. Was he involved in the initial plan  
18 that you would use the nurse's office for the  
19 restroom and be called by male pronouns, or was  
20 that done with or without his knowledge, as best  
21 you recall?

22 A I don't recall to what extent he was

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1 involved in the decision to have me in the nurse's  
2 bathroom; however -- pardon me.

3 Could you restate the second part?

4 Q Yes. What I am trying to figure out is  
5 whether your recollection is that Mr. Collins was  
6 involved in this initial decision, the initial --

7 A Right.

8 Q -- be called Gavin, male pronouns, use the  
9 nurse's office, or whether his involvement came  
10 later, when you were talking about using the boys'  
11 restroom. In other words, was he involved in that  
12 first set of conversations, as best you recall?

13 A As -- as best I can recall, there had been  
14 a discussion with him wherein he assured me that  
15 bullying was not going to be tolerated and that I  
16 should report to him, should something like that  
17 happen. I do not recall, however, at what point  
18 that conversation happened.

19 Q In the time that you were -- let's go  
20 before you identified and came to school in the  
21 summer, so in 9th grade, did you ever report  
22 bullying, did you ever go to the teachers or go to

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1 the counselors or anybody to say something has  
2 happened today, this is what's happened today,  
3 something specific?

4 A So because I had been bullied throughout  
5 my school career, I had felt consistently like it  
6 didn't matter to the administration, I was  
7 never -- I don't feel it was ever handled  
8 appropriately, I had to be home schooled in 3rd  
9 grade because no one handled the bullying, and so  
10 by that time I feel that I had developed a  
11 perception that no one was going to help me, and  
12 so I think I reported these things with less  
13 frequency -- certainly with less frequency than  
14 they happened.

15 Q In 9th grade, the entire year, that fall  
16 and spring semester, do you have any recollection  
17 of ever actually reporting a specific incident of  
18 what you believe was bullying to a teacher or  
19 administrator?

20 A I know there was a lot, but I cannot  
21 recall if I had ever reported anything.

22 Q Same question about 10th grade. In 10th

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1 grade, was there ever any specific incident that  
2 you reported to a teacher or administrator of  
3 something that you believe was bullying?

4 A I don't -- I don't recall.

5 Q Same question for 11th grade.

6 A I don't recall.

7 Q And 12th grade.

8 A I don't recall.

9 Q So let's talk about 9th grade. You have  
10 the conversation with Miss Durr, possibly  
11 Principal Collins, it is agreed that you will use  
12 the nurse's office, be called Gavin, be a male,  
13 pronouns, and that, if anything comes up, you will  
14 let them know.

15 So tell me, how does that go for that  
16 first period of time. We know eventually you go  
17 talk to him about using the boys' room, but in  
18 that period of time before you start using the  
19 boys' room, describe what was happening on a daily  
20 basis.

21 A I believe you said 9th grade. That would  
22 have been 10th grade.

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1 Q I am sorry. 10th grade. I apologize.

2 That was a misstatement on my part.

3 A Yes, sir. I -- for the period of time  
4 before I requested use of the men's facilities?

5 Q Yes.

6 A I -- I recall sort of an adjustment  
7 period, where peers who had, for example, known me  
8 previously as something else would -- it was, you  
9 know, they slowly began to realize individually  
10 that, clearly, something had changed and had, you  
11 know, their own varying opinions on that.

12 I do recall an example where I had walked  
13 into class and a previous classmate, after the  
14 teacher had called out my name for attendance or  
15 something, and I said here, you know, after having  
16 been called Gavin, a former classmate of mine sort  
17 of started laughing, and I heard him tell everyone  
18 that's a chick, that's a chick, and then he said  
19 hey, name, hey, name, hey, name, name, of course,  
20 being my dead name, like trying to get my  
21 attention with the incorrect name, and that is  
22 something I did report.

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1 Q Who did you report it to?

2 A The teacher in the classroom at that time,  
3 I do not recall the name of the teacher.

4 Q Do you remember what class or what  
5 subject?

6 A I don't. I do not.

7 Q Do you remember what action, if any, was  
8 taken?

9 A I -- I recall that the teacher assured me  
10 that, I believe it was a female teacher, that she  
11 would speak to him, and nothing like that happened  
12 afterwards in that class.

13 Q When you say nothing like that happened,  
14 you are not saying she didn't speak to him, you  
15 are saying that child never said that's a chick,  
16 hey, name, again.

17 A Correct.

18 Q That never happened again?

19 A Correct.

20 Q So it was a one-time incident?

21 A From that child. There was other  
22 ridicule, however.

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1 Q That child. I wasn't trying to overstate  
2 it.

3 A Right.

4 Q Just that particular incident with that  
5 particular class occurred on one occasion, and you  
6 reported it to the teacher; and, to your  
7 knowledge, it never happened again; correct?

8 A Yes.

9 Q What else can you recall in that time  
10 frame, in the first three or four weeks, maybe a  
11 little longer, of 10th grade, your using the  
12 nurse's restroom.

13 A I can recall that I began to feel anxiety  
14 and shame and stigma surrounding traveling to the  
15 nurse's restroom during that time. I can recall  
16 frustration with missing class time because of it,  
17 and perhaps some embarrassment, because I had the  
18 perception, of course, that the other students  
19 knew why I am going to the nurse, because, you  
20 know, I am the transgender kid, so I remember that  
21 being an anxiety that developed and intensified  
22 during that period of time.



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1 Q Okay. Was there ever anything specific  
2 that happened, any statements by another student,  
3 statements by a teacher, anyone else, that helped  
4 create the anxiety, shame, stigma, embarrassment  
5 that you mentioned?

6 A Yes.

7 Q What?

8 A There was one example of a teacher, I  
9 cannot recall what teacher, but that the teacher  
10 was male, who after a lengthy disappearance from  
11 class to use the bathroom, because, of course, it  
12 was farther from my class than the bathrooms  
13 usually are, he made a big public point, when I  
14 reentered the classroom, to comment on how long I  
15 had been gone in a way that I felt was  
16 humiliating.

17 Q Do you remember who the teacher was?

18 A I do not.

19 Q But it was one of your teachers the first  
20 semester of 10th grade?

21 A Yes.

22 Q Other than that incident where the teacher

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1 commented on how long you had been gone to the  
2 restroom, do you remember any other specific  
3 incidents with respect to events that occurred  
4 that caused you anxiety, shame, stigma,  
5 embarrassment?

6 A A point where I would miss valuable  
7 instruction time, because I had to travel farther  
8 for the restroom. Importantly as well, at the  
9 time I had mentioned the compression garment, and  
10 that is a garment that needs to be adjusted  
11 throughout the day a few times, or else it can  
12 physically damage my body including rib  
13 deformation, respiratory issues, and so it was  
14 important that I had access to a bathroom  
15 frequently enough to make sure that I was not  
16 harmed, and I recall that, because of that, I did  
17 have anxiety over how much instructional time I  
18 was missing.

19 Q So how often did you have to go to the  
20 restroom?

21 A Well, I would say -- I would say, for  
22 restroom functions, perhaps twice a day and then,

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1 to adjust that garment, that is something that I  
2 would have to do three or four times throughout a  
3 school day, often times I would, you know, do that  
4 when I went to the bathroom, but sometimes I  
5 couldn't.

6 Q Why not?

7 A Or rather not sometimes that I couldn't,  
8 but sometimes that it happened, it would  
9 reposition itself in a way that I needed to  
10 correct in a position where I -- I didn't need to  
11 go to the bathroom for any other reason than to  
12 fix that garment.

13 Q Did there come a time when they gave you  
14 access to another restroom that was closer besides  
15 the nurse's office in the D-Hall?

16 A So at one point, it was my understanding  
17 that it was communicated to me that I was allowed  
18 to access the male faculty restrooms on all halls;  
19 however, I was then told that no, in fact, I had  
20 only been given permission to use the ones on  
21 D-Hall, but I think that -- I think I genuinely  
22 was told that I had access to all staff bathrooms

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1 initially, and then the D-Hall thing was raised  
2 after the fact.

3 Q Tell me, as best you can recall, who told  
4 you you could use any male faculty restroom?

5 A I really -- it would have been one of the  
6 administrators or not -- one of -- either  
7 counselors or the principal, someone in that  
8 position, those positions, I don't recall exactly  
9 who.

10 Q But your recollection is that someone told  
11 you you could use any of the male faculty  
12 restrooms?

13 A So my recollection was that yes, that I  
14 was able -- I was permitted to use the male  
15 faculty restrooms; however, I was later called  
16 into either the guidance office or the office, I  
17 can't recall who I had the conversation with, who  
18 said no, in fact, you can only use the D-Hall.

19 Q Who was it who you had the conversation  
20 with that restricted it to the D-Hall restroom?

21 A I really don't recall.

22 Q Your recollection is it was either someone

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1 in counseling or someone in the administration?

2 A Yes. Either, for example, either like the  
3 principal or one of the guidance counselors.

4 Q So Miss Durr, Mr. Lord, Mr. Collins. Who  
5 were the other possibilities?

6 A I suppose Neblett would have been a  
7 possibility, but, of course, I don't recall who.

8 Q Did anyone ever say anything to you -- let  
9 me ask this question first. Did you ever use any  
10 of the male faculty restrooms?

11 A I -- I don't -- I don't recall if I did or  
12 did not, but I can say with certainty that, if I  
13 did once or twice, it was not something I did with  
14 frequency.

15 Q Why not?

16 A I was embarrassed. It was, in fact -- for  
17 another student to see me go into a faculty  
18 bathroom was more, obviously, I suppose uncommon  
19 than should a student watch me walk into the  
20 nurse's office, so it caused me more anxiety, in  
21 fact.

22 Q On any occasion can you recount where

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1 someone actually said something to you, any  
2 student said something to you about what are you  
3 doing in there in the nurse's office or what are  
4 you doing going in the male faculty restroom or  
5 any specific comment by a student about your  
6 restroom use during this time frame?

7 A I recall a few sort of snide comments,  
8 when I had a longer absence from class for the  
9 bathroom, you know, what took you so long, in a  
10 way that was, you know, probably implying high  
11 school bathroom humor; and other snide things like  
12 that are just things designed to point out that I  
13 was not allowed to use the other restrooms.

14 Q Okay. How were you able, if somebody says  
15 what took you so long, to know whether they're  
16 trying to tease you about what function it was  
17 that you were using versus which bathroom you were  
18 using or any other concern?

19 A Well, in part, because of the individual  
20 who would have said that, like these were  
21 typically the kids that would commonly harass me,  
22 and then, additionally, the tone of voice, but, of

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1 course, additionally, the conversation they would  
2 have thereafter about, you know, vulgar toilet  
3 things so --

4 Q All right. So can you give me any  
5 specifics where this happened, like what class you  
6 were in, who the student was, what was said, any  
7 details?

8 A I -- I mean I don't -- I don't recall what  
9 classroom I was in when this happened, it could  
10 have been any one of many.

11 I -- one of the -- one of the most  
12 persistent harassers was a student named Austin, I  
13 do not recall his last name. I do recall that  
14 this was an event -- one of these sorts of  
15 examples of ridicule was something he was involved  
16 in, and then -- pardon me. You also asked  
17 specific examples of dialogue.

18 Q Yes.

19 A For example, you know, that must have been  
20 a big crap, you know, embarrassing things like  
21 that, because it took me a while.

22 Q But you would agree, that must have been a

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1 big crap doesn't have anything to do with  
2 whether -- which restroom you used or anything  
3 else, it is just talking about what you did while  
4 you were in there.

5 MR. BLOCK: Objection.

6 A I wouldn't agree with that. That was just  
7 one example of the dialogue that would follow.  
8 Others would be laughter about there is a bathroom  
9 right there, that kind of thing, so that's why --  
10 the perception I have is that these were all  
11 related to a knowledge of where I was using the  
12 bathroom, and it was just various targeted  
13 insults, whenever they felt like teasing me about  
14 at that time; but there were examples where the  
15 conversation erred less towards bathroom humor and  
16 more towards why don't you go to that one, that  
17 kind of thing.

18 Q Can you tell me who said why don't you go  
19 to that one?

20 A I really couldn't.

21 Q Was that Austin or was it someone else?

22 A I don't recall, but it was -- the -- the



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1 primary harassers were students like Austin and  
2 that would frequently hang around with Austin or  
3 other students in similar circles to Austin. So I  
4 mean it was -- it was, you know, a few different  
5 clusters of people that all sort of ran in the  
6 same circles.

7 Q Did you report Austin's remarks or anybody  
8 else's remarks to your teacher or anyone else?

9 A I don't recall what I did and did not  
10 report. At that time I sort of had a  
11 significantly diminished faith in the protections  
12 that I would have, and so I felt a bit of a sense  
13 that it was futile to report this harassment  
14 because it was so consistent and I had been going  
15 to administrators for my whole entire school  
16 career about incredible bullying, and nothing had  
17 ever been accomplished, so I felt like at that  
18 point it was just not something that I was --

19 Q Let me ask you this. Specifically, had  
20 you ever been to Principal Collins about bullying?

21 A I don't recall.

22 MR. BLOCK: Objection. Are we still

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1 talking about this time period? About --

2 MR. CORRIGAN: I am talking about ever.

3 MR. BLOCK: You are?

4 MR. CORRIGAN: Yes.

5 A I don't recall.

6 Q Had you ever been to Miss Durr about  
7 bullying?

8 A I don't recall.

9 Q Had you ever been to Matt Lord about  
10 bullying?

11 A I don't recall.

12 Q Can you tell me anybody at the high school  
13 that you went to about bullying?

14 A The only clear memory that I have of  
15 reporting an incident would have been the one  
16 where the student, you know, referred to me  
17 incorrectly name wise.

18 Q The one we talked about with the teacher?

19 A Yes, sir.

20 Q And she addressed it?

21 A Yes. I -- I do not believe that that is  
22 the only incident I ever reported; however, I

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1 don't have a recollection of any other specific  
2 event of reporting things like that.

3 Q Okay. At some point in time you went to  
4 Miss Durr and advised her that you wanted to use  
5 the boys' room, is that right, is that how that  
6 started?

7 A I don't recall who I approached, but at  
8 some point in time I did approach a member of  
9 staff at the high school.

10 Q Tell me what you recall about how -- was  
11 it you alone, was it with your mom, was it at  
12 school, was there an email sent, or how did it go?

13 A I don't recall who was with me, and I do  
14 not recall who I spoke with, although I believe at  
15 some point Principal Collins or Nate Collins was  
16 part of the conversation.

17 In fact, what I do recall of my  
18 conversation with him was I -- actually, so I  
19 suppose I do recall, he was part of this, at least  
20 at some point. I remember expressing to him that  
21 it was stigmatizing and embarrassing and also  
22 detrimental to my instructional time, to have to

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1 travel so far to the nurse's restroom, when my  
2 classes on -- in that year were all as far from  
3 the nurse's office on campus as they could have  
4 been, and so it was even farther a journey, and I  
5 expressed that it was just -- it was not ideal for  
6 my needs, and I asked him if I could use the boys'  
7 bathroom.

8 At that time he did not commit either way,  
9 I think he told me that he would have to check  
10 with others, and then we spoke again, and he said  
11 essentially to go ahead.

12 Q Did you -- The word stigmatizing, when is  
13 the first time you ever used that word or ever  
14 heard that word?

15 A I was a verbose child, so I could have  
16 been 8. I have no idea.

17 Q With respect to this, do you remember when  
18 you first used the term stigmatizing, with using a  
19 restroom being stigmatizing?

20 A No, sir, I don't.

21 Q Do you think it was your word?

22 A Yes, of course.

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1 Q Okay. So is it your recollection you said  
2 that to Mr. Collins when you spoke with him, that  
3 specific word stigmatizing?

4 A I conveyed that I felt, you know, stigma.  
5 I do not know necessarily that I said the word  
6 stigmatizing.

7 Q Right.

8 A However, I expressed that I felt that it  
9 identified me as different, as a target, it was,  
10 you know, not right, you know, things which fall  
11 under stigma; but I also cannot say with certainty  
12 that I did not use the word stigmatizing.

13 Q Sure. Do you remember having a meeting  
14 with Mr. Collins and Miss Durr, at which they  
15 prepared a little memo? Have you seen the memo,  
16 on October 14th, that says you will start on  
17 October 20th and you will report if anything goes  
18 wrong, and, if there is an incident, that you will  
19 not increase it, you will come let us know  
20 something happened. Does any of that ring a bell?

21 A I recall the conversation, I do not recall  
22 getting any memo or anything about that.

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1 Q And you may or may not have gotten it. It  
2 may have been something that was generated  
3 internally within the school. I just didn't know  
4 if you had any recollection of a memo.

5 A Yes, I do remember that conversation.

6 Q Okay. And tell me what you recall.

7 A Essentially what you said, that it is --  
8 starting now I can use the boys' restroom. Should  
9 there be any issues, let us know right away, that  
10 kind of thing.

11 Q Okay. October 20th was a Monday. Do you  
12 recall whether the first time you used a boys'  
13 restroom, when that was that day?

14 A I would have no idea.

15 Q Don't remember?

16 A No idea.

17 Q Do you remember which boys' restroom you  
18 started using?

19 A No. It was a nonevent for me.

20 Q So when you went in the boys' restroom, I  
21 assume you went in a stall every time that you  
22 used the restroom?

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1 A Yes.

2 Q But as we are sitting here today, you  
3 can't tell me which one out of the many, if I have  
4 got the math, and said here is all the restrooms,  
5 you wouldn't be able to tell me which one --

6 A No.

7 Q -- on any given occasion?

8 A No. I had been using boys' bathrooms in  
9 every public place in Gloucester and outside of  
10 Gloucester for probably more than a year at that  
11 point, so this was very natural to me and it was  
12 not something I felt necessary to commit to  
13 memory.

14 Q Okay. Did you -- how often were you using  
15 the restroom?

16 A I suppose with the same frequency that I  
17 was going to the nurse's room beforehand.

18 Q So two times a day to use the restroom and  
19 then a few other times to adjust your garment?

20 A Yes, I would say 2 to 4 times a day would  
21 be a fair sort of ball park.

22 Q At any time on any of those occasions in

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1 the first week, which would be the 20th, 21st,  
2 22nd, 23rd, did you have any conversation with any  
3 student coming in, going out, while in the  
4 bathroom about what are you doing, what are you  
5 doing in here, anything?

6 A No. I had a single conversation with a  
7 student during that time in the D-Hall bathroom in  
8 which he asked me if I liked his socks, and that  
9 was the only encounter that I have ever had in a  
10 restroom at Gloucester High.

11 Q Beginning at the first of your sophomore  
12 year, did you ever go in the girls' restroom?

13 A Absolutely not.

14 Q When did you last use the girls' restroom  
15 at Gloucester High School?

16 A I began avoiding it before the end of  
17 freshman year of high school, so perhaps sometime  
18 towards the middle or end of that year.

19 Q Of 9th grade?

20 A Yes, sir.

21 Q So the -- that was the second part of that  
22 year, in the spring semester, you went into the



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1 homebound status, so it was before that is the  
2 last time you think you used the girls' restroom?

3 A Yes. I began avoiding it before that  
4 point, which -- in -- contributed to the overall,  
5 you know, complication of remaining at school.

6 Q Because you didn't want to use the girls'  
7 restroom?

8 A Right. However, it was not something I  
9 could vocalize to others at that time because I  
10 was not out, out being that I had not announced  
11 myself as a boy to others yet.

12 Q And since then, you have not used the  
13 girls' restroom at Gloucester High School?

14 A No.

15 Q Not at all in the 11th grade, not at all  
16 in the 12th grade?

17 A No.

18 Q Correct?

19 A Correct.

20 Q Do you recall an incident in your art  
21 class, Miss Bergh, where you and the student got  
22 into an argument, it would have been in that

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1       sometime in October of 2014?

2             A    2014?

3             Q    I have a record I can show you, but the  
4       person's name is blacked out, so I don't know who  
5       it was.

6             A    Okay.

7             Q    And the allegation is something along the  
8       lines of the student was saying something like,  
9       you know, there is a girl going in the boys' room  
10      and you said that's me and then it elevated  
11      into -- does that ring a bell?

12            A    It does. The conversation that I had  
13      overheard was actually that the child was speaking  
14      in explicit and highly, highly sexually  
15      inappropriate detail about my genitals, talking  
16      about what I had, what -- you know, how disgusting  
17      I was, how freaky I was, other explicit, you know,  
18      assumptions or observations or whatever about, you  
19      know, possible genital situations and that kind of  
20      thing.

21            At that time, I had walked over and I said  
22      you really should stop saying things like this,

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1 because he had identified me as my brother's  
2 sister, and he -- I was in that class with him,  
3 and he was aware that I was that person, and so I  
4 was like this is disgusting, you need to stop.

5 At that point actually he stood up, who do  
6 you think you are talking to. You know, my  
7 position initially was to kind of ask him to like  
8 please stop, and then his position was to yell and  
9 escalate and continue to insult and berate me,  
10 which resulted in disciplinary action for both of  
11 us.

12 Q When was that, do you remember?

13 A No, not other than what you have, what you  
14 have identified.

15 MR. CORRIGAN: Okay. I will go ahead and  
16 get this marked.

17 (G. Grimm Deposition Exhibit 1 was marked  
18 for identification and is attached to the  
19 transcript.)

20 Q Okay. Take a minute and read that. That  
21 has been marked as Exhibit 1. I am asking you, as  
22 best you can recall, whether this is the incident

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1 we were just discussing or describes the incident  
2 we were just discussing.

3 A So reading this did remind me of a detail.  
4 The statement that Miss Bergh had said to me at  
5 the time, where she was recommending disciplinary  
6 action, was that she was positive that it was  
7 going to be a physical fight. I absolutely  
8 dispute that, I had had no intentions of  
9 physically fighting with anybody. I -- my only  
10 position was to say like you -- like stop saying  
11 these things, and his position was to escalate.

12 And also importantly, we were on other  
13 sides of the table, and neither of us ever moved  
14 to get closer to each other as well, so I contest  
15 that there was a possibility of physical fight.

16 But I believe that was the grounds under  
17 which she recommended disciplinary action.

18 Q Okay. Do you remember what the  
19 disciplinary action was?

20 A I -- I don't -- I don't recall if I was  
21 suspended in or out of school or for how many days  
22 or if it was just detention or something, I really

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1 don't recall, it was something to that effect.

2 Q Okay.

3 A I hadn't -- yes.

4 Q Had this individual, who you got in the  
5 argument with, had he seen you in the restroom or  
6 had you crossed paths in the restroom?

7 A Not that I was ever aware of. Perhaps in  
8 context for this claim it is important in that  
9 during the period of time -- in fact -- in fact,  
10 most of these rumors began circulating even after  
11 I was effectively banned from the boys' bathroom,  
12 but it became very common for people to create  
13 stories of Gavin bathroom encounters ranging from  
14 fairly bizarre to, you know, just -- I mean, of  
15 course, they were all fully fabricated, but  
16 perhaps that was fueled by a rumor of that nature.  
17 I don't know.

18 Q Okay. My question is did you ever cross  
19 paths with this individual in the restroom before  
20 or on October 28, 2014, to your best recollection?

21 A Well, absolutely -- Well, to my  
22 recollection, I do not recall seeing him.

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1 Q Okay. And what is his name?

2 A I believe he was a grade beneath me and so  
3 I don't recall.

4 Q Okay. You -- Tell me about your Phys Ed  
5 decision. What did you decide to do with Phys Ed  
6 class?

7 A What grade?

8 Q 10th grade.

9 A 10th grade. I believe that was done  
10 online.

11 Q Why was that?

12 A Because I was, of course, never going to  
13 be allowed to use the correct facilities, being  
14 the male facilities, and the humiliation of having  
15 to use an alternative option or perhaps even being  
16 forced into the girls' locker room was something I  
17 was unwilling to take on.

18 In addition, I was wearing a garment, like  
19 I mentioned at the time, to compress my breasts,  
20 which it was utterly medically necessary and not  
21 something that was optional but that restricted my  
22 physical abilities pretty significantly because,

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1 of course, the function is that it presses the  
2 tissue down against your lungs, and so that does  
3 restrict some movement, and then, on top of that,  
4 that garment did not pair very well with the gym  
5 uniform because the garment was slick and so were  
6 the pants and the shirt, and so with the garment  
7 on, the pants would not stay up and that kind of  
8 thing.

9 Q Where did the garment -- describe the  
10 garment for me.

11 A A tank top but that is of a somewhat  
12 stretchy material but that is nonelastic enough  
13 that it forces tissue to compress.

14 Q So did you request to do your PE class  
15 online?

16 A I did.

17 Q Okay. Was there ever any discussion about  
18 doing it any other way?

19 A What I recall of the conversation was that  
20 I don't recall who I approached truthfully, but I  
21 approached someone and said this is just not going  
22 to be possible for me, what are my options, and

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1 they at that time had offered the virtual program.

2 Q Was it the PE teacher or was it your  
3 guidance people or was it someone else, as best  
4 you can recall?

5 A I don't recall.

6 Q So there was no time in 10th grade you  
7 actually attended a physical PE class at school;  
8 is that correct?

9 A Not that I can recall.

10 Q Okay. What do you personally know about  
11 any complaints that were received by teachers,  
12 administrators or the Superintendent or the School  
13 Board with respect to you using the boys'  
14 restroom?

15 A Well, that question actually prompted me  
16 of a detail that I had previously failed to  
17 mention. Do you mind if I --

18 Q Sure.

19 A It is somewhat connected. When you asked  
20 about, you know, if I received any adult ridicule  
21 or was it peer ridicule and that sort of thing, at  
22 both of the School Board meetings, which I



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1 attended, which they discussed my, you know,  
2 restroom usage, the adults in the community  
3 present hurled insults, called me a freak, a dog,  
4 all sorts of hateful horrible language, and also  
5 many of them went to great lengths to refer to me  
6 with female pronouns or honorifics such as young  
7 lady, little miss, ma'am, Mrs., even going so far  
8 as to, you know, reframe a sentence to where it  
9 grammatically was not correct just to say ma'am  
10 another extra time, so that was another example of  
11 verbal abuse that I received.

12 Then I apologize. Could you restate the  
13 question?

14 Q The question I asked you was are you  
15 personally aware, personally, of any complaints --  
16 I want to exclude anything that was said at those  
17 meetings, --

18 A Right.

19 Q -- the public meetings, that were received  
20 or concerns that were expressed to teachers or  
21 counseling or administration at the school or the  
22 Superintendent or the School Board.

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1 MR. BLOCK: Objection. Are you specifying  
2 complaints from students, complaints from parents  
3 or both?

4 MR. CORRIGAN: Either one of those.

5 Q Any personal knowledge you have of any of  
6 that? Not what you have heard, --

7 A Right.

8 Q -- not what the rumors were, but you know  
9 from someone telling you or you being present,  
10 whatever, where someone made a complaint.

11 A I do not have any direct knowledge of  
12 anyone making a complaint. I do have a  
13 recollection of -- I don't recall if it was  
14 Collins or one of the guidance counselors or  
15 whomever.

16 I recall at some point being told  
17 something to the effect of we have had a  
18 complaint, which time line wise, I would place  
19 probably towards the end of the 7-week period, the  
20 7-week period being, of course, when I was allowed  
21 to use the boys' bathroom.

22 Q So the first day you were allowed,

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1 according to all the information we have, is  
2 October 20th, and you think at some point after  
3 October 20th, Mr. Collins or someone else said we  
4 have had a complaint?

5 A I do recall being told by some employee of  
6 the school that they were -- their knowledge was  
7 that there was a complaint.

8 I was never given any additional details,  
9 how many complaints that was, from who it was or  
10 anything like that; and beyond that, I have no  
11 knowledge of anything.

12 Q I mean there is no reason why you would,  
13 as a student, know --

14 A Right.

15 Q -- who complained of anything like that.

16 All right. So you start using the  
17 bathroom on October 20th, and at some point do you  
18 become aware that there is going to be a School  
19 Board conversation about the use of a boys'  
20 restroom by a -- what had been previously  
21 considered to be a female student?

22 A I was made aware less than 24 hours before

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1 the first School Board meeting because there was a  
2 Facebook post that went around urging people to  
3 show up and oppose me essentially.

4 My mother -- a friend of my mother's had  
5 forwarded that post to her, and she -- well, and  
6 so it was decided at that point that, of course,  
7 we were going to go and -- so that was when I was  
8 made aware, less than 24 hours before it was going  
9 to happen, the first meeting.

10 Q So the first meeting, I think by all  
11 accounts, was November 11, 2014. So less than 24  
12 hours before the meeting on November 11, 2014, is  
13 when you first became aware that the issue of the  
14 bathroom/restroom use by a previously female  
15 student who identified male was going to be  
16 discussed?

17 A By a female -- or by a student assigned  
18 female at birth, yes.

19 Q Okay. And how is it you became aware? I  
20 know you just told me. Who is this friend of your  
21 mother's?

22 A I would not know.

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1 Q What Facebook post was it, do you remember  
2 whose Facebook post it was or what it said?

3 A I do not recall who made the post or  
4 anything to that effect. I just remember that it  
5 was a post essentially saying, you know, there is  
6 a girl in the boys' room and everyone show up and,  
7 you know, make that -- you know, make that stop.

8 And, of course, there were many, many,  
9 many vile comments underneath that post, none of  
10 which I can however remember at this time.

11 Q And who showed you the post?

12 A My mother.

13 Q Tell me about any conversation you had  
14 with your mother at that time about the post.

15 A My recollection is that we were frustrated  
16 that we were not informed, in fact, we felt that  
17 that was -- that was just wrong, that we had not  
18 been informed.

19 We also basically spoke about next steps,  
20 what do we do, and both sort of arrived at the  
21 conclusion that no one would be there to support  
22 me and they would not have the conversation

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1 without someone telling my side of the story and  
2 there would be no one to do that but us.

3 Q So you and your mother decided that the  
4 two of you would show up at the School Board  
5 meeting to discuss this restroom use issue?

6 A Yes, and I independently decided that I  
7 specifically wanted to make a comment.

8 Q What was your thinking on deciding that  
9 you wanted to make a comment?

10 A Well, I had already been identified as the  
11 student in question, people that had spoken before  
12 me had already turned to look directly at me, and,  
13 you know, it was not a secret, it was not as if we  
14 could pretend like we didn't know who the student  
15 was, and so my thought process was that people  
16 already have identified me as the transgender  
17 child in question, and a decision about my future  
18 should not be made without myself at least  
19 expressing my input.

20 Q Before you went to the School Board  
21 meeting, what information did you have that anyone  
22 knew who you were, I mean specifically that this

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1 was about you.

2 A Well, because the community had been  
3 talking. I mean my peers recognized that,  
4 malicious and friendly, all recognized that I was  
5 the trans kid. You know, at that point gossip,  
6 rumors had gotten around, I don't -- I recall  
7 getting the sense that there were some comments.  
8 I don't recall if they were on that thread;  
9 however, I do remember me reading some kind of  
10 social media comment that had identified my -- my  
11 brother's -- it being my brother's sister, you  
12 know, was the language that was used.

13 Q So you saw that somewhere?

14 A Yes, that was -- that was something I saw  
15 at some point, where someone in the comment thread  
16 had identified like there was -- and, to be clear,  
17 currently, I am not necessarily speaking about the  
18 comment thread underneath that post that went  
19 around, there were other, you know, disparaging  
20 social media posts, which were nasty, of other  
21 people, that they didn't necessarily get shared as  
22 widely, but in comments like those, I read things

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1 like, you know, that is -- that is David's sister  
2 or I know that chick or, you know, that kind of  
3 thing, so it was understood fairly generally that  
4 I was known to be the child.

5 Q Are you aware of any member of the School  
6 Board who identified you before this meeting, in  
7 other words, said this is who we are talking  
8 about, this person?

9 A During the meeting?

10 Q No. Before the meeting.

11 A I didn't have any conversations with any  
12 of them before the meeting.

13 Q I understand. My question, though, is are  
14 you aware of any -- of any information that any  
15 School Board member identified you before the  
16 meeting as the person about whom this discussion  
17 was occurring?

18 A No. However, one of the members of the  
19 School Board, Kevin Smith, was previously a close  
20 family friend, who had spoken to my mother, and I  
21 don't know about what, but ahead of the School  
22 Board meeting, and he assured her at that time



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1 that he would recuse himself from the vote because  
2 it was improper for him to make a distinction  
3 because he knew us.

4 He then did not do that and, in fact,  
5 voted against us instead. He voted, to be clear,  
6 vowed to ban me from the boys' restroom instead.

7 Q He voted in favor of the resolution?

8 A Of the proposal that Miss Hook had brought  
9 forward, yes. So there was at least one School  
10 Board member who was aware of the identity of the  
11 child.

12 Q You don't have any information that  
13 Mr. Smith told anyone else that you were the  
14 child?

15 A I don't have any information that that  
16 happened, no. But I -- I also have nothing to,  
17 you know, present that ensures that it was not  
18 something that happened as well.

19 Q You just don't know?

20 A I don't know.

21 (Discussion held off the record.)

22 Q When did you first see the policy, the

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1 proposed policy?

2 A I -- I don't recall exactly. I do  
3 remember hearing at -- I believe at the first  
4 School Board meeting, where one of the members of  
5 the School Board read the proposed policy. I  
6 don't recall if I had seen it before that time.

7 Q So your best recollection is the first  
8 time you heard the policy was out loud, it wasn't  
9 in writing?

10 A To my best recollection, yes.

11 Q Again, that's the best we can do.

12 A Right.

13 Q At the first meeting, you spoke; correct?

14 A Yes, sir.

15 Q Do you remember how many people spoke  
16 before you?

17 A I don't.

18 Q Was it a large number, small number --

19 A It --

20 Q -- before you got up and spoke?

21 A I can remember feeling like it was ages  
22 and ages, but that was -- that could be affected

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1 by how anxious I was, of course, so I really  
2 wouldn't be able to give a good metric.

3 Q Did you speak first or did your mom speak  
4 first?

5 A I don't recall.

6 Q Had you prepared your remarks?

7 A Yes, I had; however, I went primarily off  
8 script. I don't -- and I have not ever retained a  
9 copy of what I was prepared to say.

10 Q So you don't have your original notes?

11 A I do not.

12 Q When you decided to attend this first  
13 School Board meeting, which was on November 11 of  
14 2014, who else did you discuss that with besides  
15 your mom?

16 A I don't recall.

17 Q Like you don't -- is it you don't recall  
18 because it may have been a bunch of people, you  
19 just don't know who they are, or you don't think  
20 you talked to anybody else?

21 A I don't believe I spoke to anybody else,  
22 but I do not recall that with certainty.

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1 Q Sure. When did you first speak to any  
2 person who was an attorney or who was looking at  
3 this from kind of a legal standpoint?

4 A I do not recall if that happened before  
5 the second meeting or after the second meeting, I  
6 can't place that.

7 Q Do you remember how it occurred, like  
8 whether it was a phone call or in person?

9 A I cannot clearly recall how I was  
10 initially connected with the ACLU.

11 Q Was it the ACLU the first people you  
12 talked with?

13 A Yes.

14 Q Tell me about your recollection of that  
15 first meeting. We've kind of talked about it. So  
16 was it a full house in the meeting room?

17 A The individual comments, I referenced  
18 being called a freak, someone likening me to a dog  
19 peeing on a hydrant, those kind of things --

20 THE COURT REPORTER: I am sorry. A dog?  
21 I couldn't hear you.

22 MR. CORRIGAN: Peeing on a hydrant.

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1 A A dog urinating on a hydrant.

2 THE COURT REPORTER: Thank you.

3 A Comments like that, I do not recall if  
4 they were in the first or second meeting.

5 Q I think it was the second, but I am just  
6 adding, your recollection is what matters.

7 A Right. However, in the first meeting,  
8 what I do recall is that there were fewer people  
9 than in the second meeting, but that there were  
10 still -- it still seemed fairly full.

11 Q And do you remember where -- did other  
12 students speak at the first meeting, or, again, do  
13 they run together?

14 A I -- I really -- they -- to some extent,  
15 they do run together. I do not recall if any  
16 student spoke at the first meeting.

17 Q Do you remember what happened after the  
18 first or the result at the first meeting, what the  
19 School Board did?

20 A They postponed the decision to rule for  
21 the next meeting, following.

22 Q At this time, on November 11 of 2014, had

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1 you started any hormone therapy at that time?

2 A I do not -- I do not recall. I know that  
3 the -- that me and my family were actively working  
4 on, you know, the goal of getting that treatment  
5 from -- essentially from the point at which the  
6 rest of my family became aware of who I was, and  
7 from that point on we looked at next steps being  
8 hormone replacement therapy and that sort of  
9 thing, so --

10 Q Where did you receive hormone therapy?  
11 Who was guiding it, I guess is what I am asking.

12 A A doctor in Richmond at the VCU -- on the  
13 VCU campus. I do not -- she was a pediatric  
14 endocrinologist, I do not recall her name, but  
15 that she was a woman.

16 Q Have you gone back and watched the video  
17 of either of the two School Board meetings?

18 A Not -- not deliberately. The footage has  
19 been used in other videos that I have participated  
20 in, for example, like a voting PSA, where they  
21 will use a 3-second clip or whatever; however, I  
22 have not watched those clips from start to finish

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1 at any point.

2 Q Do you have any recollection of how many  
3 people spoke at either occasion?

4 A No.

5 Q In your lawsuit, on paragraph 53, it says  
6 the policy does not define biological gender and  
7 the term has no common or accepted meaning. There  
8 are many biological components of sex, including  
9 chromosomal, anatomical, hormonal and reproductive  
10 elements, some of which could be ambiguous or in  
11 conflict within an individual, either because that  
12 individual has intersex traits or because that  
13 individual has undergone medical care for gender  
14 dysphoria.

15 That's what the paragraph says. So I have  
16 some questions that I want to ask you, just to  
17 make sure I am clear and that the record is clear  
18 on this.

19 Do you have intersex traits?

20 A I have never been diagnosed as intersex.

21 Q The terms that are used here, chromosomal,  
22 anatomical, hormonal and reproductive elements,

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1 what is your understanding of your chromosomal  
2 elements?

3 A I -- well, I was assigned female at birth,  
4 so I would assume that there are two X  
5 chromosomes; however, differences in that are very  
6 common, and often you go your whole life without  
7 knowing them, so, to my knowledge, XX; however, I  
8 don't know that that's ever been formally tested.

9 Q How about anatomical elements. What is  
10 your understanding of your anatomical elements?

11 A With respect to what, sir?

12 Q With respect to the many biological  
13 components of sex.

14 A Do you mind rephrasing the question?

15 Q Again, the allegation is there are many  
16 biological components of sex including  
17 chromosomal, anatomical, hormonal and reproductive  
18 elements, some of which could be ambiguous or in  
19 conflict within an individual, either because that  
20 individual has intersex traits or because that  
21 individual has undergone medical care for gender  
22 dysphoria.



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1 So the question I am asking is, with  
2 respect to the anatomical elements, your  
3 particular anatomical elements, is there any  
4 indication, I guess, reading this paragraph,  
5 intersex traits, which I think we've said there  
6 isn't, and then other ambiguities of any sorts?

7 MR. BLOCK: I am going to object, before  
8 you answer, which is that this is a legal  
9 allegation in the Complaint, not a prior statement  
10 by Gavin, so, you know, you can -- he can answer  
11 to the extent he is saying his understanding of  
12 those terms but --

13 MR. CORRIGAN: Absolutely.

14 MR. BLOCK: But he is not the author.

15 MR. CORRIGAN: That's all I am asking.

16 A But pardon me for still being confused,  
17 but are you asking me what my understanding of  
18 that would be?

19 Q Yes. With respect to -- I am breaking it  
20 down into chromosomal, anatomical, hormonal and  
21 reproductive because that's how it is broken down  
22 in the allegation.

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1 A Okay.

2 Q That's what I am trying to understand.

3 A And my apologies, I hate to ask you to  
4 restate this, but just because there are some  
5 dialogue and my train of thought has been  
6 disrupted, but, please, I'm sorry --

7 Q I don't mind at all.

8 A Thank you, sir.

9 Q Because this is not a normal type of  
10 question that gets asked in a deposition, I can  
11 tell you.

12 A Right.

13 (Recess from 12:10 p.m. to 12:15 p.m.)

14 Q All right. So the question has to do with  
15 your understanding of whether -- The term  
16 biological gender is what is in the policy, of  
17 course; and the allegation is there are many  
18 biological components of sex including, I asked  
19 you about chromosomal, and you have answered as  
20 best you understand, which is all I am asking,  
21 this is not you kind of speaking as a lawyer, you  
22 are not speaking as a doctor, you are speaking as

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1 Gavin.

2 So the question is, with respect to your  
3 anatomical elements, some of which could be  
4 ambiguous or in conflict, what is your  
5 understanding of your anatomical elements?

6 A My understanding of my anatomical elements  
7 are that -- well, first and foremost, the --  
8 growing up, even when I still had long hair and  
9 would wear girls' clothing, I would be asked  
10 sometimes by other students, I remember one time  
11 on the elementary school bus, some kid asked me if  
12 I was a boy or a girl, and at that time I was even  
13 presenting as a girl, and that has persisted  
14 throughout my life.

15 As soon as I cut my hair, I was gender  
16 male pretty much in every facet of public life,  
17 and so at that point I looked pretty much like a  
18 boy, even before hormone replacement therapy.

19 So -- so my understanding of that would be  
20 that I suppose I did look masculine enough that,  
21 for example, when I did go into women's restrooms,  
22 I was chased out or scrutinized or yelled, you

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1 know, you are not supposed to be in here, that  
2 happened a few times in public, where women would  
3 say that I was in the wrong place and I needed to  
4 leave.

5 Q All right. How about specific -- your  
6 specific -- I guess that goes over to reproductive  
7 elements.

8 Same question. What are the -- your  
9 reproductive elements.

10 A If I may clarify, are you asking what  
11 procedures I may or may not have had?

12 Q Sure.

13 A Okay. I do not have breasts, and I do not  
14 have the ability to bear children because of  
15 hormone replacement therapy, basically making that  
16 not something that I can do.

17 Q Let's go back to on November 11, 2014 and  
18 December 9, 2014, in terms of your reproductive  
19 elements, what was the status then?

20 A In 2014 you said?

21 Q Yes, sir.

22 A That would have been that I had present

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1 breasts and was by -- I had yet to go through  
2 hormone replacement therapy; however, I -- again,  
3 I used a chest-binding garment every single  
4 solitary time I stepped out of the house, so the  
5 appearance to pretty much everyone was that I did  
6 not have breasts.

7 Q Okay. What about the actual reproductive  
8 elements at that time?

9 A Well, I had gone -- at that point I had  
10 gone through female puberty and had done nothing  
11 to disrupt the functions of those organs, so those  
12 were fully functioning.

13 Q Okay. Then the last one is hormonal is  
14 the other term that is used in the description of  
15 the many biological components of sex.

16 What are the hormonal elements in December  
17 or November 11th and December 9th of 2014?

18 A Well, the hormonal elements would be that  
19 I was yet to -- I was not yet receiving  
20 testosterone injections and that my body was  
21 producing estrogen; however, that my free  
22 testosterone levels were elevated enough for a

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1 person assigned female at birth, that it delayed  
2 treatment for hormone replacement because I was so  
3 naturally high in testosterone, that they thought  
4 there could be another issue.

5 Q When they said they thought there could be  
6 another issue, what was the other issue they  
7 thought there could be?

8 A Perhaps a tumor on my pituitary gland and  
9 increasing testosterone production or polycystic  
10 ovarian syndrome, which would increase  
11 testosterone production in some people. I was  
12 tested and was cleared of everything.

13 Q But you just naturally had higher levels  
14 of testosterone than most females?

15 A Most people assigned female at birth, yes.

16 Q All right. We got through that. All  
17 right.

18 After the November 11 meeting, there is  
19 a -- this is paragraph 57 of the Complaint -- it  
20 talks about the press release and the plans to  
21 designate single stall, unisex restrooms, to give  
22 all students the option for even greater privacy.

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1 Do you remember becoming aware of that in  
2 this time frame, that the School Board had  
3 announced that they were going to be doing that?

4 A What I was aware of in that situation -- I  
5 heard the announcement by the School Board at that  
6 time. My recollection is that they announced that  
7 the restrooms were ready; however, I was aware of  
8 their construction before that point because they  
9 were, you know, being constructed while we were  
10 going to school, and, in fact, those restrooms,  
11 however, were as they were stated to be completed,  
12 they were absolutely not completed or usable for I  
13 think around a week after the statement was that  
14 they were ready.

15 Q Sure. In fairness, the press release  
16 occurs after the November 11 meeting, that they're  
17 going to do it, and then we have documents in the  
18 case that show when they bid it out and somebody  
19 took the job and then the job was done, and it  
20 is -- it is December, possibly even later, when it  
21 is actually completed.

22 A So I misunderstood --

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1 Q My question is when did you become aware  
2 they were going to do that.

3 A Yes, sir. I misunderstood. Press release  
4 wise, I thought you were referring to what was  
5 said at the meeting, I apologize.

6 When I became aware that those bathrooms  
7 were being constructed was I suppose when they --  
8 when the construction began, which was before the  
9 second School Board meeting, as far as I can  
10 recall.

11 Q Okay. When you became aware that they  
12 were, in fact, going to create single stall,  
13 unisex restrooms for all students, not designated  
14 Gavin's restroom, but the statement is for all  
15 students, did you consider that as whether that  
16 would meet your needs?

17 A Absolutely not.

18 Q And what did you consider? What did you  
19 decide, who did you speak with about that?

20 A I -- I don't recall who I approached or if  
21 I approached anyone from school at that point. I  
22 believe somewhere in that time period was when I



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1 was contacted -- we -- my family was in contact  
2 with the ACLU, I -- my recollection at the time  
3 was that was the final decision, and there was  
4 nothing -- no one I could talk to and nothing I  
5 could do to change that within the school.

