

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

**B.P.J., by her next friend and mother, HEATHER  
JACKSON,**

**Plaintiff,**

v.

**Civil Action No. 2:21-cv-00316  
Honorable Joseph R. Goodwin**

**WEST VIRGINIA STATE BOARD OF  
EDUCATION, HARRISON COUNTY BOARD  
OF EDUCATION, WEST VIRGINIA  
SECONDARY SCHOOL ACTIVITIES  
COMMISSION, W. CLAYTON BURCH in his  
official capacity as State Superintendent,  
DORA STUTLER, in her official capacity as  
Harrison County Superintendent, and  
THE STATE OF WEST VIRGINIA,**

**Defendants,**

**and**

**LAINY ARMISTEAD,**

**Defendant-Intervenor.**

**DEFENDANTS WEST VIRGINIA STATE BOARD OF EDUCATION AND  
W. CLAYTON BURCH'S MOTION FOR SUMMARY JUDGMENT**

**NOW COME** Defendants West Virginia State Board of Education and Superintendent W. Clayton Burch, by and through counsel, Kelly C. Morgan, Michael W. Taylor, Kristen V. Hammond, and the law firm of Bailey & Wyant, P.L.L.C., and, pursuant to Rule 56 of the *Federal Rules of Civil Procedure*, hereby move this Court for entry of an Order granting them summary judgment resulting in a dismissal from this action, with prejudice. In support of this Motion, these Defendants submit their contemporaneously filed Memorandum of Law in Support of their Motion for Summary Judgment, as well as the following exhibits:

- (a) Exhibit 1 – Deposition Transcript of WVBOE 30(b)(6) Representative Michele Blatt;
- (b) Exhibit 2 – Deposition Transcript of WVSSAC 30(b)(6) Representative Bernard Dolan and Ex. 6;
- (c) Exhibit 3 – Disability Rights S.C. v. McMaster, No. 21-2070, 2022 U.S. App. LEXIS 2292 (4th Cir. Jan. 25, 2022); and
- (d) Exhibit 4 – 2022 West Virginia Legislature House Joint Resolution 102.

**WHEREFORE**, based upon the foregoing and the reasons set forth in the contemporarily filed Memorandum of Law, Defendants West Virginia State Board of Education and Superintendent W. Clayton Burch respectfully request that this Court enter an Order granting them summary judgment resulting in a dismissal from this action, with prejudice, and awarding them such other relief deemed necessary and appropriate.

**Respectfully Submitted,**

**DEFENDANTS WEST VIRGINIA  
STATE BOARD OF EDUCATION  
and W. CLAYTON BURCH**

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THE STATE OF WEST VIRGINIA,**

**Defendants,**

**and**

**LAINY ARMISTEAD,**

**Defendant-Intervenor.**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on April 21, 2022, the foregoing “**Defendants West Virginia State Board of Education and Superintendent W. Clayton Burch’s Motion for Summary Judgment**” was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

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his official capacity as State )  
Superintendent, DORA STUTLER in )  
her official capacity as )  
Harrison County Superintendent, )  
and THE STATE OF WEST VIRGINIA, )

Defendants. )

and )

LAINIEY ARMISTEAD, )

Defendant-Intervenor. )  
\_\_\_\_\_ )

VIRTUAL VIDEOCONFERENCE VIDEO-RECORDED  
DEPOSITION OF MICHELE BLATT  
Monday, February 14, 2022  
Remotely Testifying from Charleston, West Virginia

Reported By: Hanna Kim, CLR, CSR No. 13083  
Job No. 5079505

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
3 CHARLESTON DIVISION  
4

5 B.P.J. by her next friend and )  
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9 ) 2:21-cv-00316

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11 SECONDARY SCHOOL ACTIVITIES )  
COMMISSION, W. CLAYTON BURCH in )  
his official capacity as State )  
Superintendent, DORA STUTLER in )  
12 her official capacity as )  
Harrison County Superintendent, )  
13 and THE STATE OF WEST VIRGINIA, )  
14 )  
Defendants. )

15 and )  
16 LAINEY ARMISTEAD, )  
17 )  
Defendant-Intervenor. )  
18 )

19 Virtual videoconference video-recorded  
20 deposition of MICHELE BLATT, taken pursuant to the  
21 stipulations of counsel thereof, taken on behalf  
22 of the Plaintiff, on Monday, February 14, 2022,  
23 remotely testifying from Charleston, West  
24 Virginia, before Hanna Kim, CLR, Certified  
25 Shorthand Reporter, No. 13083.

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21 Also Present:

22 MITCH REISBORD, Concierge

23 DAVE HALVORSON, Videographer

24

25

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WITNESS: MICHELE BLATT

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1 Remotely Testifying from Charleston, West Virginia

2 Monday, February 14, 2022; 12:09 p.m., EST

3 --oOo--

4 THE VIDEOGRAPHER: Okay. Good afternoon.

5 We are on the record at 12:09 p.m. on 12:09:56  
6 February 14th, 2022.

7 This is Media Unit 1 in the video-recorded  
8 deposition of Michele Blatt, in the matter of  
9 B.P.J. and Heather Jackson versus West Virginia  
10 State Board of Education, et al. 12:10:15

11 It's filed in the Southern District of  
12 West Virginia in -- in the Charleston Division.  
13 The case number is 2:21-cv-00316.

14 This deposition is being held virtually.

15 My name is Dave Halvorson. I'm the 12:10:31  
16 videographer here from Veritext. And I'm here with  
17 the court reporter, Hanna Kim, also from Veritext.

18 Counsel, can you please all identify  
19 yourselves so the witness can be sworn in.

20 MS. VEROFF: Good morning. This is Julie 12:10:44  
21 Veroff from Cooley LLP. I'm an attorney  
22 representing Plaintiff B.P.J.

23 MS. HARTNETT: This is Kathleen Hartnett  
24 from Cooley, also for Plaintiff.

25 MR. BARR: Andrew Barr, also from Cooley 12:11:02

1 and also for Plaintiff.

2 MS. KANG: Katelyn Kang, also from Cooley,  
3 also for Plaintiff.

4 MS. REINHARDT: Elizabeth Reinhardt, also  
5 from Cooley, also for Plaintiff. 12:11:19

6 MS. HELSTROM: Zoe Helstrom from Cooley  
7 for Plaintiff.

8 MS. STARK: Loree Stark with the ACLU of  
9 West Virginia for Plaintiff.

10 MR. WARD: Nicholas Ward with the ACLU of 12:11:29  
11 West Virginia on behalf of Plaintiff.

12 MR. BLOCK: Josh Block from the ACLU on  
13 behalf of Plaintiff.

14 MS. SWAMINATHAN: Sruti Swaminathan from  
15 Lambda Legal on behalf of Plaintiff. 12:11:40

16 MS. SMITH-CARRINGTON: Avatara  
17 Smith-Carrington from Lambda Legal on behalf of  
18 Plaintiff.

19 MS. MORGAN: This is Kelly Morgan on  
20 behalf of the West Virginia Board of Education and 12:12:01  
21 Superintendent Clayton Burch, as well as Heather  
22 Hutchens, as general counsel for the West Virginia  
23 State Board.

24 And on Zoom as well is Kristen Hammond.

25 MR. TRYON: This is David Tryon on behalf 12:12:19

1 of the State of West Virginia.

2 Curtis Capehart is also on the line on  
3 behalf of the State.

4 MS. DENIKER: Susan Deniker on behalf of  
5 Harrison County Board of Education and 12:12:36  
6 Superintendent Dora Stutler.

7 MS. GREEN: Roberta Green here on behalf  
8 of West Virginia Secondary School Activities  
9 Commission.

10 MS. FRAMPTON: Hal Frampton from Alliance 12:12:48  
11 Defending Freedom for the Defendant-Intervenor  
12 Lainey Armistead.

13 Also on Zoom for the intervenor are Katie  
14 Kelly and Timothy Ducar.

15 THE COURT REPORTER: I'm going to 12:13:02  
16 administer the oath to the witness.

17  
18 MICHELE BLATT,  
19 having been duly administered an oath over  
20 videoconference as stipulated by all counsel, was  
21 examined and testified as follows:

22  
23 THE VIDEOGRAPHER: Okay. You may proceed.

24 ///

25 ///

EXAMINATION

BY MS. VEROFF:

Q. Good morning, Ms. Blatt. Thank you so much for being here.

Good afternoon in West Virginia. 12:13:39

How are you doing today?

A. Good. Thank you.

Q. Yep.

Would you mind stating and spelling your name for the record, please. 12:13:46

A. Michele Blatt. It's M-I-C-H-E-L-E, B-L-A-T-T.

Q. Thank you. And is it okay to refer to you as "Ms. Blatt," or would you prefer a different salutation? 12:14:00

A. Michele's fine.

Q. Michele. Okay. Thank you.

And so before we dive into questions, I have just a few keeping housekeeping items to go through with you. 12:14:10

So the oath you've just taken today is the same oath as if you were testifying in a courtroom. You must testify truthfully and not leave out any important fact.

Is there any reason you cannot testify 12:14:19

1 truthfully today?

2 A. No.

3 Q. Please give verbal answers to my  
4 questions. Nonverbal answers, like nodding or  
5 shaking your head, can't be taken down by the 12:14:28  
6 court reporter.

7 If you don't understand a question, please  
8 just let me know, and I'd be happy to repeat it or  
9 to rephrase.

10 If you answer, I'll assume you understood. 12:14:38

11 And just to be clear, when I ask  
12 questions, I'm not seeking confidential  
13 communications that you had with your attorney.

14 And, lastly, to enable the court reporter  
15 to take down a clean record, we should do our best 12:14:51  
16 to avoid speaking at the same time.

17 So please allow me to try and finish a --  
18 a question before you answer, and I'll do my very  
19 best not to speak over you.

20 Does all that sound okay? 12:15:04

21 A. Yes.

22 Q. Okay. Great.

23 And just a few shorthands that I'm  
24 planning to use through today's deposition. I'm  
25 going to use the shorthand "State Board" when 12:15:14

1 referring to the West Virginia State Board of  
2 Education.

3 Is that okay with you?

4 A. Yes.

5 Q. I'm also going to use "H.B. 3293" when 12:15:23  
6 referring to House Bill 3293, which is codified at  
7 West Virginia Code Section 18-2-25d.

8 Is that okay with you?

9 A. Yes.

10 Q. Great. 12:15:36

11 And during this deposition, I'm going to  
12 have a few questions that use the terms  
13 "cisgender" and "transgender."

14 And so for purposes of this deposition,  
15 when I say the term "cisgender," what I mean is 12:15:47  
16 someone's whose gender identity matches the sex  
17 they were assigned at birth.

18 Does that make sense?

19 A. Yes.

20 Q. Great. 12:15:56

21 And for purposes of this deposition, when  
22 I say "transgender," I mean someone whose gender  
23 identity does not match the sex they were assigned  
24 at birth.

25 Does that make sense? 12:16:07

1 A. Yes.

2 Q. Great.

3 And, lastly, when I say "B.P.J.," I'm  
4 referring to the Plaintiff in this case.

5 Does that make sense? 12:16:14

6 A. Yes.

7 Q. Great.

8 So with all that out of the way, I want to  
9 chat a little bit about your experience with  
10 depositions and preparation for today's 12:16:23  
11 deposition.

12 Have you ever had your deposition taken  
13 before?

14 A. I have not.

15 Q. And have you ever testified at trial? 12:16:31

16 A. I have not.

17 Q. Well, hopefully this will be an easy and  
18 pain-free first deposition experience.

19 Did you bring anything to today's  
20 deposition? 12:16:44

21 A. I just have a copy of the House Bill 3293  
22 that was codified.

23 Q. Great.

24 And do you have any notes or annotations  
25 on that copy of House Bill 3293? 12:16:53

1 A. No.

2 Q. And do you understand that you're here in  
3 response to a 30(b)(6) deposition notice?

4 A. Yes.

5 Q. Do you know what a 30(b)(6) deposition is? 12:17:07

6 A. Yes. I just learned that Friday.

7 Q. Excellent.

8 And have you had a chance to review the  
9 deposition notice?

10 A. Yes. 12:17:17

11 Q. Great.

12 And so you're familiar with a 12 topics  
13 described in the notice?

14 A. Yes.

15 Q. Wonderful. 12:17:25

16 So if you'll please go into your "Marked  
17 Exhibits" folder on Exhibit Share, you should see  
18 Exhibit 15.

19 Please go ahead and open that exhibit, and  
20 let me know when you have it open. 12:17:37

21 MS. MORGAN: We have it open.

22 MS. VEROFF: Wonderful.

23 (Blatt Deposition Exhibit 15 was marked  
24 electronically.)

25 BY MS. VEROFF: 12:17:45

1 Q. So if you'll please scroll to page, I  
2 believe it's 6 -- or maybe -- I'm sorry, page 4 of  
3 the PDF, you'll see "Definitions." And if you  
4 scroll to page 6, you'll see "Topics of  
5 Examination." 12:17:58

6 Do you see that?

7 A. Yes.

8 THE COURT REPORTER: Counsel?

9 MS. VEROFF: Yes.

10 THE COURT REPORTER: I need to go off the 12:18:08  
11 record for an audio issue, please.

12 THE VIDEOGRAPHER: All right.

13 We are going off the record. The time is  
14 12:18 p.m.

15 (Off the record.) 12:18:32

16 THE VIDEOGRAPHER: All right.

17 We are back on the record at 12:28 p.m.

18 Go ahead.

19 MS. VEROFF: Great.

20 BY MS. VEROFF: 12:28:13

21 Q. Thank you, Ms. Blatt.

22 So we were talking about the -- the 12  
23 topics in the notice of deposition. And I'd like  
24 to start with Topic 1, which is "The organization  
25 and structure of the State Board, including its 12:28:24

1 employees, their positions, and the scope of their  
2 responsibilities, including the role and  
3 responsibilities of the State Superintendent."

4 Did I read that correctly?

5 A. Yes. 12:28:37

6 Q. What did you do to prepare for Topic 1?

7 A. I've just generally thought through the  
8 process that we use and how our department and  
9 State Board is organized.

10 Q. Did you review any documents? 12:28:53

11 A. No.

12 Q. And did you consult with anyone other than  
13 your attorney?

14 A. No.

15 Q. Turning to Topic 2, "Your Policies,  
16 Documents, and Communications concerning  
17 rulemaking," did I read that correctly?

18 A. Yes.

19 Q. What did you do to prepare for Topic 2?

20 A. Again, just thought through the process 12:29:18  
21 that we use here at the Department of Education.

22 Q. Did you consult any documents?

23 A. No.

24 Q. And did you consult any person other than  
25 your attorney? 12:29:29

1 A. No.

2 Q. Looking at Topic 3, "Your Policies,  
3 Documents, and Communications Concerning Your  
4 control, supervision, or authority over school  
5 athletics in West Virginia," did I read that 12:29:41  
6 correctly?

7 A. Yes.

8 Q. What did you do to prepare for Topic 3?

9 A. Just reviewed the State Code regarding the  
10 SSAC. 12:29:54

11 Q. And did you review any documents?

12 A. No.

13 Q. I'm sorry, I couldn't hear you. Did you  
14 say "no"?

15 A. No, just the -- the State Code that 12:30:07  
16 relates to the SSAC.

17 Q. Just the State Code. Great.

18 And did you consult with anyone other than  
19 your attorney?

20 A. No. 12:30:16

21 MS. MORGAN: Let me just state that there  
22 are more than just one attorney, so attorneys for  
23 the State Board and Superintendent Burch.

24 BY MS. VEROFF:

25 Q. Did -- did you consult with any of your 12:30:30

1 attorneys -- or, I'm sorry, anyone other than your  
2 attorneys?

3 A. No.

4 Q. Turning to Topic 4, "Your current and/or  
5 expected role in implementing and enforcing H.B. 12:30:42  
6 3293, including any delegation of authority to or  
7 supervision over the West Virginia Secondary  
8 School Activities Commission, West Virginia county  
9 boards of education, and/or county  
10 superintendents," did I read that correctly? 12:30:59

11 A. Yes.

12 Q. What did you do to prepare for Topic 4?

13 A. Just reviewed House Bill 3293.

14 Q. Did you review any other documents?

15 A. No. 12:31:12

16 Q. And did you consult with anyone other than  
17 your attorneys?

18 A. No.

19 Q. Topic 5 is "The relationship between the  
20 State Board and the West Virginia Secondary School 12:31:24  
21 Activities Commission."

22 Did I read that correctly?

23 A. Yes.

24 Q. Did you review any -- what did you -- I'm  
25 sorry. 12:31:34



1 Q. And did you consult with anyone other than  
2 your attorneys?

3 A. No.

4 Q. Topic 7, "Your Policies, Documents, and  
5 Communications Concerning the participation of 12:32:44  
6 transgender students in athletics in West Virginia  
7 from January 1st, 2019 to the present."

8 Did I read that correctly?

9 A. Yes.

10 Q. What did you do to prepare for Topic 7? 12:32:55

11 A. There is nothing to review. We had no  
12 documents for this one.

13 Q. And did you consult with anyone other than  
14 your attorneys?

15 A. No. 12:33:06

16 Q. Topic 8, "Your Policies, Documents and  
17 Communications Concerning the separation of boys  
18 and girls in school-sponsored sports in West  
19 Virginia prior to and following the passage of  
20 H.B. 3293." 12:33:22

21 Did I read that correctly?

22 A. Yes.

23 Q. What did you do to prepare for Topic 8?

24 A. Nothing.

25 Q. Did you review any documents? 12:33:32

1 A. No.

2 Q. And did you consult with anyone other than  
3 your attorneys?

4 A. No.

5 Q. Topic 9, "Your understanding Concerning 12:33:39  
6 the purpose, scope, and implications of 3293.  
7 This expressly includes Your understanding of  
8 what, if any, governmental interests are furthered  
9 by H.B. 3293." [As read]

10 Did I read that correctly? 12:33:57

11 A. Yes.

12 Q. What did you do prepare for Topic 9?

13 A. Just read the House Bill 3293 statute.

14 Q. Did you review any other documents?

15 A. No. 12:34:09

16 Q. And did you consult with anyone other than  
17 your attorneys?

18 A. No.

19 Q. Topic 10, "Your Policies, Documents, and  
20 Communications Concerning B.P.J. and her family 12:34:24  
21 from January 1st, 2019, to the present." [As read]

22 Did I read that correctly?

23 A. Yes.

24 Q. What did you do to prepare for Topic 10?

25 A. We had nothing to -- to review or consider 12:34:34

1 in that.

2 Q. So you didn't review any documents?

3 A. No, other than the court case --

4 Q. And did you consult -- and did you consult

5 with anyone other than your attorneys? 12:34:47

6 A. No.

7 Q. Topic 11, "Your Policies, Documents, and

8 Communications Concerning H.B. 3293."

9 (Interruption in audio/video.)

10 THE COURT REPORTER: Excuse me. There was 12:35:01

11 an interruption. There was a cough.

12 If you could please start over.

13 MS. VEROFF: Sure.

14 BY MS. VEROFF:

15 Q. Topic 11, "Your Policies, Documents, and 12:35:06

16 Communications Concerning H.B. 3293. This

17 expressly includes Your Green Book Summary of H.B.

18 3293 published in 2021, Bates stamped W -- WVSBOE

19 000035, as well as the Enrolled Bill Review Form

20 submitted in relation to H.B. 3293 Bates stamped 12:35:27

21 WVSBOE 000038."

22 Did I read that correctly?

23 A. Yes.

24 Q. What did you do to prepare for Topic 11?

25 A. Just reviewed those documents. 12:35:41

1 Q. And did you review any other documents  
2 besides the Green Book Summary and the Enrolled  
3 Bill Review Form?

4 A. No.

5 Q. And did you consult with anyone other than 12:35:51  
6 your attorneys?

7 A. No.

8 Q. Topic 12, the last one, "All Your  
9 discovery responses provided to date in this  
10 action." 12:36:03

11 Did I read that correctly?

12 A. Yes.

13 Q. What did you do to prepare for Topic 12?

14 A. Just reviewed the discovery responses.

15 Q. Did you review any other documents? 12:36:13

16 A. No.

17 Q. And did you consult with anyone other than  
18 your attorneys?

19 A. No.

20 Q. Besides what we've just discussed, did you 12:36:22  
21 do any other preparation for today's deposition?

22 A. No.

23 Q. Do you understand that you are testifying  
24 today about these topics on behalf of the State  
25 Board? 12:36:37

1 A. Yes.

2 Q. So, accordingly, when I ask for your  
3 position on something, I'll be asking for the  
4 position of the State Board, unless I specify  
5 otherwise.

12:36:48

6 Does that make sense?

7 A. Yes.

8 Q. Great.

9 So even though we're largely going to be  
10 discussing the -- the State Board, I do want to  
11 talk a little bit about your personal background.  
12 So for these questions, I'm asking you to speak on  
13 your own behalf rather than that of the State  
14 Board.

12:36:57

15 What is your current position?

12:37:08

16 A. Deputy State Superintendent.

17 Q. And what are your responsibilities as  
18 Deputy State Superintendent?

19 A. Basically to oversee the management of the  
20 Department of Education and the various offices.

12:37:22

21 Q. And can you tell me a little bit more  
22 about what that involves?

23 A. We have six main divisions here that serve  
24 the different areas that are controlled by the  
25 Department of Education, and so each of these

12:37:40

1 offices I'll work with reviewing any policies that  
2 they are -- are producing, work with the State  
3 Board of Education to get those policies out on  
4 comment, and then come back for approval,  
5 oversight of the various budgets from -- in the 12:37:55  
6 different offices, and the personnel issues or  
7 hirings that may come up.

8 Q. And how long have you been in this role?

9 A. I've been in this role about a year and a  
10 half. 12:38:11

11 Q. And who do you report to?

12 A. I report to the superintendent, Clayton  
13 Burch.

14 Q. And does anyone report to you?

15 A. Yes, the -- the six officers report to me 12:38:24  
16 directly.

17 Q. And who are the six officers?

18 A. We have our division of CTE, and that's  
19 Clinton Burch; teaching and learning, Sonia White;  
20 support and accountability, Charlene Coburn; 12:38:42  
21 federal programs, Melanie Parkey; our data  
22 management and information systems, Tim Conzett;  
23 and then our chief financial officer, Phil Uwey.

24 Q. And did you go to college, Ms. Blatt?

25 A. I did. 12:39:06

1 Q. Where did you go?

2 A. Marshall University in Huntington.

3 Q. And did you obtain a degree there?

4 A. Yes.

5 Q. What degree did you earn? 12:39:15

6 A. I have a bachelor's in K-8 multisubject  
7 teaching. And I have a master's in educational  
8 leadership. And I have a master's as a reading  
9 specialist, K to adult.

10 Q. And after you finished at Marshall 12:39:31  
11 University, what was the first job that you had?

12 A. I was a classroom teacher.

13 Q. What school did you teach at?

14 A. First job was Eastland Middle.

15 Q. Got it. 12:39:44

16 And what county is that in?

17 A. Wayne County. The school no longer  
18 exists, though.

19 Q. And what --

20 MS. MORGAN: Julie, just -- just so the 12:39:51  
21 record's clear, this is beyond the scope of the --  
22 the 12 topics that you have filed that you were  
23 going to ask her questions about.

24 You know, I want to go ahead and allow it  
25 just to, you know, try to move forward on this, but 12:40:05

1 I just want to preserve that objection.

2 MS. VEROFF: Thank you.

3 BY MS. VEROFF:

4 Q. And after that teaching position, what was  
5 the next job that you had? 12:40:15

6 A. I was a teacher for six years in Wayne  
7 County.

8 Q. And what grade did you teach?

9 A. Sixth, seventh, and eighth.

10 Q. And after you finished those six years of 12:40:28  
11 teaching, what did you do next?

12 A. I went into administration. I was an  
13 assistant principal for three years.

14 Q. And what school were you the assistant  
15 principal at? 12:40:40

16 A. Buffalo Middle School in Wayne County.

17 Q. And after that job, what did you do next?

18 A. I became the principal of Buffalo Middle  
19 School for one year and then transferred to  
20 Buffalo Elementary School for four years as the 12:40:56  
21 principal.

22 Q. And when you finished with that role as  
23 the principal of the elementary school, what did  
24 you do after that?

25 A. That was at the time that I came to the 12:41:09

1 State Department of Education.

2 Q. And have you held the position of deputy  
3 superintendent the entire time you've been at the  
4 State Board of Education [verbatim]?

5 A. No. I was hired as the leadership 12:41:18  
6 development coordinator, moved into an assistant  
7 director role, then a director role, then became  
8 an assistant state superintendent over one of our  
9 divisions prior to becoming the deputy  
10 superintendent. 12:41:34

11 Q. That's great.

12 And are there any jobs that you've held  
13 that we haven't talked about just now?

14 A. I don't think so, other than part-time  
15 college jobs. 12:41:48

16 Q. Excellent. Thank you.

17 And do you play any sports?

18 A. I did.

19 Q. What sports did you play?

20 MS. MORGAN: Same objection. Object to 12:41:58  
21 the form and exceeds the scope of the topics.

22 THE WITNESS: Basketball, track, and cross  
23 country.

24 BY MS. VEROFF:

25 Q. And do you coach any sports? 12:42:10

1 A. No.

2 Q. Do you have any kids?

3 A. I do.

4 MS. MORGAN: I'm -- I'm going to con- --  
5 give me a continuing objection. I don't understand 12:42:21  
6 why this would be relevant to her 30(b)(6)  
7 deposition here.

8 MS. VEROFF: Very happy to give you a  
9 continuing deposition [sic], and -- and we'll wrap  
10 up shortly. 12:42:36

11 BY MS. VEROFF:

12 Q. Do any of your kids play school sports?

13 A. Yes.

14 Q. What sports do they play?

15 A. My son ran cross country and track. My 12:42:43  
16 daughter played basketball, volleyball, and ran  
17 cross country and track.

18 Q. Great.

19 And before today, did you know who B.P.J.  
20 was? 12:43:02

21 A. Just in preparing for this case.

22 Q. But outside of preparing for this case,  
23 did you know who she was?

24 A. Just from news articles.

25 Q. And has anyone at the State Board ever had 12:43:15

1 direct communications with B.P.J.?

2 A. No.

3 Q. Has anyone at the State Board ever had  
4 direct communications with B.P.J.'s mother?

5 A. No. 12:43:30

6 Q. Has anyone at the State Board ever had  
7 direct communications with B.P.J.'s father?

8 A. No.

9 Q. And has anyone at the State Board ever had  
10 direct communications with one of B.P.J.'s 12:43:43  
11 siblings?

12 A. No.

13 Q. I want to shift to talking a little bit  
14 about the state superintendent.

15 Have you ever met Superintendent Burch? 12:43:55

16 A. Yes.

17 Q. I would imagine so, given your role.

18 How long has Superintendent Burch been in  
19 his position?

20 A. Approximately two years. 12:44:06

21 Q. And how is someone selected to be the  
22 state superintendent?

23 A. The state superintendent is selected by  
24 the State Board of Education.

25 Q. And is there a term limit for the 12:44:23

1 superintendent?

2 A. No. They serve at the will and pleasure  
3 of the State Board of Education.

4 Q. And who is the superintendent employed by?

5 A. They're employed by the State Board of 12:44:35  
6 Education.

7 Q. And is the superintendent considered a  
8 State official?

9 A. Yes.

10 Q. What are the superintendent's 12:44:46  
11 responsibilities?

12 A. His responsibility is the general  
13 oversight of the public education system,  
14 including the -- the county school systems, the  
15 county superintendents, and the various schools 12:45:02  
16 across the state.

17 Q. And what is the relationship between the  
18 superintendent and the West Virginia Department of  
19 Education?

20 A. The -- the state superintendent hires the 12:45:15  
21 staff of the Department of Education and oversees  
22 their work.

23 Q. And as far as the relationship between the  
24 superintendent and the State Board, is the  
25 superintendent a member of the State Board? 12:45:30

1 A. Yes. An ex-officio member.

2 Q. Does ex officio mean the superintendent  
3 doesn't have a vote?

4 A. Correct.

5 Q. Does the superintendent have any kind of 12:45:46  
6 supervision over the State Board?

7 A. No, the superintendent serves the State  
8 Board.

9 Q. So, for example, the superintendent  
10 couldn't veto a decision of the State Board? 12:45:56

11 A. Correct.

12 MS. MORGAN: Julie, I'm just going to  
13 object on the basis, again, this exceeds the topics  
14 set forth in the notice of deposition, the 12  
15 topics. 12:46:09

16 MS. VEROFF: Thank you. I -- I believe  
17 that these questions are responsive to Topic 1,  
18 which include the role and responsibilities of  
19 the -- the superintendent. But just to -- to keep  
20 going forward. 12:46:22

21 BY MS. VEROFF:

22 Q. Does the superintendent oversee public  
23 schools in West Virginia?

24 A. Yes. He has the general oversight.

25 Q. And what does that general oversight 12:46:30

1 involve?

2 A. The superintendent ensures that the -- the  
3 public school system is implementing, like, the  
4 policies that are set forth by the State Board of  
5 Education and over- -- and oversees the general 12:46:47  
6 operations of the -- of the school systems.

7 Q. And does that oversight of the school  
8 system include Bridgeport Middle School?

9 A. The -- the superintendent would, you know,  
10 oversee all the county systems and schools, but 12:47:04  
11 works more directly with our county boards of  
12 education.

13 Q. And can you tell me a little bit more  
14 about how the superintendent works with the county  
15 boards of education? 12:47:16

16 A. Basically, through the staff that he  
17 hires, the various programs -- or federal programs  
18 that we have, our school improvement leadership,  
19 the various services that we provide, and the  
20 supports to the school systems. 12:47:33

21 Q. And does the superintendent have any  
22 relationship with the county superintendents?

23 A. He has a working relationship with all 55  
24 of our county superintendents.

25 Q. And what is the nature of that working 12:47:49

1 relationship?

2 A. Just a matter of they -- you know, we put  
3 out information here regularly to our  
4 superintendents to provide guidance and -- and  
5 support. They will reach out to the 12:48:03  
6 superintendent or to staff here for technical  
7 assistance.

8 Q. And does the superintendent oversee the  
9 West Virginia Secondary School Activities  
10 Commission? 12:48:20

11 A. No.

12 Q. Is there any relationship between the  
13 superintendent and the West Virginia Secondary  
14 Schools [verbatim] Activities Commission?

15 A. Not really a relationship. I mean, you 12:48:27  
16 know, the paths cross with the State Board, but...

17 Q. Is the superintendent required to follow  
18 State law?

19 A. Yes.

20 Q. Is the superintendent required to follow 12:48:44  
21 H.B. 3293?

22 A. Once it was codified, then yes.

23 Q. Are you familiar with the West Virginia  
24 Education Information System?

25 A. Yes. 12:48:58

1 Q. We've heard it abbreviated as WVEIS.

2 Is that a -- a term you're familiar with?

3 A. Yes.

4 Q. And can you tell me, what is WVEIS?

5 A. WVEIS is a statewide edu -- student 12:49:12

6 information system that we maintain here at the

7 State level and the counties input their data

8 into.

9 Q. And so, does the superintendent have any  
10 control over WVEIS? 12:49:26

11 A. The superintendent probably does not even  
12 have access to individual records in WVEIS.

13 Q. Does the superintendent have any  
14 involvement with deciding what kinds of records  
15 are collected in WVEIS? 12:49:40

16 A. Only if something comes forth in a policy  
17 would he be aware of any changes or things that  
18 are made.

19 Q. Got it.  
20 And can you tell me about the relationship 12:49:52

21 between the State Board and the West Virginia  
22 Department of Education?

23 A. Well, the State Board hires the  
24 superintendent who oversees the staff at the  
25 Department of Education. 12:50:08



1 Secondary Education Act Title programs, the IDEA  
2 funding for special education, and -- and Perkins  
3 funding, which goes with our CTE programs.

4 Q. Do you know how many people are employed  
5 at the Department of Education? 12:51:30

6 A. Approximately 234.

7 Q. And so, the State Board has members; is  
8 that right?

9 A. Yes.

10 Q. How many members are there on the State 12:51:41  
11 Board?

12 A. There are nine members.

13 Q. And how many of those nine members are  
14 ex-officio members?

15 A. Two. 12:51:54

16 Q. Two.

17 A. Including nine members --

18 Q. And how are --

19 A. -- plus two ex-officio members.

20 Q. So just to confirm, there are 11 members 12:52:06  
21 of the State Board in total?

22 A. Yes.

23 Q. And how are the members selected?

24 A. The members are appointed by the governor.

25 Q. And is that the case for all 11 members? 12:52:17

1 A. No, just the -- the nine State Board  
2 members.

3 Q. And besides the superintendent, who is the  
4 other ex-officio member?

5 A. Chancellor Sarah Tucker that's over our 12:52:32  
6 Higher Education Policy Commission and our career  
7 and technical council.

8 Q. And how often do the members of the State  
9 Board meet?

10 A. They meet monthly. 12:52:45

11 Q. And how does the State Board make  
12 decisions?

13 A. The State Board makes decisions based on  
14 policies that have been -- that are presented to  
15 them, that have been placed on comment and -- and 12:52:59  
16 reviewed.

17 Q. And, for example do they use a -- a  
18 majority-vote system to make a decision?

19 A. Yes.

20 Q. They do. 12:53:12

21 And does anyone have veto authority over a  
22 decision made by the State Board?

23 A. No.

24 Q. And is the State Board's decision subject  
25 to approval of any other body? 12:53:23

1 A. No.

2 Q. And what would you say are the  
3 responsibilities of the State Board?

4 A. I'm sorry. Could you repeat.

5 Q. Of course. 12:53:37

6 What are the responsibilities of the State  
7 Board?

8 A. The -- the State Board is charged with the  
9 general oversight of our system of free schools in  
10 the state of West Virginia. 12:53:50

11 Q. And what does the board try to accomplish  
12 when it has its monthly meetings?

13 A. Mon- -- monthly, they will either be  
14 reviewing a policy that may have been on comment  
15 or they may be hearing about a policy on that is 12:54:02  
16 going out on comment or has come back in order to  
17 be approved.

18 They start each of their meetings with the  
19 focus on the strategic plan that they have in  
20 place, and usually a presentation from department 12:54:17  
21 staff on a certain topic. And that, along with --  
22 as well as having delegations from the community.

23 Q. And so, to talk a little bit more about  
24 the educational policies piece, what does it mean  
25 in practice for the State Board to try to 12:54:33

1 determine educational policies?

2 A. I mean, basically, the State Board  
3 oversees the various pieces of -- of the  
4 department. Many of our policies are tied to  
5 either federal requirements or state legislation, 12:54:51  
6 and that's how many of our policies come into play  
7 so that the board will review and consider.

8 Q. And does the State Board have any  
9 involvement in establishing rules?

10 A. Yes. The State Board will establish the 12:55:09  
11 rules for West Virginia Board of Education rules.

12 Q. And does the State Board have any other  
13 responsibilities besides the ones that you just  
14 talked about --

15 (Interruption in audio/video.) 12:55:26

16 THE COURT REPORTER: Excuse me. I didn't  
17 hear the rest of the -- part of the question. If  
18 you can please repeat.

19 MS. VEROFF: Of course.

20 BY MS. VEROFF: 12:55:32

21 Q. I was asking, does the State Board have  
22 any other responsibilities beside the ones we just  
23 talked about?

24 A. No. Just to enact and implement policy  
25 and oversight of the -- our supervision of 12:55:42

1 the State -- in the --

2 (Interruption in audio/video.)

3 THE COURT REPORTER: "Our supervision of  
4 the"?

5 Could you please repeat. There was an 12:55:54  
6 audio interruption.

7 THE WITNESS: They enact and implement  
8 policy and have oversight of the -- or supervision  
9 rights of the -- over the state superintendent  
10 [verbatim]. 12:56:06

11 BY MS. VEROFF:

12 Q. And does the State Board have to comply  
13 with federal law?

14 A. Yes.

15 Q. Does the State Board have to comply with 12:56:11  
16 Title IX?

17 A. Yes.

18 Q. And does the Department of Education have  
19 to comply with Title IX?

20 A. Yes. 12:56:23

21 Q. Does the State Board have to comply with  
22 state law?

23 A. Yes.

24 Q. Does the State Board have to comply with  
25 H.B. 3293? 12:56:32

1 MS. MORGAN: Julie, this -- I'm going to  
2 object to form. It -- this also calls for a legal  
3 conclusion as well as these other questions.

4 But you can go ahead and answer.

5 THE WITNESS: Yes, once it was codified 12:56:45  
6 and became state law.

7 BY MS. VEROFF:

8 Q. Does the State Board discuss state laws  
9 regarding education at its meetings?

10 A. As they relate to policies, they do. 12:56:56

11 Q. Has the State Board ever discussed H.B.  
12 3293 at one of its meetings?

13 A. No.

14 Q. And is that unusual for the State Board  
15 not to discuss a law concerning education that's 12:57:15  
16 now been codified?

17 A. No.

18 Q. Do you know whether the State Board has a  
19 missions statement?

20 A. They do. 12:57:28

21 Q. And do you know what it is?

22 A. I should.

23 Something to the effect of becoming  
24 lifelong learners with education and community  
25 and the -- and the workforce. 12:57:45

1 Q. I'm going to go ahead and introduce  
2 another exhibit. I'll let you know when it's  
3 available in your marked folder [verbatim].

4 (Blatt Deposition Exhibit 16 was marked  
5 electronically.) 12:58:15

6 BY MS. VEROFF:

7 Q. Okay. If you refresh your Marked Exhibits  
8 folder, you should be able to see Exhibit 16.  
9 Just let me know when you can see it.

10 A. Yes. I can see it. 12:58:24

11 Q. Great.  
12 And do you recognize this document?

13 A. Yes, that's our website.

14 Q. Great.  
15 Well, I'll represent that Exhibit 16 is a 12:58:35

16 web page from the West Virginia Department of  
17 Education's website titled "State Board of  
18 Education." You see the URL in the bottom left  
19 corner. And if you scroll to the second page  
20 under "Mission," it says, "The West Virginia Board 12:58:49  
21 of Education and State Superintendent --

22 THE COURT REPORTER: Excuse me. Counsel,  
23 if you could if you're reading, please. Thank you.

24 MS. VEROFF: Yes, of course.

25 BY MS. VEROFF: 12:59:02

1 Q. "The West Virginia Board of Education and  
2 State Superintendent of Schools work in concert to  
3 establish policies and procedures to assure  
4 implementation of West Virginia's Public Education  
5 goals and to ensure the general supervision, 12:59:13  
6 oversight and monitoring of a thorough, efficient  
7 and effective system of free public schools."

8 Did I read that correctly?

9 A. Yes.

10 Q. Is that an accurate statement of the State 12:59:25  
11 Board's mission?

12 A. Yes.

13 Q. I'd like to talk a little bit more about  
14 how the State Board generally supervises public  
15 schools in West Virginia. 12:59:40

16 Can you tell me a little about what that  
17 general supervision involves?

18 A. Well, the State Board of Education has  
19 a -- of course, as we -- we've said before,  
20 directly supervises the superintendent. The 12:59:52  
21 superintendent then has an office of  
22 accountability. And that -- that group is charged  
23 with ensuring that our county school systems are  
24 implementing the policies or procedures, adhering  
25 to the financial audits, the various federal 13:00:07

1 requirements. And so they receive a report  
2 annually on the county school systems.

3 Q. And are there any other ways in which the  
4 State Board monitors public schools in West  
5 Virginia? 13:00:23

6 A. No.

7 Q. And are there any other forms of oversight  
8 that the State Board engages in with regards to  
9 public schools in West Virginia?

10 A. No. 13:00:35

11 Q. We talked a little bit previously about  
12 the West Virginia Secondary School Activities  
13 Commission.

14 Are you familiar with the West Virginia  
15 Secondary School Activities Commission? 13:00:53

16 A. Yes.

17 Q. Can you tell me what it is?

18 A. It is the -- a -- association charged with  
19 oversight of all of the secondary schools'  
20 athletic events. 13:01:05

21 Q. And does the Department of Education have  
22 any relationship with the West Virginia Secondary  
23 School Activities Commission?

24 A. Our only involvement with them is when  
25 they submit a rule to be approved or submitted to 13:01:17

1 the State Board.

2 Q. And when the Secondary School Activities  
3 Commission submits a rule, can you talk me through  
4 what that approval process involves?

5 A. They will present to the State Board of 13:01:33  
6 Education. The State Board then has the authority  
7 to accept the rule and put it out on a public  
8 30-day comment. And then after the comment  
9 period, then they can either approve or reject the  
10 rule. 13:01:50

11 Q. And what criteria does the State Board use  
12 in deciding whether to approve or reject a rule?

13 A. I think the State Board relies on the  
14 staff of the Department of Education to provide  
15 them with -- with guidance as to the legality of 13:02:03  
16 the rule, if it's based on federal, if it based on  
17 state statute, and then will also review the  
18 comments from the -- that come in on the policy.

19 Q. Has the State Board ever not approved a  
20 rule submitted by the commission? 13:02:23

21 A. Not to my knowledge, but I've not been  
22 here forever.

23 Q. And can the West Virginia Secondary School  
24 Activities Commission issue a rule that conflicts  
25 with a rule issued by the State Board? 13:02:39



1 Q. Great.

2 So I want to direct your attention to  
3 "REQUEST NO. 5," which is towards the bottom of  
4 the page.

5 And it reads, "REQUEST NO. 5: All 13:04:19  
6 DOCUMENTS and POLICIES CONCERNING YOUR delegation  
7 of authority over secondary school athletics to  
8 the West Virginia Secondary School Activities  
9 Commission."

10 The response states, "These Defendants do 13:04:30  
11 not have any non-privileged documents which are  
12 responsive to this request other than those which  
13 are publicly available, including W.Va. Code  
14 Section 18-2-25 which was approved by WVBE, and  
15 WVSSAC rules including but not limited to 127CSR2 13:04:48  
16 which states, "'4.1. The WVSSAC shall be  
17 composed' --

18 THE COURT REPORTER: Please slow down.  
19 BY MS. VEROFF:

20 Q. -- 'of principals or designee' -- 13:04:57

21 MS. VEROFF: I'm sorry.

22 BY MS. VEROFF:

23 Q. -- 'of those public or private secondary  
24 schools which have certified in writing to the  
25 State Superintendent of Schools of West Virginia 13:05:07

1 (State Superintendent) that they have elected to  
2 delegate the control, supervision, and regulation  
3 of their interscholastic athletic and band  
4 activities.'" "

5 That was a lot. 13:05:20

6 Did I read that correctly?

7 A. Yes.

8 Q. Excellent.

9 Are you familiar with 127CSR2?

10 A. Yes. 13:05:29

11 Q. And is what I read a correct statement of  
12 127CSR2?

13 MS. MORGAN: Objection as to form.

14 THE WITNESS: I do believe so, as that was  
15 one of the documents, part of the re- -- when I 13:05:43  
16 reviewed this, that the counsels provided.

17 BY MS. VEROFF:

18 Q. And so, to confirm I understand the  
19 meaning, is it correct that principals are  
20 required to submit a written certification to the 13:05:54  
21 superintendent for their school to be able to be a  
22 member of the West Virginia Secondary School  
23 Activities Commission?

24 MS. MORGAN: Object to form.

25 THE WITNESS: Yes, according to 4.1. 13:06:07

1 BY MS. VEROFF:

2 Q. And why does that requirement exist?

3 A. I do not have that --

4 MS. MORGAN: Object -- object to the form  
5 of the question. Calls for speculation, legal 13:06:16  
6 conclusion.

7 BY MS. VEROFF:

8 Q. If a secondary school doesn't submit a  
9 certification to the state superintendent, are  
10 they not allowed to be part of the West Virginia 13:06:31  
11 Secondary School Activities Commission?

12 MS. MORGAN: Objection.

13 THE WITNESS: According to 4.1 that's  
14 listed there, yes.

15 BY MS. VEROFF: 13:06:40

16 Q. And do you know whether the principal of  
17 Bridgeport Middle School has submitted this  
18 certification to the state superintendent?

19 A. I do not.

20 Q. Does the State Board have any involvement 13:06:51  
21 with the West Virginia Education Information  
22 System, WVEIS?

23 A. Just in the -- the fact that it's in one  
24 of the policies and they're aware of that and at  
25 times are given reports. 13:07:08

1 Q. And does the State Board have any control  
2 over the kind of data that's collected in WVEIS?

3 MS. MORGAN: Asked and answered.

4 THE WITNESS: Yes, as they would say, we  
5 have a -- there is a policy that oversees the type 13:07:25  
6 of data that is collected.