6 Q What about the idea of just going along  
7 with that and saying I can live with this  
8 alternative, this single stall, unisex restrooms,  
9 don't have to go to the girls' room, I can -- I  
10 can go to these other restrooms.

11 A Part of -- so certainly, the language was  
12 that they were for all students to use; however, I  
13 was the only student mandated to use them, I was  
14 the only student that had no option in the school  
15 other than in a single stall restroom, and that  
16 was part of the reason why I did not think that  
17 was an appropriate thing to go along with.

18 The other reason being I am a boy and it  
19 felt to me that it was humiliating and  
20 stigmatizing for the school to or not the school  
21 perhaps, the School Board to take the position  
22 that there was something wrong with me that made

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1 me not allowed, not permitted to be with my peers  
2 in common spaces.

3 In addition to that, the unisex restrooms  
4 were all -- were mostly all clustered together and  
5 not really very much closer than the nurse's  
6 office from my D-Hall classes, and so the idea was  
7 that they were more convenient, but, in fact, they  
8 were not.

9 Q Okay. Who did you discuss this with in  
10 this initial time frame?

11 A This initial time frame?

12 Q Did you discuss it with your mom, did you  
13 discuss it with anyone else? I am talking about  
14 the time frame around November 11, before the  
15 work -- before it is done, the fact it is going to  
16 be done and whether you are going to continue to  
17 object.

18 If they're going to do this, it is  
19 conceivable that someone in your position might  
20 say it is not what I want but that's good enough,  
21 but you reached the conclusion that -- it was not  
22 what you wanted, so who were you talking to about

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1 that at that time?

2 A I -- it wasn't something that I discussed  
3 in terms with anybody in terms of, you know, hey,  
4 Mom, what should I do. It was more like -- for  
5 example, I approached my mother, and I said I  
6 cannot be discriminated against in this way, I  
7 cannot go for three years of my high school career  
8 being shoved off into, you know, a converted broom  
9 closet where only I am mandated to go.

10 That -- staring down three years of that  
11 was so devastating to me, that there was not a  
12 question of if or not I would stand for that, so  
13 when I had conversations with, for example, with  
14 my mother about next steps, I said this is wrong,  
15 this hurts me, what can we do.

16 Those were the conversation that we had.

17 Q Did you ever talk to any other transgender  
18 youths, not necessarily in Gloucester, but just  
19 anywhere, about restrooms and about -- again, in  
20 this time frame between November 11 and  
21 December 9, accommodations, whether it -- how big  
22 of a deal this is, how much trouble this is, that

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1 kind of thing?

2 A I did not.

3 Q Okay. Were you talking to your counselor  
4 or other -- not school counselor but the person  
5 you were consulting with, Miss Griffin or someone  
6 else about it?

7 A I -- I didn't -- I don't -- I didn't seek  
8 counsel from them. I do not recall any individual  
9 conversations that I had with any of my mental  
10 healthcare providers.

11 Q It was clear to you from the start, this  
12 was not an option that you were interested in?

13 A Yes. If I may.

14 Q Sure.

15 A Part of that -- part of that  
16 decision-making process was also that for that  
17 7-week period, where I was respected as a boy and  
18 able to use the boys' bathroom, I was -- I was  
19 excited about the prospect of living out the rest  
20 of my school year as just another student, without  
21 having to face down discrimination every time I  
22 had to use the bathroom, and that 7-week sort of

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1 grace period was when I was most comfortable in  
2 that school, and so having experienced that and  
3 then to have it taken away was part of the reason  
4 why I was aware that it just was not -- it was  
5 just not acceptable for what I thought was  
6 correct.

7 Q Again, moving through the Complaint,  
8 paragraph 59 talks about the second meeting at  
9 which a speaker calls you a freak, a dog urinating  
10 on hydrants, that kind of thing.

11 Do you have a recollection of there being  
12 approximately 28 to 30 people who spoke?

13 A That's not a number I would contest, but I  
14 didn't count.

15 Q Do you remember how many of them you felt  
16 like were disrespectful towards you?

17 A I felt that barring the party that was  
18 with me and one individual, who seemed fairly  
19 supportive, perhaps neutral, I feel like every  
20 single -- every other person was absolutely in  
21 opposition. Of those people, I mean the  
22 statements were all, you know, I felt personally

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1 offended.

2           They generally all -- generally speaking,  
3 they all came from a viewpoint that I was a girl,  
4 which is offensive to me, but then, for sure,  
5 there was a minority of those who were  
6 specifically malicious, for example, like the  
7 hydrant.

8           Q At any point did you regret going forward  
9 for yourself, like appearing at the first meeting,  
10 appearing at the second meeting?

11          A Absolutely not.

12          Q Why not?

13          A I understood that, if I did not, that that  
14 conversation would be held without me and with no  
15 one to support me, and if it is a conversation  
16 about my future, I felt that I should be included.

17          Q It says, in paragraph 60, you felt like  
18 you had been turned into a public spectacle.

19                If you had not appeared, would you have  
20 been a public spectacle?

21          A I believe so.

22          Q How so?

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1 A The community, like I stated previously,  
2 the community was already aware of who it was that  
3 was in question, the rumors had already spread.

4 I was in the position where it was common  
5 knowledge, to my understanding, it was my  
6 understanding that the community -- it was  
7 community common knowledge that I was the  
8 individual, and I was willing to assume additional  
9 risk just because I had already been -- I had  
10 already been discriminated against, I had already  
11 been humiliated, I had already been gossiped about  
12 widely, and I felt that not speaking on my behalf  
13 would not have served me.

14 Q Have you ever been in the single stall  
15 restrooms?

16 A Not that I can recall.

17 Q Okay. I mean have you seen the layout?

18 A Yes, I -- yes.

19 Q How did you see the layout, if you didn't  
20 go in?

21 A I mean I looked, the door was open and I  
22 looked. Well, perhaps may I reframe? I never

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1 used them.

2 Q Right.

3 A But, of course, I looked once or twice,  
4 just to see what they look like, but I did never  
5 use them.

6 Q There is a claim in here that no one else  
7 ever used them. Do you know whether other people  
8 used those restrooms or not, I mean of your own  
9 personal knowledge?

10 A The -- the area that those bathrooms were  
11 positioned in was visible from where I would  
12 often, me and my friend group would often sit for  
13 lunch, and I never really saw any traffic in that  
14 time. Of course, I did not monitor those  
15 bathrooms 24/7, and I could not say that they were  
16 never used ever; however, it did not appear to be  
17 a high traffic area.

18 Q All right. After the second meeting, on  
19 December 9, word was passed to you about what the  
20 decision was, and you had a meeting, I think with  
21 the principal, is that right, or do you recall?

22 A I don't recall.



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1 Q Okay. Do you remember having any  
2 conversation with anyone about here is the system  
3 going forward, you are not going to be allowed to  
4 use the boys' restrooms any more, you can go in  
5 the ladies room or you can go to these three  
6 single stall or the nurse's office?

7 A I -- I -- I do recall that conversation  
8 with Nate Collins.

9 Q Okay.

10 A The conversation where he explained the  
11 new parameters.

12 Q Okay. From that point forward, did you  
13 follow the parameters?

14 A Yes.

15 Q One of the allegations in here is that you  
16 had painful urinary tract infections. Is that --  
17 tell me about that.

18 A I had -- so part of the anxiety in school  
19 was that, of course, the trip is long, I don't  
20 want to miss instructional time and it is  
21 embarrassing, and so often times, I would just do  
22 my best to avoid having to use the bathroom at

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1 school because it didn't feel like a safe or  
2 welcoming environment, and, as a result of that  
3 anxiety and as of holding that urine, I had  
4 urinary tract infections pretty consistently off  
5 and on through high school, to the extent that I  
6 assumed that it was just a problem that I, as a  
7 person, have; however, as soon as I left high  
8 school and, of course, used bathrooms freely, that  
9 problem disappeared.

10 Q You had mentioned safe and welcoming  
11 environment. The bathroom that you used at school  
12 when you went was in the nurse's office; is that  
13 right?

14 A Yes.

15 Q Was that unsafe?

16 A The nurse's office bathroom was not  
17 unsafe. When I say safe and welcoming  
18 environment, I am speaking about the broader  
19 culture of the bathroom policies in the school  
20 and -- and of, you know, being fearful to opening  
21 myself to more ridicule, you know, like I said,  
22 when I take so long or when students see me go

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1 into the nurse's office bathroom, as well, if I  
2 may clarify, how the nurse's office is set up is  
3 that, to go to the bathroom, you walk through sort  
4 of an infirmary, and so students may see me go  
5 into the bathroom, you know, as opposed to, you  
6 know, being at the nurse for any other reason, and  
7 so that identifies me, you know, in my opinion,  
8 per my anxiety, that felt to me like that was  
9 identifying me, again, as a student who was not  
10 capable of using shared spaces and I had to go to  
11 this place.

12 Q So if you went to the hallway where the  
13 three single stalls are, there is not a lot of  
14 classrooms there; is that right?

15 A Yes, it is not in a hallway that has many  
16 classrooms.

17 Q So the likelihood of encountering another  
18 student outside of lunch time would be pretty  
19 minimal, wouldn't it?

20 A No, sir. I mean students, for whatever  
21 reason, may be walking down the hall at any time,  
22 to go to the office, to go to another class. I

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1 mean there is pretty consistent foot traffic in  
2 the hallways throughout the day.

3 Q All right. Is there something about going  
4 into a communal restroom that you wanted to have  
5 that experience?

6 A I --

7 Q I am not asking that facetiously. I mean,  
8 literally, an argument could be made, having a  
9 single stall restroom is preferable to going in a  
10 joint restroom and going to the bathroom.

11 A Perhaps not when it is a discriminatory  
12 practice. I -- There was no aspect of the  
13 communal nature of the men's bathroom that I was  
14 attracted to, it was the fact that I was a male  
15 student and that is where the male students go to  
16 the bathroom, and, you know, anything short of me  
17 doing that communicated to me that, you know, not  
18 necessarily the school, the School Board's  
19 decision, but that the administration felt that,  
20 in fact, my identity was not correct and,  
21 therefore, I was not permitted to be in the spaces  
22 that other boys were permitted to be in.

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1 Q Let me ask you this question. If you had  
2 been allowed to go in the boys' room or the single  
3 stall restroom, would you have ever used the  
4 single stall restrooms?

5 A No, I would go in the boys' room because  
6 they were closer to my classes.

7 Q What about if you were at lunch time and  
8 it was closer to your class to use the single  
9 stall?

10 A Perhaps in that case, if it was the  
11 closest option and I wasn't being actively forced  
12 to use those and those alone, but I mean the --  
13 again, for example, if I was in D-Hall, where  
14 those bathrooms are, it's almost as far as going  
15 to the nurse's office, I would, of course, use  
16 those.

17 MR. CORRIGAN: Sure. I understand.

18 Lunch is here?

19 (Recess from 12:35 p.m. to 1:15 p.m.)

20 BY MR. CORRIGAN:

21 Q Now, the urinary tract infections, we  
22 talked about that. It is in paragraph 68 of your

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1 Complaint.

2 Did any doctor ever diagnose you as having  
3 urinary tract infections?

4 A I -- I do not recall if there had ever  
5 been a formal diagnosis.

6 Q Did you seek treatment?

7 A I -- I used over-the-counter solutions  
8 designed for urinary tract infections, which  
9 improved the condition.

10 Q What did you use?

11 A One example being a medication called Azo,  
12 that is A-Z-O.

13 Q Did any doctor ever prescribe anything for  
14 you for urinary tract infections?

15 A I do not recall.

16 Q Did any doctor ever tell you that your  
17 urinary tract infections were caused by your not  
18 using the restroom during the day at school?

19 A I do not recall.

20 Q So when you say you do not recall, do you  
21 ever remember speaking to any doctor at any time  
22 about urinary tract infections?

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1 A I do not recall if I did or did not, but I  
2 also do not recall not having seen a doctor. I --  
3 I -- it may have come up in an appointment, I just  
4 do not recall definitively enough to say yes or  
5 no.

6 Q Okay. Where does this notion come from  
7 that you have urinary tract infections because of  
8 not using the restroom as frequently as you felt  
9 like you might have needed to during the day?

10 A In part, because it is -- as I understood  
11 it, it is something that is -- can be known to  
12 increase urinary tract infections.

13 In addition, the second that I was in an  
14 environment for any extended period of time where  
15 I did not have restrictions for bathroom use, for  
16 example, summer vacation or post graduation, the  
17 problem eliminated itself entirely.

18 Q Okay. During your 11th grade year, did  
19 you use the restroom regularly then?

20 A I --

21 MR. BLOCK: Objection. If you could  
22 specify a time period within that year.

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1 Q Just during the year, in 11th grade.

2 A I suppose I don't understand the question.

3 Are you asking did I use the bathroom?

4 Q Regularly.

5 A Do you mind reframing?

6 Q Sure. In the 11th grade, where did you  
7 attend school?

8 A Gloucester High School.

9 Q During any part of that school year, did  
10 you go to T.C. Walker and were you part of the  
11 SOAR or some other program?

12 A Yes. I don't recall what it was called,  
13 however, the program.

14 Q Tell me what you recall, what part of the  
15 year you were at Gloucester High School and what  
16 part of the year you were at T.C. Walker or some  
17 other location.

18 A I don't recall when I went to T.C. Walker.  
19 I -- I -- I don't recall at what point in that  
20 school year that I started going to T.C. Walker.  
21 It coincides with a month-long absence from  
22 school, and following that I returned in the



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1 capacity of the program at T.C. Walker.

2 Q Okay. Let's go back and talk about the  
3 foundation. The 10th grade, your entire 10th  
4 grade year, you were at Gloucester High School; is  
5 that correct?

6 A To the best of my recollection, yes.

7 Q Was there any extended absence during your  
8 10th grade year?

9 A I don't recall.

10 Q All right. 11th grade. We have already  
11 talked a little bit, and some portion of that year  
12 you were at T.C. Walker, which is a separate  
13 building in a -- in a separate program; is that  
14 correct?

15 A Yes, sir.

16 Q Was there also an extended period of time  
17 when you were out of school?

18 A Yes.

19 Q Okay. When was that?

20 A I do not recall the date.

21 Q Fall of 2015?

22 A I don't recall.

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1 Q Do you remember the fall or spring  
2 semester?

3 A No, I do not.

4 Q Where were you?

5 A I was in a -- a VCU hospital.

6 Q What was it that resulted in you spending  
7 time at a VCU hospital?

8 A I had -- I was struggling with mental  
9 health.

10 Q What was the struggle?

11 A Do you mind reframing the question?

12 Q You said you were struggling with mental  
13 health, that's why you were hospitalized at VCU,  
14 for an extended period of time during 11th grade.

15 I am trying to figure out what was the  
16 issue, what was the mental health issue that you  
17 were struggling with?

18 A I see. I am sorry. I misunderstood you  
19 the first time.

20 I was admitted for suicidality and treated  
21 for a range of things including depression,  
22 anxiety, suicidality.

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1 Q We are here on this case, obviously. Does  
2 any of that relate in your mind to the bathroom  
3 use/restroom use at Gloucester High School?

4 A Yes.

5 Q In what way?

6 A It -- to be -- to have to go to an  
7 environment every single day, five days of the  
8 week, where I felt unsafe, the environment made me  
9 anxious, I didn't feel respected, it had a massive  
10 impact on my overall mental health and ability to  
11 function.

12 Q In what way does the restroom,  
13 specifically the restroom use make you feel  
14 unsafe?

15 A It -- the policy of segregating me from my  
16 peers sets a -- an environment where I understand  
17 that I will not be fully respected as who I am,  
18 and that contributes to an overall feeling that it  
19 is not an environment I will be safe in, it is  
20 not, and by safe, I do not mean fear of my peers  
21 doing anything or anything to that effect, I mean  
22 mentally safe as in I did not feel confident that

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1 was an environment where my best interests were  
2 kept at heart and where I was able to function in  
3 a way that was most conducive to my mental health  
4 and success.

5 Q Did you have check-ins with any of your  
6 counselors during this school year?

7 MR. BLOCK: During his junior school year?

8 MR. CORRIGAN: Yes.

9 A I don't recall if it was during -- if I  
10 had any during junior year.

11 Q Did at any point, and then let's talk  
12 about 10th, 11th or 12th grade, did you check in  
13 with any of the counseling staff, specifically  
14 Miss Durr and Mr. Lord?

15 A I believe -- I believe there were  
16 instances where I -- we had had a -- a brief  
17 meeting, to touch base, a few different times. I  
18 don't recall with who, was it Miss Durr or  
19 Mr. Lord, I don't recall exactly, but --

20 Q Were you a member of any clubs?

21 A I was the -- I believe vice president of  
22 the Gender and Sexuality Alliance or, rather, we

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1 called it the Equality Club, I do not recall what  
2 year that I was in the position.

3 Q Gender and Sexuality Alliance, GSA?

4 A Yes, sir.

5 Q But y'all called it the Equality Club?

6 A Yes, sir.

7 Q Was it actually known as the Equality Club  
8 or was that kind of a nickname?

9 A Well, when I began in the GSA, it was  
10 called the Gay-Straight Alliance, and I personally  
11 raised the concern that that did not honor the  
12 diversity of students that might seek the service,  
13 and so at that time we called it the Equality  
14 Club.

15 Q Was it formally changed to Gender and  
16 Sexuality Alliance at any point?

17 A GSA currently stands for Gender and  
18 Sexuality Alliance only, as far as their national  
19 branding goes.

20 Q But back when you were in 10th, 11th, 12th  
21 grade, it was Gay-Straight Alliance and then later  
22 Equality Club?

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1 A Yes, sir.

2 Q Was there a faculty advisor for that  
3 group?

4 A Yes.

5 Q Who was that?

6 A Matthew Lord.

7 Q So when you had meetings, was Mr. Lord  
8 typically there?

9 A Are you asking if those meetings took  
10 place at the Equality Club meetings?

11 Q I am asking if the Gay-Straight Alliance  
12 or Equality Club had a meeting, would Mr. Lord be  
13 present?

14 A I don't recall that -- oh, pardon. I  
15 misunderstood what you were asking.

16 He was present for all of our -- you know,  
17 we met like once a week after school, and he was  
18 present every time.

19 Q What time of day would you meet?

20 A I don't recall exactly the time, it was  
21 after school hours.

22 Q Okay. Where would you meet?

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1 A I don't recall.

2 Q How many people approximately would attend  
3 the meetings? I mean I am trying to see, is it 5  
4 or 20, 50?

5 A Between 5 and 10 --

6 Q Okay.

7 A -- traditionally.

8 Q Were the other members people you  
9 identified as your friends, or were there people  
10 besides that?

11 A Not necessarily. I was acquainted with  
12 most of them but was not close personal friends  
13 with any of them that I recall.

14 Q What would you -- what would the  
15 meetings -- What would happen at the meetings?

16 A I really don't remember.

17 Q I mean conversation, were there  
18 activities?

19 A I don't recall. I -- I really couldn't  
20 tell you. The only thing I do recall is that  
21 ahead of something like the Day of Silence, we  
22 discussed what our role would be in that, but, as

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1 far as traditional meetings, I don't recall.

2 Q What was the Day of Silence?

3 A The Day of Silence is a day designated  
4 nationally, not necessarily not a national  
5 holiday, but it is a designated day where students  
6 can voluntarily remain silent and, in so doing,  
7 recognizing the people, LGBTQ people who have been  
8 either silenced or victims of violence because of  
9 who they are, and so it is just a day of  
10 remembrance.

11 Q The idea is those people have been  
12 silenced so we are going to be silent?

13 A Yes.

14 Q Mr. Lord, was he somebody at these  
15 meetings who made you feel welcome?

16 A Yes, I would say so.

17 Q Have you kept up with him at all since you  
18 left?

19 A The only further correspondence that I  
20 have had is to request transcripts, when I went to  
21 apply for college.

22 Q Any conversation at all with him other



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1 than that?

2 A Not that I can recall.

3 Q Did you feel like he was supportive of you  
4 as a student and a person in the Gloucester County  
5 High School?

6 A I did.

7 Q One of the paragraphs in here talks about  
8 football games. Did you ever go to any football  
9 games?

10 A I did.

11 Q How many?

12 A I wouldn't have a number for you.

13 Q I mean I guess we are talking three  
14 seasons, your sophomore year, your junior year,  
15 your senior year. Did you attend more than one  
16 game --

17 A Yes.

18 Q -- each year?

19 A Yes.

20 Q It says here that you went home early.  
21 Was that always the case?

22 A I tried very -- I tried very hard to plan

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1 so that I would not have to use the restroom while  
2 I was there, because I did not have an option, on  
3 that -- on the football field, you know, in that  
4 campus; however, there were a few occasions where,  
5 regardless, I did end up having to use the  
6 bathroom, and I was forced to leave.

7 Q Tell me about those occasions, when you  
8 say you were forced to leave, what did you do?

9 A On one occasion, I had a friend drive me  
10 down the road to, it is either Lowe's or Home  
11 Depot that is on the corner, so that I could use  
12 the bathroom there. On another occasion, I  
13 believe my mother just picked me up.

14 Q When your friend drove you, did you go  
15 back to the game?

16 A I -- I -- we did. I was with a group of  
17 friends and that friend was the person who was  
18 driving all of us.

19 Q So you left the game and then came back?

20 A Yes, after I had used the bathroom  
21 offsite.

22 Q Did you do anything else while you were

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1 out besides go to Lowe's or Home Depot and use the  
2 restroom?

3 A Not that I can recall.

4 Q Did you stop and get something to eat,  
5 anything like that?

6 A Not that I can recall.

7 Q The allegation is, in December 2014, you  
8 began hormone therapy. Where did you begin the  
9 hormone therapy?

10 A At a -- it was -- a VCU facility.

11 Q Okay. You mentioned a pediatric --

12 A Endocrinologist.

13 Q -- endocrinologist.

14 A Yes, sir.

15 Q Do you remember that person's name?

16 A I do not.

17 Q How did that work in terms of how did you  
18 do hormone therapy, what is physically involved  
19 with that?

20 A Well, you must first get a recommendation  
21 from a professional saying that, in fact, you --  
22 that the person is trans and hormone replacement

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1 therapy is the best practice for having them live  
2 happily.

3 Q Who gave you that recommendation?

4 A That would have been Dr. Lisa Griffin.

5 Q Okay.

6 A And then once you produce those or that  
7 document to the doctor willing to administer the  
8 medication, they will walk you through how do --  
9 it is an injection, subcutaneously meaning in the  
10 fat rather than in the muscle, and they walk you  
11 through how to administer that injection; and,  
12 from that point on, I self-administered an  
13 injection.

14 Q How frequently?

15 A Once a week.

16 Q How frequently did you see the pediatric  
17 endocrinologist?

18 A In the first year or so, as the process  
19 was beginning, fairly often, I don't recall  
20 exactly with what frequency but fairly often; and,  
21 following that, we haven't been back in -- from  
22 the point in which the dosage of my medication was

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1 agreed upon and stable, we have not been back.

2 Q Are you still taking it?

3 A Yes.

4 Q How frequently do you take it?

5 A Once a week.

6 Q Still the same?

7 A Yes.

8 Q Is it something that will continue for the  
9 rest of your life kind of thing or foreseeable  
10 future, or how does that work?

11 A I -- I will take it for as long as I  
12 desire, and for my purposes that would probably be  
13 for the rest of my life.

14 Q When did you last see the endocrinologist?

15 A I really wouldn't have any way of telling  
16 you.

17 Q Approximately, sophomore year, junior  
18 year, senior year?

19 A I --

20 Q Don't recall?

21 A I don't recall.

22 Q In paragraph 74, it talks about the DMV

Transcript of Gavin Grimm  
Conducted on October 19, 2018

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1 issued a state ID card in June 2015, which would  
2 have been at the end of your sophomore year; is  
3 that correct?

4 A Yes, sir.

5 Q Tell me about that process.

6 A I -- I don't really recall. I -- as far  
7 as I remember -- I don't remember what  
8 supplementary documentation I had to provide to  
9 prove that I was permitted to have a male  
10 designation on that ID; however, I do recall that  
11 there was some kind of supplementary information  
12 that I had to provide. I don't recall if it was  
13 mailed in or brought up physically, but then,  
14 after that point, it was just a matter of going to  
15 the DMV and taking the picture and receiving the  
16 card.

17 Q So the actual receiving of the card, you  
18 remember being at the DMV, having a picture taken,  
19 and then handing you a card?

20 A Yes. Well, to clarify, I don't recall if  
21 I was handed the card at that time, but I remember  
22 I had to be at the DMV for part of that process.

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 Q And did anyone accompany you?

2 A My mother.

3 Q Chest reconstruction surgery in June 2016;  
4 is that correct?

5 A Yes.

6 Q Who performed?

7 A Dr. Hope Sherie.

8 Q How do you spell Sherie?

9 A S-H-E-R-I-E.

10 Q Was that at VCU?

11 A No. That was not at VCU.

12 Q Where was that?

13 A That was in either Charlotte or  
14 Charlottesville, I don't recall -- I have the  
15 names mixed up, but it was in North Carolina.

16 Q Okay. Was that a double mastectomy  
17 essentially?

18 A Yes.

19 Q What documentation or other information  
20 did Dr. Sherie require before she performed that  
21 surgery?

22 A As I was a -- I believe, if I am recalling

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 correctly, I was -- pardon me. I am sorry.

2 Do you mind reminding me of the date?

3 Q Yes. June of 2016 is what it says.

4 A So, yes, so as I was a minor --

5 Q You were 16 years old at the time?

6 A In June, yes, 16.

7 Q Or just 17?

8 A 17. Just 17.

9 Q I wasn't trying to be tricky. Your  
10 birthday is in May.

11 A I appreciate that.

12 As I was a minor, I believe there was some  
13 degree of parental consent necessary. Barring  
14 that, I don't think -- or rather, I will say I  
15 don't recall any other documentation that I had to  
16 provide beyond parental consent; however, there  
17 may have been.

18 Q Did you meet with Dr. Sherie about why  
19 this was happening or why you were going to have  
20 the procedure?

21 A I -- I don't -- I don't recall if I had  
22 any kind of in-person visitation with her before



Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 the procedure or if -- in fact, I don't recall if  
2 it was -- if we spoke over the phone or what have  
3 you because it was a very far drive.

4 It was understood, of course, that she  
5 recognized that she was performing a double  
6 mastectomy on a transgender patient, it was  
7 something her practice was known for doing.

8 Q Okay. September 9, 2016, Gloucester  
9 Circuit Court issued an order. What do you recall  
10 about the hearing and the order that occurred on  
11 September 9, 2016? Was there a hearing?

12 A Just -- just giving me the dates, I -- it  
13 is not prompting any recollection of anything. I  
14 apologize.

15 Q Do you remember going to court, the actual  
16 Gloucester Circuit Court, which would have been in  
17 Gloucester?

18 A Yes. Yes, I do -- I remember, yes.

19 Q What do you remember about the hearing?

20 A I don't remember much of anything.

21 Q Did you speak or did just your lawyer  
22 speak?

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 A I don't recall.

2 Q Did you present these documents, any of  
3 these documents, the ID card or the order from the  
4 court or the birth certificate at school?

5 A I don't recall if I provided the ID or --  
6 what was -- pardon me -- the first thing you  
7 mentioned.

8 Q The first one was the ID?

9 A ID.

10 Q Then the second one was the order from the  
11 court, and the third one is the birth certificate.  
12 Did you present those?

13 A I don't recall if I presented the ID or  
14 the court order, however, I did provide the birth  
15 certificate.

16 Q You actually went to school with the birth  
17 certificate?

18 A Yes.

19 Q Who did you give it to?

20 A I don't recall.

21 Q Do you remember walking into the front  
22 office kind of thing, to say I want to speak to

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 the principal, or did you go to your guidance  
2 counselor or --

3 A I don't recall.

4 Q What, if anything, do you remember -- if  
5 you say that you know that you presented it, what  
6 do you recall about any aspect of that then?

7 A Well, I recall -- I recall recognizing  
8 that my records had failed to be changed and I  
9 recall going on more than one occasion to the  
10 guidance office and asking why my records weren't  
11 being changed, when my documents had been amended,  
12 and asking when it would happen, if it would  
13 happen, and I was at that point told -- I do not  
14 recall by whom in the guidance office, but I was  
15 informed that the response was -- the response  
16 that that person was instructed to give me was  
17 that we received your request, thank you, which  
18 I -- which is what I remember about that.

19 Q Have you personally ever spoken to any  
20 members of the Gloucester County School Board?

21 A Current or former members?

22 Q Either.

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 A Yes.

2 Q Who?

3 A Kevin Smith.

4 Q Tell me any conversations you ever had  
5 with Kevin Smith.

6 A Kevin Smith was a family friend, he was  
7 around growing up, here and again as a friend of  
8 my mother's, I don't -- I cannot recall any  
9 conversations generally speaking; however, there  
10 is one conversation that I do recall in which  
11 Kevin approached myself and my mother and said  
12 that, since he was a friend of the family, that he  
13 would certainly recuse himself from the School  
14 Board's vote.

15 Q Well, that's the conversation you  
16 remember?

17 A That's the extent of that conversation I  
18 remember.

19 Q As you said earlier, he then did not --

20 A He did not.

21 Q -- recuse himself.

22 Have you spoken with him since then?

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 A I have not.

2 Q Have you had any communications with him?

3 A I have not.

4 Q Other than the fact that Kevin Smith was a  
5 family friend and the conversation about him  
6 recusing himself, have you had any other  
7 conversations with any members of the Gloucester  
8 County School Board, past or present?

9 A Not that I can recall.

10 Q Any other communication with any other  
11 members of the Gloucester County School Board,  
12 email, text, anything of that nature?

13 A Not that I can recall.

14 Q One of the physicians you mentioned in  
15 your interrogatory answers is Melinda Penn at  
16 Children's Hospital of the King's Daughters. Who  
17 is that person?

18 A So Melinda Penn --

19 MR. BLOCK: I am going to object. To  
20 clarify, that's the list of their current  
21 locations, so she is currently at that hospital,  
22 but that's not where she was when she treated

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 Gavin.

2 Q So what do you know about Melinda Penn?

3 MR. CORRIGAN: Thank you for the  
4 clarification.

5 A I know that I saw her at some point, but I  
6 cannot recall --

7 Q Is she the pediatric endocrinologist?

8 A I don't recall. I don't recall the name  
9 of that person, so she may or may not be.

10 Q Okay. We talked about Lisa Griffin  
11 previously. Her address here is 14 South Auburn  
12 Avenue, Richmond, Virginia.

13 Is that, when you saw her, is that where  
14 you saw her, in Richmond?

15 A She was in Richmond, I don't know the  
16 street address.

17 Q How many times have you seen her?

18 A I don't recall exactly how many times.

19 Q Well, less than ten?

20 A I -- I don't remember.

21 Q I am just trying to get a magnitude. It  
22 could be once or it could be 200 times.

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 A Right.

2 Q You have no ability to estimate between  
3 one and 200 how many times you saw Lisa Griffin?

4 A I did not see her on a long-term ongoing  
5 basis, so I assume 200 would be a high number;  
6 however, I also cannot estimate if it was 10 times  
7 or 50 times.

8 Q Okay.

9 A I just don't recall the span of time that  
10 I saw her for.

11 Q All right. Eva Abel, Chesapeake  
12 Counseling Associates, do you remember seeing her?

13 A Yes.

14 Q How often have you seen her?

15 A She was my -- I had fairly weekly --  
16 pardon me. Either weekly or monthly.

17 So either weekly or monthly, I can't  
18 recall which of the two visits with her for -- I  
19 don't recall the duration, but it was -- it was  
20 quite a while.

21 Q During high school?

22 A During high school and as well after.

Transcript of Gavin Grimm  
Conducted on October 19, 2018

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1 Q And after, but not before high school?

2 A No, not before high school.

3 Q Okay. Are you still seeing her?

4 A I am not.

5 Q Are you currently seeing anyone? When I  
6 say anyone, I mean are you seeing any  
7 psychologists, psychiatrists, counselor, Licensed  
8 Clinical Social Worker, anybody with respect to  
9 gender dysphoria or your transgender status or  
10 anything of that nature?

11 A I am not currently seeing anybody with  
12 respect to my gender identity. I have a general  
13 care physician who prescribes my testosterone, but  
14 my reason for care with him is not gender related.

15 Q Who is that physician?

16 A His name is Jess Pinder.

17 Q P-I-N-D-E-R?

18 A Yes, sir.

19 Q Where is he located?

20 A One Medical on Shattuck Avenue in Berkley,  
21 California.

22 Q One of your interrogatory answers says



Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 someone named Thomas Aberli, principal, Atherton  
2 High School, Louisville, Kentucky, is a witness  
3 with knowledge about his experience as an  
4 administrator with policies that allow boys and  
5 girls who are transgender to use the same restroom  
6 as other boys and girls.

7 Do you know anything about Mr. Aberli?

8 A I -- I don't recall having spoken to him.

9 Q Do you know of any current students at  
10 Gloucester High School who are transgender?

11 A Yes.

12 Q What do you know? Not who, but what.

13 A Okay. So there -- there is at least -- I  
14 won't speak to hearsay, but I know for certain  
15 that there is one student who is a freshman this  
16 year who identifies as a boy and has had moderate  
17 success with requesting that his teachers refer to  
18 him with male pronouns and with the name he  
19 prefers, however, he has not made any kind of  
20 greater administrative push.

21 Q Do you have any idea what that child is  
22 doing with respect to restroom use?

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 A I don't. I have not asked him.

2 Q How about any upper classmen or upper  
3 classpeople at Gloucester High School at current  
4 who are transgender, do you know of any?

5 A Current -- current right now?

6 Q Yes.

7 A I do not, however, a friend of mine is a  
8 transgender student who graduated last year, well,  
9 last school year, who was transgender while at  
10 Gloucester High School or is trans and went there.

11 Q Gotcha. So there is a student who  
12 graduated in June of '18, a year after you --

13 A Yes.

14 Q -- who is transgender?

15 A Yes.

16 Q What restroom did that student use, if you  
17 know?

18 A He said that he would either avoid them  
19 altogether or use the nurse's office or single  
20 stall restrooms but generally preferred to avoid  
21 them.

22 Q Do you know whether that student ever

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 raised the issue beyond just using those in terms  
2 of trying to get a change in the rule or address  
3 the rule?

4 A He did not because he did not have  
5 parental support.

6 Q Was he a transgender boy?

7 A Yes.

8 Q Was he called by his male name and male  
9 pronouns at school, to your knowledge?

10 A To my knowledge, that was something that  
11 he had discussed with teachers and arranged on his  
12 own, and that is what seemed to be the status quo.

13 Q So he did that without his parental  
14 support was your understanding or not?

15 A I don't have a knowledge of what degree  
16 his parents were involved in that.

17 Q Okay. Any other transgender students that  
18 you are aware of from the time you approached the  
19 school in late summer of 2014 until the present?

20 A Yes. I can think of three off the top of  
21 my head.

22 Q Three others?

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 A Yes. There were two additional  
2 transgender boys and one transgender girl.

3 Q Did they graduate?

4 A The two other boys were one grade below me  
5 and so graduated when -- graduated this previous  
6 year.

7 Q Right.

8 A And then the girl was in my grade, and she  
9 graduated with our class.

10 Q The girl, did she -- that graduated with  
11 your class, what was her restroom arrangements, if  
12 you understood it?

13 A She had even fewer opportunities to  
14 express herself truly, as her parents were even  
15 more opposed to who she is, and so she, I believe,  
16 as far as I was aware, just sort of accepted the  
17 men's restrooms or avoided them at all costs.

18 Q So she was identifying female and wanted  
19 to use the girls' restrooms but either used the  
20 boys' restrooms or -- Did she use the single  
21 stall?

22 MR. BLOCK: I am just going to object to

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 characterizing the testimony as her wanting to use  
2 the girls' restrooms.

3 MR. CORRIGAN: Okay. Go ahead.

4 A I -- she was not able to socially  
5 transition, and so she was not able to reveal to  
6 the greater community that she was a girl, and so  
7 that was knowledge only within people that were  
8 close to her or in her circle.

9 Q So she had not approached the schools to  
10 have her pronouns changed and her name changed?

11 A Not that I was aware.

12 Q But she graduated with you?

13 A Yes.

14 Q In terms of the use of the restroom, your  
15 understanding was she was using the boys' room or  
16 avoiding it?

17 A She told me that she at all possible costs  
18 avoided using them; however, in emergencies, she  
19 would go to the boys' room.

20 Q Did she ever go to the single stalls --

21 A I have no knowledge.

22 Q -- to your knowledge? You don't know?

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 A I don't know.

2 Q The two transgender boys you identified,  
3 in addition to the ones we have previously talked  
4 about, graduated last year is your understanding?

5 A Yes.

6 Q What was your understanding of their  
7 restroom use?

8 A I did not know.

9 Q Do you know them?

10 A They were not close personal friends,  
11 however, they were both close personal friends of  
12 one of my close friends, and so there were  
13 environments in which we had hung out together and  
14 had become acquainted on a more than -- on a more  
15 than peer basis.

16 Q So did you ever ask them about their  
17 restroom use?

18 A No.

19 MR. CORRIGAN: I would like to take a  
20 minute. I am going to talk to Tracey a little  
21 bit.

22 (Recess from 1:53 p.m. to 2:01 p.m.)

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 MR. CORRIGAN: No further questions.

2 MR. BLOCK: I have a couple questions.

3 EXAMINATION BY COUNSEL FOR THE PLAINTIFF

4 BY MR. BLOCK:

5 Q So do you remember when Mr. Corrigan was  
6 asking you about the construction of the  
7 additional single user restrooms?

8 A Yes.

9 Q Do you remember that you discussed how,  
10 even though the school had said they were ready at  
11 a particular time, they were not actually ready?

12 A Yes.

13 Q Is there anything you want to say about  
14 what occurred during that week when the policy was  
15 in effect but the restrooms weren't ready for you?

16 A Yes. There was one occasion where I  
17 stayed after for an event, I don't recall what  
18 event, but it was -- it was -- the -- it was  
19 before these restrooms were finished being  
20 constructed and, therefore, my only option was the  
21 nurse's restroom, which is locked after school  
22 hours, and I recognized that I had to go to the

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 bathroom and it would be a while before my parents  
2 could have picked me up, and by that time it would  
3 have been an emergency, and so I was very  
4 distraught, really just totally devastated that I  
5 had nowhere to use the bathroom in my own school,  
6 and so I broke down really bad and went sobbing to  
7 the library, where I knew I had friends, and one  
8 of the librarians actually drove me home so that I  
9 could use the bathroom.

10 Q Do you remember, when Mr. Corrigan asked  
11 you about what memories you have with respect to  
12 bringing your birth certificate to school?

13 A Yes.

14 Q And you testified about your memory  
15 regarding checking up on your school records; is  
16 that right?

17 A Yes.

18 Q Do you have a specific memory of who  
19 handed the birth certificate in?

20 A If I -- if I may clarify, I don't recall  
21 exactly who, if it was myself or my mother, but I  
22 do remember it was, in fact, handed in and that I



Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 was the one who checked up after that fact.

2 Q Do you remember talking to Mr. Corrigan  
3 about other students at Gloucester High School who  
4 were transgender?

5 A Yes.

6 Q Do you remember saying that one of the  
7 students you discussed, the transgender girl, had  
8 not socially transitioned?

9 A Yes.

10 Q Of the other students that you discussed  
11 with Mr. Corrigan, were there any other students  
12 who were transgender but had not socially  
13 transitioned?

14 A Yes.

15 Q Who was that?

16 A One other student had not socially  
17 transitioned and was presenting himself as a boy  
18 only to his friend group, however, not to teachers  
19 or administrators.

20 Q Did he tell you why he was not  
21 transitioning more broadly?

22 MR. CORRIGAN: I object to the form. Go

Transcript of Gavin Grimm  
Conducted on October 19, 2018

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1 ahead.

2 A He expressed in part that the school did  
3 not feel like an environment where he would be  
4 safe transitioning in, he also expressed that it  
5 would have been difficult just regarding the  
6 situation he was in privately, I didn't inquire as  
7 to the details, his family were less on board than  
8 he would have liked, but he had expressed that  
9 there was anxiety over not feeling like he was  
10 safe to transition within the school and  
11 especially not having a bathroom, if he did.

12 Q Do you recall Mr. Corrigan asking you  
13 about check-in meetings you would have with  
14 Miss Durr or Mr. Lord?

15 A I do.

16 Q And during those meetings, did you report  
17 any distress that you were experiencing as a  
18 result of the school's restroom policies?

19 A I believe I did.

20 Q And can you speak to whatever occasions  
21 you did make that report?

22 A There was one occasion in which I spoke to

Transcript of Gavin Grimm  
Conducted on October 19, 2018

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1 Tiffany Durr, where I had expressed that I was  
2 experiencing pain because of the situation at the  
3 school; however, I -- there was also a tendency in  
4 following meetings, for me to underreport the  
5 trauma that I was going through or examples of  
6 bullying or harassment, because I felt that it was  
7 not something that -- they could not resolve those  
8 issues, they could not give me the ability to use  
9 the boys' bathroom, and so I failed to report much  
10 of what I was experiencing because I did not have  
11 faith in the school system to protect me from  
12 those things that I was worried about.

13 MR. BLOCK: No further questions from me.

14 MR. CORRIGAN: I have a question.

15 EXAMINATION BY COUNSEL FOR THE DEFENDANT

16 BY MR. CORRIGAN:

17 Q With respect to Miss Durr, can you tell me  
18 approximately when you think you spoke with her?

19 A It -- it would have been earlier in the --  
20 the -- earlier in that school year or perhaps  
21 towards the middle of my sophomore year, somewhere  
22 in that range.

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 Q Okay.

2 A It was earlier.

3 Q So earlier as in could have been in the  
4 fall or in the early part of the spring semester?

5 A Correct, that would be where I would  
6 estimate it.

7 Q And do you remember where the conversation  
8 took place?

9 A I -- I don't, but typically those  
10 conversations were had in the office of the  
11 person; however, I cannot recall it explicitly  
12 that it was or was not.

13 Q Do you recall what you said to her?

14 A I -- I don't recall specifically phrases  
15 that were used, I do, however, recall expressing  
16 general distress about the policy and how it was  
17 affecting me negatively.

18 Q When you say the policy, what policy?

19 A Pardon. The discriminatory policy that  
20 the School Board had put in place.

21 Q With respect to the restrooms?

22 A Yes, sir.

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 Q Did you use the word pain earlier, when  
2 you were talking to Mr. Block, what pain were you  
3 talking about?

4 A Can you --

5 Q You said to him that you spoke to her one  
6 time and told her about the pain --

7 A Right.

8 Q -- because of the situation. What does  
9 that mean?

10 A Mental anguish, I mean pain being  
11 emotional distress--

12 Q So you weren't talking about physical like  
13 your stomach hurt or something like that?

14 A Yes, sir, pain being emotional distress  
15 and trauma.

16 Q Did you ever have any conversations with  
17 Miss Durr or Mr. Lord or anyone else in counseling  
18 about emotional distress and trauma that you were  
19 having that was unrelated to the restrooms?

20 A I don't recall.

21 Q To the best of your recollection, you  
22 never spoke with Mr. Lord about the restroom

Transcript of Gavin Grimm  
Conducted on October 19, 2018

1 policy; is that correct?

2 A I don't recall.

3 Q You don't recall one way or the other?

4 A Correct.

5 Q What did Miss Durr say to you after you  
6 expressed these concerns?

7 A I don't recall.

8 MR. CORRIGAN: That's all the questions.

9 MR. BLOCK: Same here.

10 You will have an opportunity to review the  
11 transcript and to make any corrections, if  
12 anything is incorrect.

13 MR. GRIMM: Okay.

14 Thank you very much.

15 MR. CORRIGAN: Thank you.

16

17 (Off the record at 2:10 p.m.)

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Transcript of Gavin Grimm  
Conducted on October 19, 2018

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ACKNOWLEDGEMENT OF DEPONENT

I, GAVIN GRIMM, do hereby acknowledge that I have read and examined the foregoing testimony, and the same is a true, correct and complete transcription of the testimony given by me and any corrections appear on the attached Errata sheet signed by me.

\_\_\_\_\_

(DATE)

\_\_\_\_\_

(SIGNATURE)

Transcript of Gavin Grimm  
Conducted on October 19, 2018

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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, LESLIE D. ETHEREDGE, Registered Merit  
3 Reporter, Certified Court Reporter and Notary  
4 Public, the officer before whom the foregoing  
5 deposition of GAVIN GRIMM was taken, do hereby  
6 certify that the foregoing transcript of the  
7 deposition is true and correct to the best of my  
8 ability; that said testimony was taken by me  
9 stenographically and thereafter reduced to  
10 typewriting under my direction; that reading and  
11 signing was requested; and that I am neither  
12 counsel for, related to, nor employed by any of  
13 the parties to this case and have no interest,  
14 financial or otherwise, in its outcome.

15 IN WITNESS WHEREOF, I have hereunto set my  
16 hand this 5th day of November, 2018.

17 

18 \_\_\_\_\_  
19 LESLIE D. ETHEREDGE, Notary Public in  
20 and for the Commonwealth of Virginia  
21 Registration No: 116406

22 My commission expires February 28, 2019



13

11/19/2014

**TRANSGENDER PROTECTIONS  
IN PUBLIC SCHOOLS:  
RECENT DEVELOPMENTS**

Bradford A. King  
(804) 783-7263  
bking@sandsanderson.com

Nicole S. Cheuk  
(804) 783-7267  
ncheuk@sandsanderson.com

**SANDS  
ANDERSON**

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**What does "transgender" mean?**

- A transgender person has a gender identity (one's internal sense of gender) that is different from the gender identification listed on the individual's birth certificate.
- A "transgender male" is a person born female, transitioning to or living as a male.
- Transgender individuals may or may not seek medical intervention, including hormone treatment or sex-reassignment surgery.