7 BY MS. VEROFF:

8 Q. And so just to make sure I understand, for  
9 example, the State Board could enact a policy that  
10 required a particular piece of data to be 13:07:36  
11 collected, and then that data collection process  
12 would be implemented in WVEIS?

13 A. After it went through a 60-day comment  
14 period, because we also have State Code that  
15 references our WVEIS system and the data that is 13:07:51  
16 allowed to be collected.

17 Q. Great.

18 MS. VEROFF: So before I move on, I know  
19 that we said regarding breaks at the beginning that  
20 we would go at -- up to about an hour and a half, 13:08:03  
21 but I just wanted to -- to check in and see how  
22 everyone was doing and see if anyone needed a break  
23 sooner.

24 THE WITNESS: We are fine.

25 THE COURT REPORTER: I would love one. 13:08:16

1 MS. VEROFF: Okay. Well, let's -- I'm  
2 sorry, Hanna, was that you?

3 THE COURT REPORTER: Yes, please. I would  
4 appreciate one, please, just a short break.

5 MS. VEROFF: Okay. Great. So why don't 13:08:28  
6 we go ahead -- does a -- a five-minute break work  
7 for folks?

8 MS. MORGAN: Yes, that's fine.

9 MS. VEROFF: Okay. That would be great.  
10 And, Mitch, could you send us into the 13:08:37  
11 break-out rooms during the -- break?

12 THE VIDEOGRAPHER: Yeah. Your rooms are  
13 still open, so you can join any time. Okay --

14 MS. VEROFF: Okay. Great.  
15 So why don't we plan to come back at --

16 THE COURT REPORTER: Would you like to go  
17 off the record?

18 THE VIDEOGRAPHER: Should we go off the  
19 record?

20 MS. VEROFF: -- 1:15? 13:08:56

21 THE VIDEOGRAPHER: Anyways, we're going  
22 off the record. The time is 1:08 p.m., and this is  
23 the end of Media Unit Number 1.

24 (Short recess taken.)

25 THE VIDEOGRAPHER: Okay. We are back on 13:18:51

1 the record at 1:18 p.m., and this is beginning of  
2 Media Unit Number 2.

3 Go ahead.

4 MS. VEROFF: Thank you.

5 BY MS. VEROFF: 13:19:01

6 Q. So I'd like to jump back into talking  
7 about the State Board's rule-making and  
8 policy-making authority and process.

9 First, can you tell me what the difference  
10 is between a State Board rule and a State Board 13:19:13  
11 policy?

12 A. There's no difference between the State  
13 Board policy and the State Board rule when we --  
14 we actually call them policies through the Board  
15 of Education; but then when they are filed with 13:19:25  
16 our Secretary of State, then they're assigned a --  
17 a rule number.

18 Q. I see.

19 So just to make sure I understand, so  
20 everything starts out as a policy, but it becomes 13:19:37  
21 a rule when it gets filed?

22 A. It's just referenced that way.  
23 They're the -- they're the same, one and the same.

24 Q. I see.

25 And so are there -- so there -- there are 13:19:49

1 no policies of the State Board that didn't go  
2 through the rule-making process?

3 A. Correct.

4 Q. Got it.

5 And do you know how many rules and 13:20:02  
6 policies the State Board has issued?

7 A. I believe we're at 82, 83.

8 Q. And is the State Board ever required by  
9 state law to promulgate a rule?

10 A. Yes. 13:20:21

11 Q. And is the State Board allowed to  
12 promulgate a rule that conflicts with a state law?

13 A. No.

14 MS. MORGAN: Ob- -- object to form.

15 BY MS. VEROFF: 13:20:36

16 Q. So I'd like to know a little bit more  
17 about the rule-making process. What happens first  
18 when the State Board is considering a rule?

19 A. Well, depending on the -- kind of the  
20 nexus for beginning a rule, if it's based on 13:21:37  
21 something that's been told to be promulgated from  
22 legislation, then it requires a look at that  
23 language to begin with.

24 We usually have an internal team here that  
25 will draft some language. Any policy making 13:21:02

1 always requires external stakeholders that will be  
2 part of the committee as well to review. And then  
3 we will work to get a final draft of the policy  
4 that then will be presented to the State Board of  
5 Education for review. 13:21:21

6 And then if -- if they are pleased with  
7 that, it will go out on a 30-day comment period to  
8 the entire state and then may or may not have  
9 changes based on comment and then be approved the  
10 following month. 13:21:36

11 Q. And who ultimately approves the rule?

12 A. The State Board of Education.

13 Q. And are there any internal policies that  
14 govern the rule-drafting process?

15 A. Not really any internal process -- or 13:21:51  
16 policies, but just some procedures that -- to --  
17 to make it aligned and consistent formatting and  
18 things like that. They're mostly technical.

19 Q. Are those procedures written down  
20 anywhere? 13:22:08

21 A. On the -- our policy website. On the  
22 State Board of Education -- or the State  
23 Department of Education website under policies  
24 there will be some forms that are used to --  
25 checklists and things to verify the process. 13:22:19

1 Q. And so from start to finish, how long does  
2 the whole rule-making process typically take?

3 A. It really depends on the content and the  
4 length of the policy. I mean, we have some  
5 policies that are two or three pages, and we have 13:22:37  
6 some that are a hundred and 50 pages, so it really  
7 just depends.

8 Q. Do you ever issue interim rules without  
9 going through the public comment period?

10 A. At times there may be like an emergency 13:22:53  
11 rule that will be enacted and it -- while -- while  
12 it's on comment.

13 Q. And what would be the reason to have an  
14 emergency rule?

15 A. It's normally something that is required 13:23:08  
16 by the State Legislature.

17 Q. And are there any examples of emergency  
18 rules that you can think of?

19 A. I can't think of any.

20 Q. Is there a specific person at the State 13:23:22  
21 Board who has responsibilities for drafting a  
22 rule?

23 A. No. The drafting would come from whoever  
24 the content experts were in the -- the area of the  
25 policy. 13:23:38

1 Q. And does the State Board ever monitor  
2 compliance with its rules?

3 MS. MORGAN: Object to form.

4 THE WITNESS: They would monitor through  
5 the process that I described earlier with our 13:23:51  
6 accountability office.

7 BY MS. VEROFF:

8 Q. And does the State Board ever enforce  
9 compliance with its rules?

10 MS. MORGAN: Are you talking a specific 13:24:03  
11 rule?

12 BY MS. VEROFF:

13 Q. Let -- let me rephrase.

14 As a -- as a general matter, does the  
15 State Board have any enforcement mechanisms that 13:24:11  
16 it puts into its rules?

17 MS. MORGAN: Object to form.

18 THE WITNESS: Our accountability office  
19 has a policy that dictates the -- the oversight and  
20 the way that various policies and things have to be 13:24:22  
21 enforced.

22 BY MS. VEROFF:

23 Q. And so -- so how -- kind of using that --  
24 that background, how does the State Board decide  
25 what the enforcement means should be for a given 13:24:35

1 rule?

2 MS. MORGAN: Object to form.

3 THE WITNESS: I don't think there's  
4 specific things to a given rule. We just -- we  
5 have a policy in place that -- with the oversight 13:24:45  
6 and our accountability policy to -- with -- just to  
7 generalize how we do all of them.

8 BY MS. VEROFF:

9 Q. And is there a particular person or  
10 particular office of the State Board that's 13:24:59  
11 responsible for enforcing compliance when a rule  
12 requires -- well, sorry, when a rule contemplates  
13 enforcement?

14 A. Again, our accountability and support  
15 office oversees all of that work. 13:25:11

16 Q. Has the County Board of Education ever  
17 violated a State Board rule?

18 MS. MORGAN: Object to form.

19 THE WITNESS: I'm sure there's been at  
20 some time. 13:25:29

21 BY MS. VEROFF:

22 Q. And what happens if a rule is violated?

23 A. Basically -- I mean, it depends on -- you  
24 know, we have -- we have rules or policies that --  
25 oversight of financial things, as well as our 13:25:41

1 curriculum and instruction policies. And so it  
2 would really -- it really varies depending on  
3 what -- which policy might have been, you know,  
4 not followed.

5 Q. And is there any kind of appeals process 13:25:58  
6 if there's thought to be a violation?

7 A. Are you referencing for the county?

8 Q. Yes.

9 A. Yeah. Yeah, as part of the -- our  
10 accountability policies and that office, part of 13:26:17  
11 the work that they do is to provide -- you know,  
12 provide information and reviews and then meet with  
13 the counties and allow them to explain or correct  
14 findings. We'll do noncompliances and findings,  
15 and then they have the opportunity to correct 13:26:34  
16 those and respond.

17 Q. Okay. And has the West Virginia Secondary  
18 School Activities Commission ever violated a State  
19 Board rule?

20 A. Not to my knowledge, but... 13:26:45

21 Q. Has an individual school ever violated a  
22 State Board rule?

23 A. I mean, I'm sure when you look at the  
24 breadth and the depth of our rules, that there's  
25 something in there that has occurred. 13:27:02

1 Q. Has a student ever violated a State Board  
2 rule?

3 A. Yes.

4 Q. And has a -- a coach for a school sports  
5 team ever violated a State Board rule? 13:27:12

6 A. I mean, again, just when you look at the  
7 80-some policies, I'm sure there is something in  
8 one of those that at some point has occurred.

9 Q. And is the oversight practice that you  
10 described for the county the same process that 13:27:26  
11 would apply to any entity, or are the processes  
12 different?

13 A. I'm not sure which other entity you would  
14 be referring to.

15 Q. Oh, I'm sorry. For example, a school or 13:27:38  
16 an individual student.

17 A. You know, our oversight is mainly at  
18 the -- at the county level. And then the counties  
19 have oversight of their schools and are to enforce  
20 the -- the rules and policies with their schools 13:27:53  
21 and then the school of course with the student.

22 Q. I see. So --

23 (Interruption in audio/video.)

24 THE COURT REPORTER: I'm sorry. "With the  
25 student"? Excuse me, there was a little cough, and 13:28:08

1 I didn't hear the end.

2 "And then the school of course with the  
3 student"?

4 THE WITNESS: Yes.

5 BY MS. VEROFF: 13:28:10

6 Q. So if, for example, a -- a student  
7 violated a State Board rule, can you walk me  
8 through what the process then would be?

9 A. If a student violated a rule, then it  
10 would be addressed at the -- at the school level. 13:28:23

11 Q. You mentioned earlier that there are  
12 content experts for different state laws; is that  
13 correct?

14 A. Yes.

15 Q. Is there a content expert for H.B. 3293? 13:28:39

16 A. No. We have -- no.

17 Q. And why hasn't there been a content expert  
18 chosen for H.B. 3293?

19 MS. MORGAN: Object to form.

20 THE WITNESS: Well, when I reference 13:29:01

21 "content expert" in reference to who writes the  
22 policies, mainly I'm referring to like our  
23 curriculum instruction policy. So we have a  
24 math -- someone with a math background that will  
25 work on that. 13:29:13

1           And then we have other -- we have  
2 leadership, people that have been in administration  
3 that have been principals and assistant principals,  
4 so they may oversee some of the ones that are of  
5 the broader spectrum. 13:29:26

6 BY MS. VEROFF:

7           Q.    Does the State Board ever promulgate a  
8 rule in conjunction with another entity?

9           A.    Not to my knowledge.

10          Q.    So, for example, has the State Board ever 13:29:37  
11 promulgated a rule in conjunction with a West  
12 Virginia Secondary School Activities Commission?

13          A.    Not in conjunction with. They -- they  
14 submit their rules from their organization, and  
15 then they're reviewed by the State Board. 13:29:52

16          Q.    Got it.

17                So I want to ask now a couple questions  
18 about the State Board and school sports. And when  
19 I refer to "state sports," [verbatim] what I mean  
20 is athletics offered by public secondary schools 13:30:07  
21 in West Virginia; so, for example, the  
22 cross-country team at Bridgeport Middle School.

23                Does the Department of Education have any  
24 role with respect to school sports in West  
25 Virginia? 13:30:22

1 A. The Department of Education or the -- the  
2 Board of Education?

3 Q. I'll ask about them separately. So,  
4 first, the Department of Education.

5 A. Okay. The -- no. 13:30:29

6 Q. And does the State Board have any role  
7 with respect to school sports in West Virginia?

8 A. Just in the approval of the rules that the  
9 secondary school's association -- the SSAC  
10 presents to them. 13:30:45

11 Q. Does the State Board currently have any  
12 roles pertaining to school sports?

13 A. Only one. It's in relation to the 2.0 GPA  
14 for eligibility.

15 Q. So can you tell me a little bit more about 13:30:58  
16 what that rule involves?

17 A. Just that students are required to  
18 maintain a 2.0 in order to participate in a sport.

19 Q. And are there any other rules that the  
20 State Board has regarding school sports? 13:31:12

21 A. No.

22 Q. Does the State Board monitor participation  
23 in school sports?

24 A. No.

25 Q. Does the State Board have any rules 13:31:24

1 regarding students who are transgender?

2 A. No.

3 Q. Has the State Board ever received any  
4 complaints regarding students who are transgender  
5 participating in school sports? 13:31:41

6 A. No.

7 Q. Has the superintendent ever received any  
8 complaints regarding students who are transgender  
9 participating in school sports?

10 A. No. 13:31:56

11 Q. So I want to shift back to talking more  
12 specifically about H.B. 3293. Are you familiar  
13 with H.B. 3293?

14 A. Yes.

15 Q. Does H.B. 3293 require the State Board to 13:32:09  
16 promulgate rules to implement H.B. 3293?

17 A. Yes.

18 Q. And has the State Board chosen an employee  
19 to be the person responsible for promulgating the  
20 rules to implement H.B. 3293? 13:32:26

21 A. No.

22 Q. I'd like to introduce a new exhibit now.  
23 I'll let you know when it's available in your  
24 "Marked Exhibits" folder.

25 (Blatt Deposition Exhibit 18 was marked 13:32:43

1           electronically.)

2           MS. VEROFF: I just introduced Exhibit 18.

3 BY MS. VEROFF:

4           Q. If you refresh your "Marked Exhibits"  
5 folder, you should be able to see it. Please just 13:33:17  
6 let me know when you have it up.

7           A. It's up.

8           Q. Do you recognize this document?

9           A. Yes.

10          Q. Great. 13:33:21

11           I'll represent that this is a discovery  
12 response produced by your counsel to Plaintiff's  
13 counsel and ask you to turn to page 6.

14           Just let me know when you're there.

15          A. Okay. We are there. 13:33:42

16          Q. If you look in the middle of the page,  
17 you'll see Interrogatory Number 6, which says,  
18 "Identify all PERSONS responsible for promulgating  
19 rules to implement H.B. 3293."

20           And the answer states, "Heather Hutchens, 13:33:58  
21 General Counsel for WVBE is responsible for  
22 promulgating rules to implement H.B. 3293."

23           Did I read that correctly?

24          A. Yes.

25          Q. And can you tell me, what does WVBE stand 13:34:13

1 for?

2 A. The West Virginia Board of Education.

3 Q. And is it accurate that Heather Hutchens  
4 is responsible for promulgating rules to implement  
5 H.B. 3293? 13:34:30

6 A. Heather Hutchens is -- does promulgate --  
7 or works with all of the rules and policies that  
8 are presented to the board. So accord- -- because  
9 she --

10 Q. Got it. 13:34:40

11 A. -- you know, she would -- she would lead  
12 that along with some other people within the  
13 department, too, to craft a policy.

14 Q. And so just to confirm I understand, so  
15 Heather Hutchens works on all rules that are 13:34:49  
16 issued by the State Board?

17 A. Yes.

18 Q. And has anyone else who will be working on  
19 implementing H.B. 3293 rules been chosen?

20 A. Not to my knowledge. The statute actually 13:35:02  
21 came into effect after a lawsuit was filed. So,  
22 therefore, we chose to wait and see the outcome  
23 as -- as opposed to spending the time developing a  
24 rule that may or may not be changed based on court  
25 action. 13:35:22

1 Q. And so have there been any discussions at  
2 the State Board about what rules implementing H.B.  
3 3293 will be?

4 MS. MORGAN: Object to form and also to  
5 the extent that this requests communications with 13:35:38  
6 counsel.

7 THE WITNESS: Could you repeat the  
8 question?

9 BY MS. VEROFF:

10 Q. Sure. 13:35:49

11 And so I'm not asking you to disclose any  
12 privileged communications you've had with your  
13 attorneys.

14 Have there been any discussions at the  
15 State Board about what the rules implementing H.B. 13:35:59  
16 3293 will be?

17 A. No, other than just the simple what we  
18 read in State Code.

19 Q. I'm sorry, I couldn't understand the last  
20 sentence. Would you mind repeating it? 13:36:12

21 A. I said just looking at what is required in  
22 State Code.

23 Q. So there have been discussions at the  
24 State Board about what H.B. 3293 requires? Did I  
25 understand correctly? 13:36:26

1 A. No, not -- not with the State Board.

2 Q. And -- and so who has had those  
3 discussions?

4 A. And I may have misspoke when you said  
5 "discussions." But just stating that we would 13:36:36  
6 look at the language and the policy would  
7 replicate what is in State Code.

8 Q. I see.

9 So there have been any discussions at the  
10 State Board regarding H.B. 3293? 13:36:45

11 A. No.

12 Q. And have there been any actions taken at  
13 the State Board to prepare to promulgate rules  
14 implementing H.B. 3293?

15 A. No. Again, we had not got to that prior 13:37:01  
16 to the lawsuit.

17 Q. Okay. And so just to confirm, is it your  
18 testimony that the State Board hasn't taken any  
19 action to promulgate rules implementing H.B. 3293  
20 because this lawsuit was filed? 13:37:17

21 A. Well, it's just the time frames and  
22 because of the lawsuit, there -- we had not  
23 had time --

24 Q. And --

25 (Simultaneous speaking.) 13:37:26

1 (Interruption in audio/video.)

2 A. There was not the -- there was not time  
3 prior to the lawsuit to start working on the rules  
4 when the session ended and the rule became  
5 effective. 13:37:34

6 Q. So if this lawsuit had not been filed,  
7 would the State Board have begun preparing to  
8 implement rules to implement H.B. 3293?

9 MS. MORGAN: Objection as to form. It  
10 also calls for speculation. 13:37:46

11 You can answer the best that you can.

12 THE WITNESS: Most likely, yes, we -- we  
13 would have.

14 BY MS. VEROFF:

15 Q. And would any rules the State Board issues 13:37:55  
16 pursuant to H.B. 3293 have to be consistent with  
17 H.B. 3293?

18 A. Yes.

19 Q. And so put another way, just to make sure  
20 I understand, could the State Board issue rules in 13:38:10  
21 conflict with H.B. 3293?

22 A. No.

23 Q. Under any rules that the State Board  
24 issues to implement H.B. 3293, will cisgender  
25 girls be able to participate girls sports team? 13:38:29

1 A. Yes, according to my understanding of  
2 the -- the statute.

3 Q. And under any rules that the State Board  
4 issues to implement H.B. 3293, will transgender  
5 girls be able to participate on girls sports 13:38:47  
6 teams?

7 A. Not from my understanding of the statute.

8 MS. MORGAN: And let me just place my  
9 objection as to form. I didn't want to interrupt  
10 her answer, but object to form. 13:38:58

11 BY MS. VEROFF:

12 Q. Must the West Virginia Secondary School  
13 Activities Commission comply with any rule that  
14 the State Board issues to implement H.B. 3293?

15 MS. GREEN: Object to the form. 13:39:10

16 MS. MORGAN: Same objection.

17 THE COURT REPORTER: Excuse me. One  
18 second.

19 Who objected to form? I did not get the  
20 speaker, please. 13:39:20

21 MS. GREEN: This is Roberta Green here on  
22 behalf of WVSSAC, and I object to the form.

23 MS. MORGAN: And Kelly Morgan, I also  
24 objected to form as well.

25 BY MS. VEROFF: 13:39:42

1 Q. You can answer the question. Please let  
2 me know if you need me to repeat it.

3 A. Yes, please. Yes, please repeat I mean.

4 Q. Does the West Virginia Secondary School  
5 Activities Commission have to comply with any rule 13:39:54  
6 that the State Board promulgates to implement H.B.  
7 3293?

8 A. Yes.

9 Q. And does the Harrison County Board of  
10 Education have to comply with any rule that the 13:40:05  
11 State Board issues to implement H.B. 3293?

12 A. Yes.

13 MS. DENIKER: This is Susan Deniker.  
14 Objection to the form.

15 BY MS. VEROFF: 13:40:18

16 Q. You can go ahead and answer.

17 A. Yes.

18 Q. And does the Harrison County  
19 Superintendent have to comply with any rule that  
20 the State Board promulgates to implement H.B. 13:40:31  
21 3293?

22 MS. DENIKER: This is Susan Deniker.  
23 Objection to the form.

24 THE WITNESS: Yes.

25 BY MS. VEROFF: 13:40:41

1 Q. And does Bridgeport Middle School have to  
2 comply with any rule that the State Board  
3 promulgates to implement H.B. 3293?

4 MS. DENIKER: This is Susan Deniker. Same  
5 objection. 13:40:57

6 THE WITNESS: Yes.

7 BY MS. VEROFF:

8 Q. I'm going to introduce a new exhibit now.  
9 I'll let you know when it's available in your  
10 "Marked Exhibits" folder. 13:41:05

11 (Blatt Deposition Exhibit 19 was marked  
12 electronically.)

13 BY MS. VEROFF:

14 Q. I've now introduced Exhibit 19. If you  
15 refresh your "Marked Exhibits" folder, you should 13:41:26  
16 be able to view it. Please just let me know when  
17 you have it up.

18 A. Yes, it's up.

19 Q. And do you recognize this document?

20 A. Yes. 13:41:40

21 Q. I'll represent that these are documents  
22 produced to plaintiff's counsel by your counsel as  
23 part of your discovery production.

24 And I'm going to ask you to scroll to page  
25 3 of this document. In the bottom left corner, 13:41:51

1 you should see that it's Bates stamped WVSBOE  
2 '00008.

3 Do you see that?

4 A. Yes.

5 Q. And at the bottom of the -- the -- sorry. 13:42:05

6 At the bottom of page 3, you'll see an  
7 e-mail from Melissa White sent on Thursday,  
8 March 11, 2021, to Bernie Dolan with the subject  
9 line "Transgender participation in secondary  
10 schools bill." 13:42:22

11 Do you see that?

12 A. Yes.

13 Q. And do you recognize this e-mail?

14 A. Yes, from my review of the documents.

15 Q. Who is Melissa White? 13:42:31

16 A. Melissa White is the counsel for house  
17 education.

18 Q. And who is Bernie Dolan?

19 A. Bernie Dolan is the executive director of  
20 the SSAC. 13:42:50

21 Q. So The e-mail reads, "Bernie, Attached is  
22 a draft of an originating bill regarding  
23 transgender participation in sports. I kept it  
24 short. There are obviously certain things that  
25 would need to be handled in a rule, unless you 13:42:59

1 have language that you would like to see in the  
2 bill. Please let me know your thoughts and if  
3 there are unintended consequences. The Chairman  
4 does not want to keep girls from participating in  
5 boys sports when there are not girls teams. 13:43:13  
6 Thanks, Melissa."

7 Did I read that correctly?

8 A. Yes.

9 Q. Do you know if Bernie Dolan responded to  
10 this e-mail? 13:43:35

11 (Simultaneous speaking.)

12 (Interruption in audio/video.)

13 MS. MORGAN: I'll just object to form.

14 MS. GREEN: Same objection.

15 THE COURT REPORTER: Excuse me. Could  
16 please repeat the --

17 BY MS. VEROFF:

18 A. Did Bernie Dolan --

19 THE COURT REPORTER: Excuse me. Could you  
20 please repeat your objections.

21 MS. MORGAN: Object to form.

22 MS. GREEN: This is Roberta Green on  
23 behalf of SS- -- deputy SSAC. I object to form.

24 BY MS. VEROFF:

25 Q. Did Bernie Dolan otherwise discuss H.B. 13:43:49

1 3293 with Melissa White?

2 MS. GREEN: Object to the -- this is  
3 Roberta Green on behalf of SSAC. I object to the  
4 form.

5 MS. MORGAN: Object to form as well. 13:44:04

6 MS. VEROFF: And moving forward, we can  
7 assume that an objection for one is an objection  
8 for all.

9 MS. MORGAN: Well, I have --

10 MS. GREEN: Well, I appreciate that, 13:44:10  
11 actually. But I represent a different defendant,  
12 and I would like to enter my objections myself.  
13 Thank you.

14 MS. MORGAN: Yeah, I be- -- I agree with  
15 Roberta. I do not believe that is appropriate 13:44:19  
16 protocol. Objections should be placed by each  
17 defendant.

18 BY MS. VEROFF:

19 Q. You can go ahead and answer. Please let  
20 me know if you need me to repeat the question. 13:44:35

21 A. Yes, please repeat.

22 Q. Did Bernie Dolan otherwise discuss H.B.  
23 3293 with MW?

24 MS. MORGAN: Object to form and also calls  
25 for speculation. 13:44:45

1 MS. GREEN: I'll object to the form --

2 MS. VEROFF: I'm just re- --

3 MS. GREEN: -- foundation. Scope and --  
4 way outside the scope for this witness.

5 But, you know, not my witness. 13:44:54

6 MS. VEROFF: Thank you. This is the same  
7 question that I asked previously that you already  
8 objected to, and I was just repeating it for the  
9 witness's convenience.

10 THE WITNESS: I have no idea. 13:45:08

11 BY MS. VEROFF:

12 Q. And do you know -- and I'm asking you on  
13 behalf of the State Board -- know what things  
14 Melissa White thought needed to be handled in a  
15 rule? 13:45:19

16 MS. MORGAN: Object to form. Also calls  
17 for speculation. Outside of the scope of these  
18 topics.

19 THE WITNESS: I do not --

20 MS. GREEN: And this is Roberta Green on 13:45:24  
21 behalf of SSAC. I object to the form.

22 THE WITNESS: I do not.

23 BY MS. VEROFF:

24 Q. Does the State Board agree that certain  
25 aspects of H.B. 3293 need to be handled in a rule? 13:45:35

1 MS. MORGAN: Object to form.

2 THE WITNESS: I mean, the -- the State

3 Board has not had that discussion, as they have not

4 started to promulgate a rule.

5 BY MS. VEROFF: 13:45:54

6 Q. And just to confirm, aside from

7 rule-making, has the State Board taken any other

8 action to contemplate the implementation of H.B.

9 3293?

10 MS. MORGAN: Object to form. 13:46:10

11 THE WITNESS: No, not to my knowledge.

12 BY MS. VEROFF:

13 Q. I'd like now to ask you about some of the

14 people who are listed on the State Board's initial

15 disclosures. 13:46:21

16 Let's start with Sarah Stewart.

17 Do you know who Sarah Stewart?

18 A. Sarah Stewart was our previous legislative

19 liaison attorney that worked with -- at the

20 Department of Education. 13:46:34

21 Q. And do you say "previous" because she no

22 longer works at the Department of Education?

23 A. Correct.

24 Q. And when did she leave that role?

25 MS. MORGAN: Object to form. 13:46:43

1 Julie, this is beyond the -- the 12 topics  
2 set forth in this -- on this notice.

3 THE WITNESS: I don't remember the exact  
4 date. It's been within the last year.

5 BY MS. VEROFF: 13:46:58

6 Q. And did Sarah Stewart have any involvement  
7 with H.B. 3293 when it was pending before the  
8 legislature?

9 MS. MORGAN: Same objection.

10 THE WITNESS: Other than just her -- her 13:47:08  
11 role as the legislative liaison working with the --  
12 with the different committees.

13 BY MS. VEROFF:

14 Q. And did Sarah Stewart have any involvement  
15 with H.B. 3293 after it was passed? 13:47:21

16 MS. MORGAN: Object to form. Beyond the  
17 scope. Calls for speculation.

18 She's a 30(b)(6) witness. You're not --  
19 she -- she's not going to know personal factual  
20 information held by Sarah Stewart. 13:47:36

21 THE WITNESS: I don't know.

22 BY MS. VEROFF:

23 Q. I'm going to ask now about Heather  
24 Hutchens, who's listed in the initial disclosures.

25 Do you know who Heather Hutchens is? 13:47:50

1 A. I do.

2 Q. And what is her position?

3 A. She's general counsel for the Department  
4 of Education --

5 Q. And what -- 13:47:57

6 (Simultaneous speaking.)

7 (Interruption in audio/video.)

8 A. Sorry.

9 Q. I'm sorry to interrupt. No, no, that was  
10 my fault. 13:48:02

11 What does the general counsel role entail?

12 MS. MORGAN: Object to form.

13 THE WITNESS: General counsel oversees all  
14 the policies, regulations, the management of the --  
15 the personnel for the State Board and for the 13:48:17  
16 Department of Education.

17 BY MS. VEROFF:

18 Q. And did Heather Hutchens have any  
19 involvement with H.B. 3293 when it was pending  
20 before the legislature? 13:48:31

21 MS. MORGAN: Object to form.

22 THE WITNESS: Only what I've seen in  
23 the -- the documents that were submitted.

24 BY MS. VEROFF:

25 Q. And has Heather Hutchens have any 13:48:40

1 involvement with H.B. 3293 since it was passed?

2 MS. MORGAN: Same objection.

3 THE WITNESS: Not to my knowledge.

4 BY MS. VEROFF:

5 Q. I'd like to next ask about Mary Catherine 13:48:51  
6 Tuckwiller.

7 Do you know who Mary Catherine Tuckwiller  
8 is?

9 A. I do.

10 Q. And what is her position? 13:49:01

11 MS. MORGAN: I'm going to go ahead and  
12 place a standing objection.

13 Again, these are beyond the scope of these  
14 12 topics. So object to form, and I will just  
15 continue my objections here. 13:49:11

16 Go ahead.

17 THE WITNESS: Mary Catherine Tuckwiller  
18 was a staff attorney that formerly worked at the  
19 Department of Education.

20 BY MS. VEROFF: 13:49:24

21 Q. And what did her job as a staff attorney  
22 entail?

23 A. She worked directly for the general  
24 counsel.

25 Q. And did she have any involvement with H.B. 13:49:30

1 3293 when it was pending before the legislature?

2 A. I don't know other than what I've seen  
3 in -- in the documents that were submitted.

4 Q. And I'd like next ask about Stephanie  
5 Abraham. 13:49:43

6 Do you know who Stephanie Abraham is?

7 A. I do.

8 Q. And what is her job?

9 A. She's also a staff attorney that works  
10 under our general counsel. 13:50:01

11 Q. And what does that job entail?

12 A. Just -- she's assigned topics and -- and  
13 cases and things from the general counsel.

14 Q. And did she have any involvement with H.B.  
15 3293 when it was pending before the legislature? 13:50:17

16 A. Not to my knowledge.

17 Q. And I'd like to also ask about Jonah  
18 Adkins.

19 Do you know who Jonah Adkins is?

20 A. I do. 13:50:29

21 Q. And what is his position?

22 A. His current position is a coordinator in  
23 our accountability office.

24 Q. And did he have any involvement with H.B.  
25 3293 when it was pending before the legislature? 13:50:41

1 A. Not that I'm aware of.

2 Q. Great. Thank you.

3 MS. VEROFF: And just to respond to the  
4 objections, I just want to alert and point --  
5 direct counsel to Topic 12, which is all discovery 13:50:53  
6 responses in this action, which the witness has  
7 said that she reviewed and those, of course,  
8 include the initial disclosures listing all the  
9 people that I just asked about.

10 MS. MORGAN: Yes, Julie. Yes, but 13:51:04  
11 discovery are not all-encompassing as all pleadings  
12 filed in a case. You're talking about initial  
13 disclosures.

14 Discovery responses, and as you've gone  
15 through, have already been responses to 13:51:18  
16 interrogatories request for production of  
17 documents, request for admissions. Again, my  
18 objection stands.

19 MS. VEROFF: Thank you.

20 I think it's probably a good time to take 13:51:28  
21 a quick break. So maybe we can go off the record.

22 MS. MORGAN: We haven't quite been an hour  
23 yet. Can we not continue through?

24 MS. VEROFF: I've heard a request from  
25 co-counsel to take a -- a quick break. So if we 13:51:42

1 would just take five minutes as a courtesy to  
2 co-counsel, I think that would be great.

3 THE VIDEOGRAPHER: Okay. We're going off  
4 the record. The time is 1:51 p.m., and this is the  
5 end of Media Unit Number 2. 13:51:53

6 (Short recess taken.)

7 THE VIDEOGRAPHER: We are back on the  
8 record at 2:03 p.m., and this is the beginning of  
9 Media Unit Number 3.

10 Go ahead. 14:04:10

11 MS. VEROFF: Thank you so much.

12 I just want to preserve a -- a few things  
13 for the record. Just to note that plaintiff's  
14 counsel had offered earlier in the deposition that  
15 an objection for one could be an objection for all 14:04:20  
16 to expedite things, and the defendants' counsel  
17 prefers not to proceed that way.

18 There also have been certain objections  
19 about questions beyond the scope. And I wanted to  
20 note for the record that the questions regarding 14:04:34  
21 Superintendent Burch are encompassed within Topic  
22 1. And questions regarding the contents of initial  
23 disclosures are encompassed in Topic 12. And  
24 questions regarding communications and discussions  
25 concerning H.B. 3293 are encompassed in various 14:04:49

1 topics in the deposition notice.

2 BY MS. VEROFF:

3 Q. So picking back up where we left off,

4 Ms. Blatt -- -

5 MS. MORGAN: Oh, I would like to respond 14:04:57

6 here, Julie, before you proceed. I'm not going to

7 actually respond to each of your summarizations, as

8 they are not appropriate.

9 All my objections are -- were accurately

10 stated on the record and will stand. And those can 14:05:09

11 be addressed with the Court at a future date.

12 MR. TRYON: This is David Tryon. I must

13 comment.

14 Julie, you indicated that there was a

15 stipulation that an objection by one is an 14:05:24

16 objection for all. I do not recall hearing that.

17 I will not -- I'm not sure if that's an accurate

18 statement of the law or not. But I do not remember

19 hearing that. The record will show whatever it

20 was. Thank you. 14:05:37

21 MS. GREEN: This is Roberta Green on

22 behalf of SSAC, and I also would like to make my

23 own objections. I may have said that already on

24 the record. But also my objections made up to this

25 point and those going forward will stand as well. 14:05:54

1 Thank you.

2 MS. VEROFF: Thank you so much.

3 BY MS. VEROFF:

4 Q. So, let's dive back in, Ms. Blatt.

5 Prior to H.B. 3293's passage, did anyone 14:06:04  
6 at the State Board have any communications about  
7 H.B. 3293 with legislators?

8 A. On what I've seen in the documents that  
9 were submitted with our legislative liaison.

10 Q. And do you know about any communications 14:06:22  
11 beyond what's captured in the discovery production  
12 that you've seen?

13 A. No.

14 Q. And prior to H.B. 3293's passage, did  
15 anyone at the State Board have any communications 14:06:35  
16 about H.B. 3293 with legislative staff?

17 A. The communication with Melissa White would  
18 be one of their staff.

19 Q. And was there any communications with  
20 legislative staff over than Melissa White? 14:06:53

21 A. Not that I'm aware of.

22 Q. And prior to H.B. 3293's passage, did  
23 anyone at the State Board have any communications  
24 about H.B. 3293 with Governor Justice?

25 A. Not that I'm aware of. 14:07:12

1 Q. And prior to H.B. 3293's passage, did  
2 anyone at the State Board have communication about  
3 H.B. 3293 with any staff for Governor Justice?

4 A. Not that I'm aware of.

5 Q. Prior to H.B. 3293's passage, did anyone 14:07:26  
6 at the State Board have any communications about  
7 H.B. 3293 with Alliance Defending Freedom?

8 A. Not to my knowledge.

9 Q. And prior to H.B. 3293's passage, did  
10 anyone at the State Board have any communications 14:07:44  
11 about H.B. 3293 with any county board of  
12 education?

13 A. No, not to my knowledge.

14 Q. And prior to H.B. 3293's passage, did  
15 anyone at the State Board have any communications 14:07:58  
16 about H.B. 3293 with any individual schools?

17 A. Not to my knowledge.

18 Q. Prior to H.B. 3293's passage, did anyone  
19 at the State Board have any communications about  
20 H.B. 3293 with any school principals? 14:08:14

21 A. Not to my knowledge.

22 Q. And prior to H.B. 3293's passage, did the  
23 State Board have any communications about H.B.  
24 3293 with anyone other than the groups of folks  
25 we've just talked about? 14:08:31

1 A. No, not that I'm aware of.

2 Q. And prior to H.B. 3293's passage, did  
3 Superintendent Burch have any communications about  
4 H.B. 3293 with any of the individuals I've just  
5 asked you about? 14:08:46

6 A. Not that I'm aware of.

7 Q. Was anyone at the State Board ever told by  
8 a legislator what the purpose of H.B. 3293 was?

9 A. Not that I'm aware of.

10 Q. Was anyone at the State Board ever told by 14:09:00  
11 a legislative staffer what the purpose of the H.B.  
12 3293 was?

13 A. Not that I'm aware of.

14 Q. I'd like to ask you a few questions about  
15 the State Board's interactions with the House of 14:09:14  
16 Delegates Education Committee while H.B. 3293 was  
17 pending.

18 Did anyone from the State Board answer  
19 questions posed by the House of Delegates  
20 Education Committee during meetings? 14:09:31

21 A. The State Board of Education does not  
22 interact with the House Education Committee. If  
23 anyone would have interacted with them, it would  
24 have been our legislative liaison, Sarah Stewart.

25 Q. And so, did anyone -- so besides Sarah 14:09:40

1 Stewart, did anyone else at the Department of  
2 Education answer questions posed by the House of  
3 Delegates Education Committee?

4 A. I don't believe so.

5 Q. And at which House of Delegates Education 14:09:56  
6 Committee meeting did Sarah Stewart answer  
7 questions?

8 A. Are you referencing, like, a date or...

9 Q. Yes. Can you tell me the dates on which  
10 Sarah Stewart answered questions -- 14:10:07

11 A. No. I'm sorry. I can't.

12 (Interruption in audio/video.)

13 THE COURT REPORTER: Excuse me. If you  
14 could start the question over. There was an  
15 interruption. 14:10:20

16 BY MS. VEROFF:

17 Q. Sure. I'll -- and I'll rephrase.

18 On which dates did Sarah Stewart answer  
19 questions from the House of Delegates Education  
20 Committee? 14:10:28

21 A. I don't know the dates.

22 Q. Did you speak with Sarah Stewart in  
23 preparation for today's deposition?

24 A. I did not.

25 Q. And do you know who posed questions to 14:10:37

1 Sarah Stewart at the House of Delegates Education  
2 Committee meetings?

3 A. No, I don't.

4 Q. Do you know what questions were asked of  
5 Sarah Stewart? 14:10:52

6 A. No.

7 Q. Do you know whether Sarah Stewart provided  
8 her answers orally or in writing?

9 A. I do not.

10 Q. Do you know what answers Sarah Stewart 14:11:01  
11 provided to the House of Delegates Education  
12 Committee?

13 A. I do not.

14 Q. Did you review Sarah Stewart's testimony  
15 before the House of Delegates Education Committee 14:11:16  
16 for today's deposition?

17 A. No, I have not.

18 Q. Is it typical for staff at the Department  
19 of Education to answer questions from the  
20 legislature related to bills under consideration? 14:11:26

21 A. Yes. Usually technical ques- -- questions  
22 are addressed.

23 Q. And is Sarah Stewart usually the person  
24 who provides that testimony?

25 A. Yes, she was at the time. 14:11:40

1 Q. And who is the person now who would  
2 provide such testimony?

3 A. Drew McClanahan.

4 Q. And what is their position?

5 A. He's our legislative director now. 14:11:56

6 Q. All right.

7 So I'd like to direct you back to one of  
8 our marked exhibits. So this is Exhibit 19. It  
9 should already be in your Marked Exhibits folder.

10 If you can just let me know when you have 14:12:11  
11 it up.

12 A. Okay. We have it up.

13 Q. Great.

14 And I'd like to ask you to scroll to  
15 page 3 of the PDF, please. You'll see in the 14:12:23  
16 bottom left corner it's Bates-stamped WVSBOE  
17 000008.

18 Do you see that page?

19 A. Yes.

20 Q. And in the middle of the page, there's an 14:12:38  
21 e-mail from Melissa White sent on Monday,  
22 March 15th, 2021, to Sarah Stewart. The subject  
23 is "FW: Transgender participation in secondary  
24 schools bill."

25 Do you see that e-mail? 14:12:55

1 A. I do.

2 Q. And I'll represent that this is a document  
3 produced to plaintiff's counsel by your counsel as  
4 part of discovery production.

5 Do you recognize this e-mail? 14:13:04

6 A. Yes.

7 Q. Is it one that you reviewed in preparation  
8 for today's deposition?

9 A. Yes.

10 Q. And the body of the e-mail says, "Sarah, 14:13:13  
11 per our discussion. Thank you, Melissa."

12 Did I read that correctly?

13 A. Yes.

14 Q. Do you know what "per our discussion"  
15 refers to? 14:13:27

16 A. I do not.

17 Q. And did you speak to Sarah Stewart about  
18 this e-mail in preparation for today's deposition?

19 MS. MORGAN: Asked and answered.

20 THE WITNESS: I did not. 14:13:39

21 BY MS. VEROFF:

22 Q. Did you speak to Melissa White in  
23 preparation for today's deposition?

24 A. No.

25 Q. Do you know if Sarah Stewart responded to 14:13:48

1 Melissa White's e-mail?

2 A. I don't know.

3 Q. I'd like you now to turn to page 2 of  
4 Exhibit 19. You'll see in the bottom left-hand  
5 corner that it's Bates-stamped WVSBOE 000007.

14:14:00

6 Do you see that e- -- that page?

7 A. Yes.

8 Q. And so, at the bottom of this page is an  
9 e-mail from Sarah Stewart sent on Monday,  
10 March 15th, 2021, to Heather Hutchens, Stephanie  
11 Abraham and Mary Catherine Tuckwiller with a  
12 subject line, "FW: Transgender participation in  
13 secondary schools bill."

14:14:15

14 Do you see that e-mail?

15 A. I do.

14:14:29

16 Q. And I'll represent that your counsel  
17 provided this document to plaintiff's counsel as  
18 part of discovery production.

19 The e-mail reads, "Happy Monday. Would  
20 you all care to take a look at this one and  
21 provide feedback (preferably in writing)? Not  
22 necessarily on the substance, but modifications we  
23 would suggest. I have to leave for a funeral soon  
24 and not sure when will be back this afternoon.

14:14:40

25 Thanks, Sarah."

14:14:55

1 Did I read that correctly?

2 A. Yes.

3 Q. And do you recognize this e-mail?

4 A. Yes.

5 Q. Did you review it in preparation for 14:15:01  
6 today's deposition?

7 A. (No response by witness.)

8 Q. And by "take a look at this one" --

9 THE COURT REPORTER: Excuse me. I don't  
10 know if there was an audio glitch, but I did not 14:15:18  
11 get an answer.

12 THE WITNESS: It was yes.

13 BY MS. VEROFF:

14 Q. By "take a look at this one," was Sarah  
15 Stewart referring to the draft of H.B. 3293? 14:15:34

16 MS. MORGAN: Object to form. Calls for  
17 speculation.

18 THE WITNESS: It would appear that  
19 that's -- by looking at the subject line.

20 BY MS. VEROFF: 14:15:46

21 Q. And do you know why Sarah Stewart asked  
22 these three individuals for their feedback on H.B.  
23 3293?

24 MS. MORGAN: Objection as to form. And  
25 calls for speculation. 14:15:58

1 THE WITNESS: They all are in our legal  
2 office. They're all three attorneys.

3 BY MS. VEROFF:

4 Q. And do you know why Sarah Stewart  
5 preferred to receive their feedback in writing? 14:16:11

6 MS. MORGAN: Same objections.

7 THE WITNESS: I do not.

8 BY MS. VEROFF:

9 Q. Do you know who Sarah Stewart plans to  
10 share any suggested modifications with? 14:16:23

11 MS. MORGAN: Same objections.

12 THE WITNESS: I do not.

13 BY MS. VEROFF:

14 Q. Did any of the recipients of this e-mail  
15 respond? 14:16:35

16 A. Yes, I believe there was a response from  
17 one of them in -- in the exhibits. I think it may  
18 have been Mary Catherine Tuckwiller.