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**Protections for Students: Federal Law**

- Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. (Title IX):
  - "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."
  - U.S. Department of Education's Office for Civil Rights ("OCR") interprets this to include gender-based harassment.
  - Gender-based harassment includes verbal, non-verbal or physical aggression, intimidation, or hostility based on sex or sex stereotyping, including failing to conform to stereotypical notions of masculinity or femininity.

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11/19/2014

### Protections for Students: Title IX

- School divisions are not liable for one student harassing another, but may be liable for failing to respond adequately, *whether or not the harassed student makes a complaint or asks the school to take action.*
- School division may violate Title IX if:
  - Harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from the educational program;
  - The division knew or reasonably should have known about the harassment; and
  - The division failed to take appropriate responsive action.

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### Protections for Students: Title IX

- When a school division knows or reasonably should know of possible harassment, it must take immediate and appropriate steps to investigate or otherwise determine what occurred.
- If an investigation reveals that the harassment created a hostile environment, the school district must then take prompt and effective steps reasonably calculated to:
  - End the harassment;
  - Eliminate the hostile environment;
  - Prevent its recurrence; and
  - As appropriate, remedy its effects.

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### Office for Civil Rights Complaints

- Arcadia Unified School District (CA) – July 2013 landmark OCR decision.
- Complaint alleged discrimination on the basis of sex against a student, born female but identified as male.
  - Specifically, school division prohibited him from accessing (1) sex-specific facilities designated for male students, and (2) sex-specific student cabins for male students during a school-sponsored overnight camp.
- Without admitting unlawful conduct, school division entered into a resolution agreement agreeing to create "a safe, nondiscriminatory learning environment for students who are transgender or do not conform to gender stereotypes."

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11/19/2014

### Office for Civil Rights Complaints

Downey Unified School District (CA) – OCR Resolution Agreement issued October 14, 2014:

- The complaint alleged discrimination based on sex.
  - 1) transgender student born male subjected to different treatment and harassment by District employees because of her gender identity and gender nonconformance; and
  - 2) subjected to sexual and gender-based peer harassment and the District failed to provide a prompt and equitable response to the notice of harassment.
- OCR investigated the complaint under its Title IX authority.
- Prior to the conclusion of the investigation, the District expressed interest in voluntarily resolving the case and entered into a Resolution Agreement.

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### Downey Investigation

- Transgender girl first informed District of her gender identity in kindergarten.
- During the years K-5, the student continued to assert a female gender identity but had not made a gender transition to attend school as a girl – continued to use male name, pronouns, etc.
- She began coming to school dressed as a girl in the fifth grade.
- Complainant asserted that make-up was confiscated, had to write an apology letter for making male students uncomfortable by wearing make-up.
- She was also discouraged from discussing her gender identity with her friends.

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### Downey Investigation

- Complainant asserted that after her non-surgical gender transition, school pictures reflected the Student's male name even though wearing a dress and used female name on the picture forms.
- Frequently verbally harassed by her peers – “fag, whore, bitch,” etc.
- After complaint, elementary administrators suggested she transfer to another school where no one knew she was a transgender girl.

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11/19/2014

### Downey Investigation

- Prior to start of middle school, Complainant requested to be called by female name and given option of using female restroom or staff restroom.
- Middle school administrator receptive to her requests and she used female restroom and locker room without incident.
- However, she continued to experience peer harassment, being called her former male name, and questioned often about her anatomy.
- The District denied her request for school-wide assembly on gender-based harassment/bullying.

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### Downey Unified School District Resolution Agreement – October 2014

- Memorializes the Student's use of female-designated facilities.
- District agrees to otherwise treat the Student as a girl in all respects.
- District agrees to amend policies and procedures, train staff, provide age-appropriate instruction to students, survey parents and students about harassment, and ensure appropriate supports for the Student and other transgender students who request it.

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### State Law Protections for Transgender Students (not exhaustive)

- Maine – Maine Human Rights Act
- Arizona – High School League recently approved its first transgender athlete.
- California (August 2013) – Requires pupils be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with their gender identity, irrespective of the gender listed on their pupil records.
- Colorado, Hawaii, Illinois, Iowa, Maryland, Minnesota, New Jersey, New York, North Carolina, Oregon, Vermont, Washington and D.C. all have laws specifically protecting transgender students in public schools from harassment and/or discrimination.

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11/19/2014

### Transgender Student Athletes

- February 2014 – Virginia High School League adopted transgender student-athlete policy.
- When a school identifies a transgender student who seeks to participate it must submit a letter requesting an appeal to the district chairman and VHSL Director.
- A transgender student-athlete may compete in the gender of their birth certificate unless they have undergone sex reassignment.
- A student-athlete who has undergone sex reassignment may participate in the re-assigned gender when the student has undergone the surgery (1) before puberty; or (2) after puberty under certain conditions:
  - Surgical anatomical changes have been completed;
  - Hormonal therapy is being administered in a verifiable manner and for a sufficient length of time; and
  - If student stops hormonal treatment, they will be required to participate in sport consistent with birth gender.

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### Transgender Student Athletes

- VHSL rule mirrors the International Olympic Committee requirements.
- Currently, 18 other states have transgender student-athlete policies, although not all require gender reassignment surgery.
- Florida requires:
  - A written statement from the student affirming the consistent identity and expression to which the student self-relates;
  - Documentation from individuals such as, but not limited to, parents /legal guardians appointed by a court of competent jurisdiction, friends and/or teachers, which affirm that the actions, attitudes, dress and manner demonstrate the student's consistent gender identification and expression;
  - A complete list of all the student's prescribed, non-prescribed or over the counter, treatments or medications;
  - Written verification from an appropriate health-care professional (doctor, psychiatrist, and psychologist) of the student's consistent gender identification and expression.

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### Case law

- **Doe v. Regional School Unit 26 (Also – Doe v. Clenchy)– Maine Supreme Judicial Court (January 30, 2014)**
- Suit filed pursuant to Maine Human Rights Act (MHRA) – prohibits discrimination based on sexual orientation in public accommodations, educational opportunities, employment, housing, and other areas.
- Transgender female had been allowed to use girl's restroom pursuant to a 504 plan that addressed her gender identity issues and upcoming transition to fifth grade – “gender dysphoria.”
  - Gender dysphoria – medical term for psychological distress resulting from having a gender identity different from the sex that one was assigned at birth.
- In fifth grade a male student followed her into the restroom on two occasions claiming he was entitled to use it also.

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11/19/2014

### Case law

□ **Doe, continued.**

- The Court had to consider the relationship between MHRA and a provision of the state Sanitary Facilities law, which requires schools to provide clean toilets that are separated according to sex.
- Court found that Sanitary Facilities law does not establish guidelines for the use of school bathrooms, rather it establishes cleanliness and maintenance requirements.
- The school division's decision to ban student from the girl's bathroom, based not upon a change in student's status but on others' complaints, constituted discrimination prohibited by MHRA.

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### Case law

□ **Doe, continued.**

- Over the student's parents' objections, the school required her to use the single-stall, unisex staff bathroom.
- The 504 team met again to discuss transition to middle school and determined student would not use girl's bathroom in middle school.
- Court acknowledged that many of the school officials exhibited tremendous sensitivity and insight over several years, but the school came under intense public scrutiny which caused it to reconsider the steps it had taken and reverse course.
- First time a state court declared it unlawful to deny a transgender student access to the bathroom that matches the gender with which she identifies.

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### Case law

□ **Coy Mathis v. Fountain-Fort Carson School District 8**  
-- June 17, 2013 decision of Colorado Division of Civil Rights

- Found sufficient evidence to find that the school district "discriminatorily denied the Charging Party equal terms and conditions of goods, services, benefits, or privileges; equal treatment based on harassment; and the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations in a place of public accommodation due to the Charging Party's sex and sexual orientation."

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11/19/2014

**Case law**

**Mathis, continued.**

- Charging Party – six year-old transgender girl who had, since 18-months old, non-verbally expressed her female gender identity through her likes and dislikes.
- Between ages of 4 and 6 began articulating her belief that she was a girl.
- Enrolled in kindergarten as a boy, but wore girl's clothes, chose female playmates.
- Between August 2012 and December 2012 (in first grade) – Charging Party used the girl's restroom, accompanied by a female classmate without issue.

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**Case law**

**Mathis, continued.**

- Superintendent found out and instructed the Principal to inform the family that the Charging Party could no longer use the girl's restroom, but could use the boy's restroom or adult staff single-user restrooms. (changed to gender-neutral after the Mathis family left school).
  - School district had received only one complaint from a former district parent regarding her use of the girl's restroom.
- The division of civil rights relied on the fact that Charging Party identifies as female and possesses documents identifying her sex as female in finding that school district discriminated against student.
- The evidence demonstrated that socially, legally and medically the Charging Party is considered female (without gender reassignment surgery), and therefore she was discriminated against.

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**Hypothetical**

How would you handle the following: a school club is going on an overnight excursion underwritten by the parents, where they plan to bunk four students per hotel room. What accommodations if any would your school districts make for a transgender student in terms of sleeping arrangements?

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11/19/2014

### Transgender Student Records

- Arises often with transgender alumni seeking employment or applying to other educational institutions after graduation.
- The Family Educational Rights and Privacy Act (FERPA) allows parents or eligible students to review education records and request that the school change records that are inaccurate, misleading or in violation of the student's privacy.
  - 1991 Family Policy Compliance Office opinion letter concluded that FERPA does not apply to a transgender former student requesting a name and gender change in his or her education records.
  - Rationale is that the change is substantive decision of the school division.
  - This rationale may be changing based on privacy standard.
- Changing the records avoids the possibility of a discrimination claim and maintains the student's privacy. By not changing the records, school is essentially disclosing that student's transgender status to anyone who sees their records.

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### Transgender Student Records

- Declining to update records is simple, consistent approach, less administrative burden.
- However, not changing the records may cause the person viewing them to question the applicant's honesty, forcing the individual to disclose their status.
- If a district would amend or change a record for a change in name based on marital status, then it should process a name change based on gender status in the same manner.
- It is not unlawful to require a court order or amendment of state/federally issued identification prior to changing records.

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### Trending

- Non-binary students – neither male nor female, sometimes known as “genderqueer”.
  - Genderqueer was one of 56 gender identity options added to Facebook in February 2014.
- Pennsylvania school division reports that a student requested to be called by a different name from the female name previously used and have all pro-nouns be non-gender specific.
- Argument: the legal construct of how gender is tracked and recorded is Binary (male/female), therefore there is no legal authority for the accommodation requested.

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11/19/2014

**Best Practices**

- Respond immediately to claims of harassment/bullying.
- Permit use of facilities based on gender identification.
- Provide training/professional development.
- Provide school-wide assemblies on gender-based harassment/bullying.

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**Protections for Employees – Federal Law**

- Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) prohibits discrimination in employment on the basis of sex.
- The Courts have been inconsistent about whether this includes discrimination based on gender-identity.
- The Equal Employment Opportunity Commission (EEOC), has recently interpreted Title VII to include discrimination on the basis of gender identity.
- No federal law expressly prohibits LGBT bias, despite Congress having proposed the Employment Nondiscrimination Act, prohibiting sexual orientation and gender identity bias in the workplace almost every year for past 20 years.

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**Macy v. Holder, Appeal No. 0120120821 (U.S. EEOC, Apr. 20, 2012).**

- In December 2010, Macy, a transgender woman then presenting as a man, applied for a Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) position at a crime laboratory.
- Macy asserted that after a discussion of her credentials and experience, the director of the lab told her that position was hers, assuming no problems arose during her background check.
- In March 2011, Macy informed the background check investigator that she was in the process of transitioning from male to female.
- Five days later, she was told that the position was no longer available.
- Three months later, Macy filed an EEOC charge against the ATF, alleging discrimination on the basis of her sex, gender identity, and sex stereotyping.

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11/19/2014

**Macy v. Holder, cont'd**

- The EEOC held that gender-identity based discrimination is banned under Title VII.
- The case then went back to the Department of Justice, which has jurisdiction over discrimination complaints against ATF.
- On July 8, 2013, the DOJ issued its finding that "ATF discriminated against complainant based on her transgender status, and thus her sex."

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**Lambda Legal and Freedom to Work**

- In July 2013, Lambda Legal and Freedom to Work announced that it had reached a settlement with a private employer, also a government contractor, on behalf of a Maryland transgender woman.
- The woman filed a charge with the EEOC alleging that she was subjected to physical and verbal harassment in the workplace over a two year period, including comments such as "tranny," "drag queen," and "faggot."

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**Lambda Legal and Freedom to Work**

- The EEOC issued a letter with a determination of reasonable cause to believe the company violated Title VII of the Civil Rights Act, stating:
  - The investigation revealed that Charging Party was subjected to derogatory gender-based comments that were frequently made by both co-workers and supervisors. Both Charging Party and witness interviews revealed that Respondent's management failed to take corrective action despite being fully aware of the harassment Charging Party was being subjected to. This lack of corrective action enabled the harassment and offensive atmosphere to continue.

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11/19/2014

### LGBT Bias Charges, Resolutions Up

- EEOC Commissioner Feldblum shared at an October Employment Law Institute that in calendar year 2013 the EEOC received 834 charges raising allegations of sexual orientation discrimination ("GO") and 199 charges alleging gender identity or transgender bias ("GT").
  - 417 resolved, 9 cause findings.
- In first six months of 2014 – EEOC received 459 GO charges and 81 GT Charges, 11 cause findings.
- Feldblum acknowledged that the increase has more to do with the change in the agency's attitude toward the handling of such claims than with legal developments internally or in the courts.

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### Protections for Employees – State law

- On January 4, 2014, Governor McAuliffe signed Executive Order Number 1, prohibiting discrimination based on sexual orientation and gender identity.
- The Executive Order applied to all state agencies, not school boards.
- Same-sex marriage is permitted in Virginia as of October 6, 2014.

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### Best Practices - Employees

- Updating nondiscrimination policies to expressly include LGBT bias.
- Training for supervisors and employees on gender-based discrimination and harassment.
- Equal employee benefits to same-sex couples (possible special open enrollment for couples married prior to Virginia's legalization of gay marriage).
- Make sure updated nondiscrimination policies include a process for workers who are transitioning from male to female or vice versa, and information regarding name changes, and restroom use.

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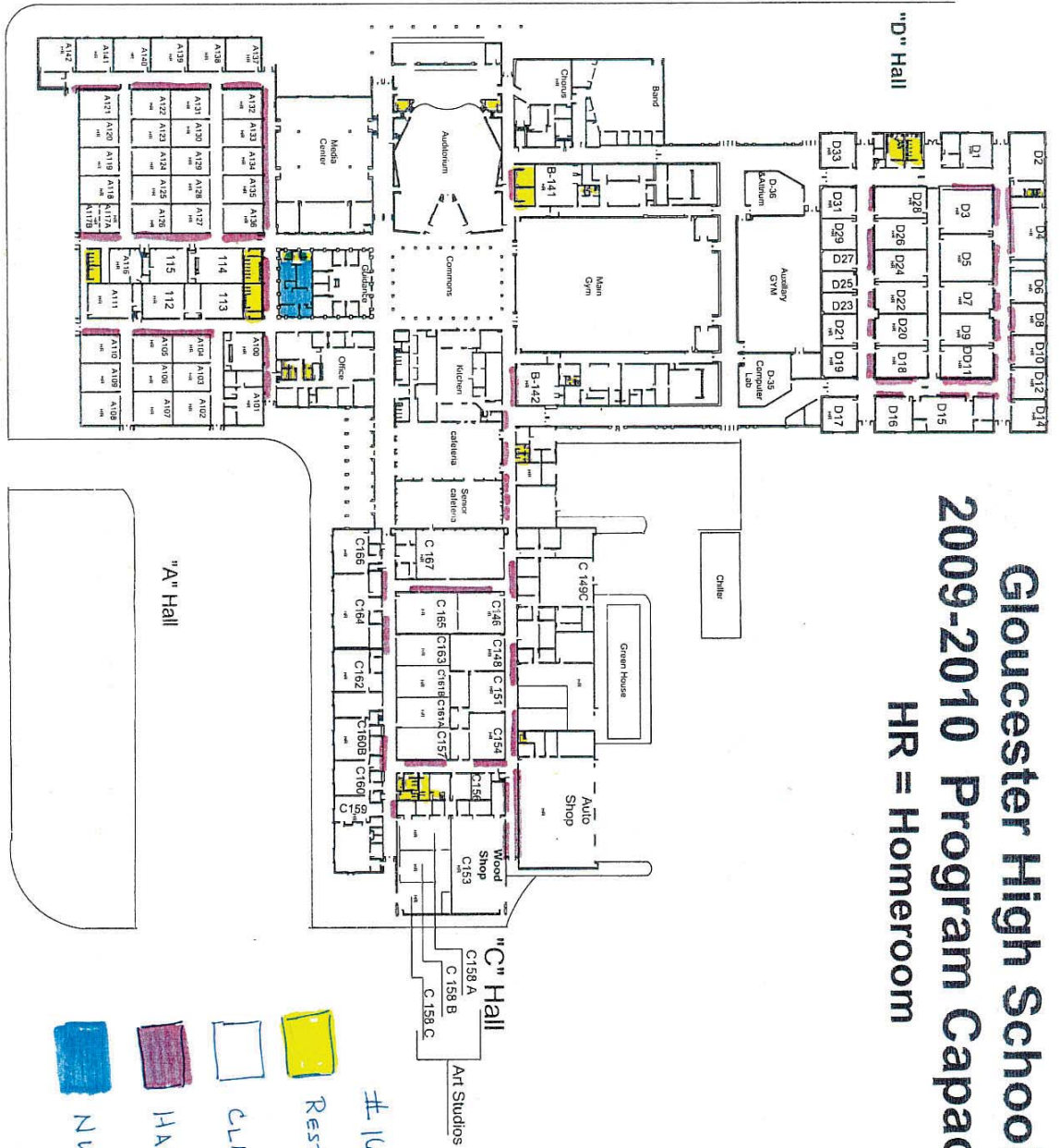
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# Gloucester High School

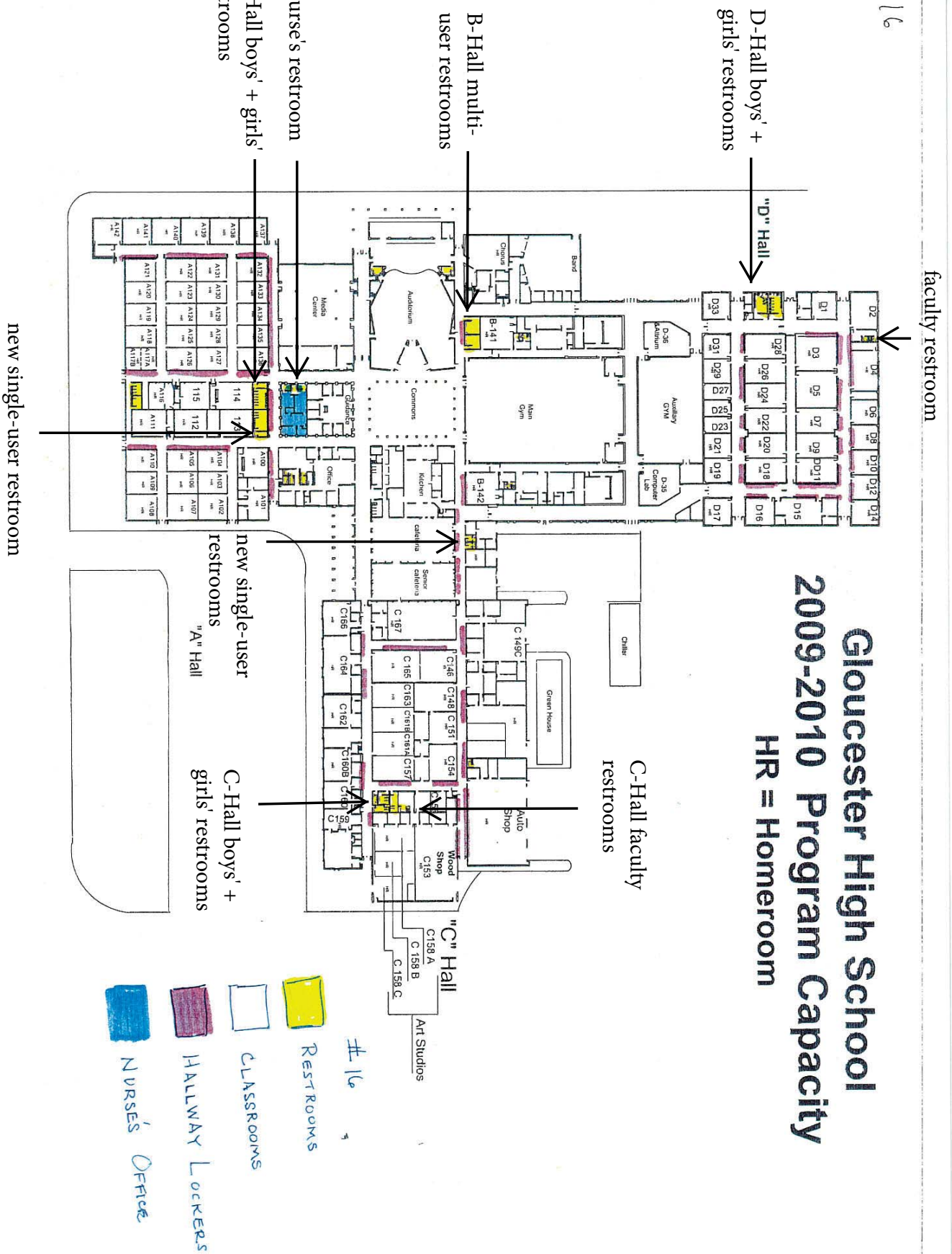
## 2009-2010 Program Capacity

HR = Homeroom

- Restrooms
- Hallway Lockers
- Nurses' Office
- Classrooms



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# Gloucester High School 2009-2010 Program Capacity

HR = Homeroom

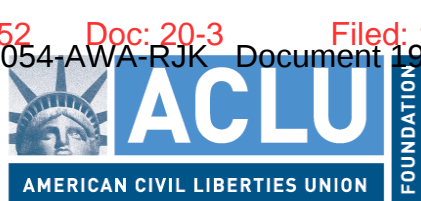
- Restrooms
- Nurses' Office
- Hallway Lockers
- Classrooms

6<sup>th</sup> Grade Wing – Teachers’ Room – 1 non-ADA restroom with single commode and sink  
Main Office – Principal’s Office – 1 non-ADA restroom with single commode and sink  
Main Office (staff) – unisex – 1 non-ADA restroom with single commode and sink  
Clinic – 1 ADA restroom with single commode and sink  
By Gym (staff) – men – 1 non-ADA restroom with single commode and sink  
By Gym (staff) – women – 1 non-ADA restroom with single commode and sink  
By Gym – boys – 1 ADA stall; 1 regular; 3 urinals without partitions  
By Gym – girls – 1 ADA stall; 1 regular  
Boys’ Locker Room – 2 non-ADA stalls; 4 urinals without partitions; 8 individual showers  
Boys’ Locker Room – Coach’s Office – 1 non-ADA restroom with commode and sink and shower  
Girls’ Locker Room – 4 non-ADA stalls; 8 individual showers  
Girls’ Locker Room – Coach’s Office – 1 non-ADA restroom with commode and sink and shower  
Custodial Office – 1 non-ADA restroom with single commode and sink  
Kitchen – 1 non-ADA restroom with single commode and sink  
Industrial Arts – boys – 2 non-ADA stalls; 3 urinals without partitions  
Industrial Arts – girls – 3 non-ADA stalls

**Gloucester High**

A Hall – boys – 3 non-ADA stalls; 7 urinals with partitions  
A Hall – unisex – 1 non-ADA stall; 1 urinal with partition  
A Hall – girls – 6 non-ADA stalls  
A Hall (staff) – women – 2 non-ADA stalls  
A Hall (staff) – women – 3 non-ADA stalls  
A Hall (staff) – men – 1 non-ADA stall; 3 urinals without partitions  
B Hall – boys – 1 ADA stall; 1 regular; 4 urinals with partitions  
B Hall – girls – 1 ADA stall; 1 regular  
C Hall – boys – 2 non-ADA stalls; 2 urinals with partitions  
C Hall – girls – 3 non-ADA stalls  
C Hall (staff) – women – 2 non-ADA stalls  
C Hall (staff) – men – 1 non-ADA stall; 1 urinal with partition  
C Hall – new unisex – 1 non-ADA stall and sink  
C Hall – new unisex – 1 non-ADA stall and sink  
D Hall – boys – 1 ADA stall; 2 regular; 3 urinals with partitions  
D Hall – girls – 1 ADA stall; 5 regular  
Teachers’ Lounge – men – 1 non-ADA restroom with single commode and sink (has 1 grab bar)  
Teachers’ Lounge – women – 1 non-ADA restroom with single commode and sink (has 1 grab bar)  
Main Office – unisex – 1 ADA restroom with single commode and sink  
Main Office (staff) – men – 1 ADA restroom with single commode and sink  
Main Office (staff) – women – 1 ADA restroom with single commode and sink  
Locker Room - Main – boys – 1 gang shower; 1 non-ADA restroom without stall; 3 urinals without partitions  
Locker Room – JV – boys – no shower; 1 ADA stall; 2 regular; 2 urinals with partitions  
Locker Room – Main – girls – 26 stall shower (not used); 2 non-ADA stalls  
Locker Room – JV – girls – no shower; 1 ADA stall; 3 regular  
Auditorium – boys – 1 non-ADA restroom with single commode and sink  
Auditorium – girls – 1 non-ADA restroom with single commode and sink  
Clinic – boys – 1 ADA restroom with single commode and sink  
Clinic – girls – 1 ADA restroom with single commode and sink  
Kitchen – unisex – 1 non-ADA restroom with single commode and sink  
Main Hall (across from Office) – boys – 1 ADA stall; 2 regular; 4 urinals with partitions  
Main Hall (across from Office) – girls – 1 ADA stall; 2 regular

LEGAL DEPARTMENT  
LESBIAN GAY  
BISEXUAL  
TRANSGENDER &  
AIDS PROJECT



December 23, 2016

David P. Corrigan  
Harman Claytor Corrigan & Wellman  
Post Office Box 70280  
Richmond, VA 23255

*Via email to dcorrigan@hccw.com*

RE: School records for Gavin Grimm

Dear David,

Pursuant to our conversation, I am writing to request that Gavin Grimm's school records be updated so that any school records submitted in connection with Gavin's college applications identify him as male, in accordance with his amended birth certificate. Some college applications are due as early as January 3, 2017.

I make this request in the hopes that we can amicably resolve this discrete issue in time for Gavin's applications to college. As discussed, in making this specific request, I am not waiving or limiting Gavin's legal rights under Title IX or any other source of law to be treated consistently with his male gender identity and the male designation on his birth certificate in other respects.

Sincerely,

/s/ Joshua A. Block

Joshua A. Block  
Senior Staff Attorney  
LGBT and HIV Project  
American Civil Liberties Union  
125 Broad St., New York, NY 10004  
■ 212.549.2593 ■ jblock@aclu.org

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
LESBIAN GAY BISEXUAL  
TRANSGENDER &  
AIDS PROJECT

PLEASE RESPOND TO:  
NATIONAL OFFICE  
125 BROAD STREET, 18TH FL.  
NEW YORK, NY 10004-2400  
T/212.549.2627  
F/212.549.2650  
WWW.ACLU.ORG/LGBT

SAN FRANCISCO OFFICE:  
39 DRUMM STREET  
SAN FRANCISCO, CA 94111

CHICAGO OFFICE:  
180 NORTH MICHIGAN AVENUE  
SUITE 2300  
CHICAGO, IL 60601-7401

WASHINGTON, D.C. OFFICE:  
915 15TH STREET, NW  
WASHINGTON, D.C. 20005

OFFICERS AND DIRECTORS  
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RICHARD ZACKS  
TREASURER



The Thomas Calhoun Walker Education Center  
6099 T.C. Walker Road  
Gloucester, Virginia 23061



William "Jarret" Lee, 2019 Chairperson  
Member At Large  
Robin M. Rice, 2019 Vice Chairperson  
Ware District  
Troy M. Andersen, Gloucester Point District

George R. Burak, Abingdon District  
Brenda F. Mack, Member At Large  
Elisa A. Nelson, York District  
Anita F. Parker, Petsworth District

## For Immediate Release

Date: February 13, 2019  
To: All Local Media Outlets  
From: Gloucester County School Board  
Subject: Notice of Public Hearing

Notice is hereby given that the GLOUCESTER COUNTY SCHOOL BOARD will hold a public hearing on **Tuesday, February 19, 2019, at 6:30 p.m.**, or as soon thereafter as the matter may be heard, in the Auditorium of the Thomas Calhoun Walker Education Center, 6099 T.C. Walker Road, Gloucester VA 23061, for the purpose of obtaining the public's views on and considering the following:

Discussion of a School Board policy on the use of restroom facilities related to the resolution that was adopted on December 9, 2014.

The policy to be discussed would allow transgender students to use the restroom consistent with the student's asserted gender identity when the following criteria have been met:

- (1) the student has appropriate medical documentation from a licensed, treating healthcare provider who specializes in the treatment of transgender individuals; and
- (2) the student has consistently asserted the student's gender identity for a period of at least six months; and
- (3) the student has undergone treatment recommended by the student's healthcare provider, which may include social transition or hormonal therapy for at least six months.

The December 9, 2014 resolution states:

Whereas the GCPS recognizes that some students question their gender identities, and

Whereas the GCPS encourages such students to seek support, advice, and guidance from parents, professionals and other trusted adults, and

Whereas the GCPS seeks to provide a safe learning environment for all students and to protect the privacy of all students, therefore

It shall be the practice of the GCPS to provide male and female restroom and locker room facilities in its schools, and the use of said facilities shall be limited to the corresponding biological genders, and students with gender identity issues shall be provided an alternative appropriate private facility.

All interested persons are invited to attend the hearing. **Public comment is expected to be received beginning at 7:00 p.m., or as soon thereafter as may be heard.**



GLOUCESTER COUNTY SCHOOL BOARD

The Thomas Calhoun Walker Education Center  
6099 T.C. Walker Road  
Gloucester, Virginia 23061



William "Jarret" Lee, 2019 Chairperson  
Member At Large  
Robin M. Rice, 2019 Vice Chairperson  
Ware District  
Troy M. Andersen, Gloucester Point District

George R. Burak, Abingdon District  
Brenda F. Mack, Member At Large  
Elisa A. Nelson, York District  
Anita F. Parker, Petsworth District

## For Immediate Release

Date: February 21, 2019  
To: All Local Media Outlets  
From: Gloucester County School Board  
Subject: Restroom Resolution

The Gloucester County School Board will not be taking any action at its February 21 work session on the possible alternative restroom resolution that was presented at its work session on February 19. In addition, the School Board has not set a time frame for when any action will be taken or when any further discussion will be held regarding the resolution. Finally, the School Board will not be providing any additional comments on this matter at this time.

**RECORDED MINUTES OF THE  
GLOUCESTER COUNTY SCHOOL BOARD  
GLOUCESTER, VIRGINIA**

**NOVEMBER 11, 2014**

The regular monthly meeting of the Gloucester County School Board was held on Tuesday, November 11, 2014. The Chairperson called the meeting to order at 5:35 pm at the Thomas Calhoun Walker Education Center.

**I. ROLL CALL**

Roll call was taken by the Acting Clerk, and the following persons were recorded as present: George R. (Randy) Burak, Chairperson, Troy M. Anderson, Kimberly (Kim) E. Hensley, Carla B. Hook, Anita F. Parker, Charles B. Records, and Kevin M. Smith, Members. Also present for the closed meeting: Walter R. Clemons, Ph.D., Superintendent of Schools, and John E. Hutchinson, Assistant Superintendent for Administrative Services and Acting Clerk.

**II. CALL FOR CLOSED MEETING**

At 5:36 pm, a motion was made by Ms. Hensley, seconded by Mrs. Hook, and unanimously approved to adjourn for a closed session, pursuant to Code of Virginia, 1950, as amended, Section 2.2-3711 (A), Subsection 1, for the discussion of personnel matters (monthly appointments, resignations, etc.) and Subsection 7, for consultation with legal counsel. At 6:50 pm, the Chairperson declared a recess, and the meeting was relocated to the Thomas Calhoun Walker Education Center auditorium.

**III. RETURN TO OPEN MEETING/CERTIFICATION**

Note: Ms. Betty Jane Duncan, Deputy Clerk, recorded the open meeting.  
The Deputy Clerk noted that all members were present for the open meeting.

At 7:00 pm, a motion was made by Mr. Smith and seconded by Ms. Hensley to reconvene the meeting into open session. The motion was approved as follows:

Mr. Andersen	<u>Aye</u>	Mr. Records	<u>Aye</u>
Ms. Hensley	<u>Aye</u>	Mr. Smith	<u>Aye</u>
Mrs. Hook	<u>Aye</u>	Mr. Burak	<u>Aye</u>
Ms. Parker	<u>Aye</u>		

There was no certification for the closed session at this time. The Chairperson stated that the Board had recessed from the closed session and would resume that closed session at the conclusion of the opening meeting.

**IV. MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE** – Mr. Burak noted that today was Veterans' Day and extended thanks to all veterans who had served our country. Ms. Campbell Farina, SAC representative, led the Board and citizens in a moment of silence followed by the Pledge of Allegiance to the flag of the United States of America.

**V. PERSONNEL ITEMS – (moved to consideration after closed session)**

**VI. ADDITIONS/CHANGES/ADOPTION OF AGENDA**

There were no changes to the agenda as previously revised and published. A motion was made by Ms. Hensley, seconded by Mr. Records, and unanimously adopted to approve the agenda as revised and published.

**RECORDED MINUTES OF THE NOVEMBER 11, 2014  
GLOUCESTER COUNTY SCHOOL BOARD MEETING**

**VII. APPROVAL OF ITEMS CONTAINED IN THE CONSENT AGENDA**

A motion was made by Ms. Hensley to approve the Consent Agenda (listed below). Motion was seconded by Mr. Andersen and approved with a roll call vote.

Mr. Andersen	<u>Aye</u>	Mr. Records	<u>Aye</u>
Ms. Hensley	<u>Aye</u>	Mr. Smith	<u>Aye</u>
Mrs. Hook	<u>Aye</u>	Mr. Burak	<u>Aye</u>
Ms. Parker	<u>Aye</u>		

**ITEMS CONTAINED WITHIN THE CONSENT AGENDA:**

- A. Approval of Minutes of October 14, 2014, Monthly Meeting
- B. Approval of Minutes of October 23, 2014, Special (Work Session) Meeting
- C. Approval of Minutes of October 30, 2014 Special (Closed) Meeting
- D. Approval of Disposal of Equipment Valued in Excess of \$500
- E. Approval of Policy Manual Update (1<sup>st</sup>/2<sup>nd</sup> Readings)
  - 1. FF: Public Dedication of New Facilities (new)
  - 2. FFA: Naming of School Facilities (new)
  - 3. BBFA: School Board Members Conflict of Interest (revision)
  - 4. BDDF: Voting Method (revision)
  - 5. EFB: Free and Reduced Price Food Services (revision)
  - 6. FE: Playground Equipment (revision)
  - 7. FG: Retirement of Facilities (revision)
  - 8. JO: Student Records (revision)
  - 9. KFB: Administration of Surveys and Questionnaires (revision)
  - 10. KH: Public Gifts to Schools (revision)
  - 11. KKA: Service Animals in Public Schools (revision)
  - 12. LCA: Charter Schools (revision)
  - 13. LCA-E: Charter School Application Addendum (form revision)
- F. Informational Central Food Service Financial Report as of September 30, 2014
- G. Informational Membership Report as of October 30, 2014
- H. Informational Suspension Report for October, 2014
- I. Informational Visiting Teachers Report for October, 2014
- J. Informational Transportation Report for October, 2014

**VIII. STAFF PRESENTATIONS/RECOGNITIONS**

A. Presentation of VSBA Academy Awards – Dr. Clemons presented the following VSBA Academy Awards:

Mr. Burak	Achievement	Mrs. Hook	Excellence
Mr. Andersen	Achievement	Ms. Parker	Honor
Ms. Hensley	Recognition	Mr. Smith	Recognition

B. Updates on Boards/Commissions by School Board Members

Ms. Hensley gave a report on WHRO. Ms. Parker provided information on the Education Foundation. Mrs. Hook made remarks regarding the Chesapeake Bay Governor’s School.

**RECORDED MINUTES OF THE NOVEMBER 11, 2014  
GLOUCESTER COUNTY SCHOOL BOARD MEETING**

**PAGE 3 of 8**

**IX. CITIZENS' COMMENT PERIOD**

Mr. Burak asked if there were any persons present who wished to address the Board. He asked that all persons state their name, the district in which they reside and to limit their remarks to three (3) minutes or less. A number of citizens addressed the issue of accommodations for transgender students including:

Ralph Van Ness (Ware)  
Rev. Eddy Aliff (Virginia Assembly of Independent Baptists)  
Savannah Williams (Abingdon)  
Terry Brennan (Abingdon)  
Deidre Grimm  
Gavin Grimm  
Joy Sampson (Petersworth)  
Kelly Williams (Abingdon)  
Mark Faulkner (Ware)  
Lorraine Walsh (Abingdon)  
Drew Palas (Gloucester Point)  
Kathryn Lindsay (Gloucester Point)  
Jacklynn Laniff (Abingdon)  
Brian Byrd (Gloucester Point)  
Ira Johnson (Petersworth)  
Patricia Ray (Petersworth)  
Kim Ward (Ware)  
Melisa Wamsley (Petersworth)  
Ray Wamsley (Petersworth)  
Season Palas (Gloucester Point)  
Paul Martin (Gloucester Point)  
Christi Jackson Feliciano (White Marsh)  
Elisa Nelson (Abingdon)  
Amy VanFossen (Ware)  
David Grimm  
Robert Teagle  
Howard Mowry (Gloucester Point)

Mr. Burak thanked all citizens who came forward to speak regarding this matter.

**X. STUDENT ADVISORY COMMITTEE (SAC) ITEMS** – Ms. Farina offered remarks regarding the transgender accommodation issue.

**XI. SUPERINTENDENT'S ITEMS**

A. Comprehensive Plan Update/Reminder of Next Meeting Date – Dr. Clemons reminded Board members and the public that the next Comprehensive Plan development meeting would be held on Monday, November 17, 2014, at 7:00 pm at the Thomas Calhoun Walker Education Center (Cafeteria). He expressed thanks to all who have attended previous meetings and provided valuable input in the process.

**RECORDED MINUTES OF THE NOVEMBER 11, 2014  
GLOUCESTER COUNTY SCHOOL BOARD MEETING**

**XII. SCHOOL BOARD MEMBERS' ITEMS**

A. VSBA Annual Convention – November 19-21, 2014 at Doubletree by Hilton Williamsburg. The Clerk has registered all School Board members who are able to attend. Opening session begins at 2:00 pm on Wednesday, November 19, 2014, followed by a break from 4:00-4:30 pm, followed by the President’s Reception at 5:30 pm, followed by dinner at 7:00 pm.

B. Other Matters as Brought Up by Board Members

1. Discussion of Use of Restrooms/Locker Room Facilities – Mrs. Hook read the following resolution and made a motion to adopt said resolution:

Whereas the GCPS recognizes that some students question their gender identities, and

Whereas the GCPS encourages such students to seek support, advice, and guidance from parents, professionals and other trusted adults, and

Whereas the GCPS seeks to provide a safe learning environment for all students and to protect the privacy of all students, therefore

It shall be the practice of the GCPS to provide male and female restroom and locker room facilities in its schools, and the use of said facilities shall be limited to the corresponding biological genders, and students with gender identity issues shall be provided an alternative appropriate private facility.

The motion was seconded by Mr. Records.

A motion was made by Ms. Parker and seconded by Ms. Hensley to postpone action on the resolution and motion offered by Mrs. Hook until the December 9 meeting of the Board. A roll call vote was called for, and the Deputy Clerk recorded the following vote:

Mr. Andersen	<u>Nay</u>	Mr. Records	<u>Nay</u>
Ms. Hensley	<u>Aye</u>	Mr. Smith	<u>Aye</u>
Mrs. Hook	<u>Nay</u>	Mr. Burak	<u>Aye</u>
Ms. Parker	<u>Aye</u>		

Motion was carried by a vote of 4-3. Motion offered by Mrs. Hook will be considered at the December 9 meeting of the Board.

**XIII. ADMINISTRATIVE ITEMS**

A. Recommendation to Restrict Outside Food Sharing at Elementary Schools – Ms. Shirley Chirch, Environmental Health and Safety Manager, and Ms. Lauren Giddings, School Health and Safety Board representative, reviewed the recommendation from the Board regarding the restriction of outside food sharing at the elementary schools. Due to an increasing number of students with life threatening food allergies and the potential for fatal reactions from unintended exposure to them, the following guidelines were recommended by the School Health Advisory Board:

**RECORDED MINUTES OF THE NOVEMBER 11, 2014  
GLOUCESTER COUNTY SCHOOL BOARD MEETING**

**XIII. ADMINISTRATIVE ITEMS (continued)**

• During the normal instructional day, no homemade or commercially prepared treats or food items, which are intended to be shared with students, will be allowed at the elementary level. This will not include food items that are part of the instructional process or school sponsored activities which are planned in advance.

A motion was made by Mr. Andersen, seconded by Ms. Hensley, and unanimously approved to adopt the guidelines as recommended by the School Health Advisory Board.

B. Discussion of Redistricting Plans – Mr. Hutchinson stated that the Redistricting Committee would be reactivated in preparation for the opening of the new Page Middle School. The first meeting of the committee will be held in January 2015 with a presentation and recommendation to the Board in March. School Board members are needed to serve on the committee. Mr. Andersen and Mr. Records agreed to serve on this committee. Mr. Records stated that this would be an opportunity for the Board to consider restructuring grade levels among the schools throughout the school system.

At 8:55 pm, the Chairperson called for a brief recess. The meeting was reconvened at 9:07 pm.

C. Monthly Departmental Report – Mr. Hutchinson reviewed departmental activities accomplished during the month.

**XIV. INSTRUCTIONAL ITEMS**

A. Recommended GCPS Local Assessment Plan – Dr. Bess Worley, Instructional Supervisor, provided information on the Virginia Department of Education Local Assessment Guidelines. It was the consensus of the Board to move forward with plans for developing local assessments in accordance with state guidelines.

B. Monthly Departmental Report – Dr. Wagner reviewed highlights of the month from Instructional Services. Ms. Hensley asked for further information on requirements for lesson plans on the elementary level. Dr. Wagner will provide this information to Board members through e-mail.

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**XV. BUDGET AND FINANCE ITEMS --- CONSIDERED OUT OF ORDER FROM PUBLISHED AGENDA**

A. Monthly Departmental Report – Ms. Joanne Wright, Director of Budget and Finance, highlighted tasks and accomplishments of the Budget and Finance Office.

B. Acceptance of Donations -- Ms. Wright highlighted the donations received by the division totaling \$11,055.00. A motion was made by Mr. Records and seconded by Ms. Parker to accept with grateful appreciation the donations as outlined. The Deputy Clerk polled the Board as follows:

Ms. Parker	<u>Aye</u>	Mr. Smith	<u>Aye</u>
Ms. Hensley	<u>Aye</u>	Mr. Records	<u>Aye</u>
Mrs. Hook	<u>Aye</u>	Mr. Burak	<u>Aye</u>
Mr. Andersen	<u>Aye</u>		

**RECORDED MINUTES OF THE NOVEMBER 11, 2014  
GLOUCESTER COUNTY SCHOOL BOARD MEETING**

**PAGE 6 of 8**

**XV. BUDGET AND FINANCE ITEMS (continued)**

C. Informational Financial Reports – Ms. Wright presented the following reports which were accepted by the Board as information:

1. September 30, 2014, Financial Report
2. October 30, 2014, Construction Financial Report
3. October 30, 2014, HVAC/Roof Financial Report

Ms. Hensley inquired what process the Board would follow if they wished to consider hiring a public relations person. Ms. Wright explained the process of bidding for services. Dr. Clemons will bring back a recommendation on this matter at the next meeting.

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**XIV. INSTRUCTIONAL ITEMS (continued)**

The Board considered the remainder of the Instructional Items at this time.

C. Update on Naviance: College and Career Readiness Solutions – Dr. Wagner stated that Mr. Bill Lindsey with the County Purchasing Department had been consulted and would be soliciting bids for college and career readiness services/programs. Further information will be provided to the Board in December.

D. Approval of Proposal to Assess Dual Enrollment Fees to Students for 2015-16 – The Board discussed the proposal to assess dual enrollment fees beginning in 2015-16. A motion was made by Mr. Andersen and seconded by Ms. Hensley to approve the proposal to assess dual enrollment fees in the amount of \$15.00 (\$5.00/credit hour) to students beginning in 2015-16. The Deputy Clerk recorded the following roll call vote:

Ms. Parker	<u>Aye</u>	Mr. Smith	<u>Aye</u>
Ms. Hensley	<u>Aye</u>	Mr. Records	<u>Aye</u>
Mrs. Hook	<u>Aye</u>	Mr. Burak	<u>Aye</u>
Mr. Andersen	<u>Aye</u>		

E. Update on Year-Round Program Proposal at Abingdon Elementary – Dr. Wagner apprised the Board on the status of the year-round program grant. Funds allocated by the state are insufficient to provide the program as written in the grant. After considerable discussion, a motion was made by Mrs. Hook and seconded by Mr. Smith to stop the planning process for a year-round program at this time and allow the grant funds to revert to the VDOE. Upon a voice vote, the motion was approved by the majority of the Board with Mr. Records voting nay.

F. Continued Discussion on Field Trip Policy (File IICA) – Dr. Wagner informed the Board that the division's insurance carrier had indicated that supplemental insurance plans were available for purchase to provide certain coverages for international trips. After discussion, it was the consensus of the Board to have Dr. Wagner obtain further information from the carrier to bring back to the Board in December. Revisions to the policy to cover international travel also will be considered at a future meeting.

G. VDOE Academic Review for Schools Accredited with Warning (GHS/Page) – Dr. Wagner outlined the process by which the VDOE will conduct academic reviews for schools accredited with warning. Teams/contractors will visit the schools on December 11 to observe classrooms, review lesson plans and curriculum, and meet with school staff. At the conclusion of the site visit, the team will present a report with recommendations to the VDOE.



**RECORDED MINUTES OF THE NOVEMBER 11, 2014  
GLOUCESTER COUNTY SCHOOL BOARD MEETING**

**XVI. PUBLIC ANNOUNCEMENTS**

Mr. Burak read the following public announcements:

- A. Next GCPS Comprehensive Plan Meeting – Monday, November 17, 2014, 7:00 pm @ the Thomas Calhoun Walker Education Center (Cafeteria)
- B. G.H.S. Fall Athletic Awards Ceremony – Tuesday, November 18, 2014, 7:00 pm, G.H.S. (Auditorium)
- C. Professional Days (Students Off) – Monday-Tuesday, November 24-25, 2014
- D. Professional Work @ Home Day (Students Off)/SBO Open ½ Day – Wednesday, November 26, 2014
- E. Thanksgiving Holidays-All GCPS Schools and Offices Closed, Thursday-Friday, November 27-28, 2014
- F. Next Monthly School Board Meeting – Tuesday, December 9, 2014, 7:00 pm @ the Thomas Calhoun Walker Education Center (Auditorium)

**CLOSED MEETING**

At 10:52 pm, the Board resumed the closed session.

At 10:59 pm, a motion was made by Ms. Hensley, seconded by Mr. Records, and unanimously approved to extend the meeting to 11:15 pm.

At 11:14 pm, a motion was made by Ms. Parker, seconded by Mrs. Hook, and unanimously approved to extend the meeting to 11:30 pm.

At 11:30 pm, a motion was made by Mr. Records, seconded by Mrs. Hook, and unanimously approved to extend the meeting to 11:45 pm.

At 11:36 pm, a motion was made by Mrs. Hook to reconvene the meeting into open session and to certify that the Gloucester County School Board, while in closed session, discussed only public matters lawfully exempted from open meeting requirements provided in Subsection A of Section 2.2-3711 and that only public business matters that were identified in the motion convening the closed session were heard, discussed or considered. The motion was seconded by Ms. Hensley and approved as follows:

Mr. Andersen	<u>Aye</u>	Mr. Records	<u>Aye</u>
Ms. Hensley	<u>Aye</u>	Mr. Smith	<u>Aye</u>
Mrs. Hook	<u>Aye</u>	Mr. Burak	<u>Aye</u>
Ms. Parker	<u>Aye</u>		

**V. PERSONNEL ITEMS – (agenda item moved to be considered after closed session)**

A. Approval of Monthly Personnel Actions — A motion was made by Mr. Smith, seconded by Ms. Hensley and unanimously adopted to approve the monthly listing of personnel appointments, staff leave, and contract changes. **(Approved copies attached to minutes)**



IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Newport News Division

GAVIN GRIMM,	)	
	)	
Plaintiff,	)	
	)	Civil No. 4:15-cv-00054
v.	)	
	)	
GLOUCESTER COUNTY SCHOOL	)	
BOARD,	)	
	)	
Defendant.	)	

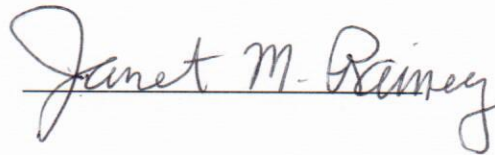
**DECLARATION OF JANET M. RAINEY**

1. I am the State Registrar and Director of the Division of Vital Records. I have actual knowledge of the matters stated in this declaration.
2. In my capacity as State Registrar, I administer Virginia's system of vital records as set out in Virginia Code §§ 32.1-249 through 32.1-276 and the *Board of Health Regulations Governing Vital Records*, 12 VAC5-550. I am responsible for administering those laws and regulations in a manner that will ensure the uniform and consistent administration of the system of vital records as provided in Virginia Code § 32.1-252A1.
3. On October 27, 2016, I issued a birth certificate to Gavin Elliot Grimm. The birth certificate states his sex as male.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 19, 2019

Janet M. Rainey



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Newport News Division

GAVIN GRIMM,

Plaintiff,

v.

Case No. 4:15-cv-54

GLOUCESTER COUNTY SCHOOL  
BOARD,

Defendant.

**DECLARATION OF TROY ANDERSEN**

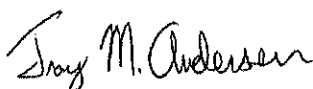
On this 25<sup>th</sup> day of March, 2019, I, Troy Andersen, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am over the age of eighteen, suffer no legal disabilities, have personal knowledge of the facts set forth below, and am competent to testify.
2. This affidavit fairly and accurately sets forth information within my personal knowledge and is true and accurate to the best of my recollection.
3. I am currently a member of the Gloucester County School Board and have been since I was appointed in 2012.
4. Gavin Grimm was enrolled with the Gloucester County School System in 2004. A true and correct copy of Gavin Grimm's enrollment records with the Gloucester County School System is attached as Exhibit 1. Gavin Grimm's freshman Report Card for the School Year 2013-2014 is attached as Exhibit 2.
5. On December 16, 2014, there were three unisex single stall bathrooms available for use for all students in the Gloucester County High School.

6. Gavin Grimm was offered the opportunity to have a hearing with the School Board on his request to change his school records on January 18, 2017 attached as Exhibit 3. Gavin Grimm did not request a hearing with the School Board while he was a student at Gloucester High School or after his graduation in 2017.

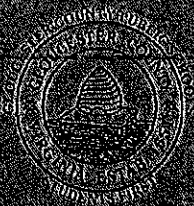
Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct.

Executed on: 3/25/2019 (date)

  
\_\_\_\_\_  
Troy Andersen



CONFIDENTIAL



BETHEL ELEMENTARY School Name

STUDENT REGISTRATION FORM

Student ID # [REDACTED]
Entry Date
YOC
Condition of Enrollment
Entry Code
Home Room #
Counselor/Teacher
Room

Former Student of Gloucester County Public Schools: YES/NO If yes, School ID#

Student's Name

[REDACTED]

[REDACTED]

Student's Social Security #

[REDACTED]

Is English the primary language spoken at home? YES/NO If no, specify

[REDACTED]

Gender (Circle) Male Female

Female

Grade 11

Date of Birth

1/1/84

Place of Birth

N.J.

City/County

State

Country

Birth Certificate #

[REDACTED]

Ethnic Group (Circle One) Unspecified American Indian Asian Black Hispanic White Native Hawaiian

Mailing Address

[REDACTED]

City/State/Zip

City

State

Zip

Home Phone #

[REDACTED]

Cell Address

(If different from Mailing Address)

Child Resides With (Circle) (Both Parents) (One Parent) (Legal Guardian(s))

Circle One: Mother (Father) Stepparent Guardian/Custodian

Name

Address (if different than student)

Place of Employment

Work Phone #

Cell Phone/Pager #

E-Mail Address

Education

Ph.D. / M.S. / B.S.

Circle One: Mother (Father) Stepparent Guardian/Custodian

Name

Address (if different than student)

Place of Employment

Work Phone #

Cell Phone/Pager #

E-Mail Address

Education

[REDACTED]

EMERGENCY CONTACT INFORMATION

Contact Person 1

(Other than parent/guardian)

Phone #

Relationship to Student

Contact Person 2

(Other than parent/guardian)

Phone #

Relationship to Student

Family Physician

Phone #

Please list any medical information concerning your child that school personnel should know (Allergies, Asthma, etc.)

Previous School

Mailing Address

City/State/Zip

Phone #

Fax #



PLEASE COMPLETE THE BACK OF THIS FORM



CONFIDENTIAL

Other Children in the Family

REDACTED

Living In Home

Date of Birth

Grade

Age

YES / NO

REDACTED

6

6.5

YES / NO

6

6.5

YES / NO

YES / NO

Others in the Home

Name

Relationship to Student

Place of Employment

Is your child receiving any specialized service(s)? (Special Education including Speech, 504, Gifted, etc.) YES / NO

If yes, specify which service(s)

Directions to Home

(Please give the location of your home. Include the route number, neighborhood, landmarks, or any information that will be helpful)

Before enrolling your child in Gloucester County Public Schools, you must provide the following:

- 1. Certified Copy of Birth Certificate
- 2. Social Security Card
- 3. Updated Immunization Records
- 4. Physical Exam Report
- 5. Transcript from Former School - Can Be Unofficial (HIGH SCHOOL ONLY)
- 6. IEP and/or 504 (if applicable)
- 7. Court Orders Referencing Student (if applicable)

I have willfully and knowingly provided you the correct information. I will provide you any new information concerning my child as it occurs.

Dorinda A. [Signature]  
Parent / Legal Guardian Signature

05/21/04  
Date

No student can be prevented from participation in any program solely because of his/her race, color, national origin, sex, age, religion, or disability. A procedure for resolving complaints alleging discrimination on the basis of race, color, national origin, sex, age, religion, or disability may be found in the manual of Policies and Regulations of the Gloucester County Public Schools. The Section 504 and Title IX Coordinator for the Gloucester County Public Schools is: Mr. William W. Fox, Coordinator - Section 504 and Title IX - Gloucester County Public Schools - 6489 Main Street - Building Two, Suite B - Gloucester, VA 23061 - (804) 643-7866



REDACTED

CONFIDENTIAL

Name of Child

STUDENT REGISTRATION FORM (Continued)

New Federal Legislation, the No Child Left Behind Act, requires that all school divisions report student information regarding the areas listed below. Please read each statement, or have the registrar read the statements for you, and answer each question as requested.

Your child is considered to be Neglected/Delinquent if one of the following is true:

In order to be eligible to be counted as neglected/delinquent, a child age 5 through 17 must live in an "institution for neglected children and youth," which means a public or private residential facility, other than a foster home, that is operated primarily for the care of children and youth who (a) have been committed to the institution or voluntarily placed in the institution under applicable State law due to abandonment, neglect, or death of their parents or guardians, and (b) have had an average length of stay in the institution of at least 30 days.

or  
must live in an "institution for delinquent children and youth," which means a public or private residential facility that is operated for the care of children and youth who (a) have been adjudicated to be delinquent or in need of supervision and (b) have had an average length of stay in the institution of at least 30 days.

Is your child Neglected/Delinquent? Yes  No

Your child is considered to be Homeless if one of the following is true:

- Shares the housing of others due to loss of housing, economic hardship or similar reason.
- Lives in motels, hotels, trailer parks or camping grounds due to lack of alternative adequate accommodations.
- Lives in emergency or transitional shelters.
- Abandoned in hospitals.
- Awaits foster care placement.
- Has a primary residence that is a public place or a place not designed for or ordinarily used as regular accommodation.
- Lives in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations or similar settings.

Is your child Homeless? Yes  No



Name of Child

**Your child is considered to be a Migratory Child if one of the following is true:**

The term "migratory child" means a child who is, or whose parent or spouse is, a migratory agricultural worker, including a migratory dairy worker, or a migratory fisher, and who, in the preceding 36 months, in order to obtain, or accompany such parent or spouse, in order to obtain temporary or seasonal employment in agricultural or fishing work—

- (A) has moved from one school district to another;
- (B) in a State that is comprised of a single school district, has moved from one administrative area to another within such district; or
- (C) resides in a school district of more than 15,000 square miles, and migrates a distance of 20 miles or more to a temporary residence to engage in a fishing activity.

Is your child a Migratory Child? Yes  No

**Your child is considered to be a Refugee if the following is true:**

An individual who is outside his/her country and is unable or unwilling to return to that country because of a well-founded fear that she/he will be persecuted because of race, religion, nationality, political opinion, or membership in a particular social group. This does not include persons displaced by natural disasters or persons who, although displaced, have not crossed an international border or persons commonly known as "economic migrants," whose primary reason for flight has been a desire for personal betterment rather than persecution.

Is your child a Refugee? Yes  No

**Your child is considered to be an Immigrant if all of the following are true:**

The term "immigrant children and youth" means individuals who—

- (A) are aged 3 through 21;
- (B) were not born in any State; and
- (C) have not been attending one or more schools in any one or more States for more than 3 full academic years.

Is your child an Immigrant? Yes  No

I have willfully and knowingly provided you with the correct information. It will provide you any new information concerning my child as it occurs.

*Dwight D. ...*  
Parent or Guardian Signature

05-21-04  
Date

No student can be prevented from participation in any program solely because of his/her race, color, national origin, sex, age, religion, or disability. A procedure for resolving complaints alleging discrimination on the basis of race, color, national origin, sex, age, religion, or disability may be found in the manual for Policies and Regulations of the Gloucester County Public Schools. The Section 504 and Title IX Coordinator of the Gloucester County Public Schools is: Mr. William W. Foy, Coordinator, Section 504 and Title IX, Gloucester County Public Schools, 6489 Main Street, Building Two, Suite E, Gloucester, VA 23061, (804) 847-6169.





WELCOME TO  
 GLOUCESTER COUNTY PUBLIC SCHOOLS

Student Registration Form

School's Name: Bethel Elementary School

CONFIDENTIAL  
 FOR OFFICE USE ONLY

Student ID# \_\_\_\_\_  
 Entry Date: \_\_\_\_\_  
 YOG: \_\_\_\_\_  
 Home Code: \_\_\_\_\_ PK Code: \_\_\_\_\_ PK Phone: \_\_\_\_\_  
 Home Phone # \_\_\_\_\_  
 Counselor/Teacher: \_\_\_\_\_  
 Years: \_\_\_\_\_  
 Age: \_\_\_\_\_

PLEASE PRINT ALL INFORMATION

Are you a resident of Gloucester County?  Yes  No Items accepted as proof of residency: lease/rent and current utility bill

Has your student ever attended a Gloucester County Public School?  Yes  No If yes, which school did your child attend?

Abingdon  Ashlles  Bethel  Botetourt  Patsworth  T. C. Walker  Pass Middle  Passer Middle  High School

Student's Legal Name: Grimm **REDACTED**  
 LAST FIRST MIDDLE NICKNAME

Gender:  Male  Female

Student's Ethnicity:  American Indian  Asian  Black  Hispanic  Native Hawaiian  White  Unspecified

Student's Birth D: REDACTED Place of Birth: Newport News, VA Birth Certificate # \_\_\_\_\_

Student's Grade Level: 5 If kindergarten, did your child have any pre-kindergarten education?  Yes  No  
 If yes, please provide brief description (i.e., licensed daycare provider, head start)

Primary language spoken by student:  English  Spanish  French  Russian  Chinese  Vietnamese  Other \_\_\_\_\_

Primary language spoken at home:  English  Spanish  French  Russian  Chinese  Vietnamese  Other \_\_\_\_\_

Student's Mailing Address: **REDACTED**

Student's Home Phone Num: \_\_\_\_\_

Student's 911 Address required: \_\_\_\_\_  
 (If different than mailing): Number Street Name City Zip Code

Does your child currently receive special services?  YES  NO If yes, please check all that apply:  
 Speech  Special Education  504  Gifted  ESL  Occupational Therapy/Physical Therapy  Other \_\_\_\_\_

Student Resides With:  Mother & Father  Mother only  Father only  Grandparents  Foster Parent(s)  
 Mother & Stepfather  Father & Stepmother  Guardian/Custodian  Other \_\_\_\_\_

Name: <u>David &amp; Dondre Grimm</u>	Name: _____
Address (if different from student): <u>same</u>	Address (if different from student): _____
Place of Employment: <u>NOTICE: No Child Support Orders</u>	Place of Employment: _____
Work Phone #: <b>REDACTED</b>	Work Phone #: _____
Cell Phone #: _____	Cell Phone #: <u>REDACTED</u>
Email address: <u>dgrimm@cs.net</u>	Email address: _____

If the student is NOT residing with BOTH biological/adoptive parents, please list other parent's information (i.e., name, address, etc.)

EMERGENCY CONTACT INFORMATION

(Our schools attempt to contact the parent/guardian first -- the following information is for OTHER than parent/guardian)

Contact Person 1: **REDACTED** Phone #: **REDACTED** Relationship to Student: friend  
 Contact Person 2: \_\_\_\_\_ Phone #: (red) Relationship to Student: older sister



CONFIDENTIAL

REDACTED

Name of Student

*[Handwritten name]*

**STUDENT REGISTRATION FORM (continued)**

New Federal legislation, the No Child Left Behind Act, requires that all school districts report student information regarding the areas listed below. Please read each statement, or have the registrar read the statements for you, and answer each question as requested.

Your child is considered to be Neglected/Delinquent if one of the following is true:

In order to be eligible to be counted as neglected/delinquent, a child age 5 through 17 must live in an "institution for neglected children and youth," which means a public or private residential facility, other than a foster home, that is operated primarily for the care of children and youth who (a) have been committed to the institution or voluntarily placed in the institution under applicable State law due to abandonment, neglect, or death of their parents or guardians; and (b) have had an average length of stay in the institution of at least 30 days;

OR

Must live in an "institution for delinquent children and youth," which means a public or private residential facility that is operated for the care of children and youth who (a) have been adjudicated to be delinquent or in need of supervision and (b) have had an average length of stay in the institution of at least 30 days.

Is your child Neglected/Delinquent? Yes  No

Your child is considered to be Homeless if one of the following is true:

- 1) Shares the housing of others due to loss of housing, economic hardship or similar reason;
- 2) Lives in motels, hotels, trailer parks or camping grounds due to lack of alternative adequate accommodations;
- 3) Lives in emergency or transitional shelters;
- 4) Abandoned in hospitals;
- 5) Awaits foster care placement;
- 6) Has a primary residence that is a public place or a place not designed for or ordinarily used as regular accommodation;
- 7) Lives in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations or similar settings.

Is your child Homeless? Yes  No  If yes, which item above applies to your situation? \_\_\_\_\_

Your child is considered to be a Migratory Child if one of the following is true:

The term "migratory child" means a child who is, or whose parent or spouse is, a migratory agricultural worker, including a migratory dairy worker, or a migratory fisher, and who, in the preceding 36 months, in order to obtain, or accompany such parent or spouse, in order to obtain temporary or season employment in agricultural or fishing work:

- (a) has moved from one school district to another;
- (b) in a State that is comprised of a single school district, has moved from one administrative area to another within such district; or
- (c) resides in a school district of more than 15,000 square miles, and migrates a distance of 20 miles or more to a temporary residence to engage in a fishing activity.

Is your child a Migratory Child? Yes  No

GCSB - 1152

CONFIDENTIAL

Gloucester County Public Schools  
 Report Card

Gloucester High School  
 6680 Short Lane  
 Gloucester, VA 23061

Report Card Printed on June 17, 2014

School Year: 2013-2014

Reporting Period: Q4

REDACTED GRIMM -

REDACTED

Grade: 9  
 Counselor: HARRIS  
 Homeroom: HOMEBOUND

Course	Teacher	Q1	Q2	Q3	Q4	S2	ABS	TAR	Comment
HOMEBOUND	STAFF, GHS						0	0	
VLA HEALTH 9	WYATT, WENDY S						0	0	
VLA PE 9	WYATT, WENDY S						0	0	
VLC ALGEBRA I	WYATT, WENDY S						0	0	
VLC WORLD I	WYATT, WENDY S						0	0	
VLC ENGLISH 9	WYATT, WENDY S						0	0	
VLC EARTH SCI	WYATT, WENDY S						0	0	

Total Daily Absences Q4: 0.000

This is the Final report card of the 2013 - 2014 school year.

SUMMER SCHOOL RECOMMENDED \_\_\_ YES \_\_\_ NO (if yes, form enclosed)

SUMMER SCHOOL CLASS RECOMMENDED

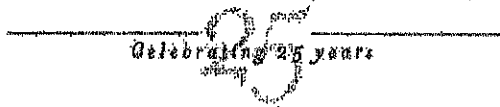
Summer school registration deadline is July 1, 2014 at 3 p.m. Summer school will begin July 7 and end August 7, 2014. Gloucester High School summer hours are 7:00 am to 4:30 pm Monday through Thursday (closed on Friday). Visit the Gloucester High School website for updated information: gets.gr.k12.va.us



GCSB - 1117



harman claytor corrigan wellman  
THE CIVIL LITIGATION FIRM



DAVID P. CORRIGAN  
804.762.8017  
dcorrigan@hcew.com

January 18, 2017

VIA EMAIL

Joshua A. Block, Esq.  
American Civil Liberties Union  
125 Broad Street  
18th Floor  
New York, NY 10004

RE School Records for G.G.

Dear Josh:

I am writing in response to your December 23, 2016 letter with respect to school records for G.G. I apologize for taking so long to get back to you, but I was waiting for a School Board meeting, and one finally occurred on January 17, 2017. The previous meeting was snowed out.

In considering your request that "G.G.'s school records be updated so that any school records submitted in connection with G.G.'s college applications identify him as a male, in accordance with his amended birth certificate," the School Board considered the following:

- (1) The copy of the birth certificate that you provided, (attached);
- (2) The relevant school policy JO, (attached);
- (3) Virginia Code §32.1-269, (attached); and
- (4) Virginia Administrative Codes §12VAC5-550-320, §12VAC5-550-450 and §12VAC5-550-460, (attached).

Based on the School Board's review of these materials, the School Board declines to change the official school records.

Please feel free to submit additional materials, and, of course, your client has the right under school policy JO, see page B Correction of Education Records, to a hearing

FOXY OFFICE BOX 70284 | RICHMOND, VA 23288  
4891 LAKE BROOK DR. | SUITE 100 | GLEN ALLEN, VA 23060  
OFFICE 804.747.8200 | FAX 804.747.6885 | WWW.HCEW.COM  
member of the harmonie group



Case 4:15-cv-00054-AWA-RJK Document 171-1 Filed 12/21/18 Page 2 of 2 PageID# 1663

January 18, 2017

Page 2

to challenge the information believed to be "inaccurate, misleading or in violation of the student's rights."

I look forward to hearing further from you,

Very truly yours,  
  
David P. Corrigan

DPC/kns  
Enclosures

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Newport News Division

GAVIN GRIMM,

Plaintiff,

v.

Case No. 4:15-cv-00054

GLOUCESTER COUNTY SCHOOL  
BOARD,

Defendant.

**DEFENDANT'S SUPPLEMENTAL ANSWER TO  
PLAINTIFF'S INTERROGATORY NO. 1**

Comes now the defendant, Gloucester County School Board ("School Board"), and for its Supplemental Answer to Plaintiff's Interrogatory, states as follows:

**GENERAL OBJECTIONS**

A. Defendant objects to the Instructions contained in Plaintiff's interrogatories to the extent they alter, amend, or exceed the scope of the Federal Rules of Civil Procedure.

B. The information supplied in these answers is not based solely on the knowledge of the executing party but includes knowledge of the party, its agents, representatives, and attorneys, unless privileged. Such knowledge may or may not be known to the Defendant other than as provided.

C. The word usage and sentence structure may be that of the attorney and staff assisting in the preparation of these answers and thus do not necessarily purport to be the precise language of the executing party.

**EXHIBIT**

**I**

D. These answers will be supplemented in accordance with the Rule 33 of the Federal Rules of Civil Procedure, the Local Rules of the Eastern District of Virginia, and any Orders regarding discovery.

E. Defendant objects to interrogatories, etc., that invade or attempt to invade the attorney/client, work product, or any other applicable privilege.

### **ANSWERS TO INTERROGATORIES**

1. Identify all complaints received by Gloucester County School Board (“the Board”) or its employees related to transgender students’ use of restrooms during the 2014-2015 school year, and for each complaint identify the date of the complaint, the recipient of the complaint, the content of the complaint, how the complaint was communicated or transmitted, whether the complainant was from a Gloucester High School student or parent of a Gloucester High School student, and whether the complaint related to any incident in which a student reported being in the restroom at the same time as Plaintiff.

**OBJECTION: The School Board objects on the grounds that this Interrogatory is overly broad and unduly burdensome. Further, the School Board objects on the grounds that the use of the term “complaint” is vague and ambiguous. Finally, the School Board objects to the extent that this Interrogatory seeks the discovery of information protected pursuant to the Agreed Confidentiality Protective Order (ECF Doc. 85) entered in this matter.**



**ANSWER:** Without waiving and subject to the foregoing objection,<sup>1</sup> Gloucester County High School Principal Nate Collins gave Grimm permission to use the male restroom on October 20, 2014. Two to three days later, Superintendent Dr. Walter Clemons received two complaints from parents regarding a transgender student using the restroom inconsistent with that student's biological sex. Dr. Clemons does not recall the identity of those parents. The parents indicated that they did not approve of a biologically female student using the male restroom. Additionally, a male student met with Collins in person and expressed concern about a biologically female student using the male restroom and a lack of privacy. Collins does not recall the specific identity of this student.

Moreover, after Grimm began to use the male restroom, Dr. Clemons, Collins and the individual members of the School Board received numerous complaints via email, which are listed below.

**Emails sent to all members of the School Board**

- On October 23, 2014, **REDACTED**, a parent of student(s) enrolled in Gloucester County Public Schools, including Gloucester High School, sent the School board an email regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On October 23, 2014, **REDACTED** parents of student(s) enrolled in Gloucester County Public Schools, including Gloucester High School, sent the School Board an email regarding their opposition to a transgender student using the bathroom inconsistent with that student's biological sex.

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<sup>1</sup> The School Board specifically reasserts its objection that Plaintiff's use of the term "complaint" in this Interrogatory is vague and ambiguous. The School Board has included in its Answer communications with individuals who generally opposed a transgender student using a restroom inconsistent with that student's biological sex. The School Board's Answer includes communications with individuals who did not agree with Gloucester High School allowing a transgender student to use a restroom inconsistent with that student's biological sex and communications with individuals who supported the School Board's December 9, 2014 resolution and the School Board's litigation of this matter.

- On October 27, 2014, **REDACTED** sent the School Board an email regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On October 27, 2014, **REDACTED** a parent of student(s) enrolled in Gloucester County Public Schools, sent the School Board an email regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On October 28, 2014, **REDACTED** upon information and belief a parent of student(s) enrolled in Gloucester County Public Schools, sent the School Board an email regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On November 10, 2014, **REDACTED** a parent of student(s) enrolled in Gloucester County Public Schools, including Gloucester High School, sent the School Board an email regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On November 10/11, 2014, **REDACTED** parents of student(s) enrolled in Gloucester High School, sent the School Board an email regarding their opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On November 11, 2014, **REDACTED** upon information and belief a resident of Gloucester County, sent the School Board an email regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On November 11, 2014, **REDACTED** sent the School Board an email regarding his opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On November 12, 2014, **REDACTED**, a parent of student(s) enrolled in Gloucester County Public Schools, sent the School Board an email regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On November 12, 2014, **REDACTED** a parent of student(s) enrolled in Gloucester County Public Schools, sent the School Board an email regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On November 13, 2014, **REDACTED** a parent of student(s) enrolled in Gloucester County Public Schools, sent the School Board an email regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On November 17, 2014, **REDACTED** a parent of student(s) enrolled in Gloucester High School, sent the School Board an email regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.



- On December 7, 2014, **REDACTED** a parent of student(s) enrolled in Gloucester County Public Schools, sent the School Board an email regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On December 8, 2014, **REDACTED** a parent of student(s) enrolled in Gloucester High School, sent the School Board an email regarding his opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On December 8, 2014, **REDACTED** a parent of student(s) enrolled in the Gloucester County Public School System, sent the School Board an email regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On December 10, 2014, **REDACTED** a resident of Gloucester County, sent the School Board an email regarding his opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On December 10, 2014, **REDACTED** a parent of student(s) enrolled in Gloucester High School, sent the School Board an email regarding his opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On December 20, 2014, **REDACTED** a resident of Gloucester County, sent the School Board an email regarding his opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On December 20, 2014, **REDACTED** sent the School Board an email regarding his opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On January 2, 2015, an individual named **REDACTED** sent the School Board an email regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On July 10, 2015, **REDACTED** ; sent the School Board an email regarding his opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On April 21, 2016, **REDACTED** a parent of students(s) enrolled in Gloucester County Public Schools, including Gloucester High School, sent the School Board an email regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On April 21, 2016, **REDACTED** parent of student(s) enrolled in Gloucester County Public Schools, including Gloucester High School, sent the School Board an email regarding his opposition to a transgender student using the bathroom inconsistent with that student's biological sex.

- On May 12, 2016, **REDACTED** sent the School Board an email regarding his opposition to a transgender student using the bathroom inconsistent with that student's biological sex.

Emails sent to Troy Anderson

In addition to receiving emails sent to the entire School Board, Mr. Anderson received the following communications:

- On December 7, 2014, **REDACTED** parent of student(s) enrolled in Gloucester High School, sent Mr. Anderson an email regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On July 27, 2015, **REDACTED** a resident of Kentucky, sent Mr. Anderson an email regarding his opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On July 14, 2016, **REDACTED** a resident of New York, sent Mr. Anderson an email regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.

Emails sent to Randy Burak

In addition to receiving emails sent to the entire School Board, Mr. Burak received the following communications:

- On November 12, 2014, **REDACTED** a parent of student(s) enrolled in Gloucester High School, sent Mr. Burak an email regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On December 3, 2014, **REDACTED** a resident of the Abingdon District, sent the School Board an email regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On December 7, 2014 **REDACTED** a parent of student(s) who attended Gloucester High School, sent the Mr. Burak an email regarding his opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On December 8, 2014, a resident of Gloucester County named **REDACTED** emailed Mr. Burak regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.

- On December 11, 2014, **REDACTED** a resident of Washington D.C., emailed Mr. Burak regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.

Emails sent to Kimberly Hensley

In addition to receiving emails sent to the entire School Board, Ms. Hensley received the following communications:

- On November 19, 2014, **REDACTED** a parent of student(s) at Gloucester High School, emailed Ms. Hensley regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.
- On December 13, 2014, **REDACTED** parents of student(s) enrolled in Gloucester County Public Schools, including Gloucester High School, emailed Ms. Hensley regarding their opposition to a transgender student using the bathroom inconsistent with that student's biological sex.

Emails sent to Carla Hook

In addition to receiving emails sent to the entire School Board, Ms. Hook received the following communications:

- On December 7, 2014, **REDACTED** a parent of high school student(s) in the York District, sent an email to Ms. Hook regarding his opposition to a transgender student using the bathroom inconsistent with that student's biological sex.

Emails sent to Charles Records

In addition to receiving emails sent to the entire School Board, Mr. Records received the following communications:

- On April 21, 2016, **REDACTED** sent an email to Mr. Records regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.

Emails sent to Dr. Clemons

In addition to receiving some of the emails sent to the entire Board, Dr. Clemons received the following communications:

- On October 22, 2016 **REDACTED** upon information and belief a parent of student(s) enrolled in Gloucester County Public Schools, sent Dr. Clemons an email regarding her opposition to a transgender student using the bathroom inconsistent with that student's biological sex.

- On November 7, 2016, **REDACTED** sent Dr. Clemons an email regarding his opposition to a transgender student using the bathroom inconsistent with that student's biological sex.

Additionally, the following School Board members received complaints via telephone, which are listed below.

Telephone Complaints made to Carla Hook

- Upon information and belief, before October 28, 2014, Ms. Hook spoke with **REDACTED** **REDACTED** whose children were enrolled in Gloucester County Public Schools, regarding their opposition to a transgender student using the bathroom inconsistent with that student's biological sex.

Additionally, the issue of transgender bathroom use was discussed at public School Board meetings on November 11, 2014 and December 9, 2014. Video links to those meetings are available at: <http://www.gloucesterva.info/640/Meeting-Portal>.

The following individuals spoke regarding their opposition to a transgender student using the bathroom inconsistent with that student's biological sex during the November 11, 2014 meeting:

- Ralph Van Ness (parent of student(s) enrolled in Gloucester County Public Schools)
- Eddie Aliff
- Savannah Williams (student at Gloucester High School)
- Terry Brennan
- Joy Sampson (parent of student(s) enrolled in Gloucester County Public Schools)
- Kelly Williams (parent of student(s) enrolled in Gloucester County Public Schools)
- Marc Jenkins (parent of student(s) enrolled in Gloucester County Public Schools)

- **Drew Palas (parent of student(s) enrolled in Gloucester County Public Schools)**
- **Kathryn Lindsay (parent of student(s) enrolled in Gloucester County Public Schools)**
- **Brian Byrd (parent of student(s) enrolled in Gloucester County Public Schools)**
- **Tricia Ray**
- **Kim Ward (parent of student(s) enrolled in Gloucester County Public Schools)**
- **Melissa Wamsley (parent of student(s) enrolled in Gloucester County Public Schools)**
- **Ray Wamsley (parent of student(s) enrolled in Gloucester County Public Schools)**
- **Season Palas (parent of student(s) enrolled in Gloucester County Public Schools)**

**The following individuals spoke regarding their opposition to a transgender student using the bathroom inconsistent with that student's biological sex during the December 9, 2014 meeting:**

- **Ralph Van Ness (parent of student(s) enrolled in Gloucester County Public Schools)**
- **Scott Williams (student at Gloucester High School)**
- **Savannah Williams (student at Gloucester High School)**
- **Kathryn Lindsay (parent of student(s) enrolled in Gloucester County Public Schools)**
- **Drew Palas (parent of student(s) enrolled in Gloucester County Public Schools)**
- **Karen Pauly**
- **Mike Enz (parent of student(s) enrolled in Gloucester County Public Schools)**
- **Katherine Foley (parent of student(s) enrolled at Gloucester High School)**
- **Howard Mowry**
- **Janet West (parent of student(s) enrolled at Gloucester High School)**
- **Linda Walk**
- **Don Mitchell**

- **Terry Brennan**
- **Marista Cooper (grandparent of student(s) enrolled in Gloucester County Public Schools)**
- **Kelly Williams**

The School Board also incorporates by reference any additional “complaints” not described herein that are contained in the documents the School Board has produced in response to Plaintiff’s First Request for Production of Documents.

**SUPPLEMENTAL ANSWER:**

In its Answers to Plaintiff’s First Interrogatories, the School Board provided a list of email communications between board members and various individuals regarding the use of restrooms by transgender students. Further, the School Board provided the emails identified in those Answers in response to Plaintiff’s First Requests for Production of Documents. The emails speak for themselves, and each School Board member’s knowledge of any “complaint” sent by email relating to the use of restrooms by transgender students is consistent with the contents of those emails.

Further, in addition to the information provided in the School Board’s Answers to Plaintiff’s First Interrogatories, the following School Board members recall receiving non-email communications from individuals concerning the use of school restrooms by transgender students:

- **Carla Hook received approximately five (5) telephone calls from parents of students enrolled in Gloucester County Public Schools who said their children were uncomfortable with a girl using the boys’ restroom. Ms. Hook does not recall the names of either the parents with whom she spoke or their children. To Ms. Hook’s knowledge, the children had no direct interaction with Grimm in the boys’ restroom.**
- **Kevin Smith received dozens of communications before the December 9, 2014, School Board meeting regarding a transgender student using the restroom**

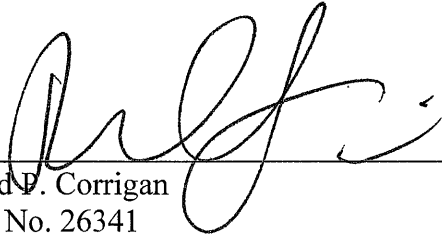
inconsistent with that student's biological sex. To Mr. Smith's best recollection, approximately seventy-five (75) percent of those communications came from parents of students enrolled in Gloucester County Public Schools. Mr. Smith does not recall the names of either the individuals with whom he spoke or their children. The individuals indicated that they were not in favor of a transgender student using the restroom inconsistent with that student's biological sex. Additionally, parents indicated that they did not want their children using the same bathroom as a member of the opposite sex. To Mr. Smith's knowledge, the children had no direct interaction with Grimm in the boys' restroom.

- Troy Andersen received approximately five (5) telephone calls from parents of students at Gloucester County Public Schools regarding a transgender student using the restroom inconsistent with that student's biological sex. Mr. Andersen does not recall the names of either the parents or their children. The parents did not want their children using the same bathroom as a member of the opposite sex, and they were concerned about the privacy and safety of students, including their children. Mr. Andersen believes that he followed any telephone conversation on this issue with an email to the parent, and that the telephone conversations were substantively similar to the email exchanges. To the best of Mr. Andersen's knowledge, the children had no direct interaction with Grimm in the boys' restroom.
- Randy Burak received two telephone calls on October 20, 2014, from parents of students at Gloucester County Public Schools regarding a transgender student using the restroom inconsistent with that student's biological sex. One telephone call came from "REDACTED," a parent of two boys enrolled in Gloucester County Public Schools. Mr. Burak does not recall the first name of REDACTED indicated that he and his children were not in favor of a girl using the same restroom as boys. The other telephone call came from a parent, whose name Mr. Burak cannot recall, who likewise did not approve of a transgender student using the restroom inconsistent with that student's biological sex. This parent expressed concern that young male students would be uncomfortable with a student who was biologically female using the male restroom. Mr. Burak does not know whether or not the children of the two parents had any direct interaction with Grimm in the boys' restroom.

**This Answer will be supplemented further as additional information is received.**

**GLOUCESTER COUNTY SCHOOL  
BOARD**

By \_\_\_\_\_



\_\_\_\_\_  
David P. Corrigan  
VSB No. 26341  
Jeremy D. Capps  
VSB No. 43909  
Douglas E. Pittman  
VSB No. 87915  
Attorney for Gloucester County School Board  
Harman, Claytor, Corrigan & Wellman  
P.O. Box 70280  
Richmond, Virginia 23255  
804-747-5200 - Phone  
804-747-6085 - Fax  
dcorrigan@hccw.com  
jcapps@hccw.com  
dpittman@hccw.com

**CERTIFICATE**

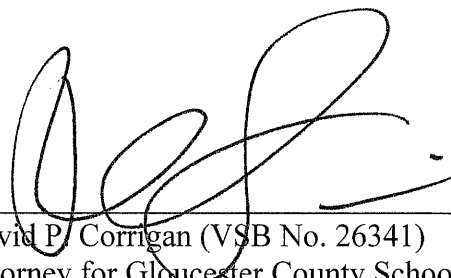
I hereby certify that on the 11th day of January, 2019, I mailed and emailed the document to the following:

Joshua A. Block, Esq. (Pro hac vice)  
NYSB No. 4370573  
Leslie Cooper, Esq. (Pro hac vice)  
NYSB No. 2759835  
Shayna Medley-Warsoff, Esq. (Pro hac vice)  
NYSB No. 5558382  
American Civil Liberties Union  
125 Broad Street  
18th Floor  
New York, NY 10004  
212-549-2627 - Phone  
212-549-2593 - DD  
212-549-2650 - Fax  
jblock@aclu.org



lcooper@aclu.org  
smedley@aclu.org

Eden B. Heilman, Esq. (Pro hac vice)  
LSBA No. 30551  
Nicole Tortoriello, Esq.  
VSB No. 91129  
ACLU  
701 E. Franklin Street  
Suite 1412  
Richmond, VA 23219  
804-726-6013 – DD  
804-649-2733 – Fax  
eheilman@acluva.org  
ntortoriello@acluva.org



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David P. Corrigan (VSB No. 26341)  
Attorney for Gloucester County School Board  
Harman, Claytor, Corrigan & Wellman  
P.O. Box 70280  
Richmond, Virginia 23255  
804-747-5200 - Phone  
804-747-6085 - Fax  
dcorrigan@hccw.com

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Newport News Division

GAVIN GRIMM, )  
)  
)  
Plaintiff, )  
)  
v. )  
)  
GLOUCESTER COUNTY SCHOOL )  
BOARD, )  
)  
Defendant. )

03 18 19

Civil Case No. 4:15-cv-54

**DECLARATION OF JAMES H. LOVING**

**Background Information**

1. My name is James H. Loving.
2. I am the photographer who took pictures of the Gloucester High School restroom facilities on behalf of Mr. Grimm, the plaintiff in the above-captioned action. I have actual knowledge of the matters stated in this declaration.

**Photographs**

3. I took the twelve photographs attached to this declaration and have first-hand knowledge of when and how the photographs were taken.
4. The photographs were taken on July 28, 2016 at Gloucester High School, located at 6680 Short Ln, Gloucester, VA, 23061.
5. The photographs depict the hallways and restroom facilities at Gloucester High School. There are five photos of the single-user restroom, three photos of a multi-user boys' restroom, and four photos of another multi-user boys' restroom.
6. I took the photographs using a Nikon D750 FX-format Digital SLR Camera.

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7. I certify that the camera I used was in good working order and condition at the time these photos were taken.

8. I certify that the photographs are a fair and accurate representation of the facilities at Gloucester High School at the time the pictures were taken.

9. I certify that no methods were used during photography, processing, or display that would modify or distort these images.

10. I certify the photographs have not been manipulated or altered in any way since they were taken.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 03/21/2019



---

James H. Loving





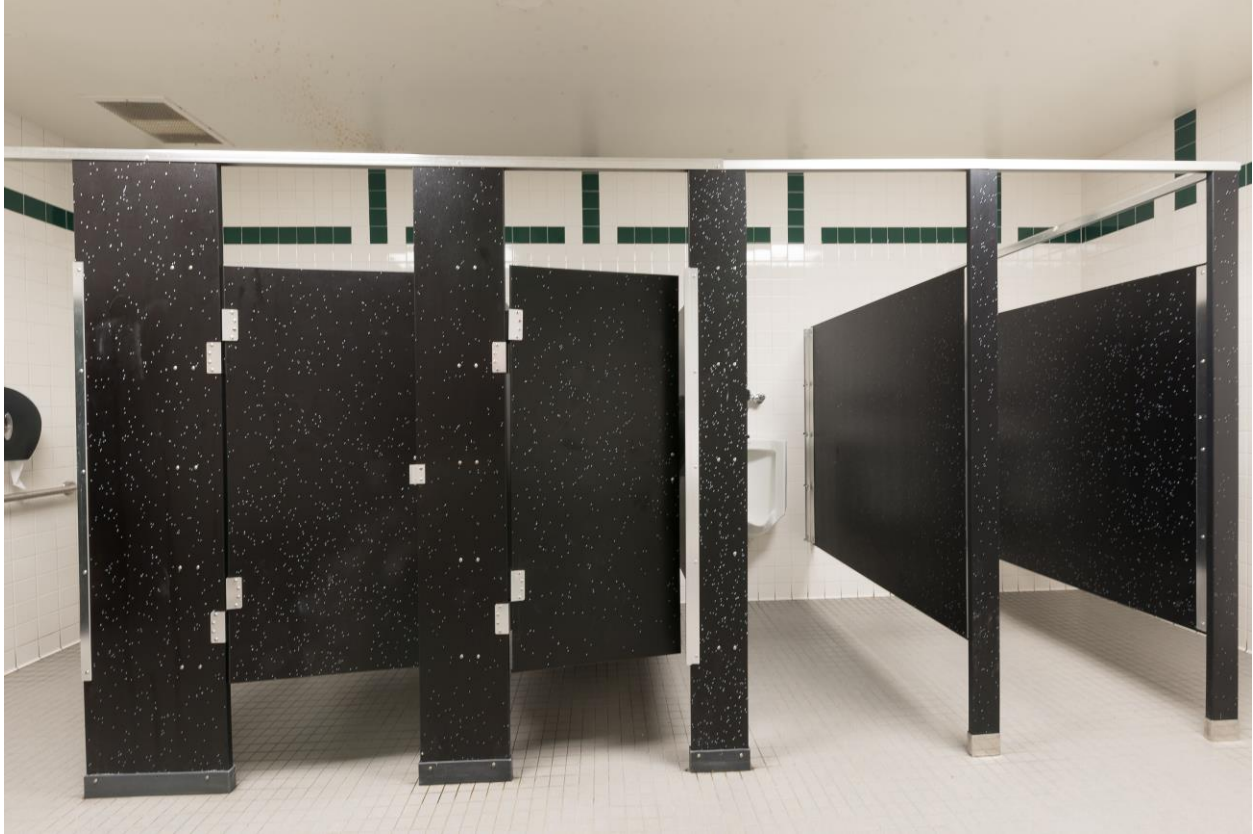


























IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Newport News Division

GAVIN GRIMM, , )  
)  
Plaintiff, )  
)  
v. ) Civil Case No. 4:15-cv-54  
)  
GLOUCESTER COUNTY SCHOOL )  
BOARD, )  
)  
Defendant. )  
\_\_\_\_\_ )

**DECLARATION OF SHAYNA MEDLEY-WARSOFF**

I, Shayna Medley-Warsoff, submit the following declaration in support of Plaintiff Gavin Grimm's opposition to Defendant's motion for summary judgment. I am one of the attorneys for Gavin Grimm, and I have personal knowledge of the facts in this attorney declaration. If called upon to testify, I could competently testify to the matters set forth in this declaration.

1. A copy of the deposition of Dr. Melinda Penn is attached to this Declaration as Exhibit 1.
2. A copy of the deposition of Gavin Grimm is attached to this Declaration as Exhibit 2.
3. A copy of page 451 of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (DSM-V), originally produced as Exhibit L to Defendant's Motion for Summary Judgment, is attached to this Declaration as Exhibit 3.
4. A copy of pages 452-53 of the DSM-V is attached to this Declaration as Exhibit 4.



5. A copy of the email from Amy Bergh to Nate Collins dated October 28, 2014, originally produced as GCSB 03541 and attached as Exhibit 1 to the deposition of Gavin Grimm, is attached to this Declaration as Exhibit 5.

6. I have reviewed the video recording of the Gloucester County School Board meeting dated February 19, 2019, which is available online at [http://gloucester.granicus.com/MediaPlayer.php?view\\_id=10&clip\\_id=2043](http://gloucester.granicus.com/MediaPlayer.php?view_id=10&clip_id=2043). At 11:03, David Corrigan, attorney for the Gloucester County School Board, says, "This standard that is under consideration is based on upon what the Virginia High School League, of which all of Gloucester County schools are members, already has in place with respect to athletic competition involving transgender students among the members of the VHSL."