19 Q. And do you know if any of them suggested  
20 modifications to H.B. 3293? 14:16:55

21 A. I do not.

22 Q. And did you speak with Heather Hutchens  
23 about this e-mail in preparing for today's  
24 deposition?

25 MS. MORGAN: Ob- -- object to form. And 14:17:07

1 you're also asking about communications between  
2 Michele as -- with counsel. That's protected by  
3 the attorney-client privilege.

4 You can answer whether you actually spoke  
5 to her, just not to -- as to any substance. 14:17:27

6 THE WITNESS: Not --  
7 (Interruption in audio/video.)

8 THE COURT REPORTER: Can you please  
9 repeat.

10 THE WITNESS: I said, "Not in relation to 14:17:32  
11 the e-mail."

12 BY MS. VEROFF:

13 Q. And did you speak with Stephanie Abraham  
14 about this e-mail in preparation for today's  
15 deposition? 14:17:42

16 MS. MORGAN: Same objection and same  
17 direction.

18 THE WITNESS: No.

19 BY MS. VEROFF:

20 Q. And did you ask -- did you speak with Mary 14:17:48  
21 Catherine Tuckwiller about this e-mail in  
22 preparation for today's deposition?

23 MS. MORGAN: Same objection. Same  
24 direction.

25 THE WITNESS: No. 14:17:59

1 BY MS. VEROFF:

2 Q. And do you know where we would find the  
3 information about whether any of these individuals  
4 suggested modifications to H.B. 3293?

5 A. I do not. 14:18:10

6 Q. I'd like you now to look at page 1 of this  
7 exhibit, which at the bottom is Bates stamped  
8 WVSBOE 000006.

9 Just let me know when you're on that page.

10 A. We're there. 14:18:30

11 Q. Great.

12 So at the top you'll see an e-mail from  
13 Heather Hutchens sent on Monday, March 15th, 2021,  
14 to Mary Catherine Tuckwiller, Sarah Stewart, and  
15 Stephanie Abraham. The Subject line is "RE: 14:18:42  
16 Transgender participation in secondary schools  
17 bill."

18 Do you recognize this e-mail?

19 A. Yes.

20 Q. Did you review it in preparation for 14:18:48  
21 today's deposition?

22 A. Yes.

23 Q. The body of the e-mail reads, "It seems  
24 like much ado about nothing. I don't think any of  
25 it is necessary." 14:19:01

1 Did I read that correctly?

2 A. Yes.

3 Q. And when Heather Hutchens said "It seems  
4 like much ado about nothing," was she referring to  
5 H.B. 3293? 14:19:14

6 MS. MORGAN: Object to form. You're --  
7 again, this is a 30(b)(6) deposition.

8 You can [verbatim] --

9 (Interruption in audio/video.)

10 -- actually ask individuals about their 14:19:20  
11 personal knowledge, but I will let you answer to  
12 the extent that you're able to do so.

13 THE WITNESS: Only looking at the subject  
14 line, would I suspect that's what it is.

15 BY MS. VEROFF: 14:19:33

16 Q. And did you discuss this e-mail with  
17 Heather Hutchens in preparing for today's  
18 deposition?

19 MS. MORGAN: Object to form to the extent  
20 that it is asking about her discussions with 14:19:41  
21 counsel protected by the attorney-client privilege.

22 But you can testify as to whether you  
23 actually spoke to her, just not as to substance.

24 THE WITNESS: Yes.

25 BY MS. VEROFF: 14:19:57

1 Q. Thank you.

2 And -- and just to confirm, as I said at  
3 the outset, I'm not asking for any confidential  
4 communications that you've had with your counsel.

5 I'm just asking about the nature of your 14:20:03  
6 preparation for today's deposition.

7 So just looking for whether or not you  
8 spoke with someone.

9 And so when Heather Hutchens writes here  
10 that H.B. 3293 is, quote, "much ado about 14:20:12  
11 nothing," what was her reason for concluding that  
12 H.B. 3293 was "much ado about nothing"?

13 MS. MORGAN: Object to form and  
14 speculation.

15 THE WITNESS: The only thing I would say 14:20:27  
16 is that we've not had an issue in West Virginia  
17 regarding transgender in sports.

18 BY MS. VEROFF:

19 Q. Does the State Board agree that H.B. 3293  
20 is much ado about nothing? 14:20:38

21 MS. MORGAN: Object to form.

22 THE WITNESS: I could not answer to that  
23 for the State Board.

24 BY MS. VEROFF:

25 Q. And are you here speaking today on behalf 14:20:46

1 of the State Board?

2 MS. MORGAN: Asked and answered.

3 Obviously she has been designated to testify as to  
4 the 12 topics identified in the notice.

5 THE WITNESS: Yes. 14:20:57

6 BY MS. VEROFF:

7 Q. But you don't know the State's position on  
8 whether the -- I'm sorry, the State Board's  
9 position on whether it would agree that H.B. 3293  
10 is "much ado about nothing"? 14:21:09

11 MS. MORGAN: Object to form.

12 THE WITNESS: I just know that we don't  
13 see an issue in West Virginia.

14 BY MS. VEROFF:

15 Q. Okay. 14:21:18

16 So I'm going to introduce a new exhibit  
17 now. I'll let you know when you can expect to see  
18 it in the "Marked Exhibits" folder.

19 (Blatt Deposition Exhibit 20 was marked  
20 electronically.) 14:21:40

21 BY MS. VEROFF:

22 Q. If you'll refresh your "Marked Exhibits"  
23 folder, you should now see what's marked as  
24 Exhibit 20. Please just let me know when you have  
25 it up. 14:21:51

1 A. I'm sorry, it's up.

2 Q. Oh, okay. Excellent.

3 A. I'm sorry, I zoned out there.

4 Q. No problem.

5 So I'd like to direct you to the first 14:22:13  
6 page, which is Bates stamped in the bottom left  
7 corner WVSBOE 000002.

8 And on this e-mail -- or, I'm sorry, on  
9 this page is an e-mail from Melissa White dated  
10 Wednesday, March 17th, 2021, to Sarah Stewart. 14:22:29  
11 The Subject line is "HB 3293 (single-sex sports)."

12 Do you recognize this e-mail?

13 A. Yes.

14 Q. Did you review it in preparation for  
15 today's deposition? 14:22:42

16 A. Yes.

17 Q. And I'll represent that this document was  
18 provided by your counsel to Plaintiff's counsel as  
19 part of discovery production. The body of the  
20 e-mail reads, "Sarah, As we discussed, how does 14:22:52  
21 this look? Thanks, Melissa."

22 Did I read that correctly?

23 A. Yes.

24 Q. And do you know what "as we discussed"  
25 refers to? 14:23:04

1 MS. MORGAN: Object to form.

2 THE WITNESS: I do not.

3 BY MS. VEROFF:

4 Q. Did Sarah Stewart and Melissa White have  
5 any discussions about H.B. 3293? 14:23:13

6 MS. MORGAN: Object to form.

7 THE WITNESS: I -- I only know what I read  
8 there in the e-mail.

9 BY MS. VEROFF:

10 Q. And did Sarah Stewart respond to Melissa 14:23:22  
11 White's e-mail?

12 A. I'm not aware.

13 Q. And do you know how we would find out the  
14 answer to that question?

15 MS. MORGAN: Object to form. 14:23:34

16 THE WITNESS: I do not.

17 BY MS. VEROFF:

18 Q. Is it common for legislative staff to  
19 solicit feedback from State Board employees?

20 A. Yes, particularly through our legislative 14:23:45  
21 liaison.

22 Q. And when the Department of Education sends  
23 feedback on proposed legislation, does the  
24 legislature typically take it into account?

25 A. Most of the feedback we would provide 14:24:02

1 would be technical in nature. We're referencing a  
2 policy or something like that. And that type of  
3 technical information, they will usually consider.

4 MS. MORGAN: Let me also place my  
5 objection as to form on the record. 14:24:14

6 BY MS. VEROFF:

7 Q. And do you know if the legislatures --  
8 legislature took into account the Department of  
9 Education's feedback on H.B. 3293?

10 MS. MORGAN: Object as to form. 14:24:25

11 THE WITNESS: I do not.

12 MS. VEROFF: I'm going to introduce  
13 another exhibit now. I'll let you know when it's  
14 available in the marked exhibits folder.

15 (Blatt Deposition Exhibit 21 was marked 14:24:38  
16 electronically.)

17 BY MS. VEROFF:

18 Q. I've now placed what is marked as Exhibit  
19 21 in the "Marked Exhibits" folder. Please just  
20 let me know when you're able to pull it up. 14:25:01

21 MS. MORGAN: What number did you say  
22 again?

23 MS. VEROFF: It should be Exhibit 21.

24 THE WITNESS: Yes, I see it.

25 BY MS. VEROFF: 14:25:19

1 Q. Great.

2 And this is Bates stamped in the bottom

3 left corner. The first page is WVSBOE 000013.

4 And the document goes through WVSBOE 000036.

5 And I'll represent that your counsel 14:25:35  
6 provided this document to Plaintiff's counsel as  
7 part of discovery production.

8 Do you recognize this document?

9 A. Yes.

10 Q. And can you tell me what it was? 14:25:47

11 A. It's our summary of legislation that was  
12 passed in that 2021 session.

13 Q. And -- so this is the -- the "2021 Green  
14 Book." And is this prepared every legislative  
15 session? 14:25:59

16 A. Yes.

17 Q. And who prepares the summaries in the  
18 Green Book?

19 A. They're either prepared by our legislative  
20 liaison, or it may be prepared by -- if we had 14:26:09  
21 a -- a lead that was representing that bill.

22 Q. And does anyone have to approve the  
23 summaries that are prepared?

24 A. We approve them through our legal office.

25 Q. And who receives the 2021 Green Book? 14:26:22

1 A. We prepare it for the Department's  
2 reference and then for our county superintendents.

3 Q. And how do the county superintendents  
4 access the 2021 Green Book?

5 A. It's available electronically on our 14:26:37  
6 website.

7 Q. And for each bill listed in the Green  
8 Book, is there a WVDE context?

9 A. Yes, I believe so.

10 Q. And does "WVDE" stand for West Virginia 14:26:55  
11 Department of Education?

12 A. Yes.

13 Q. And what does it mean to be the Department  
14 of Education contact for a bill?

15 A. It just means that if someone has 14:27:07  
16 questions regarding that bill, this is who they  
17 should reach out to.

18 Q. And how are people chosen to be the  
19 Department of Education contact for a given bill?

20 A. Just based on their background and their 14:27:18  
21 experience and maybe their work with that bill as  
22 it was being led through the legislation.

23 Q. And if someone is listed as the Department  
24 of Education contact, does that mean that they  
25 speak on behalf of the Department of Education 14:27:34

1 when they answer questions about the bill?

2 A. Yes.

3 Q. I'd like you to turn to page 23 of  
4 Exhibit 21. It's page 23 of the PDF.

5 Just let me know when you're there. 14:27:49

6 A. Okay. We're there.

7 Q. Great.

8 So you'll see two bills listed on this  
9 page, the second of which is "House Bill 3293:  
10 Relating to single-sex participation in 14:28:16  
11 interscholastic athletic events."

12 Do you see that?

13 A. Yes.

14 Q. And who is listed as the WVDE contact for  
15 House Bill 3293? 14:28:28

16 A. It says "Bernie Dolan, West Virginia  
17 Secondary Schools Activities Commission."

18 Q. And why was Bernie Dolan chosen as the  
19 Department of Education contact for House Bill  
20 3293? 14:28:40

21 MS. GREEN: Roberta Green on behalf of  
22 SSAC.

23 Object to the form.

24 THE WITNESS: He was chosen because  
25 this -- he is in charge of the SSAC and the 14:28:49

1 regulation and oversight of those athletic events.

2 BY MS. VEROFF:

3 Q. And as the Department of Education contact  
4 for House Bill 3293, he was speaking on behalf of  
5 the Department of Education if someone contacted 14:29:04  
6 him with questions?

7 MS. MORGAN: Object to form.

8 MS. GREEN: I'm going to object to the  
9 form.

10 Roberta Green, SSAC. 14:29:14

11 THE WITNESS: He would be speaking in  
12 reference to what was in the statute, if contacted.

13 BY MS. VEROFF:

14 Q. And is it unusual for a non-Department of  
15 Education employee to be listed as the contact for 14:29:28  
16 a bill?

17 MS. MORGAN: Object to form.

18 THE WITNESS: I would say it is not a  
19 normal practice; however, the -- our lead on that  
20 bill had been Sarah Stewart. By the time this book 14:29:43  
21 was published, she had already left, so he was the  
22 one that would be able to be most versed in the  
23 statute.

24 BY MS. VEROFF:

25 Q. I see. 14:29:53



1 it.

2 A. Okay, I can see it.

3 Q. Great.

4 And this is Bates stamped in the bottom  
5 left corner WVSBOE 000037, and then the second 14:31:09  
6 page is 000038.

7 I'll represent that your counsel provided  
8 this document to Plaintiff's counsel as part of  
9 discovery production.

10 Do you recon- -- recognize this document? 14:31:25

11 A. Yes.

12 Q. And what is it?

13 A. It's our -- the abstract that we complete  
14 as legislation is sent to the governor's office.

15 Q. And did you review this document in 14:31:39  
16 preparation for today's deposition?

17 A. Yes.

18 Q. Is the Enrolled Bill Review Form a  
19 standard form that's prepared for all bills that  
20 pass? 14:31:52

21 A. Yes.

22 Q. And how did this form develop?

23 MS. MORGAN: Object to form.

24 THE WITNESS: I don't know. We've used  
25 the form as long as I'm aware of that I've been 14:32:04

1 here.

2 BY MS. VEROFF:

3 Q. Is there a law requiring use of this form?

4 MS. MORGAN: Object to form.

5 THE WITNESS: I'm not -- I'm not aware of 14:32:14  
6 one.

7 BY MS. VEROFF:

8 Q. And who prepared this Enrolled Bill Review  
9 Form for H.B. 3293?

10 A. Sarah Stewart, our legislative liaison, 14:32:21  
11 our government affairs counsel.

12 Q. And who receives the Enrolled Bill Review  
13 Form?

14 A. They're sent to the governor's office.

15 Q. And who in the governor's office receives 14:32:35  
16 it?

17 A. I'm not sure if there's an exact person.  
18 I mean, there's a chief of staff that has several  
19 attorneys on staff.

20 Q. And is it sent to anyone else? 14:32:51

21 A. No, not to my knowledge.

22 Q. And do you know what the governor's office  
23 does with the form when it receives it?

24 MS. MORGAN: Object to form.

25 THE WITNESS: My understanding is just 14:33:02

1 that they -- they review the agency's summary of  
2 the bill in determination, recommendations that  
3 they would make to the governor.

4 BY MS. VEROFF:

5 Q. And besides Sarah Stewart, who prepared 14:33:11  
6 the Enrolled Bill Review Form, did anyone else at  
7 the Department of Education review this Enrolled  
8 Bill Form [verbatim] for H.B. 3293?

9 A. I can't speak exactly to this bill. But  
10 the normal process is the state superintendent 14:33:32  
11 would review prior to submitting.

12 Q. And do you know if the state  
13 superintendent reviewed this Enrolled Bill Form  
14 [verbatim] for H.B. 3293?

15 MS. MORGAN: Object to form. 14:33:41

16 THE WITNESS: I can't -- I believe so, but  
17 I can't speak for definite.

18 BY MS. VEROFF:

19 Q. And on the second page of the PDF, which  
20 is Bates stamped WVSBOE 000038, there's Item 14:33:50  
21 Number 14, which says, "Is a Governor's veto  
22 recommended? If yes, please explain."

23 And the answer provided is "The WVDE does  
24 not support this bill."

25 Did I read that correctly? 14:34:08

1 A. Yes.

2 Q. And does WVDE stand for West Virginia  
3 Department of Education here?

4 A. Yes.

5 Q. And is it correct that the Department of 14:34:17  
6 Education did not support H.B. 3293?

7 A. Department of Education did -- as we've  
8 talked --

9 (Interruption in audio/video.)

10 THE COURT REPORTER: Excuse me. Could you 14:34:31  
11 please start over your answer. There was an  
12 interruption in audio.

13 THE WITNESS: The -- the Department of  
14 Education did not see that we had an issue with  
15 transgender in sports that would require us to take 14:34:43  
16 the necessary steps and work to promulgate a rule.

17 And then also, normally a rule in relation  
18 to sports would have been created by the SSAC and  
19 then brought forth to the Board of Education.

20 BY MS. VEROFF: 14:35:04

21 Q. And were there any other reasons besides  
22 those two that the Department of Education didn't  
23 support H.B. 3293?

24 A. Not that I'm aware of.

25 Q. And who made the decision that the 14:35:13

1 Department of Education didn't support H.B. 3293?

2 A. Well, as I -- as I said a little bit  
3 earlier, I will -- you know, it's a discussion  
4 between our legislative attorney and the state  
5 superintendent. 14:35:29

6 Q. And were the reasons that the Department  
7 of Education didn't support H.B. 3293 written down  
8 anywhere?

9 A. Not to my knowledge.

10 Q. And were there any memos or other 14:35:41  
11 documents prepared that underlie --

12 (Interruption in audio/video.)

13 THE COURT REPORTER: Excuse me. Could you  
14 please start over.

15 MS. VEROFF: Of course. 14:35:53

16 BY MS. VEROFF:

17 Q. Were there any documents that capture  
18 the -- the reasoning arising at the conclusion  
19 that the Department of Education doesn't support  
20 the bill? 14:36:02

21 A. No, I don't believe there are any  
22 documents for -- for any other bill.

23 Q. And did the Department of Education tell  
24 any legislators that it didn't support H.B. 3293?

25 A. Not necessarily. I mean, I don't know 14:36:19

1 that there -- if there were conversations held  
2 between \*Sarah\* and the legislators.

3 (Interruption in audio/video.)

4 THE COURT REPORTER: Excuse me.

5 "Between Sara and"? 14:36:36

6 THE WITNESS: The legislators.

7 BY MS. VEROFF:

8 Q. And did the Department of Education tell  
9 any legislative staff that it didn't support H.B.  
10 3293? 14:36:48

11 A. I'm not aware of anything that was said.

12 MS. MORGAN: Julie, hold up just one  
13 moment. What I'm going to do is I'm going to move  
14 this speaker more in front. That might be -- if  
15 you want to move that for a second -- that might be 14:36:57  
16 part of why her -- her face is looking at different  
17 directions. So it might be -- see if that's any  
18 better.

19 THE WITNESS: I'm not in the middle.

20 BY MS. VEROFF: 14:37:11

21 Q. Did the Department of Justice [verbatim]  
22 speak with anyone in Governor Justice -- Justice's  
23 office about its decision not to support H.B.  
24 3293?

25 MS. MORGAN: Department of Justice? 14:37:23

1 MS. VEROFF: I'm sorry. In Governor --  
2 Governor Justice's office.

3 MS. MORGAN: The question was, did the --  
4 anyone in the Department of Justice.

5 MS. VEROFF: Sorry. 14:37:34

6 BY MS. VEROFF:

7 Q. Did anyone in the Department of Education  
8 speak with anyone in Governor Justice's office  
9 about the Department's decision not to support  
10 H.B. 3293? 14:37:43

11 A. Not that I'm aware of.

12 Q. And did anyone at the Department of  
13 Education ask Governor Justice to veto H.B. 3293?

14 A. Not that I'm aware of, no.

15 Q. And is the Department of Education's 14:37:58  
16 current position that it doesn't support H.B.  
17 3293?

18 MS. MORGAN: Object to form.

19 THE WITNESS: We -- the Department of  
20 Education has to -- we have to follow anything once 14:38:08  
21 it is codified and put in statute.

22 BY MS. VEROFF:

23 Q. And does the State Board not support H.B.  
24 3293?

25 MS. MORGAN: Object to form. 14:38:21

1 THE WITNESS: Once it was codified, the  
2 State Board is charged with implementing and  
3 enforcing.

4 BY MS. VEROFF:

5 Q. How frequently does the Department of 14:38:31  
6 Education decide that it doesn't support a bill?

7 A. I could not speak to the frequency. We  
8 have a few different options. You know, we --  
9 there are ought times when we say ask for a veto.  
10 Specifically there are times when we say we don't 14:38:50  
11 have a stance. So I'm not sure.

12 Q. In your tenure as deputy superintendent,  
13 have you ever seen an Enrolled Bill Review Form  
14 besides the one for H.B. 3293 that says that the  
15 Department of Education doesn't support a bill? 14:39:01

16 A. This would actually be my first year as --  
17 in -- as deputy with a session and for -- I  
18 wouldn't have access to those to review prior to  
19 them being submitted. And we haven't had any  
20 legislation sent to the governor's office yet. 14:39:18

21 Q. I see.

22 And so you weren't in this role when this  
23 Enrolled Bill Review Form was passed? Am I  
24 understanding that correctly?

25 A. I don't believe so. 14:39:28

1 Q. Got it.

2 And I'd like now for you to look at Item  
3 Number 15, so just below where we were looking,  
4 which says, "Please identify whether any other  
5 state agency should also provide a bill review:" 14:39:45  
6 And the answer is "HEPC."

7 Did I read that correctly?

8 A. Yes.

9 Q. What is HEPC?

10 A. It's our Higher Education Policy 14:39:55  
11 Commission.

12 Q. And what is the HEPC's relationship to the  
13 Department of Education?

14 A. Really the best way to describe it is like  
15 a sister agency. It oversees our colleges and 14:40:08  
16 current technical centers -- or career and  
17 technical -- I'm sorry, career and --

18 (Interruption in audio/video.)

19 THE COURT REPORTER: Excuse me.

20 THE WITNESS: I'm sorry, career and 14:40:17  
21 technical community colleges.

22 BY MS. VEROFF:

23 Q. Thank you.

24 And did anyone in the Department of  
25 Education have any communication with anyone at 14:40:26

1 HEPC about H.B. 3293?

2 MS. MORGAN: Object to form.

3 THE WITNESS: I'm not aware of any  
4 communication.

5 BY MS. VEROFF: 14:40:36

6 Q. And did the superintendent have any  
7 communications with anyone at HEPC about H.B.  
8 3293?

9 MS. MORGAN: Object to form.

10 THE WITNESS: Not that I'm aware of. 14:40:45

11 BY MS. VEROFF:

12 Q. And why did the Department of Education  
13 believe that HEPC should also provide a bill  
14 review?

15 A. Because the bill references sports at the 14:40:54  
16 college level as well, and so they -- they had  
17 oversight over that age of students.

18 Q. And did HEPC actually provide a bill  
19 review?

20 A. I don't know if they did or not. 14:41:10

21 MS. VEROFF: And now I'd like to introduce  
22 another exhibit. I'll let you know when this is  
23 available to you in the Marked Exhibits folder.

24 (Blatt Deposition Exhibit 23 was marked  
25 electronically.) 14:41:43

1 BY MS. VEROFF:

2 Q. You should now see Exhibit 23 in your  
3 Marked Exhibits folder. Just let me know when you  
4 have it.

5 A. Okay. 14:41:52

6 Q. So this is Bates stamped WVSBOE 000001.  
7 It's an e-mail from Sarah Stewart, dated Thursday,  
8 July 1st, 2021, to Heather Hutchens. Subject  
9 line --

10 THE COURT REPORTER: Could you slow down,  
11 please, Counsel.

12 MS. VEROFF: I'm so sorry.

13 BY MS. VEROFF:

14 Q. It's from Sarah Stewart sent Thursday,  
15 July 1st, 2021, to Heather Hutchens. The subject 14:42:18  
16 line is "fyi."

17 Do you recognize this e-mail?

18 A. Yes.

19 Q. And I'll represent that it was provided by  
20 your counsel to plaintiff's counsel as part of 14:42:23  
21 discovery production.

22 Did you review this e-mail in preparation  
23 for today's deposition?

24 A. I did.

25 Q. And did you review the article that Sarah 14:42:34

1 Stewart links to in the body of the e-mail?

2 A. I did not.

3 Q. Do you know why Sarah Stewart e-mailed  
4 this article to Heather Hutchens?

5 MS. MORGAN: Object to form. 14:42:47

6 THE WITNESS: I don't, but I would -- you  
7 know, I would assume she was just sharing  
8 information on the fact that it had been  
9 a MetroNews article. It's not uncommon for  
10 anything us to share education -- anything related 14:43:00  
11 to education with each other.

12 BY MS. VEROFF:

13 Q. And did Heather Hutchens respond to this  
14 e-mail?

15 MS. MORGAN: Heather Hutchens or Sarah 14:43:09  
16 Stewart?

17 BY MS. VEROFF:

18 Q. Did Heather Hutchens respond to the  
19 e-mail?

20 MS. MORGAN: Object to form. 14:43:16

21 THE WITNESS: I'm not -- I don't know.

22 BY MS. VEROFF:

23 Q. And you mentioned that Sarah Stewart has  
24 left the Department of Education.

25 Do you know why she left? 14:43:20

1 MS. MORGAN: Object to form.

2 THE WITNESS: She took another position --

3 BY MS. VEROFF:

4 Q. And do you know where other position is?

5 (Simultaneous speaking.) 14:43:24

6 (Interruption in audio/video.)

7 A. -- or another job.

8 THE COURT REPORTER: Excuse me. There was  
9 speaking over. I didn't get the rest of the  
10 answer. 14:43:33

11 THE WITNESS: I said, "She took another  
12 job."

13 BY MS. VEROFF:

14 Q. And I'm sorry for interrupting.

15 Do you know where her new job is? 14:43:38

16 A. She works with West Virginia legislature.

17 Q. And do you know what department or  
18 committee at the West Virginia legislature?

19 A. She's counsel for the senate president.

20 Q. And who is the senate president? 14:43:59

21 A. Craig Blair.

22 Q. I see.

23 And was Craig Blair the president of the  
24 senate at the time that H.B. 3293 was passed?

25 A. Yes, I believe so. 14:44:08

1 Q. Great.

2 And -- and I'm sorry if I didn't ask this  
3 earlier.

4 Did you speak with Superintendent Burch in  
5 preparing for today's deposition? 14:44:19

6 A. No.

7 Q. No.

8 I just have a few last questions, and I  
9 think we can take another break. And this is just  
10 about H.B. 3293. 14:44:29

11 Under H.B. 3293, can cisgender girls play  
12 on girls' sports teams?

13 A. Sorry. Could you repeat.

14 Q. Of course.

15 Under H.B. 3293, can cisgender girls play 14:44:45  
16 on girls' sports teams?

17 A. Yes.

18 Q. Under H.B. 3293, can transgender girls  
19 play on girls' sports teams?

20 MS. MORGAN: Object to form. 14:45:00

21 MR. TRYON: This -- this is David Tryon.  
22 Objection as to terminology.

23 THE WITNESS: Yes, according to  
24 statute they -- or no, according to statute, they  
25 cannot. 14:45:09

1 BY MS. VEROFF:

2 Q. Thank you.

3 And under H.B. 3293, can B.P.J., the  
4 plaintiff in this case, play on a girls' sports  
5 team? 14:45:23

6 A. No. According to this statute, no.

7 Q. And why can't she play on a girls' sports  
8 team?

9 MS. MORGAN: Object to form.

10 THE WITNESS: Because the statute would 14:45:32  
11 prohibit it.

12 BY MS. VEROFF:

13 Q. If B.P.J. were a cisgender girl, could she  
14 play on girls' sports teams under H.B. 3293?

15 MS. MORGAN: Objection to form. 14:45:40

16 THE WITNESS: According --

17 MR. TRYON: Objection.

18 THE WITNESS: According to what I read in  
19 the statute, yes.

20 BY MS. VEROFF: 14:45:47

21 Q. Does the State Board believe that H.B.  
22 3293 is necessary?

23 MS. MORGAN: Object to form.

24 THE WITNESS: So we've not had an issue in  
25 the past is what we've -- we had said from -- you 14:45:59

1 know, throughout the thing, that it's not been a  
2 concern in West Virginia.

3 BY MS. VEROFF:

4 Q. And does the State Board believe that H.B.  
5 3293 advances any important government interests? 14:46:10

6 MS. MORGAN: Object to form.

7 THE WITNESS: I'm not aware -- or I mean,  
8 I -- not that we're aware of.

9 BY MS. VEROFF:

10 Q. Is it -- so just to confirm, do you mean 14:46:20  
11 that you're not aware of whether the State Board  
12 thinks that any important government interests are  
13 advanced, or do you mean that the State Board does  
14 not believe that any important government  
15 interests are advanced by H.B. 3293? 14:46:34

16 A. There -- the State Board --

17 MR. TRYON: This is David Tryon.  
18 Objection to calls for a legal conclusion.

19 MS. MORGAN: Object form.

20 THE WITNESS: The -- the -- the State 14:46:42  
21 Board is not aware if there is or is not a  
22 relationship for -- for that.

23 BY MS. VEROFF:

24 Q. Great.

25 MS. VEROFF: So I think at this time, I 14:46:51

1 think I'm -- I'm close to being finished. So I'd  
2 like to suggest that we go off the record and take  
3 a five-minute break just so I can confer with  
4 co-counsel before we wrap up.

5 Does that sound okay to everybody? 14:47:07

6 MS. MORGAN: Okay.

7 MR. TRYON: Yes, I -- I needed some -- a  
8 break. Thank you.

9 THE VIDEOGRAPHER: Okay. We're going off  
10 the record. The time is 2:47 p.m., and this is the 14:47:15  
11 end of Media Unit Number 3.

12 (Short recess taken.)

13 THE VIDEOGRAPHER: We are back on the  
14 record at 3:01 p.m., and this is the beginning of  
15 Media Unit Number 4. 15:01:42

16 Go ahead.

17 MS. VEROFF: Thank you so much, Ms. Blatt,  
18 for your time today. I hope, as indicated, this  
19 was a fairly pain-free deposition. And I've  
20 reached the end of my questioning. 15:01:54

21 Plaintiff would like to leave today's  
22 deposition open in -- in light of potential  
23 inadequacy of preparation issues. And also I  
24 reserve my rights to ask questions following from  
25 any questions asked by the other parties or if 15:02:08

1       there are any changes in the errata.

2               But other than, I am finished, and so will  
3       turn it over to counsel for other parties.

4               THE WITNESS: Thank you.

5               MS. MORGAN: Just for a moment, we do not       15:02:19  
6       agree to leave this deposition open. You have been  
7       allowed full opportunity to ask any questions  
8       pursuant to these 12 topics, and she's answered  
9       them fully.

10              MS. VEROFF: I'll just add for the record       15:02:31  
11       that the witness stated at the beginning of  
12       deposition when we were viewing the notice of  
13       examination -- or the topics of examination, that  
14       there was one topic that she did no preparation  
15       for. And the witness also admitted that she didn't       15:02:41  
16       speak with any of the individuals featured in the  
17       discovery responses.

18              MS. MORGAN: I don't believe that she --

19              MS. VEROFF: Or she --

20              MS. MORGAN: -- actually has testified       15:02:52  
21       that she didn't prepare for any topics. May- --  
22       there may not have been any documents to review to  
23       prepare. But, you know, her testimony is what it  
24       is. We're -- we're not agreeing to keep her  
25       deposition -- or a deposition of a 30(b)(6)       15:03:08

1 representative open.

2 Does anyone else have any other questions?

3 EXAMINATION

4 BY MS. GREEN:

5 Q. This is Roberta Green, here on behalf of 15:03:24  
6 WVSSAC. And, Ms. Blatt, I have a few questions  
7 for you. Appreciate your patience.

8 I've heard you testify to some things that  
9 referenced Bernie Dolan.

10 Did you confer with Bernie Dolan today -- 15:03:37  
11 or prior to your deposition today?

12 A. No.

13 Q. So in terms of who Mr. Dolan communicated  
14 with relative to the legislation, would you defer  
15 to Mr. Dolan identify those persons for himself? 15:03:54

16 A. Yes, I would.

17 Q. And in terms in your Deposition  
18 Exhibit 21, which is the Green Book, at page 23,  
19 there's a summary of House Bill 3293 that  
20 represents that the West Virginia Board Department 15:04:08  
21 of Education contact is Bernie Dolan.

22 Do you recollect that document?

23 A. Yes.

24 Q. And as you sit here, do you understand  
25 that Bernie Dolan is not a West Virginia 15:04:18

1 Department of Education employee?

2 A. I do.

3 Q. And are you aware of whether Mr. Dolan was  
4 aware he was listed in the Green Book as the West  
5 Virginia Department of Education contact relative 15:04:30  
6 to House Bill 3293?

7 A. I'm not aware if he was or not.

8 Q. And in terms of any involvement Mr. Dolan  
9 had in preparing the bill summary that's listed in  
10 the Green Book at page 23, as you sit here, do you 15:04:44  
11 know whether he had involv- -- any involvement at  
12 all?

13 A. I do not know if he did.

14 Q. And in terms of whether Mr. Dolan --  
15 (Interruption in audio/video.) 15:04:57

16 THE COURT REPORTER: Excuse me. Counsel,  
17 there was a cough and an interruption. If you  
18 would please start over, please.

19 MS. GREEN: Wow. I don't know. We --  
20 well, I could try or maybe something a little 15:05:09  
21 different.

22 BY MS. GREEN:

23 Q. So I can't even -- and I don't know  
24 whether I asked you whether Mr. -- you know  
25 whether Mr. Dolan ever even reviewed this bill 15:05:22

1 summary that's in the Green Book at page 23.

2 A. I don't know that if he did.

3 Q. And I believe you testified that the State  
4 Board has no official relationship with WVSSAC; is  
5 that true? 15:05:48

6 A. I said the relationship was in that we --  
7 the State Board approves the -- the rules for the  
8 SSAC.

9 Q. And other than that, no relationship; is  
10 that true? 15:05:58

11 A. Yes.

12 Q. So you would defer to WVSSAC to answer its  
13 own questions relative to its internal practices  
14 and how it proceeds internally; is that true?

15 A. Yes. 15:06:12

16 Q. And you're not a 30(b) witness for SSAC,  
17 are you?

18 A. No, I'm not.

19 Q. All right.

20 And in terms of whether SSAC has to comply 15:06:26  
21 with State rules, is it actually that the SSAC's  
22 member schools or the membership of SSAC has to  
23 comply with the State rules? Do --

24 A. Yes, that would be -- that's how I would  
25 understand. Our schools would have to comply with 15:06:44

1 the rules.

2 Q. Okay. Very good.

3 And in terms of the 2.0 rule, I recollect  
4 you spoke to the 2.0 rule.

5 Do you recollect that testimony? 15:06:54

6 A. Yes, that that was the only reference to  
7 sports participation that's in a State Board  
8 policy.

9 Q. All right.

10 And in terms of who actually has a -- 15:07:05

11 (Interruption in audio/video.)

12 THE COURT REPORTER: Excuse me. If you  
13 would please start over. There was an interruption  
14 in audio.

15 BY MS. GREEN: 15:07:17

16 Q. So in terms of who actually has authority  
17 to enforce or waive the 2.0 rule, that would be  
18 the State Board; wouldn't it?

19 A. No. That would be the authority of the --  
20 enforcement of the 2.0 rule lies with the schools 15:07:35  
21 and with the counties, mainly with the schools who  
22 are reviewing the -- the records of the students.

23 Q. Okay. And very good point. Thank you for  
24 clarifying, not SSAC.

25 SSAC doesn't enforce the State Board's 15:07:49

1 rules; correct?

2 MS. VEROFF: Objection as to counsel  
3 testifying.

4 BY MS. GREEN:

5 Q. State -- State Board rule, your one rule; 15:07:59  
6 is that true?

7 A. Elig- -- eligibility is determined at the  
8 school level.

9 Q. All right.

10 And in terms of -- I think during the 15:08:07  
11 pandemic, the State Board had waived or changed  
12 compliance with the 2.0 rule, and that was done by  
13 the State Board; wasn't it?

14 A. Yes.

15 Q. That's not SSAC doing that with your rule, 15:08:20  
16 was it?

17 A. No.

18 Q. And I'm not sure whether I asked you or  
19 not -- and maybe counsel will all object and tell  
20 me I did. 15:08:38

21 But in terms of any sorts of  
22 communications Bernie Dolan had with the  
23 legislature or didn't have, any sort of e-mails  
24 Bernie Dolan sent, any sort of communication, you  
25 would defer to Mr. Dolan to speak for himself, 15:08:50

1 would you not?

2 A. Yes.

3 Q. Thank you. Appreciate it.

4 A. Thank you.

5 MS. GREEN: No further questions at this 15:08:58  
6 time. Thank you, all.

7 MR. TRYON: Ms. Blatt, my name the David  
8 Tryon. I don't see my video coming up yet.  
9 But anyways, my name is David Tryon, on behalf of  
10 the State of West Virginia. Thank you very much 15:09:12  
11 for your time today. We have no questions. Thank  
12 you.

13 THE WITNESS: Thank you.

14 MS. GREEN: Good afternoon, Ms. Blatt. My  
15 name is Susan Deniker. I represent the Harrison 15:09:27  
16 County Board of Education and Superintendent  
17 Stutler. Thank you for your time today. I do not  
18 have any questions.

19 THE WITNESS: Thank you.

20 MS. MORGAN: So I have a few clarifying 15:09:37  
21 questions that I would like to ask Ms. Blatt.

22 EXAMINATION

23 BY MS. MORGAN:

24 Q. You were asked about the 2.0 rule, both by  
25 plaintiff's counsel as well as counsel for SSAC. 15:09:48

1 And just want to clarify.

2 That is a -- a rule that was promulgated  
3 by the West Virginia Board of Education; correct?

4 A. Yes.

5 Q. And it was -- it is to be implemented, 15:10:01  
6 enforced by who?

7 A. By this -- membership schools.

8 Q. Is that similar to what will happen in the  
9 future if a rule is promulgated by the Board of  
10 Education? 15:10:19

11 A. Yes.

12 MS. VEROFF: Objection as to form.

13 BY MS. MORGAN:

14 Q. Has the State Board of Education ever  
15 discussed 3293 at a meeting -- discussed House 15:10:38  
16 Bill, that it was codified, 3293, at a board  
17 meeting?

18 A. No, they have not.

19 MS. VEROFF: Objection. Asked and  
20 answered. 15:10:51

21 BY MS. MORGAN:

22 Q. Have they taken any vote or action?

23 A. No, they have not.

24 Q. Has the department received any complaints  
25 about -- 15:11:07

1 MS. VEROFF: Object- --

2 (Simultaneous speaking.)

3 (Interruption in audio/video.)

4 BY MS. MORGAN:

5 Q. -- stu- -- has the State Board of 15:11:12

6 Education or the Department of Education received

7 any complaints by any individuals about

8 transgender athletes participating in sports?

9 A. No, we have not.

10 Q. When -- 15:11:29

11 MS. MORGAN: Let's go off the record just

12 for a moment.

13 THE VIDEOGRAPHER: Okay. We're going off

14 the record. The time is 3:11 p.m.

15 (Off the record.) 15:12:01

16 THE VIDEOGRAPHER: We're back on the

17 record at 3:12 p.m.

18 Go ahead.

19 BY MS. MORGAN:

20 Q. Topic 8 states that it's about "Your 15:12:53

21 Policies, Documents and Communications Concerning

22 the separation of boys and girls in sports in West

23 Virginia prior to and following the passage of

24 H.B. 3293." [As read]

25 Are -- are there any policies, documents 15:13:11

1 or communications regarding that topic?

2 A. No, we do not have any.

3 Q. Did you prepare for that topic to testify  
4 here today?

5 A. Just in stating -- reviewing it, we do not 15:13:23  
6 have anything that relates to that in a policy.

7 Q. Okay.

8 MS. MORGAN: It's all the questions I  
9 have.

10 THE COURT REPORTER: May we go off the 15:13:40  
11 record, Counsel?

12 THE WITNESS: Go off the record?

13 MS. MORGAN: If everybody is done, I think  
14 we are done here. And she'll read.

15 THE VIDEOGRAPHER: Okay, then. We are off 15:13:52  
16 the record at 3:13 p.m. This ends today's test- --  
17 testimony given by Michele Blatt.

18 The total number of media used was four,  
19 and will be retained by Veritext Legal Solutions.

20 (Proceedings concluded, 3:13 p.m., EST, on  
21 February 14, 2022.)

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JURAT

I, MICHELE BLATT, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken remotely on the 14th day of February, 2022; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022,  
at  
\_\_\_\_\_.

\_\_\_\_\_  
MICHELE BLATT

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CERTIFICATE OF REPORTER

I, Hanna Kim, a Certified Shorthand Reporter, do hereby certify:

That prior to being examined, the witness in the foregoing proceedings was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said proceedings were taken before me at the time and place therein set forth and were taken down by me in shorthand and thereafter transcribed into typewriting under my direction and supervision;

I further certify that I am neither counsel for, nor related to, any party to said proceedings, not in anywise interested in the outcome thereof.

Further, that if the foregoing pertains to the original transcript of a deposition in a federal case, before completion of the proceedings, review of the transcript [X] was [ ] was not requested.

In witness whereof, I have hereunto subscribed my name.

Dated: 3rd day of March, 2022



Hanna Kim, CLR, CSR No. 13083

1 Ms. Michele Blatt

2 mlblatt@k12.wv.us

3 March 3, 2022

4 RE: B.P.J. vs. WEST VIRGINIA STATE BOARD OF EDUCATION

5 February 14, 2022, Michele Blatt (JOB NO. 5079505)

6 The above-referenced transcript has been

7 completed by Veritext Legal Solutions and

8 review of the transcript is being handled as follows:

9 \_\_\_ Per CA State Code (CCP 2025.520 (a)-(e)) - Contact Veritext  
10 to schedule a time to review the original transcript at  
11 a Veritext office.

12 \_\_\_ Per CA State Code (CCP 2025.520 (a)-(e)) - Locked .PDF  
13 Transcript - The witness should review the transcript and  
14 make any necessary corrections on the errata pages included  
15 below, notating the page and line number of the corrections.  
16 The witness should then sign and date the errata and penalty  
17 of perjury pages and return the completed pages to all  
18 appearing counsel within the period of time determined at  
19 the deposition or provided by the Code of Civil Procedure.

20 \_\_\_ Waiving the CA Code of Civil Procedure per Stipulation of  
21 Counsel - Original transcript to be released for signature  
22 as determined at the deposition.

23 \_\_\_ Signature Waived - Reading & Signature was waived at the  
24 time of the deposition.

25

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1     \_X\_ Federal R&S Requested (FRCP 30(e)(1)(B)) - Locked .PDF  
2           Transcript - The witness should review the transcript and  
3           make any necessary corrections on the errata pages included  
4           below, notating the page and line number of the corrections.  
5           The witness should then sign and date the errata and penalty  
6           of perjury pages and return the completed pages to all  
7           appearing counsel within the period of time determined at  
8           the deposition or provided by the Federal Rules.  
9     \_\_ Federal R&S Not Requested - Reading & Signature was not  
10           requested before the completion of the deposition.

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1 B.P.J. vs. WEST VIRGINIA STATE BOARD OF EDUCATION  
2 Michele Blatt (JOB NO. 5079505)

3 E R R A T A S H E E T

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6 REASON \_\_\_\_\_

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21 REASON \_\_\_\_\_

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24 WITNESS \_\_\_\_\_ Date \_\_\_\_\_

25

[&amp; - 3293]

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**[start - superintendent]**

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**[superintendent - timothy]**

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**[veroff - witness]**

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION

B.P.J. BY HER NEXT FRIEND AND	)	
MOTHER, HEATHER JACKSON,	)	
	)	
PLAINTIFF,	)	
	)	CIVIL ACTION NO.
VS.	)	2:21-cv-00316
	)	
WEST VIRGINIA STATE BOARD OF	)	
EDUCATION, HARRISON COUNTY BOARD	)	
OF EDUCATION, WEST VIRGINIA	)	
SECONDARY SCHOOL ACTIVITIES	)	
COMMISSION, W. CLAYTON BURCH IN	)	
HIS OFFICIAL CAPACITY AS STATE	)	
SUPERINTENDENT, DORA STUTLER IN	)	
HER OFFICIAL CAPACITY AS HARRISON	)	
COUNTY SUPERINTENDENT, AND THE	)	
STATE OF WEST VIRGINIA, ,	)	
	)	
DEFENDANTS,	)	
	)	
AND	)	
	)	
LAINY ARMISTEAD,	)	
	)	
DEFENDANT-INTERVENOR.	)	
_____	)	

VIDEOTAPED REMOTE ZOOM 30(b)(6) DEPOSITION  
WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION  
BERNARD DOLAN  
FRIDAY, FEBRUARY 11, 2022

JOB NO. 5079532  
REPORTED BY: DAYNA HESTER, C.S.R. 9970

1 VIDEOTAPED REMOTE ZOOM 30(B)(6) DEPOSITION OF WEST  
2 VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION BERNARD  
3 DOLAN, TAKEN ON BEHALF OF PLAINTIFF B.P.J., BY HER NEXT  
4 FRIEND AND MOTHER, HEATHER JACKSON, AT 12:18 P.M., EASTERN  
5 STANDARD TIME, FRIDAY, FEBRUARY 11, 2022, WITH THE WITNESS  
6 (PHYSICALLY PRESENT WITH COUNSEL), COURT REPORTER, AND  
7 VIDEOGRAPHER APPEARING REMOTELY VIA ZOOM VIDEOCONFERENCE,  
8 BEFORE DAYNA HESTER, C.S.R. NO. 9970.