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated: April 9, 2019



Shayna Medley-Warsoff

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NEWPORT NEWS DIVISION

-----X  
GAVIN GRIMM, :  
 :  
 Plaintiff, :  
 :  
 v. : CASE NO.:  
 :  
 GLOUCESTER COUNTY SCHOOL : 4:15-cv-54  
 :  
 BOARD, :  
 :  
 Defendant. :  
-----X

Deposition of MELINDA PENN, M.D.  
Richmond, Virginia  
Thursday, March 14, 2019

10:15 a.m.

Job No.: 234511  
Pages 1 - 92  
Reported by: Helen B. Yarbrough, RPR, CCR

## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

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1           Deposition of MELINDA PENN, M.D., held at the  
2 offices of:

3

4           ACLU OF VIRGINIA

5           701 East Franklin Street, Suite 1412

6           Richmond, Virginia 23219

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10           Pursuant to agreement, before Helen B.

11           Yarbrough, RPR, CCR, Notary Public in and for the

12           Commonwealth of Virginia.

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## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

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## A P P E A R A N C E S

ON BEHALF OF PLAINTIFF GAVIN GRIMM:

JOSHUA A. BLOCK, ESQUIRE

LESLIE COOPER, ESQUIRE (Via Telephone)

SHAYNA MEDLEY-WARSOFF, ESQUIRE

AMERICAN CIVIL LIBERTIES UNION

125 Broad Street, 18th Floor

New York, New York 10004

212-549-2500

and

JENNIFER SAFSTROM, ESQUIRE

AMERICAN CIVIL LIBERTIES UNION

701 East Franklin Street, Suite 1412

Richmond, Virginia 23219

804-644-8080

Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

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A P P E A R A N C E S (Continued)

ON BEHALF OF DEFENDANT GLOUCESTER COUNTY  
SCHOOL BOARD:

JEREMY D. CAPPS, ESQUIRE  
HARMAN, CLAYTOR, CORRIGAN & WELLMAN  
4951 Lake Brook Drive, Suite 100  
Glen Allen, Virginia 23060  
804-747-5200

Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

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I N D E X

PAGE

EXAMINATION OF MELINDA PENN, M.D.

By Mr. Capps

6

E X H I B I T S

PAGE

Exhibit 1 Expert Report

10

Exhibit 1A Curriculum Vitae

11

Exhibit 1B WPATH Standards of Care

37

Exhibit 1C Endocrine Society Guidelines

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Exhibit 2 Rebuttal Expert Report and

86

Declaration

## Deposition - Examination

Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

6

1 P R O C E E D I N G S

2 Whereupon,

3 MELINDA PENN, M.D.,

4 being first duly sworn or affirmed to testify to  
5 the truth, the whole truth, and nothing but the  
6 truth, was examined and testified as follows:

7 EXAMINATION BY COUNSEL FOR THE DEFENDANT

8 BY MR. CAPPS:

9 Q Dr. Penn, my name is Jeremy Capps. I  
10 represent the Gloucester County School Board in a  
11 lawsuit that was brought by Gavin Grimm.

12 You have been disclosed as an expert in  
13 this case. Are you aware of that?

14 A Yes.

15 Q Can you state your full name for the  
16 record?

17 A Melinda Penn.

18 Q And have you testified as an expert  
19 before?

20 A No.

21 Q Have you ever given deposition  
22 testimony before?

## Deposition - Examination

Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

7

1           A     Yes.

2           Q     So you're familiar with the ground  
3 rules.  If I ask you a question that you don't  
4 understand, please feel free to stop me, and I'll  
5 try to rephrase it.

6                     I will be sometimes inarticulate in  
7 medical terminology.  You are welcome to correct  
8 me if you want, and we'll make sure that we are on  
9 the same page.  Okay?

10          A     Okay.

11          Q     Who engaged you for this case?

12          A     Josh Block.

13          Q     And when were you engaged?

14          A     I believe it was over the summer, 2018.

15          Q     And have you reviewed any materials in  
16 preparing your expert report?

17          A     Yes.

18          Q     What did you review?

19          A     The Endocrine Society guidelines on  
20 transgender care and the WPATH guidelines and then  
21 various articles that have been published about  
22 transgender adolescence.



## Deposition - Examination

Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

8

1 Q As you sit here today, can you remember  
2 what articles you've reviewed?

3 A Not specifically. It's different ones  
4 on medical health outcome and mental health  
5 concerns in transgender adolescence.

6 Q Did you print those articles out after  
7 you reviewed them and save them?

8 A Not specifically for this case. I have  
9 articles that I have for my patients and for  
10 endocrinology care.

11 Q But as you sit here now, you are not  
12 able to name the titles of those articles?

13 A No.

14 Q Did you review the second amended  
15 complaint for this case?

16 A Is that from Dr. Van Meter?

17 Q That would be Dr. Van Meter's report.

18 A Yes.

19 Q So you reviewed Dr. Van Meter's report;  
20 is that correct?

21 A Yes.

22 Q Did you review the lawsuit, the paper

## Deposition - Examination

Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

9

1 that was filed by Gavin Grimm?

2 A No.

3 Q Did you review any discovery in this  
4 case?

5 A No.

6 Q Other than your original report and the  
7 rebuttal report that you prepared, have you  
8 prepared any other materials related to Gavin  
9 Grimm's lawsuit against Gloucester County School  
10 Board?

11 A No.

12 Q As you sit here now, do you know how  
13 many hours of time you have put into this case  
14 serving as an expert?

15 A Not exactly. I've written down when  
16 I've spoken about the case, but I haven't added it  
17 up yet.

18 Q And you're charging \$300 an hour; is  
19 that correct?

20 A Yes.

21 Q Do you have a ballpark figure about how  
22 much time you have in it?

## Deposition - Examination

Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

10

1 A Probably under ten hours.

2 Q Have you reviewed the Gloucester County  
3 School Board Restroom Resolution?

4 A No.

5 Q Have you received any information from  
6 Mr. Grimm's attorneys that you relied on in  
7 forming your opinions in this case?

8 A We've reviewed my expert --

9 Q I'm not asking you that, and I'm not  
10 asking you for the comments on your report. What  
11 I'm asking is, did they -- did Mr. Grimm's lawyers  
12 give you any factual information that you relied  
13 on in coming to your opinions?

14 A No.

15 (Penn Deposition Exhibit 1 was marked  
16 for identification and is attached.)

17 Q I'm going to show you what's been  
18 previously marked as Exhibit 1. Is that the  
19 expert report that you prepared in this case?

20 A Yes.

21 Q And in looking at that report, you  
22 agree that there are not any specific opinions

## Deposition - Examination

Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

11

1 that refer to or relate to Gavin Grimm?

2 MR. BLOCK: Objection.

3 A Can you state that question again?

4 Q Sure. You agree that in your report,  
5 you don't mention Gavin Grimm?

6 A Yes.

7 Q And you agree that in the opinion  
8 section of your report, you have not expressed any  
9 opinions specific to Gavin Grimm?

10 A Yes.

11 (Penn Deposition Exhibit 1A was marked  
12 for identification and is attached.)

13 Q You can go ahead and put that to the  
14 side for the moment. We'll get back to it.

15 I'm going to show you what's been  
16 marked as Exhibit 1A. That is the Attachment A to  
17 the binded report that I received. Is that your  
18 current CV?

19 A Yes.

20 Q Are there any additions to your CV  
21 since you provided it back in January?

22 A I have done some additional

## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

12

1 presentations locally at EVMS and CHKD, Eastern  
2 Virginia Medical School and Children's Hospital of  
3 the King's Daughters.

4 Q What are the presentations that you  
5 gave?

6 A I gave a presentation for the pediatric  
7 residents about transgender health care, and I  
8 presented at a recent safe zone presentation for  
9 the Children's Hospital.

10 Q The presentation to the pediatric  
11 residents, when was that?

12 A That was, I believe, November or  
13 December of 2018.

14 Q And the safe zone?

15 A That was last week.

16 Q And have you published any articles or  
17 chapters that are not included on your current CV?

18 A No.

19 Q I asked you if you had ever -- I'm not  
20 sure what I asked, what my first question was  
21 about an expert. I think I asked if you'd ever  
22 served as an expert before. Have you ever served

## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

13

1 as an expert involving a transgender case?

2 A No.

3 Q Have you ever served as an expert in a  
4 case involving appropriate psychological treatment  
5 for a transgender adolescent?

6 A No.

7 Q So I get my terminology straight,  
8 what's -- is there a difference from your  
9 treatment between a child and an adolescent, or  
10 are their terms interchangeable?

11 A We only provide endocrine care for  
12 patients who have begun puberty. They have to  
13 have begun puberty to receive treatment. They  
14 would all be adolescents to receive hormone  
15 therapy.

16 Q So if I use the word "adolescent," does  
17 that mean a child who has begun puberty?

18 A Yes.

19 Q And if I just use the term "child" or  
20 "children," that's someone that has not begun  
21 puberty?

22 A In general.

## Deposition - Examination

Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

14

1 Q And then if we use the term "adult," is  
2 that someone that's reached the age of majority,  
3 someone that's over 18?

4 A I think in most cases that would be  
5 used.

6 Q Looking at your CV, you received your  
7 medical degree in 2004 from Eastern Virginia  
8 Medical School?

9 A Yes.

10 Q When you were at Eastern Virginia  
11 Medical School, were there any courses taught on  
12 transgender individuals?

13 A Not full courses.

14 Q Was there any instruction on medical  
15 care for transgender individuals?

16 A I remember having a presentation that  
17 was about LGBT patients.

18 Q And was that a one-day presentation?

19 A Yes.

20 Q One day? While you were at Eastern  
21 Virginia Medical School, did you receive any  
22 training on gender identity disorder?

## Deposition - Examination

Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

15

1 A No.

2 Q Did you receive any training on gender  
3 dysphoria?

4 A No.

5 Q Other than the presentation, did you  
6 receive any training on the medical treatment of  
7 transgender individuals?

8 A No.

9 Q It looks like you did your residency in  
10 general pediatrics from July 2004 to July of 2007  
11 at the Medical University of South Carolina. Is  
12 that correct?

13 A Yes.

14 Q And while you were at the Medical  
15 University of South Carolina, did you receive any  
16 training on the medical treatment of transgender  
17 individuals?

18 A Not that I recall.

19 Q Did you receive any training on the  
20 medical treatment of gender dysphoria?

21 A No.

22 Q And while you were at the Medical



## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

16

1 University of South Carolina, did you receive any  
2 training on the medical treatment of gender  
3 identity disorder?

4 A No.

5 Q What did your residency at the Medical  
6 University of South Carolina consist of?

7 A General pediatric education.

8 Q What does that mean?

9 A The care and health care of pediatric  
10 patients.

11 Q Did you, during your residency at the  
12 Medical University of South Carolina, participate  
13 in any research studies involving transgender  
14 individuals?

15 A No.

16 Q Then again looking at your CV, it looks  
17 like you had your fellowship at Children's  
18 Hospital of Philadelphia?

19 A Yes.

20 Q From July 2017 through August of 2010?

21 MR. BLOCK: Objection.

22 A July 2007 to August 2010.

## Deposition - Examination

Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

17

1 Q I'm sorry. Did I misstate it?

2 A Uh-huh.

3 Q So you had your fellowship from  
4 July 2007 through August of 2010; is that correct?

5 A Yes.

6 Q What was your fellowship in?

7 A Pediatric endocrinology.

8 Q And what is pediatric endocrinology?

9 A It's the study of hormones and hormone  
10 disorders.

11 Q In persons under the age of 18?

12 A Yes. Well, we continue up until about  
13 21.

14 Q So in your practice in pediatric  
15 endocrinology, you would treat patients up to  
16 approximately the age of 21?

17 A Yes.

18 Q And during your fellowship in pediatric  
19 endocrinology, did you receive any training on the  
20 treatment of transgender individuals?

21 A We didn't have formal education, but  
22 there was discussion.

## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

18

1 Q And so when you say you had discussion,  
2 what did that involve?

3 A Speaking about patients and discussing  
4 the care that was occurring at other facilities.

5 Q And is that -- would that be like on  
6 rounds, presenting on special --

7 A Yes.

8 Q I'm sorry.

9 -- presenting on individual patients?

10 A As we came across them in outpatient  
11 clinic or inpatient, and then just discussing in  
12 general the literature that was coming out.

13 Q During your fellowship, did you have  
14 any medical training on the treatment of gender  
15 identity disorder?

16 A No.

17 Q Did you have, during your fellowship,  
18 any medical training on the treatment of gender  
19 dysphoria?

20 A Just in what I just stated.

21 Q The discussion?

22 A Just the discussions and conferences

## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

19

1 that I had attended.

2 Q And as you sit here today, do you  
3 remember any conferences that you attended on --  
4 during your fellowship that involved the treatment  
5 of transgender individuals?

6 A Yes.

7 Q What were those?

8 A Dr. Norman Spack from Boston Children's  
9 has a gender clinic and spoke at -- I believe it  
10 was a Pediatric Endocrine Society meeting.

11 Q Do you remember when that occurred?

12 A Not specifically.

13 Q Other than the conference with

14 Dr. Norman Spack --

15 Can you spell that?

16 A S-P-A-C-K.

17 Q -- that Dr. Norman Spack presented, do  
18 you recall any other conferences that you attended  
19 that involved the treatment of transgender  
20 individuals?

21 A I believe at the Endocrine Society  
22 national conference I attended some discussions

## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

20

1 about gender dysphoria.

2 Q Did you have any formal education other  
3 than those conferences on gender dysphoria?

4 A No.

5 Q During your fellowship, did you  
6 participate in any research studies on gender  
7 dysphoria or transgender individuals?

8 A No.

9 Q During your fellowship, did you  
10 participate in preparing any articles or  
11 literature on gender dysphoria or transgender  
12 individuals?

13 A No.

14 MR. BLOCK: Jeremy, is now a good time  
15 to call Leslie?

16 MR. CAPPS: Yes. Let's take a break.  
17 I meant to say if you want a break at any time,  
18 tell me.

19 (A recess was taken.)

20 (Ms. Cooper joins the deposition by  
21 telephone.)

22

## Deposition - Examination

Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

21

1 BY MR. CAPPS: (Continuing)

2 Q You are licensed to practice medicine  
3 in Virginia?

4 A Yes.

5 Q And are you board certified?

6 A Yes.

7 Q What are you board certified in?

8 A General pediatrics and pediatric  
9 endocrinology.

10 Q And when did you become board certified  
11 in pediatric endocrinology?

12 A Pediatric endocrinology was 2011.

13 Q Do you have any other certificates or  
14 licenses -- strike that.

15 Is there any certificate or degree  
16 relative to the treatment of transgender  
17 individuals?

18 A I believe WPATH is in the process of  
19 creating a certificate.

20 Q And do you have a certificate relative  
21 to the treatment of transgender care?

22 A No.

## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

22

1           Q     Is there any certification at present  
2 concerning the treatment of transgender  
3 individuals?

4           A     I don't believe there's one that  
5 formally is available yet.

6           Q     What do you do now in your practice?

7           A     I practice general pediatric  
8 endocrinology at the Children's Hospitals of the  
9 King's Daughters.

10          Q     What is your general patient  
11 population?

12          A     I see patients for a number of  
13 endocrine disorders. The majority of my practice  
14 is made up of patients with Type 1 diabetes, but  
15 we also care for children and adolescents with  
16 growth hormone deficiency, thyroid disorders,  
17 puberty disorders, adrenal dysfunction, obesity,  
18 Type 2 diabetes, and then I see transgender  
19 patients as well.

20          Q     And do you consider yourself as having  
21 a specialty?

22          A     I see -- I tend to specialize in Type 1

## Deposition - Examination

Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

23

1 diabetes and transgender care.

2 Q How long have you been at the  
3 Children's Specialty Group?

4 A I have been there since July of 2018.

5 Q And since you joined Children's  
6 Specialty Group, what's the percentage of your  
7 patients that you treat who are transgender?

8 A It's hard to estimate since it's a new  
9 practice for me. I see several a month. But  
10 because all of the patients are new to me and I'm  
11 building the practice, it's difficult to determine  
12 exactly how many I'm seeing currently.

13 Q So are you able to say how many  
14 transgender children or adolescents that you've  
15 treated since you've gone to Children's Specialty  
16 Group?

17 A I would estimate that currently I've  
18 had probably about 25 patients.

19 Q And what is your involvement in the  
20 treatment of those patients?

21 A When I joined Children's Specialty  
22 Group, there was a previous pediatric



## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

24

1 endocrinologist who retired, and he was previously  
2 seeing the transgender patients and providing  
3 endocrine care for them. So I've taken over his  
4 practice and continued the care that he was  
5 providing, as well as seeing new patients.

6 Q I guess what I'm getting at now -- so  
7 when you say you are providing endocrine care, you  
8 are providing medical treatment; is that correct?

9 A Yes.

10 Q And are you providing -- when you say  
11 "endocrine care," does that mean you're providing  
12 hormone --

13 A Yes.

14 Q -- therapy? Maybe I'm using the wrong  
15 term.

16 A No. So, it varies what we do for  
17 transgender patients. But if they choose to  
18 undergo hormone therapy and feel that they'll  
19 benefit from hormone therapy, that can include  
20 pubertal suppression where we stop the development  
21 of -- production of pubertal hormones. And then  
22 we can do gender-affirming hormone therapy, which

## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

25

1 means that we will provide estrogen or  
2 testosterone to have feminizing or masculinizing  
3 effects.

4 Q Does your practice now involve any  
5 other types of care other than -- strike that.

6 Does your practice now, involving  
7 transgender individuals, provide any other type of  
8 medical treatment other than the hormone therapy  
9 that you just described?

10 A So, when I see patients who are  
11 transgender and have gender dysphoria, some choose  
12 not to proceed with any treatment; and some  
13 patients, I'm just meeting with and giving them  
14 the options of what's available. So there are  
15 patients that I see and I follow who haven't  
16 decided to embark on hormone therapy. But if they  
17 want endocrine care, then that's what's provided.

18 Q All right. And before you went to the  
19 Children's Specialty Group, you worked at Virginia  
20 Commonwealth University?

21 A Yes.

22 Q And you started at VCU when you ended

## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

26

1 your fellowship?

2 A Yes. September 2010.

3 Q So that was your first job out of --  
4 after your fellowship?

5 A Yes.

6 Q And what did you do at VCU?

7 A I provided pediatric endocrine care for  
8 patients.

9 Q And while you were at VCU, did you  
10 receive any training on the treatment of  
11 transgender individuals?

12 A I attended workshops and conferences  
13 that discussed transgender care.

14 Q Have you had any formal education  
15 during your time at VCU on the treatment of  
16 transgender individuals?

17 A Just the attendance of conferences.

18 Q When did you begin treating transgender  
19 individuals?

20 A I believe it was 2013.

21 Q And tell me, how did that come about?

22 A There was a local psychologist who

## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

27

1 specialized in LGBT adolescent care, and she had  
2 adult hormone providers but no pediatric hormone  
3 providers in the area, and the adult providers  
4 knew of me and recommended that she speak with me,  
5 so I started discussions with her.

6 Q And who is the local psychologist?

7 A Dr. Lisa Griffin.

8 Q And it says on your CV that you --  
9 maybe it was in your report -- but, that you  
10 started a pediatric transgender health clinic at  
11 VCU?

12 A Yes.

13 Q And who did you start that with?

14 A Dr. Susan Jones, a child and adolescent  
15 psychiatrist.

16 Q Were there any other endocrinologists  
17 associated with the program?

18 A When I left VCU, another  
19 endocrinologist joined and took part in the  
20 program. But while I was there, I was the only  
21 endocrinologist taking care of the transgender  
22 patients.

## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

28

1           Q     When you took care of the transgender  
2 patients at VCU, were they all under 21, or were  
3 there adults?

4           A     When I began their care, they were  
5 under 21. Some may have been over 21 while they  
6 were still in my care.

7           Q     After you opened the pediatric  
8 transgender health clinic, did you receive any  
9 specialized training in the treatment of pediatric  
10 transgender individuals?

11          A     Just attendance at conferences and  
12 speaking to other endocrinologists who had had  
13 prior experience with transgender care.

14          Q     And in providing your treatment at VCU,  
15 did you rely on any standards of care or  
16 guidelines?

17          A     Yes. The Endocrine Society standards  
18 of care and WPATH guidelines.

19          Q     And in your treatment of transgender  
20 individuals at VCU, did you provide any mental  
21 health care?

22          A     No, not in my -- I didn't provide it.

## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

29

1 I worked with mental health providers who provided  
2 it.

3 Q Right. But you're not a licensed  
4 mental health provider?

5 A No.

6 Q And as you sit here now, do you  
7 remember the conferences that you attended  
8 concerning the treatment of transgender  
9 individuals while you were at VCU?

10 A The Pediatric Endocrine Society has a  
11 national conference and typically has a couple  
12 lectures that are about transgender care, and the  
13 Philadelphia Transhealth conference is an annual  
14 conference, and I attended that. I'd have to look  
15 back to see exactly what year it was. And they  
16 had a health care and medical path in that  
17 conference that I attended.

18 Q And your treatment of transgender  
19 individuals while you were at VCU, was that any  
20 different than your current treatment of these  
21 individuals now that you're at the Children's  
22 Specialty Group?

## Deposition - Examination

Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

30

1           A     No.

2           Q     Same type of hormone therapy treatment,  
3     endocrine treatment?

4           A     Yes.

5           Q     While you were at VCU, did you  
6     participate in any research studies involving  
7     transgender individuals?

8           A     No.

9           Q     Did you track in any formal way the  
10    progress of the transgender individuals that you  
11    treated at the pediatric transgender health clinic  
12    at VCU?

13          A     Not in any formal way.

14          Q     Did you participate in any research --  
15    strike that.

16                 Did you participate in any -- in  
17    preparing any written articles or literature  
18    involving the treatment of transgender individuals  
19    while you were at VCU?

20          A     No.

21          Q     How did you leave VCU to go to the  
22    Children's Specialty Group?

## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

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1           A     I wanted a new position and felt like  
2     this position gave me more support as a  
3     specialist.

4           Q     Is the transgender health clinic still  
5     operating at VCU?

6           A     I believe so. The endocrinologist who  
7     came on after me, I think, has left VCU, so I'm  
8     not sure who's heading that now.

9           Q     So at least as of right now, you do not  
10    have any collaboration with VCU's transgender  
11    health clinic?

12          A     No.

13          Q     All right. Have you ever participated  
14    in any peer-reviewed research studies involving  
15    transgender individuals?

16          A     No.

17          Q     Have you ever participated in any  
18    peer-reviewed research studies involving gender  
19    identity disorder?

20          A     No.

21          Q     Have you ever participated in any  
22    peer-reviewed research studies involving gender



## Deposition - Examination

Transcript of Melinda Penn, M.D.

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1 dysphoria?

2 A No.

3 Q As you sit here now, have you published  
4 any articles or literature or books related to the  
5 treatment of transgender individuals?

6 A No.

7 Q Have you published any articles,  
8 literature, or chapters in books regarding the  
9 treatment of gender dysphoria?

10 A No.

11 Q Have you published any articles,  
12 literature, or chapters in books related to the  
13 treatment of gender identity disorder?

14 A No.

15 Q Have you ever received any state or  
16 federal grant funding to conduct research into the  
17 treatment of transgender individuals?

18 A No.

19 Q All right. In your report, you state  
20 that you are a member of WPATH.

21 A Yes.

22 Q What is WPATH?

## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

33

1           A     It's an international society for  
2 people who provide health care for transgender  
3 individuals.

4           Q     What is the purpose of the WPATH  
5 organization?

6           A     I don't know exactly what their stated  
7 purpose is, but it's to promote education about  
8 transgender health care.

9           Q     Is it a medical organization?

10          A     It's a professional society.

11          Q     What's that mean?

12          A     I believe you have to be a health care  
13 provider to join it, but that can include mental  
14 health providers as well.

15          Q     Do you know, as you sit here now, what  
16 the qualifications are to be a member of WPATH?

17          A     I believe you had to have a medical  
18 license of some sort or some sort of professional  
19 licensure.

20          Q     Did you fill out an application to be a  
21 member?

22          A     Yes.

## Deposition - Examination

Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

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1 Q And are there annual dues to be a  
2 member?

3 A Yes.

4 Q What are the annual dues?

5 A I don't recall.

6 Q Have you participated in preparing the  
7 standards of care issued by WPATH?

8 A No.

9 Q You also state that you are a member of  
10 the Pediatric Endocrine Society?

11 A Yes.

12 Q What is that?

13 A It's a professional society for  
14 pediatric endocrinologists in the U.S.

15 Q And do you have to be a pediatric  
16 endocrinologist to join?

17 A Yes.

18 Q And did you participate in preparing  
19 the Pediatric Endocrine Society guidelines  
20 concerning the treatment of transgender  
21 individuals?

22 A No.

## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

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1           Q     Did you offer any comments on the  
2     development of the guidelines issued by the  
3     Pediatric Endocrine Society concerning the  
4     treatment of transgender individuals?

5           A     No.

6           Q     Is there a difference between a  
7     standard of care and a guideline?

8           A     Not that I'm aware of.

9           Q     So would you treat a standard of care  
10    as the same -- in the same manner as -- strike  
11    that. I'll be more specific.

12                   Do you treat the standards of care  
13    issued by WPATH as -- in the same manner as you  
14    treat the guidelines issued by the Endocrine  
15    Society?

16           A     I use them both as kind of guides for  
17    how to provide care for those patients. I tend to  
18    refer to the Endocrine Society guidelines more  
19    often because they specifically -- more  
20    specifically relate to what I'm doing.

21           Q     Do you know whether the standards of  
22    care issued by WPATH were peer-reviewed by

## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

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1 endocrine professionals?

2 A I do not.

3 Q Do you know who authored the standards  
4 of care?

5 A No.

6 Q Did you review the underlying  
7 literature that is used to support the WPATH  
8 standards of care?

9 A I have in the past.

10 Q And do you recall what literature it is  
11 that you reviewed?

12 A No.

13 Q Do you know whether WPATH took into  
14 consideration any contrary or dissenting views on  
15 the treatment of transgender individuals in  
16 creating their standards of care?

17 A I do not.

18 Q Do you know what methodology was used  
19 by WPATH in creating these standards of care?

20 A No.

21 Q And did you have any involvement in the  
22 adoption of the standards of care by WPATH?

Deposition - Examination

Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

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1           A     No.

2                     MR. CAPPS: Do you want to take a quick  
3 break? I'm going to transition into those --  
4 we're okay to take a quick break if you want.

5                     (A recess was taken.)

6                     (Penn Deposition Exhibit 1B was marked  
7 for identification and is attached.)

8 BY MR. CAPPS: (Continuing)

9           Q     I'm showing you what's been marked as  
10 Exhibit 1B, which was attached to your expert  
11 report. Is that the most current standards of  
12 care issued by WPATH that you have been referring  
13 to?

14           A     Yes.

15           Q     And you agree that the WPATH standards  
16 of care are intended to be a flexible guideline?

17           A     Yes.

18           Q     And you agree that the WPATH standards  
19 of care state that treatment for gender dysphoria  
20 is intended to be individualized?

21           A     Yes.

22           Q     And the WPATH standards of care state

## Deposition - Examination

Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

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1 that what helps one person alleviate gender  
2 dysphoria might be very different from what helps  
3 another person?

4 A Yes.

5 Q And is that true in your practice?

6 A Yes.

7 Q So in your practice, the treatment of  
8 transgender adolescents or children varies from  
9 one child to another?

10 A Yes.

11 Q And it may depend on what the parents  
12 want?

13 A I talk with the patients and the  
14 parents and come up with the best plan.

15 Q And that plan, though, may depend on  
16 what the parents want instead of what the child  
17 wants?

18 A In order to proceed with any  
19 treatments, I have to have -- I require that all  
20 parents or guardians agree to the plan.

21 Q And if a parent disagrees with the  
22 adolescent that you're treating, does that mean

## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

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1 you don't proceed with the treatment?

2 A Yes.

3 Q And if the child that you're treating  
4 disagrees with how the parents want the treatment  
5 to proceed, does that mean you don't provide the  
6 medical treatment to the individual?

7 MR. BLOCK: Objection. You said  
8 "child," and we previously talked about children  
9 versus adolescents, so I wanted to clarify.

10 Q Maybe I got my terms confused. Are you  
11 treating adolescents or children?

12 A If I'm providing medical hormone  
13 therapy, then they would be adolescents.

14 Q And you treat children in your practice  
15 that are -- that you would not consider to be  
16 adolescents?

17 A In my endocrine practice. And I do see  
18 some transgender children as initial consults, but  
19 I don't provide any medical treatment for them  
20 until they've had some degree of puberty.

21 Q So let me see if I can get my question  
22 out right.



## Deposition - Examination

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1 MR. BLOCK: Sorry.

2 MR. CAPPS: That's all right.

3 Q If the transgender adolescent that  
4 you're treating does not agree with the parents'  
5 preferred method of medical treatment, does that  
6 mean you do not provide medical treatment to the  
7 adolescent?

8 A In order to get treatment, the parents  
9 have to have agreed, as well as the adolescent, to  
10 proceed with treatment.

11 Q Are you aware of any formal studies,  
12 scientific studies, that have documented the  
13 prevalence of transgender adolescents?

14 A There have been some research studies,  
15 but I don't think that we have any current ones  
16 that adequately address the current population of  
17 transgender patients.

18 Q Do you know who participated in  
19 creating the clinical guidelines for the Endocrine  
20 Society?

21 A There are a number of endocrinologists  
22 from different areas across the U.S. and

## Deposition - Examination

Transcript of Melinda Penn, M.D.

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1 internationally that were consulted.

2 (Penn Deposition Exhibit 1C was marked  
3 for identification and is attached.)

4 Q I'm going to show you what's been  
5 marked as Exhibit 1C. Is that the Pediatric  
6 Endocrine Society guidelines that you rely on?

7 MR. BLOCK: Objection. It's not the  
8 Pediatric Endocrine Society. It's the Endocrine  
9 Society.

10 Q Sorry. The Endocrine Society  
11 guidelines that you rely on?

12 A Yes.

13 Q Are there guidelines that are specific  
14 to pediatric transgender patients?

15 A Within the Endocrine Society  
16 guidelines, they specifically discuss pediatric  
17 care.

18 Q Are you a member of the Endocrine  
19 Society?

20 A I'm not currently an Endocrine Society  
21 member, but I'm a member of the Pediatric  
22 Endocrine Society.

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1 Q Has the Pediatric Endocrine Society put  
2 out guidelines for the treatment of transgender  
3 pediatric patients?

4 A They have supported these Endocrine  
5 Society guidelines.

6 Q Do you know what the scientific  
7 methodology was used -- strike that.

8 Do you know what scientific methodology  
9 was used in creating the Pediatric Endocrine  
10 Society guidelines?

11 A They reviewed studies that are  
12 available and came up with best practices.

13 Q And do you know what percentage of  
14 Endocrine Society members agreed with the  
15 guidelines?

16 A No.

17 Q Do you know whether the guidelines were  
18 adopted by a vote?

19 A No.

20 Q In your report, in paragraph 9 you  
21 stated that in the five -- the past five years,  
22 you've treated approximately -- well, you've

## Transcript of Melinda Penn, M.D.

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1 treated over a hundred transgender youth and  
2 adolescents in Virginia?

3 A Yes.

4 Q Have you done any follow-up studies on  
5 the patients, the individuals -- transgender --  
6 strike that, and I'm going to try again.

7 Have you done any follow-up studies on  
8 the transgender individuals that you have treated  
9 in the last five years?

10 A No, only through clinical follow-up.

11 Q You have not documented their outcomes  
12 after you have provided your treatment; is that  
13 correct?

14 A I document as I'm seeing them  
15 clinically, but I haven't collected that data.

16 Q Have you, in your practice over the  
17 last five years, conducted any studies to  
18 determine the benefits to the transgender  
19 individuals -- strike that.

20 Have you conducted any studies to  
21 determine the benefits of your medical treatment  
22 to any of the transgender individuals that you

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1 have provided care to?

2 A No.

3 Q I know I'm jumping around, but if you  
4 look at your report at paragraph 12, you stated,  
5 "In preparing this report, I relied on . . .  
6 scientific literature on this topic."

7 Do you see that?

8 A Yes.

9 Q What is the scientific literature that  
10 you relied on?

11 A Some of the studies that are referred  
12 to in the guidelines.

13 Q And as you sit here now, can you tell  
14 me what studies those are?

15 A Can I refer to the guidelines?

16 Q Yeah, of course.

17 A The ones that we referred to in my  
18 document are ones that I've referred to  
19 specifically.

20 Q So the literature that you relied on is  
21 set out in your expert report; is that correct?

22 A Yes. And in addition, I've reviewed

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1 other documents that are referred to in the  
2 guidelines. Specifically for my report, those are  
3 documented in here.

4 Q So looking at your opinions, if you  
5 look at paragraph 17, you state that, "The term  
6 'gender identity' refers to a person's innate  
7 sense of belonging to a particular gender."

8 A Yes.

9 Q Where did you get that definition?

10 A The endocrine guidelines.

11 Q And you then state that the precise  
12 etiology of gender identity is unknown?

13 A Yes.

14 Q What do you mean by that?

15 A There are no precise causes that have  
16 been identified that guarantee your gender  
17 identity.

18 Q So does that mean there's no scientific  
19 data that can determine an individual's gender  
20 identity?

21 A Yes. There's no specific test that you  
22 can do.

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1 Q So there's not a diagnostic test that  
2 can be performed that would determine an  
3 individual's gender identity?

4 A No.

5 Q Is there a biological test that could  
6 determine gender identity?

7 A No.

8 Q As you sit here now, is there a  
9 biological basis for gender identity?

10 A Not a direct one.

11 MR. BLOCK: Can we stop for a second?

12 MR. CAPPS: Yes.

13 (A discussion was held off the record.)

14 BY MR. CAPPS: (Continuing)

15 Q In paragraph 18 of your report, you  
16 state that the terms "sex designated at birth" or  
17 "sex assigned at birth" are more precise than  
18 "biological sex."

19 A Yes.

20 Q Why is that?

21 A There are a number of different  
22 components that make up what is determined to be

## Transcript of Melinda Penn, M.D.

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1 the sex at birth, and the biological sex is  
2 imprecise and doesn't address all of those.

3 Q So you would agree that a -- that sex  
4 is determined by chromosomal makeup and  
5 reproductive organs, correct?

6 MR. BLOCK: Objection.

7 A Those are two components that can  
8 contribute to the sex that's assigned at birth,  
9 but there's chromosomal, hormonal, anatomic  
10 conditions that all have to align to help with the  
11 sex assigned at birth.

12 Q Have you ever, as a pediatrician, been  
13 asked to determine the sex of an infant at birth?

14 A Yes. As a pediatric endocrinologist,  
15 we are involved with the diagnosis of children  
16 with ambiguous genitalia.

17 Q Is that different than the phrase  
18 "intersex"?

19 A That's related to intersex.

20 Q Outside of a case where an infant has  
21 ambiguous genitalia, are you asked to recognize  
22 the sex at birth as a pediatrician?



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1           A     As a pediatrician, yes; but in  
2     pediatric endocrinology I typically am not  
3     involved in that unless there's questions.

4           Q     So when you were a pediatrician, did  
5     you recognize the sex of an infant at birth based  
6     upon the appearance of external genitalia?

7           A     Yes. We would examine patients and  
8     describe the appearance of the genitalia.

9           Q     And then you would designate the  
10    infant's sex based on that external genitalia,  
11    correct?

12          A     Yes.

13          Q     If there is a question concerning the  
14    sex of an infant at birth, can medical providers  
15    perform a chromosomal testing?

16          A     Yes, you can perform that. There's a  
17    number of different tests that we'll do if there's  
18    question about the appearance of the genitalia.

19          Q     And what are those tests?

20          A     We'll perform chromosomes; we'll do  
21    investigations to look at the internal anatomy in  
22    genitalia; we'll perform hormone levels.

## Deposition - Examination

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1 Q And when you say "looking at the  
2 internal anatomy," does that mean the reproductive  
3 organs?

4 A Yes.

5 Q And the chromosomal testing, that would  
6 be the XX chromosome or the XY chromosome?

7 A Yes.

8 Q And if the infant has an XX chromosome,  
9 that's recognized as a biological basis for a  
10 female?

11 A Not always.

12 Q In what cases would it not be?

13 A There are times when you can have a  
14 portion of the Y be present in an XX individual.  
15 There are times that you have an XY individual who  
16 won't respond to testosterone and therefore would  
17 look very feminine on the outside. So it's not  
18 always clear.

19 Q And if there is an XX chromosome  
20 without a portion of a Y, does -- is that the  
21 biological basis for a female?

22 A In general, yes.

## Deposition - Examination

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1 Q And in situations where you look to the  
2 reproductive organs to determine the sex of an  
3 infant born at birth, that is a biological basis  
4 for your determination, correct?

5 A Can you say that again?

6 Q When you look to the reproductive  
7 organs to determine the sex of an infant born at  
8 birth, that is a biological basis for your  
9 determination, correct?

10 A Yes. But there are cases where just  
11 the appearance of the genitalia are not always  
12 aligned and appropriate.

13 Q I was talking about the internal  
14 reproductive organs that you discussed.

15 A Not always.

16 Q That's not always a biological basis?

17 A Yes.

18 Q And how is that?

19 A There are cases where there are people  
20 who have XY chromosomes but don't respond to  
21 androgens or to testosterone. They would have no  
22 internal uterus. They would have testes, but

## Deposition - Examination

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1 they're not responding to the testosterone, so  
2 their external genitalia is very feminine, but  
3 they wouldn't have the internal female uterus or  
4 ovaries.

5 Q And what would the medical diagnosis  
6 for that be?

7 A Androgen insensitivity.

8 Q And how often does that occur?

9 A I would have to review for  
10 specifically -- specific numbers.

11 Q How often did you see it in your  
12 practice?

13 A I've seen it about three times.

14 Q You agree that choosing a gender  
15 identity does not cause any chromosomal changes in  
16 the body, correct?

17 A Yes.

18 Q And a person's innate sense of  
19 belonging to a particular gender does not cause  
20 any biological changes in the body?

21 A That's correct.

22 Q In paragraph 20 of your report, you

## Deposition - Examination

Transcript of Melinda Penn, M.D.

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1 state that, "Gender identity is deeply rooted  
2 early in life."

3 Do you see that?

4 A Yes.

5 Q What is that opinion based on?

6 A There's -- many pediatric patients have  
7 very distinct gender identity and identify with a  
8 specific gender at a young age as a normal part of  
9 pediatric development.

10 Q And when you say it's rooted early in  
11 life, does that mean in both gender identity that  
12 is consistent with the sex recognized at birth and  
13 inconsistent with the sex recognized at birth?

14 A It can be, yes.

15 Q Have there been any empirical studies  
16 or data that identify when a child has a sense of  
17 gender identity?

18 A I'm not aware. There has been research  
19 describing it, but I'm not sure of the specifics.

20 Q DSM-V --

21 A Yes.

22 Q -- describes gender dysphoria; is that

## Transcript of Melinda Penn, M.D.

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1 correct?

2 A Yes.

3 Q And what, to your understanding, is  
4 gender dysphoria?

5 A That's the distress that a patient or a  
6 person experiences when their gender identity  
7 doesn't align with the sex assigned at birth.

8 Q Okay. And you're aware that the DSM-V  
9 defines sex as it refers to the biological  
10 indicators of male and female such as in sex  
11 chromosomes, gonads, sex hormones, and  
12 nonambiguous internal or external genitalia?

13 A Yes.

14 Q And you agree with that, correct?

15 A Yes.

16 Q So the treatment that you provide as a  
17 pediatric endocrinologist, is that to treat gender  
18 dysphoria, or is it to treat a transgender  
19 individual?

20 A Yes, it's to treat the gender dysphoria  
21 that occurs in transgender individuals.

22 Q So your practice, medical practice,

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1 seeks to medically treat a transgender  
2 individual's distress?

3 A Yes. We're helping to decrease the  
4 distress and the dysphoria.

5 Q Do you need a break?

6 A Yes.

7 (A recess was taken.)

8 BY MR. CAPPS: (Continuing)

9 Q In your practice, do you diagnose  
10 gender dysphoria?

11 A I rely on the mental health providers  
12 that I work with to do the official diagnosis, but  
13 I review with the patients why they're seeking  
14 hormone therapy.

15 Q Is there any objective test that can  
16 diagnose gender dysphoria?

17 A Not that I'm aware of.

18 Q So a diagnosis would be based on a  
19 conversation with the transgender individual?

20 A There are guidelines and criteria that  
21 you have to meet for the diagnosis of gender  
22 dysphoria, and that's with discussion by the

## Transcript of Melinda Penn, M.D.

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1 patient.

2 Q But it's based upon the subjective  
3 information that the patient gives you; is that  
4 correct?

5 A Yes.

6 Q Do you agree that not all transgender  
7 individuals express distress in their gender  
8 identity choice?

9 A Yes.

10 Q Do you dispute the DSM-V statement that  
11 for natal adult males, the prevalence ranges for  
12 gender dysphoria range between .005 percent to  
13 .014 percent of natal adult males?

14 A It sounds appropriate. I'm not sure  
15 exactly what they are referring to for this data.

16 Q How about the prevalence ranges for  
17 natal females range from .002 percent to  
18 .003 percent? Do you dispute that data?

19 A Again, I don't know where it comes from  
20 and how that research is done, but it sounds  
21 appropriate.

22 MR. BLOCK: Could she be provided a



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1 copy of the DSM, even with your markings?

2 MR. CAPPS: Yes. That's fine. I'm  
3 not . . .

4 A I don't know how old the data is or how  
5 they obtained the information. That can really  
6 vary from -- by determining what population they  
7 looked at.

8 Q Is there a difference in the treatment  
9 that you provide to transgender individuals with  
10 gender dysphoria that do not have a disorder of  
11 sex development, versus having a disorder of sex  
12 development?

13 A I guess it would depend on what  
14 disorder of sexual differentiation you are  
15 referring to. Many of those patients need  
16 different treatment than what we would provide for  
17 gender dysphoria.

18 Q And the reason I ask is the DSM-V has a  
19 section that differentiates. It says gender  
20 dysphoria without a disorder of sex development  
21 and gender dysphoria with a disorder of sex  
22 development. So I was curious whether your

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1 treatment is different under those scenarios.

2 A Yes, it would be different. But it  
3 would apply to the individual. It's not  
4 distinctly different.

5 Q In paragraph 23 of your report, you  
6 identify medical treatment for gender dysphoria  
7 that involves helping a transgender person live in  
8 alignment with their gender identity. Do you see  
9 that?

10 A Yes.

11 Q You say, "This treatment is sometimes  
12 referred to as 'gender transition, 'transition  
13 related care,' or 'gender-affirming care.'"

14 Do you see that?

15 A Yes.

16 Q As part of your medical practice, do  
17 you provide medical treatment that involves  
18 gender-affirming care?

19 A Yes.

20 Q And what is the medical treatment that  
21 you provide related to gender-affirming care?

22 A I provide pubertal suppression where we

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1 give hormones that stop the production of pubertal  
2 hormones in the body. And then I can also provide  
3 hormones that would promote the development of  
4 secondary sex characteristics that align with the  
5 person's gender identity.

6 Q Do you provide any medical treatment  
7 related to any transgender individual's social  
8 transition?

9 A Can you restate it?

10 Q Do you, in your treatment of  
11 transgender individuals, provide a treatment plan  
12 that includes social transition?

13 A Not directly. We discuss the social  
14 transition and what they've done with their social  
15 transition, but I don't directly.

16 Q So you're not involved in creating  
17 treatment plans related to a transgender  
18 individual's social transition related to their  
19 gender identity?

20 A No. I do assist with some of the  
21 paperwork that they require to do name change and  
22 gender change, and some of the legal documents

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1 require a medical provider to sign off, and I  
2 assist with that.

3 Q But on a day-to-day basis, do you  
4 outline a treatment plan that relates to a  
5 transgender individual's social transition?

6 A No.

7 Q Do you document a patient's  
8 participation in social transition as a part of  
9 your medical treatment of transgender individuals?

10 A I typically discuss with the patients  
11 what social transitions have occurred, and we  
12 discuss family support, school support, and  
13 friends' support, and that sort of information.

14 Q Do you agree that transgender patients  
15 also have an alternative medical plan that would  
16 involve just counseling?

17 A The treatment for transgender  
18 individuals varies greatly, and some of my  
19 patients ultimately have done well with counseling  
20 and just social transition.

21 Q Have you had any patients participate  
22 in just counseling without engaging in social

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1 transition?

2 A I can't think of anyone in particular.  
3 Typically, in order for a patient to come to me,  
4 they have some desire of the social transition  
5 because they need the hormones to be able to  
6 display their signs of their gender. So I have a  
7 biased patient population in that way.

8 Q Are you aware of a treatment approach  
9 that's kind of been described as a  
10 "let's-wait-and-see approach"?

11 A Yes.

12 Q And do you have an opinion on that  
13 medical approach to treating transgender  
14 individuals?

15 A In general, I think the wait-and-see  
16 discusses seeing what happens at puberty; and  
17 typically, since I'm seeing the patients at  
18 puberty who are still displaying the gender  
19 identity, that's been my experience, that those  
20 patients are now coming to me for treatment of  
21 their dysphoria.

22 Q Do you agree that the wait-and-see

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1 approach can be an appropriate medical treatment?

2 MR. BLOCK: Can I just object just in  
3 terms of the foundation about what you're  
4 referring to as the wait-and-see approach?

5 MR. CAPPS: I thought I'd done that  
6 when I asked her if she was aware of it.

7 Q What is your understanding of what I  
8 refer to as a "counseling" or sometimes referred  
9 to as a "wait-and see approach"? What is your  
10 understanding?

11 A In my experience -- well, in general,  
12 we're not making any permanent changes until a  
13 child has begun to have pubertal changes. I think  
14 the wait-and-see sometimes can be determined as  
15 just social changes or limited social changes, and  
16 then more definitive gender care once puberty has  
17 started and their gender identity has persisted.

18 Q In paragraph 25 of your report, we  
19 talked about the social transition plan; and in  
20 it, you said it can include allowing children to  
21 wear clothing, to cut or grow their hair, to use  
22 names and pronouns and restrooms and other

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1 sex-separated facilities in line with their gender  
2 identity. Do you see that?

3 A Yes.

4 Q The social transition that you're  
5 talking about, is that part of a medical treatment  
6 plan?

7 A It's not typically a part that I'm  
8 involved in, because most of the patients are  
9 coming to see me at the onset of puberty.

10 Q And whose plan, if anybody's, would  
11 that be -- that social transition be a part of?

12 A It's oftentimes something that's  
13 discussed with the mental health provider and the  
14 families.

15 Q And the social transition plan is used  
16 to address the treatment of gender dysphoria; is  
17 that correct?

18 A Yes.

19 Q And you would agree, then, that the use  
20 of restrooms that are in line with a transgender  
21 patient's gender identity instead of the sex  
22 designated at birth is one component of the social

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1 transition plan?

2 A Yes, it can be a part of that.

3 Q And that there are other components of  
4 the social transition plan that can be provided or  
5 recommended by a mental health provider to treat  
6 gender dysphoria?

7 A Yes.

8 Q I looked at Exhibit 1B, the WPATH  
9 standard of care guidelines, and I don't see in  
10 those guidelines where the standard of care refers  
11 to the use of restrooms in line with a transgender  
12 patient's gender identity instead of the sex  
13 recognized at birth. Can you tell me if the WPATH  
14 standards of care provide any guidance on the use  
15 of restrooms to treat gender dysphoria in  
16 transgender individuals?

17 A I'd have to review it again to look if  
18 there's specific mention about restroom use.

19 Q I'm going to give you that opportunity.

20 A (Witness reviewing document.)

21 MR. BLOCK: Jeremy, since it's a long  
22 document, can I help?



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1 MR. CAPPS: Yes, that's fine. I don't  
2 mind you saying where you think in the document it  
3 is.

4 MR. BLOCK: All right. So I'll  
5 identify the points; I'll refer to the pages.

6 So, you might want to look at page 68.  
7 There's one other page you might want to look at.

8 MR. CAPPS: Document.

9 A On page 17 there's a section about the  
10 social transition in early childhood, and it just  
11 refers to the safe and supportive environment for  
12 their transitioning, that maintaining a safe and  
13 supportive environment in their transitioning  
14 child -- for example, in school, peer group  
15 settings. It doesn't specifically say restrooms  
16 but in general the environment.

17 Q Right. So on page 17 of a -- of the  
18 WPATH "Social Transition In Early" -- I'm sorry.  
19 I'm going to start over.

20 On page 17 of the WPATH standards of  
21 care under the title "Social Transition in Early  
22 Childhood," there is a section at the bottom of

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1 the page that states, "If parents do allow their  
2 young child to make a gender role transition, they  
3 may need counseling to facilitate a positive  
4 experience for their child. For example, they may  
5 need support in using correct pronouns,  
6 maintaining a safe and supportive environment for  
7 their transitioning child (e.g. in school, peer  
8 group settings), and communicating with other  
9 people in their child's life."

10 Do you see that? Yes?

11 A Yes.

12 Q And that standard of care relates to  
13 the parents of a transgender child, correct?

14 A Yes.

15 Q And that standard of care does not  
16 state anything about the use of restrooms  
17 consistent with the child's expressed gender  
18 identity, correct?

19 A Not specifically.

20 Q And that standard of care does not  
21 relate to the use of a bathroom at a school --  
22 strike that. That standard of care -- strike

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1 that.

2           Anywhere else in the document that you  
3 believe the standard of care expressed by WPATH  
4 references restroom use for transgender  
5 individuals?

6           A     There's a section in applicability of  
7 the standards of care to people living in  
8 institutional environments on page 68. It says  
9 that, "Housing and shower/bathroom facilities for  
10 transsexual, transgender, and gender nonconforming  
11 people living in institutions should take into  
12 account their gender identity and role, physical  
13 status, dignity, and personal safety."

14          Q     So the WPATH standard of care that you  
15 just referenced relates to transsexual,  
16 transgender, and gender nonconforming people  
17 living in institutional environments such as  
18 prisons, or long-term health care facilities,  
19 correct?

20          A     Yes.

21          Q     WPATH does not have a standard of care  
22 related to the use of restrooms by transgender

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1 students at schools, correct?

2 A Not that I see.

3 Q In Exhibit 1C, which is the Endocrine  
4 Treatment -- Clinical Practice Guidelines of  
5 Gender-Dysphoric/Gender-Incongruent Persons -- do  
6 you see that?

7 A Yes.

8 Q And you relied on this document in  
9 coming to your opinions, correct?

10 A Yes.

11 Q Do the guidelines issued by the  
12 Endocrine Society refer to the use of the  
13 restrooms by a transgender person?

14 A Let me review. It's mostly discussing  
15 the medical treatment, and I don't think that  
16 there's a lot of discussion about social, but let  
17 me review it again.

18 I don't think there's a specific  
19 reference to the bathroom facility.

20 Q All right. So you would agree, then,  
21 that there are no guidelines issued by the  
22 Endocrine Society related to transgender students

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1 using restrooms consistent with their gender  
2 identity in the school?

3 MR. BLOCK: Objection.

4 MR. CAPPS: What's the objection?

5 MR. BLOCK: "Related to" versus  
6 "specifically mentioned."

7 Q Okay. You would agree that the  
8 Endocrine Society has not issued clinical  
9 guidelines for the use of restroom facilities for  
10 transgender students consistent with their gender  
11 identity in schools?

12 A I believe there's a pediatric endocrine  
13 statement in support of transgender care, but I  
14 don't know if it specifically states restrooms.

15 Q What I'm asking is, in the guidelines  
16 that you relied on, you would agree that there is  
17 no guideline on the use of a restroom by a  
18 transgender student that is consistent with a  
19 student's gender identity in school?

20 A Yes, there's no specific reference to  
21 "restroom."

22 Q If, as part of the treatment plan for

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1 gender dysphoria, a transgender student wants to  
2 use the restroom that is consistent with their  
3 recognized sex at birth, is that medically  
4 appropriate?

5 A Say that again.

6 Q If a transgender student wants to use  
7 the restroom that is consistent with their  
8 recognized sex at birth, is that medically  
9 appropriate?

10 A Yes.

11 Q Are you aware of any studies that show  
12 how many transgender students want to use --  
13 continue to use the restroom consistent with their  
14 recognized sex at birth?

15 A I'm not aware of any studies that have  
16 looked at that.

17 Q Are you aware of whether there has been  
18 any research or studies into whether transgender  
19 students want -- who want to use the restroom  
20 consistent with their recognized sex at birth?

21 A I'm not aware of any studies.

22 Q If a transgender student wants to use a

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1 single user restroom at school instead of the  
2 restroom that is consistent with their gender  
3 identity, is that medically appropriate?

4 A If that's the patient's choice, yes.

5 Q Are you aware of whether there have  
6 been any studies or research into how many  
7 transgender students would prefer to use a single  
8 user restroom instead of the restroom that is  
9 consistent with their gender identity?

10 A I'm not aware of any studies.

11 Q Are you aware of any scientific or  
12 medical research studies into the effect of not  
13 permitting a transgender student to use the  
14 bathroom consistent with his gender identity in  
15 school?

16 A Not specifically looking at the  
17 bathroom.

18 Q You would agree that if a student,  
19 transgender student, is not permitted to use the  
20 bathroom consistent with his gender identity in  
21 school, there are other methods of social  
22 transition that can be used to help treat that

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1 student's gender dysphoria?

2 A There are a number of components that  
3 go into the social transition, and what's required  
4 is individual for each person.

5 Q Are you aware of any medical research  
6 or studies into the effect of implementing a plan  
7 of gender-affirming care that allows a transgender  
8 student to wear the clothing that he wants, to  
9 change his name to be consistent with his gender  
10 identity, and to be referred to with pronouns  
11 consistent with his gender identity but not be  
12 permitted to use a restroom consistent with his  
13 gender identity at school?

14 A I don't think that any of the studies  
15 have looked at that precise situation. There are  
16 studies that have looked at the effect of social  
17 transition on transgender health, but I don't know  
18 which specific components they addressed.

19 Q Have you ever treated a transgender  
20 student that was not permitted to use the restroom  
21 that corresponded with the student's gender  
22 identity at school?



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1 A Yes.

2 Q How many students?

3 A I couldn't estimate. We speak in  
4 general, but I don't always discuss specifically  
5 what bathrooms they're using.

6 Q And in those students that you treated,  
7 was there a continued social transition plan to  
8 address gender dysphoria?

9 A Yes.

10 Q In those patients that you were  
11 treating, did you see a lessening of the patient's  
12 gender dysphoria?

13 A Yes.

14 Q And in those patients, you saw an  
15 improvement in their gender dysphoria, correct?

16 A Yes. Most of my patients who have  
17 undergone some social transition relate that it  
18 leads to some gender dysphoria improvement.

19 Q Are you aware of any objective tests or  
20 diagnostic tools that measure the distress in a  
21 transgender student who is not able to use the  
22 restroom consistent with his gender identity in

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1 school?

2 A No.

3 Q Are you aware of any scientific studies  
4 or empirical data that measures the impact or  
5 effect on gender dysphoria by permitting  
6 transgender students to use a single user restroom  
7 at school?

8 A No.

9 MR. CAPPS: Can we just take a minute?

10 MR. BLOCK: Yes. Sure.

11 MS. COOPER: Just letting you know I'm  
12 going to drop off right now.

13 (A recess was taken.)

14 BY MR. CAPPS: (Continuing)

15 Q So if we look at paragraphs 27 and 28  
16 of your report, in these paragraphs, you're  
17 outlining your opinions on the use of  
18 puberty-blocking hormone treatment; is that  
19 correct?

20 A Yes.

21 Q And that's what you do in your  
22 practice; is that correct?

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1           A     Yes. That's one of the components of  
2 what I can do.

3           Q     And you provide this medical treatment  
4 to transgender adolescents in order to address  
5 their gender dysphoria; is that correct?

6           A     Yes.

7           Q     And when you provide the  
8 puberty-blocking hormone treatment, do you see an  
9 improvement in the transgender adolescent's gender  
10 dysphoria?

11          A     Yes. In some patients, with pubertal  
12 suppression alone, I see improvement in their  
13 dysphoria.

14          Q     And are there patients that you have  
15 treated that you have not seen an improvement in  
16 gender dysphoria?

17          A     Yes. Some persist with gender  
18 dysphoria.

19          Q     Have you seen transgender patients  
20 whose gender dysphoria did not improve in any  
21 measurable way despite all of the medical  
22 treatment that was provided to the patient?

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1           A     I have had patients who continue to  
2 have some dysphoria, but in general they have  
3 improvements in some way.

4           Q     And then in paragraphs 29 and 30 and, I  
5 guess, 31, you talk about providing  
6 gender-affirming hormone therapy?

7           A     Yes.

8           Q     And who makes the decision whether  
9 that's medically necessary and appropriate?

10          A     I discuss with the patient and their  
11 guardians and their mental health provider about  
12 whether we should proceed with that treatment.

13          Q     And what does gender-affirming hormone  
14 therapy do, again?

15          A     It causes the secondary sex  
16 characteristics that align with their gender  
17 identity. So it's using testosterone to  
18 masculinize the body of a person who identifies as  
19 male or using estrogen to feminize the body for a  
20 person who identifies as female.

21          Q     And is that treatment used to address  
22 the gender dysphoria in transgender individuals?

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1 A Yes.

2 Q So you use gender-affirming hormones to  
3 treat the distress of a transgender adolescent?

4 A Yes.

5 Q In paragraph 33 you also state that,  
6 "Under WPATH standards of care, boys and girls who  
7 are transgender may also receive medically  
8 necessary chest reconstructive surgeries once they  
9 turn 16 . . . ."

10 Do you see that?

11 A Yes.

12 Q Does the Endocrine Society have  
13 guidelines on chest reconstructive surgery?

14 A Let me review again. I think they have  
15 a section on surgery, yes. They have a section on  
16 surgery. I don't know specifically --

17 MS. SAFSTROM: Is it all right to share  
18 a page number again?

19 MR. CAPPS: Yeah, I think we are  
20 looking at the same thing. I'm looking at 3893,  
21 but if there was another section --

22 A So there's breast surgery. I don't

1 know if it specifically has an age that they refer  
2 to.

3 MS. SAFSTROM: I believe there's some  
4 additional information on 3872.

5 A On 3872, 5.5, "We suggest that  
6 clinicians delay gender-affirming genital surgery  
7 . . . until the patient at least is 18 years," or  
8 older." That's for genital.

9 MR. BLOCK: Before you get to the 5.6  
10 on that same page.

11 MS. SAFSTROM: 3872.

12 A 3894, "The most important masculinizing  
13 for the transgender male is mastectomy . . . ."  
14 And then later it says, "Because some transgender  
15 male adolescents present after significant breast  
16 development has occurred, they may also consider  
17 mastectomy 2 years after they begin androgen  
18 therapy and before the age of 18." (As read.)

19 Q So the guidelines provide that  
20 clinicians should provide individualized treatment  
21 in those cases; is that correct?

22 A Yes.

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1 Q So what is chest reconstructive  
2 surgery?

3 A So, that can either be in transgender  
4 males where they have a mastectomy and all the  
5 breast tissue is removed and reconstructed to  
6 appear more masculine, or in transgender females  
7 it can include breast augmentation.

8 Q Okay. In the situation where there is  
9 a mastectomy for a transgender male, is there --  
10 does that procedure create any biological changes  
11 in the transgender individual?

12 A It's just physical changes.

13 Q And is that treatment part of a medical  
14 treatment plan to address the gender dysphoria or  
15 distress associated with gender identity?

16 A It can be, but it is all determined by  
17 the individual, whether that's something that they  
18 desire.

19 Q And then you state in paragraph 33 that  
20 under the WPATH standards of care there can be  
21 genital surgery once they reach the age of  
22 majority?

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1 A Yes.

2 Q What does that mean?

3 A There are genital surgeries that can be  
4 performed to make the external genitalia more  
5 similar to the gender identity, and then there are  
6 surgeries that can remove the internal genitalia,  
7 or the gonads, the testes or the ovaries, to  
8 prevent production of those hormones.

9 Q And so under the WPATH standards of  
10 care, surgical gender reassignment procedures  
11 cannot be completed until the transgender  
12 individual is at least 18 years of age, correct?

13 A Yes. In general, any surgical  
14 procedure that would affect the fertility is held  
15 off until 18.

16 Q I assume as part of your practice you  
17 don't perform surgery; is that correct?

18 A Yes. I don't.

19 Q So make sure I've got it clear. So if  
20 you have -- if a transgender boy has chest  
21 reconstructive surgery, they still have the female  
22 genitalia in place; is that correct?



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1           A     Yes.

2           Q     I think you told me that in the five  
3 years that you've been treating transgender  
4 patients you have had some patients reach the age  
5 of majority?

6           A     Yes.

7           Q     And have any of those patients elected  
8 to undergo genital surgery?

9           A     Yes.

10          Q     How many?

11          A     I can think of two.

12          Q     And did you continue to see them after  
13 the surgical genital procedure?

14          A     Yes.

15          Q     What was your role?

16          A     Continuing to provide hormone . . .

17          Q     And at that time was the hormone  
18 therapy that you provided, providing for gender  
19 dysphoria, or was it for some other purpose?

20          A     With one of the patients, her gonads  
21 were removed; and you, therefore, have to receive  
22 sex hormones of some sort to maintain good bone

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1 density and health. So it was medically required  
2 to provide estrogen.

3 Q What about the other case?

4 A The other case was a transgender male,  
5 and -- and I don't recall if he had his ovaries  
6 removed, but he was continuing the testosterone to  
7 relieve gender dysphoria, because -- in order to  
8 continue to have masculinization, and for the  
9 masculinization, you need to continue the  
10 testosterone.

11 Q What happens if you stop taking  
12 testosterone?

13 A Over time, some of the physical changes  
14 will slowly revert back to more feminine features,  
15 but some of the changes are permanent and would  
16 remain.

17 Q Have you seen any studies or research  
18 which show that some transgender adolescents  
19 return to a gender identity that is consistent  
20 with their sex at birth?

21 A There've been case reports, but I'm not  
22 aware of any major studies.

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1           Q     Have you taken those case reports into  
2 consideration when you treat transgender  
3 individuals?

4           A     I've not had any patients that have  
5 desisted or seen that in my clinical practice.

6           Q     Other than in gender identity issues,  
7 are there any other medical diagnoses that use the  
8 criteria "persistently, consistently, and  
9 insistently" for the medical diagnosis?

10          A     Not that I'm aware of.

11          Q     Other than in gender identity, are  
12 there any other mental health diagnoses that use  
13 the criteria "persistently, consistently, and  
14 insistently" as a basis to make a mental health  
15 diagnosis?

16          A     Not that I'm aware of, but I'm not a  
17 mental health provider.

18          Q     In paragraph 36 of your report, you  
19 state that transgender youth are at a high risk --  
20 are a high risk population, with increased risk  
21 for poor mental health outcomes, including  
22 suicide. Do you see that?

## Deposition - Examination

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1           A     Yes.

2           Q     What is your basis for that opinion?

3           A     There are multiple studies looking at  
4     mental health in adolescents.  And in the LGBTQ  
5     population, there is increased risk for those, and  
6     there have been studies that have stated the  
7     increased prevalence of suicide in transgender  
8     youth.

9           Q     Do you know whether the suicide rate in  
10    transgender youth is greater or less than that in  
11    autistic youth?

12          A     I'm not sure.

13          Q     Are there any studies that separate the  
14    suicide rate in transgender individuals from the  
15    underlying mental health conditions --

16                MR. BLOCK:  Objection.

17          Q     -- sorry -- that the individual may  
18    suffer from?

19          A     Not that I'm aware of.  There are  
20    studies looking at transgender youth who have  
21    undergone transition, and their degree of mental  
22    health disorders are decreased back to their

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1 peer-adjusted -- similar to their peers, their  
2 non-transgender peers.

3 Q This is kind of an inarticulate  
4 question, I guess. But what I'm wondering is, is  
5 there a way to determine whether a transgender  
6 individual committed suicide because of gender  
7 dysphoria versus maybe bipolar disorder?

8 A I don't know if any of them  
9 specifically look at the other conditions.

10 Q That's what I mean. Is there any way  
11 to determine whether a suicide that was committed  
12 by a transgender individual was related to the  
13 gender dysphoria versus depression or bipolar or  
14 some other underlying mental health condition?

15 MR. BLOCK: Are you asking for the  
16 individual or for the population studies?

17 MR. CAPPS: Population studies.

18 A I'm not aware of specific studies on  
19 that.

20 Q In paragraph 39 of your report -- in  
21 paragraph 39 of your report, you state that some  
22 students, particularly those who are early in

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1 transition, "feel safer and more comfortable using  
2 a private restroom, forcing transgender students  
3 to do so can be harmful to their well-being by  
4 calling them out as different or rejecting their  
5 gender."

6 What do you base that opinion on?

7 A I have patients who, they don't want to  
8 be seen as the transgender boy or the transgender  
9 girl. They just want to be seen as a boy or a  
10 girl. And so if they had to go to their own  
11 special restroom, that just is another way of kind  
12 of saying that they aren't a boy or not completely  
13 affirming their gender identity.

14 Q Are there any studies that show that it  
15 can be harmful to their well-being that you're  
16 aware of?

17 A Just the studies that have shown that  
18 there's improvement in well-being if socially  
19 supported and with full support and full  
20 affirmation of their gender.

21 Q And so "full affirmation" means if the  
22 student wants to use the restroom, then the

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1 medical treatment plan is the student should use  
2 the restroom?

3 A The studies, I don't think, have  
4 specifically looked at the restroom, but in  
5 general, fully affirming the patient's identity  
6 and supporting it.

7 (Penn Deposition Exhibit 2 was marked  
8 for identification and is attached.)

9 Q Let me show you Exhibit 2 to your  
10 deposition. So Exhibit 2 is your rebuttal report  
11 that you submitted; is that correct?

12 A Yes.

13 Q All right. And you state that the  
14 American College of Pediatricians is a fringe  
15 organization?

16 A Yes.

17 Q And on what basis do you state that?

18 A It's a small medical society that  
19 generally disagrees with the mainstream pediatric  
20 and the Academy -- American Academy of Pediatrics'  
21 beliefs.

22 Q And do you know what the criteria is

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1 for being a member in the American College of  
2 Pediatricians?

3 A No.

4 Q Have you reviewed any research studies  
5 for articles published by the American College of  
6 Pediatricians?

7 A I've seen some of their statements  
8 before, but I don't know -- I can't recall the  
9 specific -- or any specific studies that I've seen  
10 of theirs.

11 Q Have you reviewed any publications by  
12 Dr. Van Meter?

13 A I recently saw a letter to the editor  
14 that he had published.

15 Q And did you look at the underlying data  
16 to that letter, the underlying citations that were  
17 in the letter to the editor?

18 A No.

19 Q Have you taken into consideration any  
20 of Dr. Van Meter's publications in the treatment  
21 of transgender adolescents?

22 A No, none of his specific publications



## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

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1 that I'm aware of.

2 Q Are you aware of whether WPATH  
3 advocated for the American Psychiatric Association  
4 to eliminate a gender dysphoria diagnosis in  
5 DSM-V?

6 A No.

7 Q You're not aware of whether that  
8 occurred or not?

9 A No.

10 Q You're aware that the Endocrine Society  
11 revised its guidelines in 2017; is that correct?

12 A Yes.

13 Q Did the revisions in 2017 from the  
14 original 2009 guidelines change the manner in  
15 which you provided medical treatment to  
16 transgender adolescents?

17 A No. The practice didn't change very  
18 much. There were some lessened restrictions about  
19 laboratory follow-up, but my practice hasn't  
20 changed.

21 Q And do you know whether the revised  
22 2017 guidelines added to or changed the social

## Deposition - Examination

Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

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1 transition guidelines from 2009 -- strike that.

2 Maybe I could ask this: Were there  
3 social transition guidelines in the 2009 version  
4 of the Endocrine Society guidelines?

5 A I think there was a brief mention of  
6 it, but I don't remember the specifics of it, no.

7 Q So would it be true that the 2017  
8 revised guidelines are different as it relates to  
9 social transition for transgender individuals?

10 A I don't think that they significantly  
11 differ. It was in general that the social  
12 transition should be individual and supported  
13 the -- necessary for that individual.

14 MR. CAPPS: One second. I'm going to  
15 look through my notes.

16 Dr. Penn, thank you very much. Those  
17 are all the questions I have. I appreciate your  
18 patience.

19 MR. BLOCK: We don't have any questions  
20 either, and she'll review her transcript.

21 MR. CAPPS: I want to order expedited  
22 if I can.

## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

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1 THE COURT REPORTER: How expedited?

2 MR. CAPPS: As expedited as your  
3 schedule allows.

4 (A discussion was held off the record.)

5 THE COURT REPORTER: Expedited as well?

6 MR. BLOCK: Yes.

7 AND FURTHER THIS WITNESS SAITH NOT

8 (Off the record at 1:04 p.m.)

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Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

1 COMMONWEALTH OF VIRGINIA,

2 \_\_\_\_\_, to wit:

3

4 I, Melinda Penn, M.D., do hereby certify  
5 that I have read the foregoing pages of typewritten  
6 matter numbered 1 through 90, and that the same  
7 contains a true and correct transcription of the  
8 deposition given by me on the 14th day of March,  
9 2019, with the exception of the noted corrections,  
10 to the best of my knowledge and belief.

11

12 \_\_\_\_\_

13 Date

Melinda Penn, M.D.

14

15

16 Subscribed and sworn to before me this  
17 \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

18

19

\_\_\_\_\_

20

Notary Public

21 My commission expires \_\_\_\_\_

22 Notary Registration Number: \_\_\_\_\_

## Transcript of Melinda Penn, M.D.

Conducted on March 14, 2019

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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Helen B. Yarbrough, Registered

3 Professional Reporter, Certified Court Reporter,

4 and Notary Public, the officer before whom the

5 foregoing deposition was taken, do hereby certify

6 that the foregoing transcript is a true and

7 correct record of the testimony given, to the best

8 of my ability; that said testimony was taken by me

9 stenographically and thereafter reduced to

10 typewriting under my supervision; that reading and

11 signing was requested; and that I am neither

12 counsel for, nor related to, nor employed by any

13 of the parties to this case and have no interest,


14 financial or otherwise, in its outcome.

15 IN WITNESS WHEREOF, I have hereunto set my

16 hand and affixed my notarial seal this 17th day of

17 March 2019.

18



19

Helen B. Yarbrough, RPR, CCR  
VCRA Certification #0313016

20

21 My Commission Expires:

July 31, 2021

22

Notary Registration Number: 158897

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# Gender Dysphoria

In this chapter, there is one overarching diagnosis of gender dysphoria, with separate developmentally appropriate criteria sets for children and for adolescents and adults. The area of sex and gender is highly controversial and has led to a proliferation of terms whose meanings vary over time and within and between disciplines. An additional source of confusion is that in English "sex" connotes both male/female and sexuality. This chapter employs constructs and terms as they are widely used by clinicians from various disciplines with specialization in this area. In this chapter, *sex* and *sexual* refer to the biological indicators of male and female (understood in the context of reproductive capacity), such as in sex chromosomes, gonads, sex hormones, and nonambiguous internal and external genitalia. Disorders of sex development denote conditions of inborn somatic deviations of the reproductive tract from the norm and/or discrepancies among the biological indicators of male and female. *Cross-sex* hormone treatment denotes the use of feminizing hormones in an individual assigned male at birth based on traditional biological indicators or the use of masculinizing hormones in an individual assigned female at birth.

The need to introduce the term *gender* arose with the realization that for individuals with conflicting or ambiguous biological indicators of sex (i.e., "intersex"), the lived role in society and/or the identification as male or female could not be uniformly associated with or predicted from the biological indicators and, later, that some individuals develop an identity as female or male at variance with their uniform set of classical biological indicators. Thus, *gender* is used to denote the public (and usually legally recognized) lived role as boy or girl, man or woman, but, in contrast to certain social constructionist theories, biological factors are seen as contributing, in interaction with social and psychological factors, to gender development. *Gender assignment* refers to the initial assignment as male or female. This occurs usually at birth and, thereby, yields the "natal gender." *Gender-atypical* refers to somatic features or behaviors that are not typical (in a statistical sense) of individuals with the same assigned gender in a given society and historical era; for behavior, *gender-nonconforming* is an alternative descriptive term. *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. *Gender dysphoria* as a general descriptive term refers to an individual's affective/cognitive discontent with the assigned gender but is more specifically defined when used as a diagnostic category. *Transgender* refers to the broad spectrum of individuals who transiently or persistently identify with a gender different from their natal gender. *Transsexual* denotes an individual who seeks, or has undergone, a social transition from male to female or female to male, which in many, but not all, cases also involves a somatic transition by cross-sex hormone treatment and genital surgery (*sex reassignment surgery*).

*Gender dysphoria* refers to the distress that may accompany the incongruence between one's experienced or expressed gender and one's assigned gender. Although not all individuals will experience distress as a result of such incongruence, many are distressed if the desired physical interventions by means of hormones and/or surgery are not available. The current term is more descriptive than the previous DSM-IV term *gender identity disorder* and focuses on dysphoria as the clinical problem, not identity per se.



## Gender Dysphoria

### Diagnostic Criteria

#### Gender Dysphoria in Children

**302.6 (F64.2)**

A. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least six of the following (one of which must be Criterion A1):

1. A strong desire to be of the other gender or an insistence that one is the other gender (or some alternative gender different from one's assigned gender).
2. In boys (assigned gender), a strong preference for cross-dressing or simulating female attire; or in girls (assigned gender), a strong preference for wearing only typical masculine clothing and a strong resistance to the wearing of typical feminine clothing.
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. In boys (assigned gender), a strong rejection of typically masculine toys, games, and activities and a strong avoidance of rough-and-tumble play; or in girls (assigned gender), a strong rejection of typically feminine toys, games, and activities.
7. A strong dislike of one's sexual anatomy.
8. A strong desire for the primary and/or secondary sex characteristics that match one's experienced gender.

B. The condition is associated with clinically significant distress or impairment in social, school, or other important areas of functioning.

#### Specify if:

**With a disorder of sex development** (e.g., a congenital adrenogenital disorder such as 255.2 [E25.0] congenital adrenal hyperplasia or 259.50 [E34.50] androgen insensitivity syndrome).

**Coding note:** Code the disorder of sex development as well as gender dysphoria.

#### Gender Dysphoria in Adolescents and Adults

**302.85 (F64.1)**

A. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least two of the following:

1. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics).
2. A strong desire to be rid of one's primary and/or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated 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 (or some alternative gender different from one's assigned gender).
5. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
6. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).

B. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.

#### Specify if:

**With a disorder of sex development** (e.g., a congenital adrenogenital disorder such as 255.2 [E25.0] congenital adrenal hyperplasia or 259.50 [E34.50] androgen insensitivity syndrome).

**Coding note:** Code the disorder of sex development as well as gender dysphoria.

#### Specify if:

**Posttransition:** The individual has transitioned to full-time living in the desired gender (with or without legalization of gender change) and has undergone (or is preparing to have) at least one cross-sex medical procedure or treatment regimen—namely, regular cross-sex hormone treatment or gender reassignment surgery confirming the desired gender (e.g., penectomy, vaginoplasty in a natal male; mastectomy or phalloplasty in a natal female).

### Specifiers

The posttransition specifier may be used in the context of continuing treatment procedures that serve to support the new gender assignment.

### Diagnostic Features

Individuals with gender dysphoria have a marked incongruence between the gender they have been assigned to (usually at birth, referred to as *natal gender*) and their experienced/expressed gender. This discrepancy is the core component of the diagnosis. There must also be evidence of distress about this incongruence. Experienced gender may include alternative gender identities beyond binary stereotypes. Experienced gender may include a limited to a desire to simply be of the other gender, but may include a desire to be of an alternative gender, provided that it differs from the individual's assigned gender.

Gender dysphoria manifests itself differently in different age groups. Prepubertal natal girls with gender dysphoria may express the wish to be a boy, assert they are a boy, or assert they will grow up to be a man. They prefer boys' clothing and hairstyles, are often perceived by strangers as boys, and may ask to be called by a boy's name. Usually, they display intense negative reactions to parental attempts to have them wear dresses or other feminine attire. Some may refuse to attend school or social events where such clothes are required. These girls may demonstrate marked cross-gender identification in role-playing, dreams, and fantasies. Contact sports, rough-and-tumble play, traditional boyhood games, and boys as playmates are most often preferred. They show little interest in stereotypically feminine toys (e.g., dolls) or activities (e.g., feminine dress-up or role-play). Occasionally, they refuse to urinate in a sitting position. Some natal girls may express a desire to have a penis or claim to have a penis or that they will grow one when older. They may also state that they do not want to develop breasts or menstruate.

Prepubertal natal boys with gender dysphoria may express the wish to be a girl or assert they are a girl or that they will grow up to be a woman. They have a preference for dressing in girls' or women's clothes or may improvise clothing from available materials (e.g., using towels, aprons, and scarves for long hair or skirts). These children may role-play female figures (e.g., playing "mother") and often are intensely interested in female fantasy figures. Traditional feminine activities, stereotypical games, and pastimes (e.g., "playing house"; drawing feminine pictures; watching television or videos of favorite female characters) are most often preferred. Stereotypical female-type dolls (e.g., Barbie) are often favorite toys, and girls are their preferred playmates. They avoid rough-and-tumble play and competitive sports and have little interest in stereotypically masculine toys (e.g., cars, trucks). Some may pretend not to have a penis and insist on sitting to urinate. More



From: "Amy Bergh" <abergh@gc.k12.va.us>  
Date: October 28, 2014 7:18:05 PM  
To: "Nate Collins" <ncollins@gc.k12.va.us>  
Subject: **Gavin and** [REDACTED]

Attachments:

Today at the end of B4 Gavin Grimm and [REDACTED] stood up and began yelling at each other across their tables. They were mutually clearly ready to physically fight. As near as I could tell it had something to do with Gavin using the boys restroom today. Both students were visibly upset and cursing at each other stating they didn't have to put up with this "fucking shit" and other similar comments. I don't remember exact comments but something to the effect that [REDACTED] didn't believe that Gavin should use the boys room because he we a girl and Gavin stating that he didn't have to put up with people saying negative things. They were equal partners in escalating the situation.

I yelled at them to stop several times and then sent Gavin to Clark Barkley's class to wait for me and took [REDACTED] to my office hallway.

I asked [REDACTED] what had happened. He stated that he had anger issues. He said something to the effect that he had asked Gavin's brother about seeing his sister going into the boys restroom. [REDACTED] swore he did not know that Gavin was transgender.

I then asked Gavin what had happened and Gavin said that [REDACTED] knew all about it and was just saying things to upset him.

Other students sitting around them include:

[REDACTED] - NJROTC student and probably reliable

[REDACTED] - Probably reliable

[REDACTED] - NOT reliable

-Amy Bergh

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Newport News Division

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GAVIN GRIMM,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO.
	)	4:15cv54
v.	)	
	)	
GLOUCESTER COUNTY SCHOOL	)	
BOARD, et al.,	)	
	)	
Defendants.	)	

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TRANSCRIPT OF PROCEEDINGS

Norfolk, Virginia

July 23, 2019

BEFORE: THE HONORABLE ARENDA WRIGHT ALLEN  
United States District Judge

APPEARANCES:

AMERICAN CIVIL LIBERTIES UNION OF VIRGINIA

By: Nicole G. Tortoriello  
Eden B. Heilman  
Jennifer M. Safstrom  
Joshua A. Block  
Shayna Medley-Warsoff  
Counsel for the Plaintiff

HARMON CLAYTOR CORRIGAN & WELLMAN

By: David P. Corrigan  
Jeremy D. Capps  
Counsel for Gloucester County School Board

1 (Hearing commenced at 9:04 a.m.)

2 THE CLERK: Gavin Grimm versus Gloucester County  
3 School Board, civil case number 4:15cv54.

4 Mr. Block, is the plaintiff ready to proceed?

5 MR. BLOCK: Yes.

6 THE CLERK: Mr. Corrigan and Mr. Capps, is the  
7 defendant ready to proceed?

8 MR. CORRIGAN: Yes, we are.

9 THE COURT: All right. Gentlemen, it's good to see  
10 you all.

11 Mr. Block, if you can please introduce your team to  
12 the Court, I'd appreciate it.

13 MR. BLOCK: Sure. My name is Joshua Block. I  
14 represent Gavin Grimm from the ACLU. This is Mr. Grimm with  
15 us today. This is my co-counsel, Shayna Medley.

16 THE COURT: Good to meet you.

17 MR. BLOCK: This is my co-counsel, Eden Heilman.

18 THE COURT: Good to meet you, as well.

19 MR. BLOCK: And Jennifer Safstrom and Nicole  
20 Tortoriello.

21 THE COURT: It's good to meet you all. Thank you  
22 for being here.

23 Then Mr. Corrigan, is it?

24 MR. CORRIGAN: Yes, ma'am.

25 THE COURT: That's mister, who is with you?

1 MR. CORRIGAN: Mr. Jeremy Capps.

2 THE COURT: Mr. Capps, it's good to meet you, as  
3 well.

4 MR. CAPPS: Yes, ma'am. Thank you.

5 THE COURT: All right. We are here on the  
6 cross-motions for summary judgment and a motion to strike,  
7 and as I think we e-mailed you guys regarding the motion to  
8 strike, I'd like to take that up first. I'm going to give  
9 the Board first 10 minutes, and then Mr. Grimm 10 minutes  
10 thereafter.

11 Then regarding the two summary judgments, we did  
12 want to take up the Title IX first, and then the equal  
13 protection clause. We are going to start with the  
14 plaintiff, 30 minutes; defendant, 30 minutes; plaintiff  
15 rebuttal; and then defendant rebuttal. So that's the order  
16 that I'd like to hear the argument.

17 All right. So we can start with the motion to  
18 strike.

19 MR. CORRIGAN: Your Honor, David Corrigan on behalf  
20 of the Gloucester County School Board. We filed the motion  
21 to strike and exclude certain exhibits because the exhibits  
22 do not comply with the Court's order or Rule 26 or otherwise  
23 improper.

24 There are four categories of exhibits or evidence  
25 we seek to exclude: First, the business records of Dr. Lisa

1 Griffin, Dr. Hope Sherie, and Dr. Melinda Penn; second, the  
2 To Whom It May Concern, the treatment documentation letter,  
3 the hormone recommendation letter from Dr. Griffin, as well  
4 as To Whom It May Concern letter from Dr. Sherie, and a  
5 letter from Eva Abel; third, the WPATH standards of care,  
6 the Endocrine Society guidelines, the amicus briefs and all  
7 policy statements; and, fourth, the statements made in  
8 February 2019 at a public hearing by counsel for the  
9 Gloucester County School Board. These issues have been  
10 thoroughly briefed, and we rely on that briefing, and I will  
11 just hit the highlights.

12 Dr. Penn was disclosed to offer opinions on the  
13 standard of care for treating individuals with gender  
14 dysphoria. She did not give testimony or have her expert  
15 report specifically related to this plaintiff. No expert  
16 was timely disclosed, offer opinions regarding the  
17 plaintiff's diagnosis or treatment or causation or  
18 prognosis.

19 Rule 803(6) permits medical records to be  
20 introduced but does not absolve a party of obligation to  
21 comply with Rule 26(a)(2)(C), which is the rule regarding  
22 testifying experts in which this Court has an order in place  
23 which says you must identify your testifying experts by a  
24 certain date, and that was done with respect to Dr. Penn  
25 doing -- with respect to her general opinions about the

1 treatment but not specific to Mr. Grimm, and there was no  
2 introduction of any testifying reports for any of the other  
3 people that we've mentioned.

4 The diagnosis of gender dysphoria is an opinion and  
5 so are the testimony about the treatments medically  
6 necessary to treat the condition and the causation of any  
7 damages specific to the use of restroom use. None of this  
8 has been provided by the plaintiff with respect to a  
9 testifying expert in a timely fashion.

10 Rule 902(11) requires the proponent of records to  
11 provide written notice of the intent to offer a record.  
12 That also was not done here, another basis for excluding the  
13 testimony. Neither Dr. Griffin nor Dr. Sherie was  
14 identified as an expert or as a healthcare provider who  
15 would provide expert testimony; therefore, they should not  
16 be allowed to offer any opinions, and their record should  
17 not be introduced as evidence of expert opinions. That's on  
18 diagnosis, medical necessity, causation, prognosis.

19 The records of Dr. Griffin and Dr. Sherie are also  
20 not admissible because the letters addressed To Whom It May  
21 Concern are not records prepared for regular business  
22 purposes. We cite cases for this concept, the idea being in  
23 physicians' records, you see insurance information and notes  
24 taken during a visit and things of that nature. But these  
25 types of To Whom It May Concern letters are not regularly

1 prepared for business purposes, and the cases say that they,  
2 therefore, should not be allowed. That's a back-up reason.  
3 That's not the primary reason they should not be allowed.  
4 The primary reason is what we have previously said about  
5 Rule 26.

6           The WPATH and Endocrine Society guidelines are not  
7 admissible as substantive evidence in this case. They are  
8 purely hearsay opinions. Not even Dr. Penn can make them  
9 admissible because she, like all other experts, cannot  
10 testify to others' opinions. As in every case, she can  
11 testify to what her opinions are, and she can say I relied  
12 on WPATH, Endocrine, and other things, but she can't say  
13 what those things say. So those guidelines are not  
14 admissible and cannot be made admissible even by Dr. Penn.

15           With respect to the settlement-related statements,  
16 which is the fourth category, there was a February 2019  
17 school board meeting. It was held after settlement  
18 conference with Judge Doug Miller. Plaintiff and  
19 plaintiff's counsel agreed to the process, including having  
20 a public hearing as part of that process. At the hearing I  
21 was the speaker, and I introduced the topic of what we were  
22 going to be talking about. It was all said in the interest  
23 of attempting to resolve the case, and nothing said was  
24 intended to be binding in terms of the substantive of the  
25 case, and the Gloucester County School Board itself did not

1 speak or vote.

2 To consider the 2019 statements in that hearing,  
3 when discussing events related to what happened back in  
4 2014, '15 and '16 is simply not relevant, and, more  
5 importantly, to consider this effort to resolve the case  
6 when determining the merits violates the purpose and spirit  
7 of Rule 408 which calls for things that are related to  
8 settlement not to be used against a party who is having a  
9 conversation about settlement.

10 So those are all the reasons that we would ask that  
11 the Court exclude the evidence. Thank you.

12 THE COURT: All right. Now, how is the statement,  
13 "I diagnosed Grimm with gender dysphoria" an expert opinion?

14 MR. CORRIGAN: Pardon?

15 THE COURT: How is the statement, "I diagnosed  
16 Grimm with gender dysphoria" an expert opinion? You don't  
17 have to agree with the wisdom of the diagnosis but isn't  
18 that a statement of fact?

19 MR. CORRIGAN: No, ma'am. It's a statement of  
20 opinion. Whether someone has that condition or not is not  
21 something that the normal lay person can testify to. It has  
22 to be something that someone with expertise to do that. So  
23 that would be an opinion, not a statement of fact. To say  
24 that he has identified as male, that he has claimed -- his  
25 statement is that my gender identity is male, they can say



1 that, but that doesn't make it a diagnosis, and the  
2 diagnosis is what is not present in the record.

3 THE COURT: Were the statements made at this public  
4 meeting following the settlement conference really  
5 statements made "during a compromise negotiation"?

6 MR. CORRIGAN: To say it was during a compromise  
7 negotiation would be not entirely accurate. It was in the  
8 context. As I said, the parties had agreed that the next  
9 step was going to be this public hearing, and in order for  
10 the proposal that was on the table to be brought forward, it  
11 needed to be introduced. So it was in that context, but I  
12 wouldn't say it met that specific definition.

13 THE COURT: Your answer is no?

14 MR. CORRIGAN: Not in that context, no.

15 THE COURT: All right, sir. Thank you very much.

16 Mr. Block, I'd like to hear from you, please.

17 MR. BLOCK: Thank you, Your Honor. The Board's  
18 motion to strike is all built around this flawed premise  
19 that we are using Gavin's medical records to show that it  
20 was medically necessary for him to use the boy's restroom at  
21 school. That is not something we have to prove, and that's  
22 not something we are trying to prove here.

23 All we are trying to do is document as a historical  
24 fact that the following four events occurred: Dr. Griffin  
25 diagnosed him with gender dysphoria. She gave him the

1 treatment documentation letter that's attached to his  
2 declaration. He had hormone therapy, and he had chest  
3 reconstruction surgery. These are statements of historical  
4 fact, not statements of expert opinion, and the reason why  
5 they are relevant has nothing to do with us proving it was  
6 medically necessary for him to use the restroom.

7           They are relevant for two reasons: The first is to  
8 respond to the Board's continued attempt to mischaracterize  
9 Gavin's claims as seeking to use the restrooms based solely  
10 on a self-declaration or gender identity. That's not true,  
11 and the Board knows that's not true. The Board admits that  
12 it received the treatment documentation letter from Gavin.  
13 Gavin didn't forge that letter.

14           The business records confirm that Dr. Griffin wrote  
15 it to him, and, therefore, he was seeking to use the  
16 restroom based not just on him strolling into the office and  
17 saying I want to use the boy's restroom. He had this  
18 documentation.

19           Whether the Board agrees or disagrees with the  
20 expert opinions in that documentation, we are simply  
21 establishing that this isn't just based on evaluation of one  
22 person's subjective claims of having a particular gender  
23 identity. The hormone therapy and surgery are relevant in  
24 order to respond to the Board's arguments that it assigned  
25 students to restrooms based on physiological sex

1 characteristics.

2           As a result of hormone therapy and surgery, Gavin  
3 has physiological and anatomical characteristics that align  
4 with his gender identity and not the sex assigned to him at  
5 birth. So if the Board isn't objecting to those four facts,  
6 then there is no reason to look at the medical records at  
7 all. We are not seeking to introduce them for any other  
8 purpose.

9           In fact, in reviewing the Board's answer, the Board  
10 actually admits in its answer that Gavin received a  
11 document that's -- yeah, that Gavin received a document  
12 entitled "Treatment documentation letter." So I think these  
13 are really just uncontroversial facts that we are not trying  
14 to use them for the reasons the Board is saying we are  
15 trying to use them.

16           To respond to some of the subsidiary points that we  
17 just heard, Rule 902(11), about giving notice of business  
18 records, my understanding is that's a notice before trial,  
19 not for purposes of a summary judgment hearing. And then  
20 even if we were wrong that these are records of statements  
21 of fact, not opinion, the Board's argument that business  
22 records under 803(6) have to be evaluated pursuant to 702  
23 for expert opinion, and then disclosed as expert testifying  
24 witnesses, they've identified one case saying that but  
25 that's very much the minority opinion.

1           The majority opinion is that these documents are  
2 evaluated for overall trustworthiness, and if they are  
3 overall trustworthy, you don't perform a second analysis.  
4 That makes sense because the disclosure requirements talk  
5 about testifying experts, and 803(6) business records are  
6 records that are produced regardless of whether the  
7 declarant is available to testify or not.

8           No one is being presented, besides Dr. Penn, for  
9 purposes of talking about the standards of care to provide  
10 expert testimony. And then the last thing I'd say is in our  
11 disclosures, we do disclose as fact witnesses all four of  
12 these witnesses, and we say they have information regarding  
13 his diagnosis.

14           So the fact that we consider his diagnosis to be a  
15 statement of fact opinion, and it is in our disclosures, I  
16 don't think there is any unfair surprise here. With respect  
17 To Who It May Concern letters not being trustworthy, the  
18 cases Mr. Corrigan cites are cases in which To Whom It May  
19 Concern letter was written subsequent to treatment at some  
20 later date for purpose of use in the litigation.