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QUESTIONS INSTRUCTED BY COUNSEL NOT TO ANSWER  
(NONE.)

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ZOOM VIDEOCONFERENCE DEPOSITION

FRIDAY, FEBRUARY 11, 2022

12:18 P.M. EASTERN STANDARD TIME

THE VIDEOGRAPHER: Good afternoon.

We are going on the record at 12:18 p.m. 12:18  
EST on February 11th, 2022. 12:18

Please note that the microphones may pick 12:18  
up background noise, private conversations, and 12:18  
interference if unmuted. 12:18

When muted remember to unmute to speak on 12:18  
the record. 12:18

Audio and video recording will continue to 12:18  
take place unless all parties agree to go off the 12:18  
record. 12:18

This is Media Unit 1 of the video-recorded 12:18  
deposition of 30(b)(6) witness Bernie Dolan taken by 12:19  
counsel for plaintiff in the matter of B.P.J., by 12:19  
her next friend and mother, Heather Jackson, versus 12:19  
West Virginia State Board of Education, et al., 12:19  
filed in the United States District Court for the 12:19  
Southern District of West Virginia, Charleston 12:19  
Division. Case Number 2:21-cv-00316. 12:19

This deposition is being conducted via 12:19  
Veritext Virtual Zoom technology and all parties are 12:19

1 attending remotely. 12:19

2 My name is Shawna Hynes from the firm 12:19

3 Veritext Legal Solutions, and I am the videographer. 12:19

4 The court reporter is Dayna Hester from 12:19

5 the firm Veritext Legal Solutions. 12:20

6 I am not related to any party in this 12:20

7 action, nor am I financially interested in the 12:20

8 outcome. 12:20

9 Counsel present and everyone attending 12:20

10 remotely will state their appearances and 12:20

11 affiliations for the record. 12:20

12 If there are any objections to proceeding, 12:20

13 please state them at the time of your appearance 12:20

14 beginning with the noticing attorney. 12:20

15 MS. KANG: Hi. 12:20

16 My name is Katelyn Kang. I'm an attorney 12:20

17 at the law firm of Cooley LLP, and I'm here on 12:20

18 behalf of the plaintiff. 12:20

19 And I'll let my co-counsel introduce 12:20

20 themselves. 12:20

21 MS. HARTNETT: Hi. 12:20

22 This is Kathleen Hartnett from Cooley LLP 12:20

23 for plaintiff. 12:20

24 MR. BARR: Good afternoon. 12:20

25 This is Andrew Barr from Cooley LLP on 12:20



1 MS. GREEN: This is Roberta Green, Shuman 12:21  
2 McCuskey & Slicer. I'm here on behalf of WVSSAC. 12:21  
3 And here with me today is our deponent 12:22  
4 30(b)(6) witness Bernie Dolan. 12:22  
5 MS. BANDY: Hello. 12:22  
6 This is Kimberly Bandy also on behalf of 12:22  
7 West Virginia SSAC. 12:22  
8 MS. MORGAN: This is Kelly Morgan on 12:22  
9 behalf of the West Virginia State Board of Education 12:22  
10 and Superintendent Burch. 12:22  
11 I have with me as well general counsel 12:22  
12 Heather Hutchens and Deputy Superintendent Michelle 12:22  
13 Blatt as our representative. 12:22  
14 MR. CAPEHEART: This is Curtis Capeheart 12:22  
15 the West Virginia Attorney General's office on 12:22  
16 behalf of the defendant State of West Virginia. 12:22  
17 Also with me in my office is another 12:22  
18 individual from the office, Jesseca Church. 12:22  
19 MR. CROPP: My name is Jeffrey Cropp. I'm 12:22  
20 with Steptoe & Johnson. We represent defendants 12:22  
21 Harrison County Board of Education and 12:22  
22 Superintendent Dora Stutler. 12:22  
23 MS. HAMMOND: Hi. 12:23  
24 This is Kristen Hammond. I'm also on 12:23  
25 behalf of the West Virginia State Board of Education 12:23

1 and Superintendent Burch. 12:23

2 MR. SCRUGGS: All right. I think that 12:23

3 leaves us as intervenor. 12:23

4 Jonathan Scruggs on behalf of the 12:23

5 Intervenor with Alliance Defending Freedom. 12:23

6 And also attending today on behalf of the 12:23

7 intervenor is my -- let me get my list here -- Catie 12:23

8 Kelly, Christiana Holcomb, Hal Frampton, and 12:23

9 Timothy Ducar. 12:23

10 And that is it. 12:23

11 THE VIDEOGRAPHER: Thank you. 12:23

12 If that's everybody, will the court 12:23

13 reporter please swear in the witness. 12:23

14 THE REPORTER: Okay. And because it is a 12:23

15 federal case, I do have a read-on. One second. 12:23

16 My name is Dayna Hester. This statement 13:08

17 is to acknowledge my obligations pursuant to Federal 13:08

18 Rules of Civil Procedure. 13:08

19 Rule 30(b), Subsection 5(a). My business 13:08

20 address is 707 Wilshire Boulevard, Los Angeles, 13:08

21 California. The videographer has stated the 13:08

22 additional required information.

23 Rule 30(b), Subsection 5(c). Upon

24 completion of the deposition, if there is a

25 stipulation about the custody of the transcript or

1 other pertinent matters, I will recite such  
2 stipulation(s). Additionally, the videographer will  
3 read-off when the deposition concludes.

4 So with this being said, I will now swear  
5 in the witness.

6 Mr. Dolan, please, raise your right hand.

7 THE WITNESS: [Witness did as requested].

8 THE REPORTER: Do you affirm the testimony  
9 you are about to give in the cause now pending will  
10 be the truth, the whole truth, and nothing but the  
11 truth? 12:24

12 THE WITNESS: I do. 12:24

13 THE REPORTER: Thank you. 12:24

14

15 BERNARD DOLAN

16 having been first duly sworn, was  
17 examined and testified as follows:

18

19 EXAMINATION 12:25

20 BY MS. KANG: 12:25

21 Q. Hi. Good afternoon, Mr. Dolan. How are 12:25  
22 you? 12:25

23 A. Good. How are you? 12:25

24 Q. Doing well. 12:25

25 Thank you so much for spending your Friday 12:25

1 afternoon with us. 12:25

2 Before we get started, would you please 12:25

3 state and spell your name for the record. 12:25

4 A. Bernard, B-E-R-N-A-R-D; Dolan, D-O-L-A-N. 12:25

5 Q. Mr. Dolan, before we get started, we have 12:25

6 some housekeeping items. So the oath you just took 12:25

7 is the same oath you would take if you were 12:25

8 testifying in a courtroom. So what that means is 12:25

9 you must testify truthfully and not leave out any 12:25

10 important facts. 12:25

11 Is there any reason you cannot testify 12:25

12 truthfully today? 12:25

13 A. No. 12:25

14 Q. Please give verbal answers to any of my 12:25

15 questions. Nodding or shaking your head cannot, 12:25

16 unfortunately, be captured by the court reporter. 12:25

17 So the answer you just gave was perfect. 12:25

18 If you don't understand the question, 12:25

19 please let me know, and I'm happy to try to rephrase 12:25

20 it or make it clear for you. If you answer, I will 12:25

21 assume you understood. Is that fair? 12:25

22 A. Yes. 12:25

23 Q. And just to be clear, when I ask questions 12:25

24 I am not seeking communications that you had with 12:26

25 your attorney. 12:26

1           Because the court reporter is taking down           12:26  
2           what we say on the record, I'll do my best to avoid           12:26  
3           talking over you and to avoid talking at the same           12:26  
4           time as you.           12:26

5           And then, finally, I'm going to try to do           12:26  
6           a break every hour or so -- but if at any point you           12:26  
7           need a break, we'll finish up whatever question we           12:26  
8           are on, and we can take a break whenever you feel           12:26  
9           comfortable.           12:26

10           Does that sound fair?           12:26

11           A.    Yes, ma'am.           12:26

12           Q.    Have you ever had your deposition taken           12:26  
13           before?           12:26

14           A.    Yes.           12:26

15           Q.    When was it?           12:26

16           A.    Two years ago, I believe.           12:26

17           Q.    What was it about?           12:26

18           A.    A herpes case in wrestling.           12:26

19           Q.    So were you testifying on behalf of the           12:26  
20           WVSSAC?           12:26

21           A.    Yes, ma'am.           12:26

22           Q.    And going forward if I say the           12:26  
23           "Commission" instead of the "WVSSAC," would that be           12:26  
24           all right with you?           12:26

25           A.    That is fine.           12:26

1 Q. So you mentioned it's a herpes case. Can 12:26  
2 you tell me whether you testified on behalf of the 12:27  
3 W- -- of the Commission or was it in your personal 12:27  
4 capacity? 12:27

5 A. I believe it was on behalf of the 12:27  
6 Commission, but I'm -- I wouldn't -- I'm not sure. 12:27

7 Q. Have you ever -- have you ever had your 12:27  
8 deposition taken other than this time? 12:27

9 A. Not that I recall. 12:27

10 Q. Have you ever testified at trial? 12:27

11 A. Yes. 12:27

12 Q. When was this? 12:27

13 A. Couple years -- I would say probably three 12:27  
14 or four years ago. 12:27

15 Q. What was it about? 12:27

16 A. A golf ruling in a championship. 12:27

17 Q. And so were you also testifying on behalf 12:27  
18 of the Commission? 12:27

19 A. Yes, ma'am. 12:27

20 Q. Did you bring anything with you today? 12:27

21 A. Just a bottle of water. 12:27

22 Q. Good. 12:27

23 And do you understand that you are here to 12:27  
24 respond to a 30(b)(6) deposition notice? 12:28

25 A. Yes. 12:28

1 Q. Do you know what a 30(b)(6) deposition -- 12:28  
2 deposition notice is? 12:28  
3 A. Yes. 12:28  
4 Q. Have you had a chance to review the 12:28  
5 deposition notice? 12:28  
6 A. Yes. 12:28  
7 Q. So in that deposition notice, there were a 12:28  
8 number of topics. 12:28  
9 Are you familiar with each of the topics 12:28  
10 described in that notice? 12:28  
11 A. Yes. 12:28  
12 Q. So if you go into your Marked Exhibits 12:28  
13 folder, I'm going to introduce to you a document 12:28  
14 that's been marked as Exhibit 1. 12:28  
15 (Deposition Exhibit 1 was marked for 12:28  
16 identification and is attached hereto.) 12:28  
17 BY MS. KANG: 12:28  
18 Q. Let me know when you have had a chance to 12:28  
19 pull that up. 12:28  
20 A. Okay. Exhibit 1, the deposition notice. 12:28  
21 Q. That's correct. 12:28  
22 And I'm going to ask you to scroll down to 12:28  
23 Page 6 of Exhibit A. I believe it's Page 7 of the 12:28  
24 actual pdf, if that's helpful, or Page 6. 12:29  
25 A. Yes. Okay. 12:29

1 Q. Great. 12:29

2 So I'm going to go through each of the 12:29

3 topics and just ask you a few questions about them. 12:29

4 So for Topic 1, what did you do to prepare 12:29

5 for Topic 1? 12:29

6 A. Looked at our organization. 12:29

7 Q. Did you review any documents? 12:29

8 A. Our rules and regulations. 12:29

9 Q. And by looked at your organization, did 12:29

10 you mean -- 12:29

11 A. Review -- 12:29

12 Q. -- look at your -- sorry. Go ahead. 12:29

13 A. Just -- there's a part of our rules and 12:29

14 regulations that has a history of the organization. 12:29

15 Q. Got it. 12:29

16 Is there any reason you can't give full 12:29

17 and complete testimony on Topic 1? 12:29

18 A. No. 12:29

19 Q. When preparing for Topic 1, did you 12:30

20 consult with anyone other than your attorney? 12:30

21 A. No. 12:30

22 Q. Moving on to Topic 2, same question. What 12:30

23 did you do to prepare for Topic 2? 12:30

24 A. Probably just discuss with my attorney. 12:30

25 Q. And did you review any documents? 12:30

1 A. Not necessary for that one. 12:30

2 Q. And just to clarify, you didn't talk to 12:30

3 anyone other than your attorney? 12:30

4 A. No. 12:30

5 Q. For Topic 3, what did you do to prepare 12:30

6 for Topic 3? 12:30

7 A. Looked at our handbook, rules and 12:30

8 regulations handbook. 12:30

9 Q. Did you review any other document? 12:30

10 A. No. 12:30

11 Q. Did you consult with anyone other than 12:30

12 your attorney? 12:30

13 A. No. 12:30

14 Q. And is there any reason you cannot give 12:30

15 full and complete answers on behalf of the 12:30

16 Commission for that topic? 12:30

17 A. No. 12:30

18 Q. For Topic 4, what did you do to prepare 12:31

19 for it? 12:31

20 A. Rules and regulations handbook. 12:31

21 Q. Did you review anything else? 12:31

22 A. No. 12:31

23 Q. Did you consult with anyone other than 12:31

24 your attorney? 12:31

25 A. No. 12:31

1 Q. And is there any reason you cannot give 12:31  
2 full and complete answers on behalf of the 12:31  
3 Commission for Topic 4? 12:31  
4 A. No. 12:31  
5 Q. For Topic 5, what did you do to prepare 12:31  
6 for that? 12:31  
7 A. Looked at our rules and regulations and 12:31  
8 probably researched my email. 12:31  
9 Q. Can you clarify for me what you mean by 12:31  
10 researched your email? 12:31  
11 A. Just search the email to make sure I 12:31  
12 didn't have any communication with the plaintiffs. 12:31  
13 Q. Did you consult with anyone other than 12:31  
14 your attorney for Topic 5? 12:32  
15 A. No. 12:32  
16 Q. And is there any reason you cannot give 12:32  
17 full and complete answers on behalf of the 12:32  
18 Commission? 12:32  
19 A. No. 12:32  
20 Q. Sorry. I know these questions are 12:32  
21 repetitive, but I do appreciate it. 12:32  
22 For Topic 6, what did you do to prepare 12:32  
23 for Topic 6? 12:32  
24 A. Researched -- or looked through my emails 12:32  
25 as well as text messages. 12:32

1 Q. Did you review any documents? 12:32

2 A. Not really. Just -- I'm sorry. 12:32

3 Our transgender policy or our Board 12:32

4 policy. That was all. 12:32

5 Q. Did you review any of the emails or text 12:32

6 messages that you searched for? 12:32

7 A. I probably would have read them for -- to 12:32

8 determine whether there was any substance to them, 12:32

9 yes. 12:33

10 Q. Did you consult with anyone other than 12:33

11 your attorney for Topic 6? 12:33

12 A. No. 12:33

13 Q. And is there any reason you cannot give 12:33

14 full and complete answers on behalf of the 12:33

15 Commission for Topic 6? 12:33

16 A. No. 12:33

17 Q. For Topic 7, what did you do to prepare 12:33

18 for it? 12:33

19 A. Looked at our rules and regulations 12:33

20 handbook. 12:33

21 Q. Did you review any documents other than 12:33

22 the rules and regulations handbook? 12:33

23 A. No. 12:33

24 Q. Did you consult with anyone other than 12:33

25 your attorney about Topic 7? 12:33



1 Q. Did you consult anyone other than your 12:34  
2 attorney? 12:34  
3 A. No. 12:34  
4 Q. Is there any reason you cannot give full 12:34  
5 and complete answers on behalf of the Commission? 12:34  
6 A. No. 12:34  
7 Q. All right. We're almost there. 12:34  
8 For Topic 10, what did you do to prepare 12:34  
9 for it? 12:34  
10 A. Reviewed the rules and regulations 12:34  
11 handbook. 12:35  
12 Q. Did you review anything else? 12:35  
13 A. No. 12:35  
14 Q. Did you -- did you consult anyone other 12:35  
15 than your attorney? 12:35  
16 A. No. 12:35  
17 Q. Is there any reason you cannot give full 12:35  
18 and complete answers on behalf of the Commission? 12:35  
19 A. No. 12:35  
20 Q. For Topic 11, what did you do to prepare 12:35  
21 for it? 12:35  
22 A. Reviewed the rules and regulations 12:35  
23 handbook as well as the Board policy on transgender. 12:35  
24 Q. Did you review anything else? 12:35  
25 A. No. 12:35

1 Q. Did you consult with anyone other than 12:35  
2 your attorney? 12:35  
3 A. No. 12:35  
4 Q. Is there any reason you cannot give full 12:35  
5 and complete answers on behalf of the Commission? 12:35  
6 A. No. 12:35  
7 Q. For Topic 12, what did you do to prepare 12:35  
8 for it? 12:35  
9 A. Reviewed the rules and regulations 12:36  
10 handbook. 12:36  
11 Q. Did you review anything else? 12:36  
12 A. No. 12:36  
13 Q. Did you consult with anyone other than 12:36  
14 your attorney? 12:36  
15 A. No. 12:36  
16 Q. Is there any reason you can't give full 12:36  
17 and complete answers on behalf of the Commission? 12:36  
18 A. No. 12:36  
19 Q. For Topic 13, what did you do to prepare 12:36  
20 for it? 12:36  
21 A. Read the rule -- read the House Bill 3293. 12:36  
22 Q. Did you review anything else? 12:36  
23 A. Just our rules and regulations. 12:36  
24 Q. Did you consult with anyone other than 12:36  
25 your attorney? 12:36





1 A. No. 12:39

2 Q. Did you discuss today's deposition with 12:39

3 anyone other than your attorney? 12:39

4 A. Just that I had it scheduled so people 12:39

5 would know in the office not to send me calls. 12:39

6 Q. So other employees at -- at the 12:39

7 Commission; is that right? 12:39

8 A. Yes, ma'am. 12:39

9 Q. Do you know who B.P.J. is? 12:39

10 A. By name only, yes. 12:39

11 Q. Do you know anything else about her? 12:39

12 MS. GREEN: I'll just object to the form, 12:39

13 to the extent he knows things from me, from counsel. 12:39

14 THE WITNESS: I have -- only know what -- 12:39

15 the documents that have been sent to me. I don't 12:39

16 know anything firsthand about her. 12:40

17 BY MS. KANG: 12:40

18 Q. Do you agree that B.P.J. is a girl who is 12:40

19 transgender? 12:40

20 MS. GREEN: I'll object to the form. And 12:40

21 I'll just object outside the scope. 12:40

22 THE WITNESS: It's been presented to me 12:40

23 that way. 12:40

24 BY MS. KANG: 12:40

25 Q. Are you aware that B.P.J. ran 12:40

1 cross-country on the girls' team at Bridgeport 12:40  
2 Middle School? 12:40  
3 A. Yes. 12:40  
4 Q. How did you become aware of that? 12:40  
5 A. Through the court case. 12:40  
6 Q. Have you ever spoken to B.P.J.? 12:40  
7 A. I have not. 12:40  
8 Q. Have you ever spoken to B.P.J.'s parents? 12:40  
9 A. No. 12:40  
10 MS. GREEN: And I'll just object to the 12:40  
11 extent this is outside the scope. 12:40  
12 BY MS. KANG: 12:40  
13 Q. Have you ever spoken to B.P.J.'s sibling? 12:40  
14 A. No. 12:40  
15 Q. Now, I want to just talk a little bit 12:40  
16 about your personal background to sort of better 12:41  
17 understand your selection as -- as the witness for 12:41  
18 the 30(b)(6) deposition. 12:41  
19 What is your position at the Commission? 12:41  
20 A. I am the executive director. 12:41  
21 Q. What are your responsibilities as 12:41  
22 executive director? 12:41  
23 A. Generally oversee the organization, assign 12:41  
24 duties and evaluate staff, make decisions when 12:41  
25 there's disagreement amongst schools. 12:41