21           That's not what happened here. This is contemp --  
22 excuse me, at the same time that Dr. Griffin is treating  
23 Gavin, she is writing referral letters for hormone therapy,  
24 she's writing a carry letter for school. This is like a  
25 prescription. These aren't *post hoc* letters To Whom It May

1 Concern.

2           With respect to the WPATH standards and the  
3 Endocrine Society guidelines, Dr. Penn includes them as  
4 attachments to her expert testimony. She is testifying  
5 about the standards of care that pediatricians in the field  
6 follow that are endorsed by the American Academy of  
7 Pediatrics. Again, it's an uncontested fact that these are  
8 the standards that the American Academy of Pediatrics  
9 follows. The Board's expert witness disagrees with those  
10 standards, but the fact that these are the standards is just  
11 an admitted fact.

12           And then with respect to the remaining *amicus*  
13 briefs, we have simply attached them for the Court's  
14 convenience in an attorney declaration. We are not  
15 submitting them into evidence. They are just available for  
16 reference as the medical views of these organizations. Once  
17 again, whether or not the Board agrees with those  
18 organizations' views, the fact is that these are those  
19 organizations' views and that there are children across  
20 Virginia being treated in accordance with those protocols.

21           With regard to statements at the council meet at  
22 the hearing, there is no requirement that they had this  
23 public hearing. They could have agreed to any settlement  
24 agreement without going through that process. Ultimately, I  
25 don't think it's ultimately necessary to rule in our favor,

1 that I think on its face the policy violates Title IX and is  
2 insubstantially related to an important governmental  
3 interest.

4 If, however, we have to establish as a disputed  
5 fact that the Board's stated rationales are pretext, then I  
6 think they would be relevant at that stage. But in order  
7 for the Court to grant summary judgment in our favor, I  
8 don't think the Court has to consider it.

9 THE COURT: All right. Now, the first full  
10 paragraph of your second amended complaint states that  
11 Mr. Grimm's medical providers assisted him in transitioning  
12 "to living in accordance with his male identity as part of  
13 medically necessary treatment for gender dysphoria."

14 So my question is, are you or are you not asserting  
15 that Mr. Grimm's use of the boy's restroom was medically  
16 necessary?

17 MR. BLOCK: Well, we are asserting a couple of  
18 things. We are asserting that it was prescribed as his  
19 medically necessary treatment plan, but we are not  
20 asserting, you know, for the Court to find as a matter of  
21 fact that it was medically necessary.

22 THE COURT: All right. Thank you, Mr. Block.

23 Now if we could start with the Title IX, and we  
24 will hear from you. You have 20 to 30 minutes.

25 MR. BLOCK: Sure. Thank you, Your Honor. The

1 Court has already decided the fundamental legal questions in  
2 this case, and all that's left is to apply those legal  
3 principles to the undisputed summary judgment record. And  
4 although the Board says it disputes a lot of things, almost  
5 all of its disputes are legal disputes or objections to  
6 admissibility that are resolved by this Court, not by a  
7 finder of fact.

8           The Board doesn't actually produce any independent  
9 evidence from which a finder of fact could rule in its favor  
10 or contradict Gavin's testimony. The elements of a Title IX  
11 claim are that Gavin was at an educational program receiving  
12 federal financial assistance, that he was discriminated  
13 against on the basis of sex, and that he experienced harm.

14           The Board concedes it receives federal financial  
15 assistance, and this Court already ruled as a matter of law  
16 that a policy prohibiting transgender students from using  
17 restrooms that align with their gender identity  
18 discriminates against them on the basis of sex.

19           So the only factual question here is did Gavin  
20 suffer harm, and we have identified two forms of harm here:  
21 The first is the humiliation and stigma of having to use a  
22 restroom that is different from everyone else, and the  
23 second is the physical pain and discomfort of not being able  
24 to go to the bathroom when he needed to.

25           Now, those harms are detailed in excruciating

1 detail in his declaration. The Board hasn't presented any  
2 evidence to contradict them. In fact, the school principal  
3 testified that he could understand why Gavin felt that way.  
4 The Board does quibble with Gavin's competence to diagnose  
5 himself as having a UTI. I think it's the experience of a  
6 lot of people with a female sex assigned at birth, that they  
7 know when they have a UTI, and they don't need a doctor to  
8 tell them.

9 But even if we put that issue aside, the physical  
10 pain and discomfort of feeling like his bladder is going to  
11 burst is more than sufficient here. The Board's main  
12 argument is it's not enough that he felt humiliated, it's  
13 not enough that he felt that his bladder was going to burst,  
14 Gavin needs to provide expert testimony saying that it was  
15 medically necessary for him to use the restroom and that the  
16 exclusion interfered with his medically necessary treatment.

17 That certainly would be an additional type of harm,  
18 but it is just not the harm we are relying on for our  
19 claims. This isn't a case seeking hundreds of thousands of  
20 dollars in damages for acute psychiatric pain from  
21 interfering with his medical treatment. That is a case we  
22 could have pursued but decided not to.

23 So this is narrowly tailored to just be a case  
24 about the humiliation and stigma and the physical harm, and  
25 those injuries are more than sufficient to establish a Title



1 IX violation, and our request for nominal damages is a  
2 perfect remedy for that where harm has been experienced but  
3 it's difficult to prove.

4 I don't have any further things to offer unless the  
5 Court has questions.

6 THE COURT: Hold on for one second, sir.

7 What is the impact of the distance of the restrooms  
8 from the places where his classes were located? I've never  
9 been there so help me see what he had to experience when he  
10 was in class and then thereafter had to go to the bathroom  
11 and then thereafter return back to class so he could be  
12 there timely?

13 MR. BLOCK: Yeah, absolutely, Your Honor. To be  
14 clear, you know, we do think that the stigma of having to  
15 use separate facilities is by itself enough to constitute a  
16 Title IX violation, but in addition to that, we've attached  
17 as exhibits to the summary judgment motion a map of the  
18 school that the locations to the restrooms are notated there  
19 and that hasn't been disputed by the School Board.

20 The way that the high school is set up is there is  
21 four halls, A hall, B hall, C hall, D hall with the  
22 cafeteria near the center. Now, every single one of those  
23 halls, A, B, C, and D, all have a common boy's room, a  
24 common girl's room and a faculty restroom. But there is no  
25 single use or restroom available on B hall, C hall or D

1 hall. The nurse's office is in A hall, and one of the  
2 single user restrooms is located very close to the nurse's  
3 office. And then the two other restrooms are located in the  
4 cafeteria area near the center of the building.

5           So we know not just from looking at the map that  
6 that is inconvenient to access, but we actually have  
7 complaints from faculty at Gloucester High School who were  
8 on C hall where when the school initially considered using  
9 one of the faculty restrooms in C hall and changing it into  
10 a single user restroom, the faculty complained, and they  
11 said we don't have time to use the bathroom if it's not  
12 located on C hall between classes. They said we'd have to  
13 avoid using the restroom for several hours a day, and that's  
14 very difficult for anyone to do without concentrating.

15           Of course, when we asked the school principal,  
16 well, wouldn't those same concerns apply to Gavin, and he  
17 said, yes, they would. The difference is when a teacher has  
18 to use the bathroom, the whole class misses class, but when  
19 one person has to use the bathroom, only that one person has  
20 to miss class.

21           That's an inappropriate answer for a school  
22 principal who has to juggle those competing interests, but  
23 it doesn't change the fact that by preventing Gavin from  
24 using the boy's restroom on B hall, C hall and D hall, they  
25 were forcing him to take a significant break from his

1 classes.

2 We also have Gavin's testimony about one time when  
3 a teacher actually humiliated him in front of class, saying  
4 what took so long for you to use the bathroom? Then, of  
5 course, in addition to all of that, at football games there  
6 weren't any single user restrooms available at all.

7 So when Gavin had to use the restroom, he had to be  
8 picking up and driven him or taken to Lowe's down the street  
9 to use the toilet. Now, the Board has said, well, this  
10 doesn't matter because Gavin said he wouldn't use those  
11 single user restrooms anyway, but it absolutely does matter.

12 First of all, it confirms that the nurse's office  
13 is a significant distance from the rest of the school. But  
14 the second is, you know, the Board is proposing these  
15 restrooms as an alternative solution, and I think in this  
16 Court's opinion it said it is insufficient for two reasons;  
17 one is the stigma and the other is the distance. And so  
18 distance isn't necessary for us to win but is an additional  
19 reason why we should win here.

20 THE COURT: And it's true that he was told that he  
21 would be disciplined if he ever used the boy's bathroom?

22 MR. BLOCK: Yes. Yes. Of course, we have the  
23 official letter that Principal Collins wrote to him after  
24 the fact. I think, you know, the facts in this case are  
25 really extraordinary in that this is someone who did

1 everything right, went through all the steps, met with  
2 counselors before school when he wanted to use the boy's  
3 restroom, set up another meeting with the principal.

4 The principal, you know, went through all the steps  
5 of checking with the superintendent, checking with the  
6 Virginia -- I forget the name of the organization -- and  
7 they checked with -- it's even disclosed through one of the  
8 e-mails that they checked with council and allowed Gavin to  
9 use the restroom.

10 Now, this might be bleeding over a little bit into  
11 the equal protection claim, but, you know, I think the only  
12 evidence in the record of any, you know, problems with him  
13 using the restrooms are the fact that the Board received  
14 complaints from parents, which are in their disclosures, and  
15 we don't dispute that those exist, and that one student  
16 complained in person to the principal and expressed  
17 discomfort with using a restroom with someone who is  
18 transgender.

19 THE COURT: Then I think there was another student  
20 that asked Mr. Grimm whether or not Mr. Grimm liked his  
21 socks.

22 MR. BLOCK: Yes. That was -- I didn't view that as  
23 a -- that is the only interaction where --

24 THE COURT: There was seven weeks of using the  
25 male's bathroom and no incidents other than the sock

1 incident in which the parents got on board and one other  
2 student went to the principal.

3 MR. BLOCK: Right. There is -- I don't think this  
4 is actually necessarily admissible, but there was argument  
5 in one of the classrooms where a student was calling Gavin  
6 freaky and disgusting and they got into a yelling match.

7 The information about that is in an e-mail from a  
8 faculty member, and they haven't produced a witness. It is  
9 hearsay, but, in any event, it wasn't about an actual  
10 incident encountering Gavin in the restroom at all.

11 Also, the student complaint or the student  
12 expression of discomfort was at the very beginning before  
13 the added privacy protections were installed. Would the  
14 Court like me to talk about --

15 THE COURT: I have another question for you. If  
16 the single-stall restrooms were plentiful and closer to the  
17 classrooms, would this case be different?

18 MR. BLOCK: Well, I think then we would have one  
19 grounds for winning, which would be the inherent stigma of  
20 having to use separate facilities.

21 THE COURT: How about if other students would then  
22 use those single -stall restrooms?

23 MR. BLOCK: Well, I think the answer would be the  
24 same because even though other students might be able to use  
25 them if they want to, Gavin is the only student required to

1 use them. There is testimony in the record, just as --

2 THE COURT: Required to use them, and if he didn't,  
3 he would be punished if he used the boy's?

4 MR. BLOCK: That's correct. That's correct. Now,  
5 it is true that Principal Collins testified that the single  
6 user restrooms had been used because they had to be cleaned  
7 up at the end of the day. But it's also true that he  
8 testified he never actually saw anyone using them so -- and  
9 Gavin's own testimony says he never saw anyone using them.

10 THE COURT: Could you talk more about how the facts  
11 of this case relate to the sex stereotyping standard  
12 articulated in *Price*?

13 MR. BLOCK: Yes, Your Honor. So, you know, in  
14 *Pricewaterhouse*, the Supreme Court made clear that sex  
15 discrimination doesn't simply include discrimination against  
16 all men for being men or women for being women, it includes  
17 discrimination against individuals for being the wrong type  
18 of man or the wrong type of woman or not looking or  
19 appearing the way that someone thinks a man or a woman  
20 should look.

21 So I think that is actually the sex stereotyping  
22 going on here in that, you know, the Board is not only  
23 regarding, you know, Gavin's treatment documentation letter,  
24 his name change, the fact that he has an I.D. that says he  
25 is male, the fact that, you know, he lives his whole life as

1 a man, but they are even saying that the Virginia Court got  
2 it wrong in declaring Gavin's legal sex to be male because  
3 the Board says he needs to have some undefined surgery in  
4 order to actually be a man.

5 So it all relates to the stereotype about --  
6 frankly, I'm not sure if it's about genitals or chromosomes  
7 because they say chest surgery isn't a biological change,  
8 but genital surgery -- I'm not sure what the biological  
9 means, but genital surgery doesn't change your chromosomes  
10 either. So I think that is why it fits in.

11 It also is literally discrimination on the basis of  
12 sex that it's, you know, because they refuse to acknowledge  
13 him as a man, he is being treated a certain way. There is  
14 one more point. Actually, I do think is important to add to  
15 the sex stereotyping theory, which is the facial claim of  
16 equality here, rests on the idea that everyone, whether they  
17 are transgender or not, can use the restroom that matches  
18 their sex assigned at birth.

19 That is what's put forward as what makes us  
20 facially equal. As we have said, if that's how the policy  
21 operates, then it doesn't serve the asserted interests in  
22 keeping students' privacy from having to share restrooms  
23 with people with different physiological sex characteristics  
24 because a transgender woman with breasts would be using the  
25 boy's room, and a transgender boy like Gavin would be using

1 the girl's room. And the Board's response to that in the  
2 summary judgment motion is to say, of course, those things  
3 won't occur because we have the single user restrooms, which  
4 I think is an admission that the policy is actually a policy  
5 that's saying transpeople are so gender non-conforming that  
6 that they really can't use the same restrooms as anyone  
7 else, that they don't fit into our restrooms and they are  
8 going to have to use separate ones. So I think that's  
9 another way that this policy fits into the sex stereotyping  
10 framework of *Pricewaterhouse*.

11 THE COURT: All right. Thank you, sir, very much.

12 All right. Mr. Corrigan, your turn.

13 MR. CORRIGAN: Thank you, Your Honor.

14 THE COURT: You're welcome.

15 MR. CORRIGAN: Gloucester County School Board has  
16 treated this plaintiff with respect and attempted to  
17 accommodate his gender identity based on his assertions to  
18 school staff. In this case when the facts moved from the  
19 allegations to actual material disputed facts, undisputed  
20 facts, Grimm's case falls short. Grimm has offered no  
21 expert to prove he is a boy or has been diagnosed with  
22 gender dysphoria or that the use of the boy's restroom was a  
23 medical necessity for him or that the use of single-stall  
24 restroom or other alternative restroom adversely affected  
25 his gender dysphoria.



1           Even if the Court considers the WPATH and Endocrine  
2 Society guidelines, there is no standard of care related to  
3 the use of restrooms by students who identify as transgender  
4 at school. The Gloucester County School Board policy is  
5 based on a binary concept of sex. There are two sexes, male  
6 and female. These are based on physiological or anatomical  
7 characteristics. The Gloucester County School Board policy  
8 permits every student to have two choices when it comes to  
9 restroom use; either use the restroom associated with your  
10 sex, male or female, or use one of the single stall  
11 restrooms available for use by any student for any reason.

12           No consideration is given under the Gloucester  
13 County School Board policy to whether a student appears  
14 masculine or feminine or identifies with his or her physical  
15 sex or not. Two choices for all. The Gloucester County  
16 School Board does not take the position that their policy is  
17 the only way to conform with Title IX or the equal  
18 protection clause. Rather, this policy is simply not a  
19 violation of either Title IX or the equal protection clause.  
20 The School Board does not have to show that its policy is  
21 the least intrusive means of achieving a relevant  
22 governmental objective.

23           The plaintiff conflates whether school district, as  
24 a matter of social policy, should permit transgender  
25 students to use the restroom consistent with their gender

1 identity with whether their Gloucester County School Board  
2 has violated Title IX of the equal protection clause by  
3 providing separate restrooms based on physiological  
4 differences between males and females along with the  
5 single-stall restrooms for all.

6 Relevant facts is that the plaintiff is born female  
7 with female genitalia and reproductive organs, was issued a  
8 female birth certificate, is not intersex, enrolled in high  
9 school as a girl, used female restrooms as a freshman, later  
10 identified as a boy. Grimm had chest reconstruction surgery  
11 in the fall of his senior year, but that surgery, according  
12 to the plaintiff's own expert, did not create any biological  
13 changes nor did it complete gender reassignment.

14 Under these facts, the binary Gloucester County  
15 School Board policy providing restrooms for all males,  
16 another for all females, and single stall restrooms for  
17 anyone to choose from is not discriminatory, does not  
18 violate Title IX, and does not stereotype anyone. No  
19 consideration is given to male or female appearance based on  
20 physiology alone.

21 Interestingly, the plaintiff's expert was not  
22 designated to diagnose his gender dysphoria or the medical  
23 necessity of any treatment or the causation of any  
24 psychological or medical problem that plaintiff alleges he  
25 has experienced.

1           Plaintiff's case is basically unsupported by any  
2 medical or psychological expert testimony. Plaintiff has  
3 presented no expert to say he has been diagnosed with gender  
4 dysphoria, that his gender dysphoria required that he be  
5 allowed to use the boy's restroom or that the failure to  
6 allow him to use the boy's restroom caused him distress,  
7 only have his own opinion.

8           Finally, the plaintiff has identified no expert to  
9 support his claim that he experienced harm as a result of  
10 this policy limiting his restroom options to the female or  
11 single-stall restrooms. At lunch two single-stall restrooms  
12 are nearby, and the plaintiff was allowed to use a staff  
13 restroom on D wing where many of his classes were held.

14           In fact, as has been mentioned, the plaintiff  
15 refused to use any single-stall restrooms after consulting  
16 with the ACLU. Title IX prohibits exclusion of any person  
17 from participation in any educational program on the basis  
18 of sex.

19           To decide the claim, the Court has to define sex,  
20 in our opinion, and based on dictionary definitions,  
21 legislative history, and even the case law, the definition  
22 of "on the basis of sex" is a binary concept that does not  
23 consider the societal construct of gender identity.  
24 Implementing regulation 34 C.F.R. 106.33 allows for separate  
25 restrooms for each sex.

1           Nothing in Title IX itself or the regulation states  
2 on its face that the Gloucester County School Board, based  
3 on physiological sex, violates Title IX. Those are our  
4 statements with respect to the Title IX claim, Your Honor.

5           THE COURT: All right. As I understand the gist of  
6 Mr. Grimm's humiliation and shame, he was -- helped  
7 stigmatize to use separate restrooms, and that the nurse's  
8 and the other -- or the faculty restroom that we have heard  
9 about, of the distance that he had to travel to and fro, so  
10 from class and to the bathroom and back, which caused him to  
11 be late sometimes. He uses the word humiliation and  
12 distress detrimental to his instructional time.

13           As I mentioned earlier to counsel, he was told he  
14 would be disciplined if he used the boy's restroom, uses the  
15 word isolated, distraught, quote, felt like a walk of shame,  
16 end quote. Embarrassed that everyone who saw him enter the  
17 nurse's office knew exactly why he was there because he was  
18 transgender.

19           He explains how he had to limit his liquid intake  
20 such that he wouldn't have to go to the bathroom throughout  
21 the course of his day. He describes holding himself at  
22 school activities, and as alluded to by his counsel, he  
23 couldn't -- he would go to a Lowe's or a Home Depot to use  
24 the bathroom or have his mother come and pick him up and  
25 take him to the bathroom.

1           There is unsafe suicidal and depressive feelings,  
2 and then for his entire 12th grade class, he had to continue  
3 to go to class and conduct himself in this manner, and in  
4 his declaration, I was looking at Paragraphs 29 through 32,  
5 44, 46 through 53, and 54 and 56.

6           So my question to you, sir, does he really need  
7 expert testimony to show that he felt humiliated and shamed?

8           MR. CORRIGAN: I think his feelings are not  
9 something he needs expert testimony for, Your Honor, I think  
10 that's true. I think the question is whether or not --

11           THE COURT: So you acknowledge that all that  
12 establishes humiliation, stigma and shame?

13           MR. CORRIGAN: That in his feelings, and, of  
14 course, it's related directly --

15           THE COURT: Wait. Answer my question, please. You  
16 acknowledge everything that I just put on the record equals  
17 shame and humiliation and pain?

18           MR. CORRIGAN: I acknowledge that that is his  
19 testimony, yes. And what I'm saying is that in the context  
20 of this case, he was provided with options, and as a result  
21 of his own decision, his choices, that is the result that  
22 occurred for him on this occasion.

23           THE COURT: Now, his suffering, does that warrant  
24 nominal damages?

25           MR. CORRIGAN: I think the question of nominal

1 damages, I think the answer is yes. Again, I don't think we  
2 can say that there is no nominal damages here.

3 THE COURT: Is there anything short of surgical  
4 gender reassignment surgery that the Board would consider?

5 MR. CORRIGAN: My understanding of the Board's  
6 position is that as long as an individual has the primary  
7 genitals and sex characteristics of a particular gender,  
8 male or female, that they will be considered that, and that  
9 is what the policy gender -- what it talks about in the  
10 policy, that is what they are considering.

11 THE COURT: But anything lower than that they will  
12 not, correct?

13 MR. CORRIGAN: As my understanding, yes.

14 THE COURT: So dress, they wouldn't consider;  
15 mustache, they wouldn't consider; removing one's breasts,  
16 they wouldn't consider?

17 MR. CORRIGAN: Correct.

18 THE COURT: Okay. So all or nothing is the Board's  
19 position?

20 MR. CORRIGAN: Yes, ma'am.

21 THE COURT: All right, sir. Thank you. I have  
22 nothing further. If we can do equal protection now, please.

23 MR. BLOCK: Thank you, Your Honor. For equal  
24 protection this Court has already determined that  
25 discrimination against transpeople is subject to heightened

1 scrutiny under the equal protection clause, which means the  
2 Board has the heavy burden of showing that its policy is  
3 substantially related to an important governmental interest.  
4 And other than the facts that Your Honor and I discussed  
5 about student complaints, the Board hasn't submitted any  
6 evidence whatsoever to carry that burden.

7           The Board's 30(b)(6) witness made clear that the  
8 Board is relying on a privacy interest related to nudity and  
9 preventing unwarranted exposure to nudity around students of  
10 different physiological sex characteristics, and there are  
11 two problems with that justification. The first is that  
12 there is no risk of exposure to nudity in the restrooms.

13           The Board could have put on any testimony it  
14 wanted, any evidence it wanted to say that there is an  
15 actual risk of exposure to nudity in these restrooms, and it  
16 hasn't done so. And especially in light of the privacy  
17 protections that have been installed, attached to  
18 Mr. Loving's declaration, there are pictures of the urinal  
19 dividers that provide incredible protection for privacy for  
20 anyone who wants it.

21           Now, and then in talking to the 30(b)(6) witness  
22 about, well, how is this privacy interest implicated, he  
23 discussed nudity when someone uses the urinal or toilet, and  
24 he also said that he sometimes in high school unbuckled his  
25 pants to tuck in his shirt, which is, of course, something

1 that someone can do in a stall if they want added privacy  
2 for it.

3           When we asked are there any other situations  
4 involving nudity, and he said none that I can think of off  
5 the top of my head. This is at a 30(b)(6) deposition where  
6 the Board has had four years to think about how its policy  
7 implicates nudity. So I think that, you know, that alone is  
8 sufficient to resolve the case, that, you know, they are  
9 claiming a privacy interest related to nudity. They say  
10 it's not about simply being in the presence of a  
11 transperson, and if that's the case, that has nothing at all  
12 to do with restrooms.

13           The second problem with the justification is, as I  
14 alluded to before, the policy doesn't stop people from  
15 sharing restrooms with people with different physiological  
16 sex characteristics, that under the policy, you know, a boy  
17 who is not transgender might not have to share a restroom  
18 with the boy who is transgender but they have to share a  
19 restroom with a transgender girl who has breasts as a result  
20 of hormone therapy.

21           When asked what about that boy's privacy interests,  
22 the School Board said, well, they have the option of using  
23 one of the single-user restrooms if they want greater  
24 privacy. So if that boy's privacy in not wanting to share  
25 the restroom with a transgender girl is sufficiently



1 addressed by the single-user restrooms, then there is no  
2 rational reason why the interest of a sex gender boy who  
3 doesn't want to use the same restrooms as another boy who is  
4 transgender isn't also addressed by the availability of the  
5 single-user restrooms.

6 Now, we think that even the context of locker  
7 rooms, the *M.A.B.* case shows that these policies aren't  
8 really substantially related to an interest in locker rooms  
9 either, but this is a very easy case as a result of the  
10 Board's explicit statements during the deposition that this  
11 is only about restrooms. And if it's only about restrooms,  
12 then there is no interest related to exposure to nudity at  
13 all.

14 Now, one thing I wanted to harken back to for one  
15 second is this issue of the D hall faculty restroom where my  
16 understanding is that that was before Gavin began using the  
17 boy's restroom. He could use the nurse's restroom or the  
18 faculty restroom, and, in fact, faculty subsequently  
19 complained that they didn't want him using it. So I don't  
20 think the record shows that he had -- he wasn't going to use  
21 the faculty restroom anyway, but I don't think the record  
22 shows that it was an option for him. I'd hate for that to  
23 be a disputed question that avoid summary judgment. So as  
24 far as I'm concerned, the Court could assume what they are  
25 saying here is true, although I don't think the record

1 supports it.

2 Now, I do have to acknowledge there are disputed  
3 questions in the record about how the policy interacts with  
4 birth certificates, but those are disputes between the  
5 30(b)(6) witness and counsel. They are not, for purposes of  
6 our affirmative motion for summary judgment, I don't think  
7 the Court has to get into any questions of what inconsistent  
8 answers or pretext or how the policy relates to birth  
9 certificates because no matter what the policy is with  
10 respect to birth certificates, it's not substantially  
11 related to the asserted governmental interest.

12 And so for purposes of our affirmative summary  
13 judgment motion, I think all the confusion created by what  
14 we think are discrepancies between the 30(b)(6) witness's  
15 testimony and the other statements we have heard from  
16 counsel, they are not material to our affirmative  
17 complaints -- I'm sorry, our affirmative claims.

18 They are only material if we had to get to the  
19 stage of proving that the Board's asserted interest is  
20 pretextual. But this is heightened scrutiny. All we need  
21 to show is that it's not tailored to meet the interest. We  
22 don't have to show invidious motive, even though we think in  
23 a factual finder of fact setting a finder of fact could  
24 conclude that. We are not asking the Court to do that for  
25 our affirmative motion.

1           Does the Court want me to address the transcript  
2 issue also at this time?

3           THE COURT: Yeah, you can. That's great.

4           MR. BLOCK: So for the transcript issue, again, I  
5 think there's -- you know, some confusion has been created  
6 as a result of the 30(b)(6) witness's testimony about what  
7 would have happened if we had pursued a FERPA hearing in  
8 January.

9           THE COURT: Why didn't you go to the hearing?

10          MR. BLOCK: Well, because our understanding was the  
11 Board was requiring genital surgery, and that anything short  
12 of that would be irrelevant. We didn't have anything else  
13 to produce, and we'd never heard anything about -- the  
14 30(b)(6) witness was the first time we ever heard the  
15 Board's objections to the birth certificate could possibly  
16 be related to a confusion about whether it was authentic,  
17 like this nonsense about it saying "void" on it.

18          Before then, our understanding is they just thought  
19 the birth certificate, you know, either didn't comply with  
20 regulations or wasn't legally valid because Gavin hadn't had  
21 genital surgery. So all the confusion in the record was  
22 just based on this suggestion at the 30(b)(6) testimony that  
23 maybe there was an authenticity question. I think it's  
24 clear now that's not on the table, that their objection is  
25 to -- they think the registrar didn't comply with

1 regulations and statute, and they disagree with the Circuit  
2 Court's statutory interpretation.

3           If we were seeking damages based on the specific  
4 action taken in January, that maybe we would have to get  
5 into their heads about what they were doing then, but the  
6 Board has continued to deny him updated transcript to this  
7 day. So we don't really need to get into the factual  
8 nuances about, you know, what was or was not said in  
9 January. They have known for years that he has this birth  
10 certificate, and he has a Court order, and, yet, they are  
11 still refusing to provide him a transcript that matches his  
12 birth certificate.

13           THE COURT: Tell me about how that affects him, why  
14 that hurts him.

15           MR. BLOCK: Well, he's been -- well, he wants to go  
16 to college, a four-year college, and, you know, he's been  
17 putting it off. He doesn't want to go to a -- his current  
18 college, Berkeley City College, doesn't require a  
19 transcript, and that's one of the reason he goes there.

20           So the idea of starting college with this, like,  
21 old document being chained to him, is something that's very,  
22 you know, painful and distressing to him, and, you know,  
23 it's a document that follows him all his life, and it's sort  
24 of a constant reminder of what he went through at school,  
25 and it's a constant, like, declaration that no matter what

1 he does, the Board is going to refuse to recognize him as a  
2 boy.

3 I think that the Board's refusal to issue the  
4 transcript is another incidence of sex stereotyping under  
5 *Pricewaterhouse* because it's explicitly based on this idea  
6 that despite whatever other legal document you say, we think  
7 that you are only a boy if you have the genital surgery. We  
8 think you should have, although there are many types of  
9 genital surgeries, and it's not clear, like metoidioplasty  
10 phalloplasty, it's not clear the Board even knows what type  
11 of surgery it requires, but that's their basis for not  
12 giving him a transcript matching all those other legal  
13 documents.

14 THE COURT: All right. Thank you, sir.

15 All right. Mr. Corrigan, I'll be glad to hear from  
16 you. Before you start, is it the Board's job to determine  
17 if a birth certificate complies with Virginia law or is it  
18 the state registrar and the Director of Division of Vital  
19 Statistic records, their job?

20 MR. CORRIGAN: So with respect to that question --

21 THE COURT: No, just answer my question. Is it the  
22 Board's job, yes or no?

23 MR. CORRIGAN: To?

24 THE COURT: Determine if a birth certificate  
25 complies with Virginia law? Is that the Board's job? Yes

1 or no?

2 MR. CORRIGAN: Yes, in the context that the Board  
3 has this policy, and they are receiving a birth certificate  
4 that, again, it didn't say amended. It didn't have void --  
5 it had "void" on it, and the Board was aware that the  
6 requirement for surgical gender reassignment procedure,  
7 which is part of what was supposed to have occurred in order  
8 for an order to be entered and a birth certificate to have  
9 been provided, had not occurred.

10 THE COURT: So when Board members are elected, are  
11 they -- how do they get on the Board? How does a Board  
12 member become a Board?

13 MR. CORRIGAN: They are elected.

14 THE COURT: So is there a question when somehow the  
15 voters let them know, they say, hey, you may have to usurp  
16 the powers of a Circuit Court Judge or usurp the powers of  
17 the state registrar or the Director of Division of Vital  
18 Statistics, is that something that is part of the electoral  
19 process?

20 MR. CORRIGAN: Not that I'm aware of.

21 THE COURT: Okay.

22 MR. CORRIGAN: So that equal protection claim, the  
23 equal protection clause is not a source of substantive  
24 rights but, rather, a right to be free of invidious  
25 discrimination. Neither Title IX nor the equal protection

1 clause gives plaintiff the substantive right to governmental  
2 assistance.

3 THE COURT: Before you go on, just answer me this.  
4 So did they usurp the power of the Circuit Court Judge? Is  
5 that a violation of the law when you have the Circuit Court  
6 Judge say this is legal and you as a Board is saying no,  
7 it's not?

8 MR. CORRIGAN: I don't know that they are usurping  
9 the power.

10 THE COURT: Are they complying with the law?

11 MR. CORRIGAN: For their purposes, what they are  
12 doing is attempting to take a look at what they have been  
13 presented and determine whether or not it complies with the  
14 law and determine whether or not it complies with their  
15 policy.

16 THE COURT: The Circuit Court Judge, they have  
17 documentation saying he is a boy, right?

18 MR. CORRIGAN: Yeah, there is an order that says  
19 male, yes.

20 THE COURT: So are they complying with the Circuit  
21 Court Judge's order? They are saying, no, he's not.

22 MR. CORRIGAN: They are saying for purposes of  
23 bathroom use in their schools, that that does not determine  
24 his sex. That is what they are saying.

25 THE COURT: Okay.

1 MR. CORRIGAN: We continue to argue that the  
2 Gloucester County School Board policy is simply not  
3 discriminatory. There is no invidious discrimination based  
4 on similarly situated students. All are treated the same.  
5 In order for the plaintiff to prevail, the Court must find  
6 under heightened scrutiny, because transgender is a new  
7 suspect class, but neither the United States Supreme Court  
8 nor the Fourth Circuit has ever recognized transgender as a  
9 suspect class.

10 This Court previously referred to transgender  
11 status as immutable, however, the Gloucester County School  
12 Board expert, Dr. Van Meter, has testified that 80 to 95  
13 percent of prepubertal children with gender identity order  
14 desist, meaning they identify with their biological sex by  
15 the time they emerge from puberty to adulthood. The Court  
16 should apply the rational basis test, and under that test --

17 THE COURT: I already ruled that it was not  
18 rational.

19 MR. CORRIGAN: I'm kind of preserving my position  
20 on that.

21 THE COURT: Okay.

22 MR. CORRIGAN: I understand. Even under the  
23 intermediate scrutiny, the Gloucester County School Board's  
24 competing interest is the privacy of all students in the  
25 restroom, and the school has provided numerous examples of



1 those concerns being expressed to School Board members by  
2 parents on behalf of their students saying that the privacy  
3 was infringed by the presence of a member of the opposite  
4 biological sex in the restroom when they were using the  
5 restrooms.

6 I refer you to our summary judgment brief on Page  
7 3, Paragraph 8. Within two days parents of students in the  
8 community learned that a gender -- that a transgender boy  
9 was using the boy's restroom and complained. The student  
10 complained about the lack of privacy in the bathroom.  
11 Principal Collins talked about that.

12 Grimm was also involved in an altercation with a  
13 fellow student concerning his use of the restroom. The  
14 Board received 39 e-mails and numerous oral communications  
15 expressing concerns from parents. One parent wrote, "I  
16 respectfully ask that you act to protect the rights and  
17 privacy of students who are not transgender. I have a son  
18 who attends school and cannot imagine how he would feel if a  
19 transgender student began to utilize the boy's restroom.  
20 All students, not just one, should have their privacy  
21 upheld. This is not a discrimination issue. It is a  
22 privacy issue."

23 Another family wrote, "The decision regarding any  
24 transgender student using the restroom they assigned to  
25 themselves should be considered based on the needs and

1 privacy of all students in the school. Our boys are  
2 mortified by the idea that any female, including their  
3 mother or sister, would be in a bathroom with them while  
4 they are using it. Surely, there is a place somewhere in  
5 the school that can be remodeled to include two or three  
6 stalls and designated as a unisex bathroom by anyone who  
7 feels the need."

8           The school also was advised on December 9, 2014  
9 that the ACLU website at that time noted with approval that  
10 some school administrators offered transgender students the  
11 use of employee single-stall restroom, noted that with  
12 approval. So at that time in 2014, that was a position on  
13 the website of the ACLU. And it's well-known and  
14 established in this case by all the experts that many  
15 transgender students prefer the option that the Gloucester  
16 County School Board has offered. So this goes to the  
17 weighing of the interest.

18           The feelings of students of all ages that their  
19 privacy is compromised in the restroom by the presence of a  
20 member of the opposite sex has been recognized for  
21 generations, and we have -- the Board has interest in  
22 protecting the privacy rights of its students. "Students  
23 had significant privacy interest in their unclothed bodies."  
24 That's from the *Beard v. Whitmore* case.

25           Men and women simply are not physiologically the

1 same for purposes of physical fitness programs. The Court  
2 in Virginia, which is the *VMI* case, recognized that some  
3 differences between the sexes are real, not perceived, and,  
4 therefore, could require accommodation. The Board's  
5 interest in student privacy that justifies segregation of  
6 restroom and locker rooms arise from the physiological  
7 differences between boys and girls and not from differences  
8 in gender identity.

9           The *Faulkner v. Jones* case says, "Society's  
10 undisputed approval of separate public restrooms for men and  
11 women based on privacy concerns." So there are privacy  
12 concerns that exist. There are privacy concerns that are  
13 legitimate to consider, and the privacy concerns are not  
14 outweighed in this case. That's the position of the Board  
15 with respect to the equal protection claim.

16           THE COURT: How does Mr. Grimm walking into a stall  
17 in the boy's bathroom and shutting the door harm the privacy  
18 rights of other students?

19           MR. CORRIGAN: Well, I mean, in any individual  
20 case, if that is all that happens, then that could be, but  
21 we don't know what's going to happen.

22           THE COURT: Repeat your answer, please.

23           MR. CORRIGAN: Anyone inside of a stall, as long as  
24 the stall is completely -- no one can see in or see out,  
25 then you could clearly -- then clearly there is no

1 interaction --

2 THE COURT: There is no privacy violation.

3 MR. CORRIGAN: -- to be of concern.

4 THE COURT: There is no privacy violation, is that  
5 what you just said?

6 MR. CORRIGAN: But that --

7 THE COURT: Is that what you just said?

8 MR. CORRIGAN: I'm saying that there would not be  
9 the specific concern that is raised here, which, again, is  
10 privacy, but it is also the notion that these individuals in  
11 the bathroom of the opposite sex, it is upsetting to those  
12 individuals, and there is a privacy concern.

13 You can't envision every circumstance under which  
14 something might occur that would cause a concern; at a  
15 urinal, someone changing, or just, you know, un --  
16 re-establishing their pants, all these different  
17 circumstances that exist. It's made to consider, and it is  
18 a legitimate privacy concern.

19 With respect to the birth certificate --

20 THE COURT: Yes.

21 MR. CORRIGAN: -- the School Board policy providing  
22 separate restrooms for boys and girls based on anatomy is  
23 based on social norms, binary sexes and students using the  
24 restroom that corresponds to their biological sex or the  
25 alternative single-stall restrooms.

1           Before this case, the Gloucester County School  
2 Board has never dealt with the conflict between a student's  
3 biological sex and the sex on an amended birth certificate.  
4 So it's not something that anyone had ever thought about,  
5 considered, or otherwise. The argument on this issue is  
6 straightforward. First Grimm's amended birth certificate  
7 does not change his physiological anatomical sex, which  
8 remain female. Grimm's own expert, Melinda Penn, confirms  
9 that after the chest reconstruction surgery, Grimm remained  
10 biologically and physiologically female the entire time he  
11 was a student at Gloucester County High School, and even  
12 until this day.

13           Second, the birth certificate that Grimm provided  
14 was not in conformity with Virginia law. As I already said,  
15 there was no gender reassignment surgery with respect to the  
16 transcript. Counsel received a letter on January 18, 2017,  
17 declining to change the official school records based on a  
18 review of the certificate itself had "void" on it and did  
19 not say amended in various places where it was required to  
20 do so. School policy JO and the Virginia Code and  
21 administrative code, and all the relevant documents, were  
22 attached to the letter, and that letter concludes, "Please  
23 feel free to submit additional materials, and, of course,  
24 your client has the right under policy JO, see Page 8,  
25 correction of education records, for a hearing to challenge

1 the information believed to be inaccurate, misleading, or in  
2 violation of the student's right."

3 So that was offered, the explanation was given, and  
4 that was offered, and that was never undertaken, and to this  
5 day has never been undertaken.

6 THE COURT: All right. Thank you very much.

7 MR. CORRIGAN: Thank you.

8 THE COURT: Anything additional, sir?

9 MR. BLOCK: Just say one more thing, Your Honor.

10 THE COURT: You may.

11 MR. BLOCK: Counsel just spoke about how the school  
12 can't anticipate every possible scenario that might arise.  
13 But this is a case about a real person, an individual, and  
14 the school admits it never encountered this problem before  
15 Gavin. So I think that's a perfect example of this policy  
16 being driven about abstractions and hypotheticals and  
17 ignoring the real individual who was in front of them and  
18 not analyzing whether any of those abstract concerns  
19 actually applied to this person who has individual rights  
20 under Title IX and the Constitution.

21 THE COURT: All right. Thank you.

22 Anything additional from you?

23 MR. CORRIGAN: No, ma'am.

24 THE COURT: Well, thank you both very much. It was  
25 a pleasure meeting everybody. I'm going to take the matter

1 under advisement, and I want you to have a good rest of your  
2 week and a great weekend.

3 (Hearing adjourned at 10:02 a.m.)

4 CERTIFICATION

5  
6 I certify that the foregoing is a correct transcript  
7 from the record of proceedings in the above-entitled matter.  
8

9  
10 X \_\_\_\_\_ /s/ \_\_\_\_\_ x

11 Jody A. Stewart

12 X \_\_\_\_\_ 9-27-2019 \_\_\_\_\_ x

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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Newport News Division

GAVIN GRIMM,

Plaintiff,

v.

GLOUCESTER COUNTY SCHOOL  
BOARD,

Defendant.

Civil No. 4:15cv54

ORDER

Pending before the Court are a Motion to Strike Exhibits (ECF No. 213) and Cross-Motions for Summary Judgment filed by Plaintiff Gavin Grimm (ECF No. 184) and Defendant Gloucester County School Board (“the Board”) (ECF No 191). For the following reasons, the Board’s Motion to Strike is **GRANTED IN PART** and **DENIED IN PART**, Mr. Grimm’s Motion for Summary Judgment is **GRANTED**, and the Board’s Motion for Summary Judgment is **DENIED**.

**I. FACTUAL BACKGROUND**

Gavin Grimm is a twenty-year-old man who attended Gloucester High School, a public high school in Gloucester County, Virginia, from September 2013 until his graduation in June 2017. *See* Gavin Grimm Decl. ¶¶ 3, 5, ECF No. 186. When Mr. Grimm was born, hospital staff identified him as female. *Id.* ¶ 7. Despite this designation, Mr. Grimm has always “related to male characters” and “ha[s] always known that [he is] a boy.” *Id.* ¶ 6.

When Mr. Grimm enrolled in the Gloucester County School System, he was listed as a girl. He began his freshman year in 2013 at Gloucester High School with a female birth certificate. Andersen Decl., ECF No. 196-6.



In April 2014, Mr. Grimm disclosed to his parents that he was transgender. Gavin Grimm Decl. ¶ 20; Deirdre Grimm Decl. ¶ 7, ECF No. 187. According to Dr. Melinda Penn, M.D.,<sup>1</sup> “gender identity” refers to “a person’s innate sense of belonging to a particular gender.” Penn Expert Rep. and Decl. ¶ 17, ECF No. 192-3. She opines that people’s gender identity usually matches the sex consistent with their external genitalia possessed at birth, but that transgender individuals have a gender identity different from the one assigned to them at birth. *Id.* ¶¶ 18–19.

At Mr. Grimm’s request, he began therapy in May 2014 with Dr. Lisa Griffin, Ph.D., a psychologist with experience counseling transgender youth. Gavin Grimm Decl. ¶ 24. Dr. Griffin diagnosed Mr. Grimm with gender dysphoria. *Id.* Dr. Griffin prepared a treatment documentation letter stating that Mr. Grimm has gender dysphoria, that he should present as a male in his daily life, that he should be considered and treated as a male, and that he should be allowed to use restrooms consistent with that identity. ECF No. 186-1 at 1.

The American Psychiatric Association’s Diagnostic & Statistical Manual of Mental Disorders (“DSM V”) defines “gender dysphoria” as a condition experienced by some transgender people that inflicts clinically significant stress because their gender identity differs from the sex assigned to them at birth. Penn Expert Rep. and Decl. ¶ 21. Dr. Penn’s report explains that “to be diagnosed with gender dysphoria, the incongruence [between gender identity and assigned sex] must have persisted for at least six months and be accompanied by clinically significant distress or impairment in social, occupational, or other important areas of functioning.” *Id.*

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<sup>1</sup> Mr. Grimm retained Dr. Penn to “provide expert testimony on the applicable standards of care and treatment guidelines for transgender youth.” ECF No. 214-2 at 1. Dr. Penn is a pediatric endocrinologist with the Children’s Hospital of the King’s Daughters in Norfolk, Virginia, holds a medical degree from Eastern Virginia Medical School, and is board certified in pediatric endocrinology by the American Board of Pediatrics. ECF No. 192-3 ¶¶ 3–4. One of her specialties is transgender health. *Id.*

During the course of his treatment for gender dysphoria, Mr. Grimm changed his first name legally to Gavin and began using male pronouns to describe himself. Gavin Grimm Decl. ¶¶ 23, 25. He also began using men’s restrooms in public venues. *Id.* ¶¶ 37, 38. Dr. Griffin referred Mr. Grimm to an endocrinologist for hormone treatment around this time. *Id.* ¶ 24.

In August 2014, before the beginning of Mr. Grimm’s sophomore year, Mr. Grimm and his mother met with Ms. Tiffany Durr, a school guidance counselor. *Id.* ¶¶ 26–27. They gave Ms. Durr a copy of Dr. Griffin’s treatment documentation letter and requested that Mr. Grimm be treated as a boy at school. *Id.* Mr. Grimm and Ms. Durr agreed that Mr. Grimm would use the restroom in the nurse’s office. *Id.* ¶ 29.

Mr. Grimm “soon found it stigmatizing to use a separate restroom,” however, and “began to feel anxiety and shame surrounding [his] travel to the nurse’s office.” *Id.* He also found that the distance to this bathroom caused him to be late to class. *Id.*

After a few weeks of using the restroom in the nurse’s office, Mr. Grimm met with Ms. Durr and sought permission to use the school’s male restrooms. *Id.* ¶ 33; Durr Dep. 23:6–17, ECF No. 192-11. Ms. Durr relayed Mr. Grimm’s request to Principal Nate Collins. Durr Dep. 24:1–17. Principal Collins spoke with Superintendent Walter Clemons, who offered to support Principal Collins’ ultimate decision. Collins Dep. 49:7–50:1, ECF No. 192-9; Clemons Dep. 24:4–20, ECF No. 192-10. Principal Collins allowed Mr. Grimm to use the male restrooms. Collins Dep. 50:22–51:13.

Mr. Grimm used the male restrooms at Gloucester High School for seven weeks. Gavin Grimm Decl. ¶ 36. During this time, there were no incidents in the restrooms involving Mr. Grimm and other students. *Id.* Mr. Grimm was given permission to complete his physical education

courses online and never needed to use the locker rooms at school. Gavin Grimm Dep. 96:14–97:9.

Subsequently, however, Dr. Clemons, Principal Collins, and Board members began receiving complaints from adult members of the community who had learned that a transgender boy was using male restrooms at the high school. *See* Collins Dep. 66:1–22; Clemons Dep. 32:16–33:6; Def.’s Response to First Set of Interrogatories ¶ 1, ECF No. 192-1. Some members of the community demanded that the transgender student be barred from the male restrooms. *Id.* One student personally complained to Principal Collins. ECF No. 192-1 ¶ 1.

Following these complaints, Board member Carla Hook proposed the following policy at the Board’s public meeting on November 11, 2014:

Whereas the GCPS recognizes that some students question their gender identities, and

Whereas the GCPS encourages such students to seek support, advice, and guidance from parents, professionals and other trusted adults, and

Whereas the GCPS seeks to provide a safe learning environment for all students and to protect the privacy of all students, therefore

It shall be the practice of the GCPS to provide male and female restroom and locker room facilities in its schools, and the use of said facilities shall be limited to the corresponding biological genders, and students with gender identity issues shall be provided an alternative appropriate private facility.

Hook Nov. 9, 2014 Email, ECF No. 192-21.

Mr. Grimm and his parents spoke against the proposed policy at the November 11, 2014 meeting. Gavin Grimm Decl. ¶ 40. The Board voted 4-3 to defer a decision regarding the policy until the next Board meeting on December 9, 2014. Recorded Minutes of the Board, Nov. 11, 2014 at 4, ECF No. 192-37.

The Board passed the proposed policy on December 9, 2014 by a 6-1 vote. Recorded Minutes of the Board, Dec. 9, 2014, at 3, ECF No. 192-23. The Board also announced that it would construct single-stall, unisex restrooms for all students to use. *Id.* The following day, Principal Collins told Mr. Grimm that his further use of the male restrooms at Gloucester High School would result in disciplinary consequences. Collins Dec. 10, 2014 Memo to Deirdre and David Grimm, ECF No. 192-24; Gavin Grimm Decl. ¶ 44.

In December 2014, Mr. Grimm began hormone therapy. This “deepened [his] voice, increased [his] growth of facial hair, and [gave him] a more masculine appearance.” Gavin Grimm Decl. ¶ 60.

Single-user restrooms had not yet been constructed when the Board enacted the policy. Gavin Grimm Decl. ¶ 46. Mr. Grimm has recounted an incident when he stayed after school for an event, realized the nurse’s office was locked, and broke down in tears because there was no restroom he could use comfortably. *Id.* A librarian witnessed this and drove him home. *Id.*

Mr. Grimm also declared that when the single-user restrooms were built, they were located far from classes that he attended. *Id.* ¶ 49. A map of the school confirms that no single-user restrooms were located in Hall D, where Mr. Grimm attended most classes. ECF Nos. 192-28, 192-29. There was also no single-user restroom at the school’s stadium, limiting Mr. Grimm’s ability to attend events there. Gavin Grimm Decl. ¶ 52.

The single-stall restrooms made Mr. Grimm feel “stigmatized and isolated.” *Id.* ¶ 47. He never saw any other student use these restrooms. *Id.* ¶ 48. Principal Collins testified at his deposition that he never saw a student use the single-user restrooms, but that he assumed that they were used because they were cleaned daily. Collins Dep. 132:7–20.

Mr. Grimm avoided using restrooms at school and later developed urinary tract infections. Gavin Grimm Decl. ¶¶ 51–52. This caused him to become distracted and uncomfortable in class. *Id.* Mr. Grimm’s mother kept medication for urinary tract infections “always stocked at home.” Deirdre Grimm Decl. ¶ 26.

In June 2015, the Virginia Department of Motor Vehicles issued Mr. Grimm a state identification card identifying him as male. Gavin Grimm Decl. ¶ 61; ECF No. 41-2.

During his junior year of high school, Mr. Grimm was admitted to the boys’ ward at the hospital at Virginia Commonwealth University “because he was having thoughts of suicide.” Deirdre Grimm Decl. ¶ 24.

In June 2016, Mr. Grimm underwent chest-reconstruction surgery. Grimm Decl. ¶ 62.

On September 9, 2016, the Gloucester County Circuit Court issued an order declaring Mr. Grimm’s sex to be male and directing the Virginia Department of Health to issue him a birth certificate listing his sex as male. *Id.* ¶ 63; ECF No. 41-3. The order referred to Mr. Grimm’s chest reconstruction surgery as “gender reassignment surgery” and concluded that Mr. Grimm is “now functioning fully as a male.” ECF No. 41-3.

On October 27, 2016, the Virginia Department of Health issued a birth certificate listing Mr. Grimm’s sex as male. Gavin Grimm Decl. ¶ 64; ECF No. 41-4. After receiving an updated birth certificate, Mr. Grimm and his mother provided Gloucester High School with a photocopy of it and asked that his school records be updated. Gavin Grimm Decl. ¶ 66. The school has declined to correct Mr. Grimm’s transcript, which still reflects his sex as female. ECF No. 41-5.

Troy Andersen, the Board's 30(b)(6) witness,<sup>2</sup> testified that the Board has declined to update Mr. Grimm's transcripts because it believes that the amended birth certificate does not accord with Virginia law and because the photocopy presented was marked "void." Andersen Dep. 65:8–66:1, ECF No. 192-13.

On January 18, 2017, the Board informed Mr. Grimm that he had a right to a hearing related to the Board's decision not to amend his official transcript and educational records. ECF No. 171-

1. Mr. Grimm did not request a hearing.

Mr. Grimm graduated high school on June 10, 2017. Gavin Grimm Decl. ¶ 57. He is now attending Berkeley City College in California and intends to transfer to a four-year college. *Id.* ¶ 69.

## II. PROCEDURAL BACKGROUND

Mr. Grimm commenced this action against the Board on June 11, 2015, at the end of his sophomore school year, alleging that the Board's policy of assigning students to restrooms based on their biological sex violated Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a), and violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. ECF No. 1. This Court considered the Board's motion to dismiss Mr. Grimm's Amended Complaint. On May 22, 2018, this Court denied the motion to dismiss. ECF No. 148.

In doing so, this Court held that a plaintiff's claim of discrimination on the basis of transgender status constitutes a viable claim of sex discrimination under Title IX. *Id.* at 13–21. Specifically, this Court relied on *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), which held

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<sup>2</sup> Under Federal Rule of Civil Procedure 30(b)(6), if an organization is named as a deponent in a civil matter, the organization must designate one or more persons who consent to testify on its behalf. The Board designated Troy Andersen, a Board member, to testify on its behalf.

that Title VII of the Civil Rights Act of 1964 bars discrimination not only based on a person's gender, but also based on whether the person conforms to stereotypes associated with the person's gender.<sup>3</sup> This Court joined the District of Maryland in concluding that under Title IX "discrimination on the basis of transgender status constitutes gender stereotyping because 'by definition, transgender persons do not conform to gender stereotypes.'" *M.A.B. v. Bd. of Educ. of Talbot Cty.*, 286 F. Supp. 3d 704, 714 (D. Md. 2018) (quoting *Finkle v. Howard Cty.*, 12 F. Supp. 3d 780, 787–88 (D. Md. 2014)).<sup>4</sup>

This Court also held that state action that discriminates against transgender individuals is subject to intermediate scrutiny under the Constitution's Equal Protection Clause for two reasons. ECF No. 148 at 25–28. First, transgender individuals constitute at least a quasi-suspect class. *See M.A.B.*, 286 F. Supp. 3d at 718–20. Second, discrimination based on sex stereotypes constitutes a sex-based classification of a type subject to intermediate scrutiny. *Id.* at 718–19.

On February 15, 2019, this Court permitted Mr. Grimm to file a Second Amended Complaint. This filing added a claim that the Board continues to discriminate against Mr. Grimm in violation of Title IX and the Equal Protection Clause by refusing to update his official school transcripts to reflect his sex as male. ECF No. 177.

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<sup>3</sup> Courts may, and frequently do, look to case law interpreting Title VII for guidance in evaluating a claim brought under Title IX. *See, e.g., G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.* ("*Grimm I*"), 822 F.3d 709, 718 (4th Cir. 2016), *vacated and remanded*, 853 F.3d 729 (Apr. 17, 2017) (citing *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007)).

<sup>4</sup> The First, Sixth, Ninth, and Eleventh Circuits have all relied on *Price Waterhouse* in holding that claims of discrimination based on transgender status constitute *per se* sex discrimination under Title VII or other civil rights laws. *See EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, 884 F.3d 560, 574–75 (6th Cir. 2018) *cert. granted* 139 S. Ct. 1599 (2019) (Title VII); *Glenn v. Brumby*, 663 F.3d 1312, 1316–19 (11th Cir. 2011) (Title VII and Equal Protection Clause); *Smith v. City of Salem*, 378 F.3d 566, 573–75 (6th Cir. 2004) (Title VII and Equal Protection Clause); *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215–16 (1st Cir. 2000) (Equal Credit Opportunity Act); *Schwenk v. Hartford*, 204 F.3d 1187, 1201–03 (9th Cir. 2000) (Gender Motivated Violence Act).



The parties filed motions for summary judgment. ECF Nos. 184, 191. The Board has also moved to strike certain exhibits relied upon by Mr. Grimm. ECF No. 213. On July 23, 2019, this Court heard argument on these pending motions. ECF No. 228. The motions are now ripe for consideration.

### III. LEGAL STANDARDS

Rule 56 of the Federal Rules of Civil Procedure permits a party to move for summary judgment and directs a court to grant such motion “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The party “seeking summary judgment always bears the initial responsibility of informing the [court] of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (quotations omitted). Subsequently, the burden shifts to the non-moving party to present specific facts demonstrating that a genuine dispute of material fact exists for trial. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (“When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.”). For the evidence to present a “genuine” dispute of material fact, it must be “such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When deciding a motion for summary judgment, courts must view the facts, and inferences to be drawn from the facts, in the light most favorable to the non-moving party. *Id.* at 255.

[A] party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only),



admissions, interrogatory answers, or other materials; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c).

When ruling on a summary judgment motion, “a court may also give credence to other facts supporting the movant, regardless of their source, if such facts are not challenged by the non-moving party because a failure to challenge proffered facts may render such facts ‘admitted.’” *XVP Sports, LLC v. Bangs*, No. 2:11cv379, 2012 WL 4329258, at \*4 (E.D. Va. Sept. 17, 2012).

As specified in Local Civil Rule 56(B), “the Court may assume that facts identified by the moving party in its listing of [undisputed] material facts are admitted, unless such a fact is controverted in the statement of genuine issues filed in opposition to the motion.” E.D. Va. Loc. Civ. R. 56(B).

The applicable standards for resolving the challenges raised by the Board’s Motion to Strike are addressed where needed below.

#### **IV. ANALYSIS**

##### **A. Motion to Strike Exhibits**

In his Reply in support of his Motion for Summary Judgment, Mr. Grimm submitted the following records: (1) a treatment documentation letter written by Dr. Griffin on May 26, 2014; (2) a hormone documentation letter written by Dr. Griffin on May 26, 2014; (3) a “To Whom It May Concern” letter written by Dr. Griffin on July 1, 2014; (4) a “To Whom It May Concern” letter written by Dr. Eva Abel, Psy.D.; (5) treatment records prepared by Dr. Hope Sherie, M.D. FACS; (6) a “To Whom It May Concern” letter written by Dr. Sherie on June 21, 2016; and (7) treatment records from VCU Medical Center.

The Board has filed a Motion to Strike Exhibits submitted by Mr. Grimm in support of his Motion for Summary Judgment. ECF No. 213. The Board seeks to strike four categories of exhibits: (1) the medical records kept by Dr. Penn, Dr. Griffin, and Dr. Sherie that are referred to above; (2) the “To Whom It May Concern” letters; (3) policy statements and amicus briefs relied upon by Mr. Grimm; and (4) references to a public hearing that was held in February 2019. These challenges are addressed in turn.

**1. Medical Business Records**

The Board argues that Mr. Grimm’s submission of medical records from Dr. Penn, Dr. Griffin, and Dr. Sherie constitute expert testimony and that these records must be stricken because Mr. Grimm did not disclose these experts under Federal Rule of Civil Procedure 26. Federal Rule of Civil Procedure 26 provides that a party must disclose, without awaiting a discovery request, any witness it may use to present evidence under Federal Rule of Evidence 702, 703, or 705 governing expert testimony. Fed. R. Civ. P. 26(a)(2)(A). When a party does not comply with Rule 26(a), “the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.” Fed. R. Civ. P. 37.

Mr. Grimm is not presenting these exhibits as expert opinion testimony and they are not governed by Rules 702, 703, or 705. Mr. Grimm has established that he is using these records only to demonstrate the fact that Mr. Grimm was diagnosed with gender dysphoria and received treatment pursuant to that diagnosis. ECF No. 216 at 1–6. The Court is not asked to determine whether that diagnosis was medically sound. Nor is the Court asked to determine whether it was medically necessary for Mr. Grimm to use the restrooms consistent with his gender identity. Mr. Grimm does not seek such a ruling and reiterated this at oral argument. Draft Tr. at 11–12.

To support its request to strike, the Board cited cases that excluded documents that differ from the evidence submitted in this case. *See* ECF No. 214 at 6–7. In these decisions, the courts excluded expert reports that were not timely disclosed. *See, e.g., United States ex rel. Lutz, et al. v. Berkeley Heartlab, Inc., et al.*, No. 9:11-CV-1593-RMG, 2017 WL 5957738, at \*1 (D.S.C. Dec. 1, 2017) (excluding expert reports opining that certain laboratory tests were medically necessary).

By contrast, Mr. Grimm has submitted documents prepared contemporaneously to his treatment that detail the factual background attendant to his diagnosis and treatment. These documents are permissible. *Morris v. Bland*, 666 F. App'x 233, 239 (4th Cir. 2016) (holding that physicians testifying as fact witnesses may “discuss their examination of [a patient] and their diagnoses or findings,” but may not offer expert opinions as to proximate cause).

These records also qualify as hearsay exceptions as defined in Federal Rule of Evidence 803(6). Under Federal Rule of Evidence 803(6), records of an act, event, condition, opinion, or diagnosis are excluded from the bar against hearsay if:

(A) the record was made at or near the time by—or from information transmitted by—someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with [certain rules or statutes];

and

(E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

Fed. R. Evid. 803(6).

Medical records are quintessentially business records, and Mr. Grimm has identified adequate custodians for each record presented. For these reasons, the Court denies the Board's Motion to Strike Mr. Grimm's medical documentation.

## 2. "To Whom It May Concern" Letters

The Board also seeks to strike the "To Whom It May Concern" letters on the basis of hearsay. The Board asserts that such letters "are not the type of records regularly kept in the course of a medical practice . . . ." ECF No. 214 at 7–8. The Board also argues that the letters are untrustworthy because they are addressed to unknown recipients. *Id.* at 8.

The Board offers no support for its assertion that these letters are not the type of records kept regularly in the course of the medical practice. The fact that three different doctors prepared these types of letters contemporaneously with their treatment of Mr. Grimm suggests otherwise.<sup>5</sup>

Regarding trustworthiness, Rule 803(6) makes clear that the burden of showing untrustworthiness falls on the opponent of the records. The Board cites *Garrett v. City of Tupelo*, No. 1:16-cv-197, 2018 WL 2994808 (N.D. Miss. June 14, 2018) to assert that letters addressed to unknown recipients are untrustworthy. However, *Garrett* did not turn on the identity of the recipient of information, but instead turned on the identity of the source of such information. *Id.* at \*4 (recognizing that documents may be untrustworthy when information comes from the patient, not the doctor, or when the "source of the information is unknown") (emphasis added). The Board has not met its burden of showing that these documents are untrustworthy. Accordingly, the Court declines to strike the "To Whom It May Concern" letters provided by Dr. Griffin, Dr. Abel, and Dr. Sherie.

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<sup>5</sup> The Court also notes that the World Professional Association for Transgender Health acknowledges that the role of a health professional working with transgender youth encompasses providing referral letters for hormone therapy and includes advocacy on behalf of their patients at school. WPATH Standards of Care at 13, 31–32, ECF No. 192-5.

### **3. Policy Statements and Amicus Briefs**

The Board seeks to strike evidence submitted by Mr. Grimm that include: (1) the World Professional Association for Transgender Health Standards of Care, (2) amicus briefs from a variety of organizations, including the American Academy of Pediatrics, the National Parent Teacher Association, and school administrators from thirty-three states and the District of Columbia; and (3) other documents reflecting the views of the American Psychological Association and National Association of School Psychologists, Gender Spectrum, and the National Association of Secondary School Principals. *See* ECF No. 214 at 9–13.

The Board does not dispute that the statements presented in these documents reflect the views of these organizations. Instead, the Board argues that Mr. Grimm cannot use these documents to prove the truth of the matters asserted. Mr. Grimm responds that he is using these documents only as evidence of these organizations' views. Given that there is no dispute regarding the propriety of the intended use of these documents, the Court need not strike them. The Court has considered these documents as evidence of the views of the organizations that prepared them, and not as substantive evidence of the accuracy of such views.

### **4. Public Hearing References**

On February 19, 2019, the Board announced that it was considering a new policy that would allow transgender students to use restrooms consistent with their gender identity if certain criteria were met. Feb. 3, 2019 Press Release, ECF No. 192-35. The proposed policy arose out of settlement negotiations between the parties. Shayna Medley-Warsoff Decl. ¶ 53, ECF No. 192. The policy was ultimately rejected.

The Board argues that the Court should strike any evidence related to the February 2019 hearing under Federal Rule of Evidence 408, which prohibits the use of evidence related to

compromise negotiations. At the summary judgment hearing, counsel for Mr. Grimm stated that the Court need not consider the statements made at the February 2019 hearing. Draft Tr. at 11. Accordingly, the Court has not considered evidence related to that hearing and **GRANTS** the Board's Motion to Strike any evidence related to it.

**B. Gavin Grimm's Motion for Summary Judgment**

**1. Title IX**

Title IX provides that no person "shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a); *see also* 34 C.F.R. § 106.31. To obtain relief for claims alleging a violation of Title IX, a plaintiff must demonstrate that (1) he or she was excluded from participation in an education program because of his or her sex; (2) the educational institution was receiving federal financial assistance at the time of his or her exclusion; and (3) the improper discrimination caused the plaintiff harm. *Grimm I*, 822 F.3d at 718 (citing *Preston v. Virginia ex rel. New River Cmty. Coll.*, 31 F.3d 203, 206 (4th Cir. 1994)). The Board does not dispute that it receives federal financial assistance. ECF No. 154 ¶ 91. Accordingly, only the first and third elements are disputed.

**(a) Gavin Grimm was excluded from participation in an education program on the basis of sex.**

In its May 22, 2018 Order, this Court concluded that claims of discrimination on the basis of transgender status are *per se* actionable under a gender stereotyping theory. ECF No. 148 at 20. The Board argues that this decision was made in error and that "the plain language of Title IX and its implementing regulation, 34 C.F.R. § 106.33," define sex as a binary term encompassing the physiological distinctions between men and women. ECF No. 200 at 27–28.

The Board presents no intervening case law that compels reconsideration of this decision. To the contrary, every court to consider the issue since May 22, 2018 has agreed with the analysis relied upon by this Court. *See Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 530 (3d Cir. 2018) (stating that a policy forcing transgender students to use separate facilities “would very publicly brand all transgender students with a scarlet ‘T,’ and they should not have to endure that as the price of attending their public school”); *Adams by & through Kasper v. Sch. Bd. of St. Johns Cty.*, 318 F. Supp. 3d 1293, 1325 (M.D. Fla. 2018) (holding that “the meaning of ‘sex’ in Title IX includes ‘gender identity’ for purposes of its application to transgender students” and that the transgender student proved a Title IX violation where a school board denied him from using male restrooms, causing him harm) *appeal docketed*, No. 18-13592 (11th Cir. Aug. 24, 2018); *Parents for Privacy v. Dallas Sch. Dist. No. 2*, 326 F. Supp. 3d 1075, 1106 (D. Or. 2018) (“Forcing transgender students to use facilities inconsistent with their gender identity would undoubtedly harm those students and prevent them from equally accessing educational opportunities and resources. Such a . . . District policy would punish transgender students for their gender nonconformity and constitute a form of sex-stereotyping.”) *appeal docketed*, 18-35708 (9th Cir. Aug. 23, 2018). This Court believes that this reasoning is sound and correct and declines to revisit its prior holding.

In sum, there is no question that the Board’s policy discriminates against transgender students on the basis of their gender nonconformity. Under the policy, all students except for transgender students may use restrooms corresponding with their gender identity. Transgender students are singled out, subjected to discriminatory treatment, and excluded from spaces where similarly situated students are permitted to go.



The Board responds that its policy treats all students equally on the basis of physiological or anatomical characteristics, and that these characteristics should not be considered sex stereotypes under *Price Waterhouse*. This argument is unpersuasive.

The Board's policy relies on the term "biological gender." See ECF No. 192-21. As this Court recognized previously, biological gender is not a medically accepted term. See ECF No. 148 at 14–15 (explaining that "sex" refers to biological attributes such as genes, chromosomes, genitalia, and secondary sex characteristics, and "gender" refers to the "'internal, deeply held sense' of being a man or woman") (citing Wylie C. Hembree *et al.*, *Endocrine Treatment of Gender-dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102(11), J. CLIN. ENDOCRINOLOGY & METABOLISM 3869, 3875 (2017)). The policy's use of an ambiguous term obscures the basis for excluding transgender students from restrooms that they believe are appropriate and safe for them.

Moreover, the Board has inadequately explained the physiological and anatomical characteristics it relies upon to enforce its policy. For example, Mr. Grimm has had chest reconstruction surgery. The Gloucester County Circuit Court referred to Mr. Grimm's chest reconstruction surgery as "gender reassignment surgery," relying on that surgery in part in determining that Mr. Grimm is a male. However, this surgery is insufficient under the Board's policy. At the summary judgment hearing, counsel for the Board argued that an individual must have "the primary genitals and sex characteristic of a particular gender." Draft Tr. at 26. "Primary genitals" may be sufficiently clear, but "sex characteristic" is troublingly ambiguous. Many aspects of biology determine a person's sex, including genitalia, *and also* including hormones, genes, chromosomes, and other factors that comprise a person's biological makeup. The policy at issue uses some of these factors to define sex and ignores others. In determining the physical



characteristics that define male and female and the characteristics that are disregarded, the Board has crafted a policy that is based on stereotypes about gender. *See Brumby*, 663 F.3d at 1316 (“A person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes. . . . There is thus a congruence between discriminating against transgender and transsexual individuals and discrimination on the basis of gender-based behavioral norms.”); *City of L.A., Dep’t of Water & Power v. Manhart*, 435 U.S. 702, 707 (1978) (stating that protections from sex discrimination are not limited to discrimination based on “myths and purely habitual assumptions,” but also extend to discrimination based on generalizations that are “unquestionably true”).

Additionally, Mr. Grimm has both a valid court order and a state-issued birth certificate identifying him as male. All other students with male birth certificates at Gloucester High School are permitted to use male restrooms. Mr. Grimm was the only student with a male birth certificate excluded from the male restrooms. This constitutes discriminatory treatment by the Board.

Furthermore, the Board has refused to update Mr. Grimm’s transcripts and education documents, despite his amended birth certificate. The Board argues that his amended birth certificate does not comply with Virginia law and questions its authenticity. Such questions have been dispelled by the Declaration of Janet M. Rainey. ECF No. 195. Ms. Rainey is the State Registrar and Director of the Division of Vital Records and administers Virginia’s system of vital records in accordance with Virginia law. She issued Gavin Grimm an amended birth certificate on October 27, 2016 that identifies him as male. *Id.* Regardless of prior concerns about the amended birth certificate’s authenticity,<sup>6</sup> the Board’s continued recalcitrance in the face of Ms.

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<sup>6</sup> It is obvious from the face of the amended birth certificate that the photocopy presented to the Board was marked “void” because it was a copy of a document printed on security paper, not because it was fabricated. *See* ECF No. 184-6 (a copy of Mr. Grimm’s birth certificate, stating that it the original is printed on security paper and is void

Rainey's Declaration and the court order from the Gloucester County Circuit Court is egregious. It is also discriminatory. Other students in the Gloucester County School system with male birth certificates also have male transcripts. Undeniably, the Board discriminates against Mr. Grimm in violation of Title IX in refusing to afford him the same dignity.

The Board also argues that Mr. Grimm has not proven that his use of male restrooms was medically necessary. However, the questions presented in this case do not require a finding that Mr. Grimm's use of a male restroom was medically necessary. The Board treated Mr. Grimm differently than other students on the basis of sex and, as established below, he suffered some measure of harm from that treatment. The existence of other methods of social transition for transgender individuals is, for the purposes of resolving the questions presented, irrelevant.

The Court concludes that the Board has discriminated against Gavin Grimm on the basis of his transgender status in violation of Title IX. The Court must next determine whether the improper discrimination caused Mr. Grimm harm.

**(b) The Board's policy harmed Gavin Grimm.**

In his Declaration, Mr. Grimm described under oath feeling stigmatized and isolated by having to use separate restroom facilities. Gavin Grimm Decl. ¶ 47. His walk to the restroom felt like a "walk of shame." *Id.* ¶ 50. He avoided using the restroom as much as possible and developed painful urinary tract infections that distracted him from his class work. *Id.* ¶ 51. This stress "was unbearable" and the resulting suicidal thoughts he suffered led to his hospitalization at Virginia Commonwealth University Medical Center Critical Care Hospital. *Id.* ¶ 54.

Despite this evidence, the Board contends that Mr. Grimm has suffered no harm. ECF No. 200 at 29–30. The Board has discounted Mr. Grimm's testimony that separate restroom facilities

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without a watermark). In any event, given Ms. Rainey's Declaration, the Board rationalizes its continuing denial of Mr. Grimm's amended birth certificate on specious grounds: that a photocopy was marked void.

caused him mental distress because he has not identified an expert to testify that he suffered such distress.<sup>7</sup> *Id.* Similarly, the Board argues that Mr. Grimm cannot prove that he suffered from painful urinary tract infections because he presented no supporting medical evidence. *Id.*

The Board's argument that Mr. Grimm's testimony regarding his harm is inadequate because it is not bolstered by expert testimony is untenable.<sup>8</sup> The Board's argument has no basis in law. *See Adams*, 318 F. Supp. 3d at 1316 (relying on a transgender student's own testimony to conclude that the student suffered harm in the form of stigma and humiliation).

The Board's assertion that Mr. Grimm has suffered no harm as a result of its policy is strikingly unconvincing. Mr. Grimm broke down sobbing at school because there was no restroom he could access comfortably. After one breakdown, Mr. Grimm was hospitalized with suicidal thoughts. He avoided after-school activities such as football games. He experienced pain and discomfort as a result of avoiding restrooms while at school.<sup>9</sup> Further expert testimony is unnecessary to conclude that the Board's policy harmed Mr. Grimm during his high school years.

There is also sufficient evidence to conclude that the Board continues to harm Mr. Grimm by refusing to update his school records to reflect his male identity. Whenever Mr. Grimm has to provide a copy of his transcript to another entity, such as a new school or employer, he must "show them a document that negates [his] male identity and marks him different from other boys." Gavin

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<sup>7</sup> The Board "disputes" Mr. Grimm's statements regarding his harm suffered because the Board labels his Declaration as "self-serving." Dismissing a party's testimony as self-serving while failing to present contradicting evidence is plainly insufficient to establish a genuine dispute of material fact.

<sup>8</sup> At the hearing, the Court read portions of Mr. Grimm's declaration into the record regarding the humiliation and stigma he suffered as a result of the Board's policy. The Court asked defense counsel whether that testimony could support a finding of harm, warranting at least an award of nominal damages. Counsel responded that "I think the answer is yes. . . . I don't think we can say there [are] no nominal damages here." Draft Tr. at 26.

<sup>9</sup> Medical documentation confirming that his discomfort was caused by urinary tract infections is irrelevant for the purposes presented here. There is sufficient evidence that Mr. Grimm suffered pain of some measure, for which he requests only injunctive relief and nominal damages.

Grimm Decl. ¶ 69. The Board continues to harm Mr. Grimm every time he is asked to furnish his records. This harm compels at least an award of injunctive relief and nominal damages.

Mr. Grimm has established (1) that he was excluded from the restrooms at Gloucester High School on the basis of gender stereotypes; (2) the educational institution received federal financial assistance at the time of his exclusion; and (3) improper discrimination caused him harm. For these reasons, summary judgment is **GRANTED** in favor of Mr. Grimm regarding his claim asserting a violation of Title IX (Count Two).

## 2. Equal Protection Clause

Mr. Grimm also alleges that the Board's actions violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, which provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV § 1. The Equal Protection Clause "is essentially a directive that all persons similarly situated should be treated alike." *Whitaker by Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1050 (7th Cir. 2017) (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985)).

In its May 22, 2018 ruling, this Court held that intermediate scrutiny must be applied in analyzing claims of discrimination against transgender individuals. ECF No. 148 at 24. Although the Board seeks reconsideration of this holding, it presents no authorities that compel a different result.<sup>10</sup> Other courts that have considered this issue since May 2018 have agreed that heightened scrutiny applies. *See, e.g., Karnoski v. Trump*, 926 F.3d 1180, 1200–02 (9th Cir. 2019) (holding that intermediate scrutiny applies to alleged discrimination against transgender individuals in the

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<sup>10</sup> Instead, the Board's citations include out-of-circuit cases from the 1980s and 1990s, cases that interpret Title VII instead of the Equal Protection Clause, and cases that pertain to sexual orientation, not gender identity. The Board's citations are unpersuasive.

military); *Adams by & through Kasper*, 318 F. Supp. 3d at 1296, 1312–13 (applying intermediate scrutiny and noting that “federal courts around the country have recognized the right of transgender students to use the bathroom matching their gender identity”). In light of these rulings, this Court rejects defense counsel’s argument that it is “step[ping] out on its own.” *See* ECF No. 200 at 32.

When applying intermediate scrutiny to a sex-based classification, the Board bears the burden of demonstrating that its proffered justification for its use of the classification is “exceedingly persuasive.” *United States v. Virginia*, 518 U.S. 515, 533 (1996). The Board is required to demonstrate that the classification “serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives.” *Id.* at 524.

In response, the Board asserts an interest in protecting the privacy rights of students, specifically privacy interests that students have in protecting their unclothed bodies.<sup>11</sup> ECF No. 200 at 33. There is little doubt that students have a privacy right in avoiding exposure of their unclothed bodies.

Defendant makes no showing, however, that the challenged policy is “substantially related” to protecting student privacy. First, it is undisputed that the Board received no complaints regarding any encounter with Mr. Grimm in a restroom. Andersen Dep. 13:20–14:5. The fact that Mr. Grimm used male restrooms for seven weeks without incident is evidence suggesting that the Board’s privacy concerns are unwarranted. *Cf. Whitaker*, 858 F.3d at 1052 (noting that the school district’s privacy argument was undermined by the fact that a transgender boy used male restrooms for six months without incident).

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<sup>11</sup> The Board cites a case involving strip searches of students. *See* ECF No. 200 at 33 (citing *Doe v. Renfrow*, 631 F.2d 91, 92–93 (7th Cir. 1980)). Those situations are starkly distinct from transgender students seeking to use a restroom.

The Board's privacy argument also ignores the practical realities of how transgender individuals use a restroom. *See Grimm I*, 822 F.3d at 723 n.10 (expressing doubt that "G.G.'s use . . . or for that matter any individual's appropriate use of a restroom" would involve the types of intrusions present in other cases where privacy abuses were found); *Whitaker*, 858 F.3d at 1052 (holding that a similar policy "ignores the practical reality of how [the plaintiff], as a transgender boy, uses the bathroom: by entering a stall and closing the door"); *Adams*, 318 F. Supp. 3d at 1296, 1314 ("When he goes into a restroom, [the transgender student] enters a stall, closes the door, relieves himself, comes out of the stall, washes his hands, and leaves.").

At the summary judgment hearing, defense counsel conceded that there is no privacy concern for other students when a transgender student walks into a stall and shuts the door. Draft Tr. at 38. However, the Board's 30(b)(6) witness, Troy Andersen, testified that privacy concerns are implicated when students use the urinal, use the toilet, or open their pants to tuck in their shirts. Andersen Dep. 30:10–20. When asked why the expanded stalls and urinal dividers could not fully address those situations, Mr. Andersen responded that he "was sure" the policy also protected privacy interests in other ways, but that he "[couldn't] think of any other off the top of [his] head." *Id.* This Court is compelled to conclude that the Board's privacy argument "is based upon sheer conjecture and abstraction." *See Whitaker*, 858 F.3d at 1052.

Even if there were a plausible risk of exposure to nudity, transgender individuals often undergo a variety of procedures and treatments that result in anatomical and physiological changes, such as puberty blockers and hormone therapy. Such treatments can result in transgender girls developing breasts or transgender boys developing facial hair. If exposure to nudity were a real concern, forcing such a transgender girl to use the male restrooms could likely expose boys to

viewing physical characteristics of the opposite sex. From this perspective, the Board's privacy concerns fail to support the policy it implemented.

When asked why transgender students present a greater risk of invasion of privacy to students than the risk from someone of the same physiological sex, Mr. Andersen answered "I would say that it just goes back to [bathroom] use relying on the social norms of binary sexes." Andersen Dep. 31:4–10. However, "mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable . . . are not permissible bases" for discrimination. *Cleburne Living Ctr.*, 473 U.S. at 448. The Board has failed to meet its burden to provide an "exceedingly persuasive justification" for its policy. Accordingly, its policy must be found unconstitutional under the Equal Protection Clause.

Moreover, the Board's continued refusal to update Mr. Grimm's school records implicates no privacy concerns. The Board has put forward no justification for refusing to correct these records other than alleged concerns about his amended birth certificate's compliance with law and authenticity. These unsubstantiated doubts are easily dispelled by Janet Rainey's Declaration.

For these reasons, summary judgment must be **GRANTED** in favor of Gavin Grimm on his claim for a violation of the Equal Protection Clause (Count One).

### **3. Mr. Grimm's request for a permanent injunction**

Mr. Grimm seeks an injunction requiring the Board to update his school records to reflect his male identity. To obtain a permanent injunction, a plaintiff must show: "(1) irreparable injury, (2) remedies at law are inadequate to compensate for that injury, (3) the balance of hardships between the plaintiff and defendant warrants a remedy, and (4) an injunction would not disserve the public interest." *Raub v. Campbell*, 785 F.3d 876, 885 (4th Cir. 2015) (internal quotations



omitted). “[T]he deprivation of constitutional rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal quotations omitted).

The Court has already determined that Mr. Grimm has suffered injury that is ongoing and thus cannot be compensated by mere monetary damages. The balance of hardships also weighs in Mr. Grimm’s favor. The Board has not identified any difficulty in altering Mr. Grimm’s records. Nor has it identified any other governmental interest in refusing to update Mr. Grimm’s records other than those already addressed in this Order. By contrast, Mr. Grimm suffers great hardship when he presents school records that negate his male identity. Finally, an injunction would serve the public’s interest in upholding constitutional rights. *See Centro Tepeyac v. Montgomery Cty.*, 722 F.3d 184, 191 (4th Cir. 2013) (en banc) (internal quotations omitted). For these reasons, a permanent injunction requiring the Board to update Mr. Grimm’s school records is warranted.

### C. Gloucester County School Board’s Motion for Summary Judgment

The Board also moves for summary judgment. ECF No. 195. The Board first argues that Title IX’s prohibition of discrimination “on the basis of sex” does not encompass the Board’s policy and that the definition of sex in the statute and its implementing regulation do not account for gender identity. ECF No. 196 at 10–30. The Court rejected this argument on May 22, 2018 and it reaffirms that holding today.<sup>12</sup>

Regarding the Equal Protection Clause, the Board argues that its policy should not be subjected to heightened scrutiny but should be subjected to a lower level of scrutiny: rational basis review.<sup>13</sup> *Id.* at 32–37. The Board argues that its policy survives such review. *Id.* The Court

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<sup>12</sup> Much of the Board’s Summary Judgment Motion is an attempt to relitigate this Court’s prior holdings. For example, the Board argues that if “sex” were equated with “gender identity,” Title IX and its regulations would be invalid for lack of clear notice. ECF No. 196 at 29–30 (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)). This Court found this exact argument “unavailing.” ECF No. 148 at 20 n.11.

<sup>13</sup> Under rational basis review, a court analyzes whether a law is “rationally related to a legitimate governmental interest.” *U.S. Dep’t. of Agric. v. Moreno*, 413 U.S. 528, 533 (1973).



again rejects this argument. The Board also reasserts that its policy survives intermediate scrutiny for the same reasons advanced in opposition to Mr. Grimm’s Motion for Summary Judgment, as addressed above. Those arguments remain unavailing. Accordingly, the Gloucester County School Board’s Motion for Summary Judgment, ECF No. 195, is **DENIED**.

## V. CONCLUSION

Parents, teachers and administrators share “a solemn obligation to guard the well-being of the children in their charge.” *Adams*, 318 F. Supp. 3d at 1296.

As recent events from around the country have tragically demonstrated, this is a very challenging job. Recognizing the difficulty of this task and that local school boards, answerable to the citizens of their community, are best situated to set school policy, federal courts are reluctant to interfere. Nevertheless, the federal court also has a solemn obligation: to uphold the Constitution and laws of the United States. That is why federal courts around the country have recognized the right of transgender students to use the bathroom matching their gender identity.

*Id.*

Nelson Mandela said that “[h]istory will judge us by the difference we make in the everyday lives of children.” One need only trace the arduous journey that this litigation has followed since its inception over four years ago to understand that passion and conviction have infused the arguments and appeals along the way.<sup>14</sup> The Board undertook the unenviable

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<sup>14</sup> A cursory collection of salient events docketed in this matter include the following: the initial Complaint, June 11, 2015; a Motion to Dismiss Complaint argued, July 27, 2015, and partially granted; Order denying Plaintiff’s Motion for Preliminary Injunction, September 4, 2015; Order denying an injunction appealed to the United States Court of Appeals for the Fourth Circuit, September 8, 2015; the Memorandum Opinion granting dismissal and denying motion for injunction, September 17, 2015; the Fourth Circuit’s partial reversal of dismissal Order, April 19, 2016; the Order permitting Plaintiff’s use of male restrooms at Gloucester County High School, June 23, 2016; Defendant’s appeal of the June 23, 2016 Order, June 27, 2016; the Order denying a stay pending appeal, July 6, 2016; the United States Supreme Court’s stay of the injunction pending resolution of an anticipated petition for writ of certiorari, August 3, 2016; the Fourth Circuit vacating the preliminary injunction, April 7, 2017; reassignment of the case to the undersigned, June 6, 2017; an Amended Complaint, August 22, 2017; a Motion to Dismiss Amended Complaint, September 22, 2017; supplemental briefing ordered, October 26, 2017; an Amended Motion to Dismiss, January 5, 2018; an Order denying the Amended Motion to Dismiss, May 22, 2018; Order granting a Motion for Leave to take Interlocutory Appeal, June 5, 2018; a Second Amended Complaint, February 15, 2019; cross-motions for summary judgment, March 26, 2019; Defendant’s Motion to Exclude and Strike Exhibits, April 30, 2019; and oral argument on cross-motions for summary judgment and on the Motion to Strike, July 23, 2019.

responsibility of trying to honor expressions of concern advanced by its constituency as it navigated the challenges presented by issues that barely could have been imagined or anticipated a generation ago. This Court acknowledges the many expressions of concern arising from genuine love for our children and the fierce instinct to protect and raise our children safely in a society that is growing ever more complex. There can be no doubt that all involved in this case have the best interests of the students at heart.<sup>15</sup>

At the same time, the Court acknowledges that for seven weeks, the student body at Gloucester High School accommodated Mr. Grimm without incident as he—assisted by compassionate school and medical representatives—took new paths in his everyday life. This Court is compelled to acknowledge too that some of the external challenges seeking to reroute these new paths inflicted grief, pain, and suicidal thoughts on a child.

However well-intentioned some external challenges may have been and however sincere worries were about possible unknown consequences arising from a new school restroom protocol, the perpetuation of harm to a child stemming from unconstitutional conduct cannot be allowed to stand. These acknowledgements are made in the hopes of making a positive difference to Mr. Grimm and to the everyday lives of our children who rely upon us to protect them compassionately and in ways that more perfectly respect the dignity of every person.

Therefore, the Board’s Motion to Strike, ECF No. 213, is **GRANTED IN PART** and **DENIED IN PART**. Gavin Grimm’s Motion for Summary Judgment, ECF No. 184, is **GRANTED**. The Board’s Motion for Summary Judgment, ECF No. 191, is **DENIED**.

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<sup>15</sup> “When confronted with something affecting our children that is new, outside of our experience, and contrary to gender norms we thought we understood, it is natural that parents want to protect their children. But the evidence is that [the plaintiff] poses no threat to the privacy or safety of any of his fellow students. Rather, [the plaintiff] is just like every other student . . . , a teenager coming of age in a complicated, uncertain and changing world.” *Adams*, 318 F. Supp. 3d at 1297.

The Court **ORDERS** the following relief:

- The Court **DECLARES** that the Board’s policy violated Mr. Grimm’s rights under the Fourteenth Amendment to the United States Constitution and Title IX of the Education Amendments of 1972, on the day the policy was first issued and throughout the remainder of his time as a student at Gloucester High School;
- The Court **DECLARES** that the Board’s refusal to update Mr. Grimm’s official school transcript to conform to the “male” designation on his birth certificate violated and continues to violate his rights under the Fourteenth Amendment to the United States Constitution and Title IX of the Education Amendments of 1972;
- Nominal damages are awarded to Mr. Grimm in the amount of one dollar;
- The Court issues a permanent injunction requiring the Board to update Mr. Grimm’s official school records to conform to the male designation on his updated birth certificate and to provide legitimate copies of such records to Mr. Grimm within ten days of the date of this Order;
- The Board shall pay Mr. Grimm’s reasonable costs and attorneys’ fees pursuant to 42 U.S.C. § 1988.

The Clerk is **REQUESTED** to forward a copy of this Order to all parties and counsel of record.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
Arenda L. Wright Allen  
United States District Judge

  
\_\_\_\_\_, 2019  
Norfolk, Virginia

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Newport News Division**

**GAVIN GRIMM,**

Plaintiff,

v.

**Civil Action No. 4:15cv54**

**GLOUCESTER COUNTY SCHOOL  
BOARD,**

Defendant.

**JUDGMENT IN A CIVIL CASE**

**Decision by the Court.** This action came for decision before the Court. The issues have been considered and a decision has been rendered.

**IT IS ORDERED AND ADJUDGED** that Gavin Grimm's Motion for Summary Judgment, ECF 184, is **GRANTED**. Gloucester County School Board's Motion for Summary Judgment, ECF 191, is **DENIED**.

The Court **ORDERS** the following relief:

- The Court **DECLARES** that the Board's policy violated Mr. Grimm's rights under the Fourteenth Amendment to the United States Constitution and Title IX of the Education Amendments of 1972, on the day the policy was first issued and throughout the remainder of his time as a student at Gloucester High School;
- The Court **DECLARES** that the Board's refusal to update Mr. Grimm's official school transcript to conform to the "male" designation on his birth certificate violated and continues to violate his rights under the Fourteenth Amendment to the United States Constitution and Title IX of the Education Amendments of 1972;
- Nominal damages are awarded to Mr. Grimm in the amount of one dollar;
- The Court issues a permanent injunction requiring the Board to update Mr. Grimm's official school records to conform to the male designation on his updated birth certificate and to provide legitimate copies of such records to Mr. Grimm within ten days of the date of this Order;
- The Board shall pay Mr. Grimm's reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988.

Dated: August 9, 2019

FERNANDO GALINDO, Clerk

By: \_\_\_\_\_  
B. Peters, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Newport News Division

GAVIN GRIMM,

Plaintiff,

v.

Case No. 4:15-cv-54

GLOUCESTER COUNTY SCHOOL  
BOARD,

Defendant.

**NOTICE OF APPEAL**

Defendant Gloucester County School Board (“School Board”), by counsel, hereby appeals to the United States Court of Appeals for the Fourth Circuit from the final judgment entered on August 9, 2019.

**GLOUCESTER COUNTY SCHOOL  
BOARD**

By Counsel

/s/  
\_\_\_\_\_  
David P. Corrigan (VSB No. 26341)  
Jeremy D. Capps (VSB No. 43909)  
Attorneys for Gloucester County School Board  
Harman, Claytor, Corrigan & Wellman  
P.O. Box 70280  
Richmond, Virginia 23255  
804-747-5200 - Phone  
804-747-6085 - Fax  
dcorrigan@hccw.com  
jcapps@hccw.com

**CERTIFICATE**

I hereby certify that on the 30<sup>th</sup> day of August, 2019, I filed a copy of the foregoing document with the Clerk of the Court using the CM/ECF system, which will automatically send a Notice of Electronic Filing to all counsel of record.

/s/

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David P. Corrigan (VSB No. 26341)  
Jeremy D. Capps (VSB No. 43909)  
Attorneys for Gloucester County School Board  
Harman, Claytor, Corrigan & Wellman  
P.O. Box 70280  
Richmond, Virginia 23255  
804-747-5200 - Phone  
804-747-6085 - Fax  
dcorrigan@hccw.com  
jcapps@hccw.com