1 Q. What sort of duties do you assign? 12:41

2 A. Director of all the tournaments. So 12:41

3 each -- each assistant executive director is 12:41

4 assigned multiple sports that they will oversee 12:41

5 and -- and put on the tournaments. 12:41

6 I assign secretarial duties to the 12:41

7 secretarial staff. 12:41

8 Q. How many assistant executive directors do 12:42

9 you have? 12:42

10 A. Three. 12:42

11 Q. So I believe you said you make decisions 12:42

12 when schools have disputes. Is that accurate? 12:42

13 A. Yes, ma'am. 12:42

14 Q. Can you tell me a little bit -- a little 12:42

15 bit more about that. 12:42

16 MS. GREEN: I'll just object. Outside the 12:42

17 scope. 12:42

18 THE WITNESS: If there is a difference 12:42

19 on -- opinion on eligibility of a student in one 12:42

20 school, one school may say they are eligible, one 12:42

21 school may say they are ineligible. So we gather 12:42

22 the facts, and we'll make a determination. 12:42

23 BY MS. KANG: 12:42

24 Q. And by "we," do you mean you as the 12:42

25 executive director or the Commission? 12:42



1 they come up before the Board to either appeal their 12:44

2 discipline or appeal their ineligibility. 12:44

3 BY MS. KANG: 12:44

4 Q. Do you report to anyone currently as the 12:44

5 executive director? 12:44

6 A. I have ten Board members, yes. 12:44

7 Q. Is that the same Board of Directors that 12:44

8 you were just talking about? 12:44

9 A. Yes, ma'am. 12:44

10 Q. Does anyone report to you? 12:44

11 A. My eight other staff members report to me, 12:44

12 yes. 12:44

13 Q. What are their titles? 12:44

14 A. Three of -- 12:44

15 MS. GREEN: Object. Outside the scope. 12:44

16 And can I just have a continuing objection 12:44

17 for the outside scope, or you want be to keep 12:44

18 hopping in? 12:44

19 MS. KANG: Yes. I'll grant you a 12:44

20 continuing objection for outside the scope, Roberta. 12:44

21 MS. GREEN: Thank you. Thank you. 12:44

22 THE WITNESS: There are three assistant 12:44

23 executive directors, one events communication 12:44

24 coordinator, one bookkeeper, and three secretaries. 12:44

25 ///

1 BY MS. KANG: 12:45

2 Q. Have you ever been employed by -- employed 12:45

3 by the Attorney General's Office of the State of 12:45

4 West Virginia? 12:45

5 A. No. 12:45

6 Q. Have you ever been employed by the 12:45

7 West Virginia House of Delegates? 12:45

8 A. No. 12:45

9 Q. Have you ever been employed by the 12:45

10 West Virginia Senate? 12:45

11 A. No. 12:45

12 Q. Have you ever been employed by the 12:45

13 Harrison County Board of Education? 12:45

14 A. No. 12:45

15 Q. Have you ever been employed by the 12:45

16 West Virginia State Board of Education? 12:45

17 A. No. 12:45

18 Q. So I am going to introduce to you a 12:45

19 document that is going to be marked as Exhibit 2. 12:45

20 And I'll let you know when it should 12:45

21 appear in your Marked Exhibit folder. 12:45

22 (Deposition Exhibit 2 was marked for 12:45

23 identification and is attached hereto.) 12:45

24 BY MS. KANG: 12:45

25 Q. So if you go to your Marked Exhibit 12:45

1 folder, you should now see a document that's been 12:45  
2 marked as Exhibit 2. 12:45  
3 Let me know when you see it. 12:46  
4 A. Okay. 12:46  
5 Q. So on Page 2 of Exhibit 2, you'll see a 12:46  
6 section entitled "Bernie Dolan," and this is -- I'll 12:46  
7 represent to you that this is a screenshot that I 12:46  
8 took from the Commission website on February 10th, 12:46  
9 2022. And in the bottom left corner you'll see the 12:46  
10 URL stamp where I pulled it from the website. 12:46  
11 And I'd just like to ask you a few 12:46  
12 questions about your biography in -- on this page. 12:46  
13 Do you agree with what's written in the 12:46  
14 paragraph on Page 2 of Exhibit 2 under "Bernie 12:46  
15 Dolan"? 12:46  
16 MS. MORGAN: Counsel, this is Kelly 12:46  
17 Morgan. 12:46  
18 I do not see an Exhibit 2 in the Egnyte. 12:46  
19 MS. KANG: So if you're -- if anyone is 12:46  
20 having trouble accessing the Marked Exhibits, I 12:46  
21 recommend clicking on the folder again to refresh 12:46  
22 it. 12:46  
23 Let me know if you continue to have 12:47  
24 problems. 12:47  
25 THE WITNESS: I do -- I agree with what is 12:47

1 written there. 12:47

2 BY MS. KANG: 12:47

3 Q. Where did you work before your current 12:47

4 role at the Commission? 12:47

5 A. Ohio County Schools. 12:47

6 Q. How long did you work there? 12:47

7 A. 30 years. 12:47

8 Q. Whoa. 12:47

9 Did you interact with any transgender 12:47

10 individuals in that role? 12:47

11 A. I did not. 12:47

12 Q. When did you attend West Virginia 12:47

13 University? 12:47

14 A. I graduated in '85; so probably '81 to 12:47

15 '85. 12:47

16 Q. And when did you attend Salem 12:47

17 International University? 12:47

18 A. I would say '99 to 2000 or 2000 to 2001. 12:47

19 Q. What is the Super Six? 12:47

20 A. State football championship. 12:48

21 Q. What was your role there? 12:48

22 A. I had a variety of roles starting out from 12:48

23 assistant media director over the years to being the 12:48

24 director -- once I was the athletic director of 12:48

25 Wheeling Park High School. 12:48

1 Q. What was your role as the athletic 12:48  
2 director? 12:48  
3 A. I was the athletic director at Wheeling 12:48  
4 Park High School. 12:48  
5 What was the question? 12:48  
6 Q. Sure. 12:48  
7 Could you tell me what some of your 12:48  
8 responsibilities were in that role? 12:48  
9 A. I would oversee the coaches, do their 12:48  
10 evaluations, purchase equipment for each team, as 12:48  
11 well as coordinate transportation, and also make 12:48  
12 sure all eligibility information was submitted to 12:48  
13 the Commission -- Commission as well as accurate. 12:48  
14 Q. What is the state golf tournament? 12:49  
15 A. State championship for golf. 12:49  
16 Q. And what was your role there? 12:49  
17 A. The director. 12:49  
18 Q. What is OVAC? 12:49  
19 A. It's the Ohio Valley Athletic Conference. 12:49  
20 It was the conference that Wheeling Park was a 12:49  
21 member of, and still is, but it's the athletic 12:49  
22 conference for the high schools. 12:49  
23 Q. What was your role there? 12:49  
24 A. I served on executive Board a couple of 12:49  
25 the years while I was the athletic director at 12:49

1 Wheeling Park. 12:49

2 Q. Finally, what is WVADA? 12:49

3 A. West Virginia Athletic Directors 12:49

4 Association. 12:49

5 Q. What was your role there? 12:49

6 A. I served on the executive Board -- or the 12:49

7 Board of Directors for a couple of years while I was 12:49

8 the athletic director at Wheeling Park High School. 12:49

9 Q. And do you yourself play sports? 12:50

10 A. A little bit still. 12:50

11 Q. What sports do you play? 12:50

12 A. Tennis a little bit. Basketball a little 12:50

13 bit. Pickleball. 12:50

14 Q. Do you currently coach any sports? 12:50

15 A. I do not. 12:50

16 Q. Did you used to coach? 12:50

17 A. I did. 12:50

18 Q. What did you coach? 12:50

19 A. 18 years I coached boys' and girls' track 12:50

20 at Wheeling Park High School; 12:50

21 12 as the head coach for both boys and 12:50

22 girls; 12:50

23 Assistant coach of football; 12:50

24 And assistant coach of girls' basketball. 12:50

25 Q. Thank you. 12:50

1 MS. KANG: You can take down Exhibit 2 12:50  
2 now. 12:50  
3 BY MS. KANG: 12:50  
4 Q. So now I want to move into talking a 12:50  
5 little bit more about the Commission and its 12:50  
6 structure. 12:50  
7 When was the Commission founded? 12:50  
8 A. In 1916. 12:50  
9 Q. Why was it founded? 12:51  
10 A. To primarily handle disputes between 12:51  
11 schools at that point, and they did provide 12:51  
12 championship opportunities for schools. 12:51  
13 Q. What sort of disputes between schools? 12:51  
14 A. As I said earlier, it could be 12:51  
15 eligibility; it could have been breaking of 12:51  
16 contracts; could be officials, you know -- who -- 12:51  
17 what officials get assigned to games. 12:51  
18 So there is quite a bit of conflict 12:51  
19 possible. 12:51  
20 Q. How does the Commission define secondary 12:51  
21 sports? 12:51  
22 A. Secondary sports, we are -- we oversee the 12:51  
23 sports that we currently have, which is -- a number 12:51  
24 of them. 12:52  
25 But the -- what happens is, as the schools 12:52

1 offer these sports as clubs, once there is enough 12:52  
2 schools that offer the sports, then they would 12:52  
3 petition us to recognize an additional sport. So we 12:52  
4 have, I believe, 19 championships at this point. 12:52  
5 Q. What grades count as a secondary grade? 12:52  
6 A. 6th through 12. 12:52  
7 Q. Do you know if Bridgeport Middle School 12:52  
8 qualifies as a secondary school? 12:52  
9 A. They are a member of our association. So 12:52  
10 yes. 12:52  
11 Q. Can you tell me what is a member of 12:52  
12 your -- what does a member of your association mean? 12:52  
13 A. First of all, initially there was 12:52  
14 a initia- -- an initiation fee. And there were 12:52  
15 dues. But we have not charged dues for 20 years. 12:52  
16 To be a member, you just have to 12:53  
17 provide -- you have to agree to follow all the rules 12:53  
18 and regulations as well as provide an opportunity 12:53  
19 for a boy sport and a girl sport in each of the 12:53  
20 seasons. 12:53  
21 Q. So each member school has to offer a boys' 12:53  
22 team or a girls' team for each support? 12:53  
23 A. Yes. 12:53  
24 Q. Is that right? 12:53  
25 A. Yes. Yes. 12:53

1 Q. And you said you stopped collecting dues 12:53  
2 for 20 years; is that correct? 12:53  
3 A. Yes. 12:53  
4 Q. Why did the Commission stop collecting 12:53  
5 dues? 12:53  
6 A. At that point, it was more trouble than it 12:53  
7 was worth it. There wasn't that much money coming 12:53  
8 in from dues. It was before my time, though. 12:53  
9 Q. Understood. 12:53  
10 How many employees does the Commission 12:53  
11 have currently? 12:53  
12 A. Nine. 12:53  
13 Q. Is there someone who is considered in 12:54  
14 charge of the Commission? 12:54  
15 A. I would assume -- I am the executive 12:54  
16 director. So I would be in charge. But I still 12:54  
17 answer to my Board of Directors. 12:54  
18 Q. So does the Commission have a relationship 12:54  
19 with the State Board of Education in West Virginia? 12:54  
20 A. We do have a relationship, number one. As 12:54  
21 our rules are promulgated from our members, they 12:54  
22 will submit rules to be voted on by the membership 12:54  
23 at our Board of Control. 12:54  
24 If at the Board of Control they pass by a 12:54  
25 majority, then those rules get submitted to the 12:54

1 State Board of Education who would then put them out 12:54  
2 for public comment. 12:54  
3 And they would have final vote on whether 12:54  
4 or not the rule becomes law. And if it does, they 12:54  
5 will submit that to the Secretary of State's office. 12:55  
6 Q. So just to clarify, who submits the rules 12:55  
7 to the Board of Control again? 12:55  
8 A. Principals. We are a principals 12:55  
9 organization. So each principal has one vote in our 12:55  
10 membership. 12:55  
11 Q. And are you the principal of your member 12:55  
12 school? 12:55  
13 A. Yes, ma'am. 12:55  
14 Q. Do you personally, as the executive 12:55  
15 director, work with the State Board of Education of 12:55  
16 West Virginia? 12:55  
17 A. Not directly. 12:55  
18 MS. GREEN: I'm sorry. Could -- I'm 12:55  
19 sorry. 12:55  
20 Ms. Kang, would you repeat the question? 12:55  
21 MS. KANG: Sure. 12:55  
22 BY MS. KANG: 12:55  
23 Q. Do you personally, as the executive 12:55  
24 director, have a role or relationship with the State 12:55  
25 Board of Education of West Virginia? 12:55

1           A.    I don't have a -- I mean, I have a working    12:55  
2    relationship because we deal with same schools.  But    12:55  
3    as far as on a daily basis of any interaction, no --    12:55  
4    other than they approve the rules.                    12:56

5           Q.    Does the Commission have a relationship    12:56  
6    with the County Board of Education?                    12:56

7           A.    Not really.  We are a principals            12:56  
8    organization.  We do communicate with county boards.    12:56  
9    But our membership are the high schools.                12:56

10          Q.    What sort of communication --            12:56

11          A.    And --                                        12:56

12          Q.    Oh, sorry.                                    12:56

13                What sort of communications would you have    12:56  
14    with the County Board?                                    12:56

15          A.    Oftentimes we would -- if there is rules    12:56  
16    or memos that we go out and send out, sometimes we    12:56  
17    will send them to the County Boards of Education        12:56  
18    that -- to keep them up to date on what is going on    12:56  
19    with the Commission.                                    12:56

20          Q.    By "rules," do you mean the Commission's    12:56  
21    rules?    12:56

22          A.    It could be -- yes, the Commission rules.    12:56  
23    Yep.  Yes.    12:57

24          Q.    Does the Commission determine who can play    12:57  
25    on a secondary school sports team?                    12:57

1 MS. GREEN: Object to the form. 12:57

2 THE WITNESS: When you say "Commission," 12:57

3 it's not the nine members here at the office. 12:57

4 The Commission, technically, is made up by 12:57

5 the 286 members. So they have voted in the rules, 12:57

6 and they are required by law -- by the -- being a 12:57

7 member to follow those rules. So only when there is 12:57

8 a dispute do we intervene. 12:57

9 BY MS. KANG: 12:57

10 Q. So I'd ask who makes the initial 12:57

11 determination of a student's eligibility? 12:57

12 A. That would be the school. 12:57

13 Q. I believe you mentioned earlier the -- a 12:57

14 dispute process. So the student -- or a student's 12:57

15 eligibility is disputed. 12:57

16 Can you walk me through what would happen 12:57

17 there? 12:57

18 A. It could be a school sending -- if 12:57

19 Student A left School Number 1, went to School 12:58

20 Number 2, and didn't follow the normal transfer 12:58

21 procedures, School A might file a complaint to say, 12:58

22 "Hey, can you look at so-and-so because they never 12:58

23 sat out with School B, or Number 2." 12:58

24 So we would intervene and get the 12:58

25 information, work with the two schools, and come up 12:58

1 with a final answer. 12:58

2 Q. What sort of information would you look 12:58

3 at? 12:58

4 A. Whether they -- when they enrolled at the 12:58

5 school, who they -- are they still living with their 12:58

6 parents, same household, did they -- did they make a 12:58

7 bona fide move, and whether they have a 2.0 or not. 12:58

8 Things like that. 12:58

9 Q. Anything else? 12:58

10 A. Could be age. There's a number of rules 12:58

11 for eligibility, but those are the biggest ones. 12:58

12 Q. So if a student is deemed ineligible by 12:59

13 the Commission, is that student -- student 12:59

14 prohibited from playing? 12:59

15 A. The student would be prohibited from 12:59

16 playing in a varsity or JV game. There's only a 12:59

17 limited exception as to when they would be able to 12:59

18 even practice with the team. But for the most part, 12:59

19 if you're ineligible, you're ineligible for all 12:59

20 activities for that team. 12:59

21 Q. And I believe you mentioned that you have 12:59

22 286 member schools. Do you know if that includes 12:59

23 all the schools -- secondary schools in 12:59

24 West Virginia? 12:59

25 A. It does not. 12:59

1 Q. Do you know how many schools are not a 12:59  
2 member school in West Virginia? 12:59  
3 A. I do not. 12:59  
4 Q. If the Commission finds a person is 12:59  
5 ineligible, is there an appeal process? 12:59  
6 A. Yes, there is. 12:59  
7 Q. Can you walk me through what that appeal 13:00  
8 process looks like? 13:00  
9 A. They would -- I would send them a letter 13:00  
10 telling them initially that they were determined 13:00  
11 ineligible. If they would like a hearing in front 13:00  
12 of our Board of Directors, then along with the 13:00  
13 level -- along with a letter of ineligibility, I 13:00  
14 would send the appeal papers that they would fill 13:00  
15 out and return to me. 13:00  
16 And then within 30 days, I would bring 13:00  
17 them before our Board of Directors for them to make 13:00  
18 a decision to grant a waiver or not. And the Board 13:00  
19 can grant a waiver for rule fails to accomplish what 13:00  
20 it was intended for or there's a hardship on the 13:00  
21 student. 13:00  
22 Q. What sort of hardship would count? 13:00  
23 A. It -- it's up to the Board of Directors. 13:00  
24 So there is -- there's no marker that you have to 13:00  
25 hit. So there's lots of different things that may 13:01

1 have come up. 13:01

2 Q. Have you taken part in the appeal process 13:01

3 before? 13:01

4 A. When I was a member of the Board of 13:01

5 Directors, yes. 13:01

6 Q. So is it the Board of Directors that makes 13:01

7 the determination on the appeal? 13:01

8 A. Yes. 13:01

9 Q. Are you familiar with WVEIS, the 13:01

10 West Virginia Education Information System? 13:01

11 A. Yes. 13:01

12 Q. Does the Commission have any control over 13:01

13 the information that goes into WVEIS? 13:01

14 A. No. We have no access to that note. 13:01

15 Q. In West Virginia, to your knowledge, has a 13:01

16 college team ever competed against a middle school 13:01

17 team? 13:02

18 A. Has a college team ever competed against a 13:02

19 middle school? 13:02

20 Q. That's correct. 13:02

21 A. It would be against our rule if they did. 13:02

22 But no, not to my knowledge. 13:02

23 MS. KANG: So I'm going to introduce a 13:02

24 document to you that's going to be marked as 13:02

25 Exhibit 3, and I'll let you know when folks can 13:02

1 access it in their Marked Exhibit folder. 13:02  
2 (Deposition Exhibit 3 was marked for 13:02  
3 identification and is attached hereto.) 13:02  
4 MS. KANG: So Exhibit 3 should now be in 13:02  
5 everyone's Marked Exhibit folder. If you don't see 13:02  
6 it, try clicking on the folder again to refresh it. 13:03  
7 BY MS. KANG: 13:03  
8 Q. Mr. Dolan, let me know when you're able to 13:03  
9 access Exhibit 3. 13:03  
10 A. Okay. 13:03  
11 Q. Do you recognize this document? 13:03  
12 A. It is our rules and regulations handbook. 13:03  
13 Yes. 13:03  
14 Q. Do you know who prepared this document? 13:03  
15 A. Over time it's -- you know -- you know, 13:03  
16 it's the charge of one of my secretaries to -- once 13:03  
17 rules are changed, to submit the changes. But we 13:03  
18 take care of that in -- in the office here. 13:03  
19 Q. So is this a Commission that's responsible 13:03  
20 for the information in the rules and regulations 13:03  
21 handbook? 13:03  
22 A. Yes. 13:03  
23 Q. So you'll notice that on the first page of 13:03  
24 Exhibit 3 it says that this was revised and printed 13:04  
25 August 2021. 13:04

1                   Is this the most recent version of the                   13:04  
2 rules and regulations?                   13:04  
3           A.    Yes.  There may be editorial changes                   13:04  
4 between then, but that's the most recent copy we                   13:04  
5 have, yes.                   13:04  
6           Q.    So is it fair to say --                   13:04  
7           A.    For --                   13:04  
8           Q.    I'm sorry.  Go ahead.                   13:04  
9           A.    For the current year.                   13:04  
10          Q.    So is it fair to say that this document                   13:04  
11 is -- is currently in effect?                   13:04  
12          A.    Yes.                   13:04  
13          Q.    And just to be clear, is this the rules                   13:04  
14 and regulations handbook that you reviewed when                   13:04  
15 preparing for this deposition?                   13:04  
16          A.    Yes.                   13:04  
17          Q.    Is the Commission required to follow these                   13:04  
18 rules and regulations?                   13:04  
19          A.    The Commission as well as all the member                   13:04  
20 schools, yes.                   13:04  
21          Q.    So I believe you might have mentioned it                   13:04  
22 earlier, but just to be clear, can you walk me                   13:04  
23 through the rule-making process of the rules and                   13:05  
24 regulations in this handbook?                   13:05  
25          A.    Okay.  Any principal can submit a rule                   13:05

1 proposal. It has to be in by January 15th. 13:05

2 This rule proposal would then be looked at 13:05

3 by our constitution and bylaws committee. They 13:05

4 would make sure that it's legal and written 13:05

5 appropriate. 13:05

6 In the next week here, we'll be sending 13:05

7 out those proposals, all of our rule proposal 13:05

8 changes out to our membership. 13:05

9 We will meet in the -- the first week of 13:05

10 in April. And we will go over all of the rule 13:05

11 proposals, and we'll vote on them individually. 13:05

12 If they pass by a majority, they'll move 13:05

13 on to the State Board of Education, who puts them 13:05

14 out for comment. And then they will vote on them 13:05

15 whether or not they will move forward as part of our 13:06

16 rule book. 13:06

17 Q. What do you mean by you make sure that the 13:06

18 proposed rule is legal? 13:06

19 A. Sometimes the way it's written may not be 13:06

20 appropriate. You know, there just may be 13:06

21 misspellings, misinterpretation. So any changes we 13:06

22 make would go back to the person who made it. We 13:06

23 would re-read it and say, "Is this what your intent 13:06

24 was" to make sure it's written properly. 13:06

25 Q. And just to be clear, who exactly votes on 13:06

1 the proposed rule in the Commission? 13:06

2 A. At our Board of Control, all 286 members 13:06

3 are eligible to vote. So if they come to our annual 13:06

4 meeting, we will discuss each item. And then the 13:07

5 next day we vote on every item that we have. 13:07

6 Q. So it -- it would be the Board of Control 13:07

7 and any member school who participate in that 13:07

8 meeting that would vote on that rule? 13:07

9 A. That is correct. 13:07

10 Q. Who amends these rules if they need 13:07

11 amendments? 13:07

12 A. Beforehand, it would be the constitution 13:07

13 and bylaws. There is a committee that we have 13:07

14 that -- made up of five principals. 13:07

15 Q. Who is responsible for enforcing these 13:07

16 rules? 13:07

17 A. All of the member schools plus the SSAC 13:07

18 office itself. 13:07

19 Q. What happens if a member school doesn't 13:07

20 follow these rules? 13:07

21 A. Either the coach, the administration, or 13:07

22 the school itself could face any sort of penalty 13:07

23 from a letter of warning to suspension or fine. 13:08

24 Q. By "suspension," do you mean suspension 13:08

25 from being a member school? 13:08

1           A.    I don't know if we have ever suspended           13:08  
2           anybody from being a member school, but it would be           13:08  
3           suspicion of games, maybe not able to participate in           13:08  
4           championships.           13:08

5                    But, to my knowledge, we have never           13:08  
6           suspended anybody from being a member.           13:08

7           Q.    Is it possible for the Commission to           13:08  
8           cancel a school's membership?           13:08

9           A.    I'm not sure.           13:08

10          Q.    To your knowledge, has anyone ever           13:08  
11          submitted a rule proposal about the participation of           13:08  
12          transgender students?           13:08

13          A.    No.           13:08

14          Q.    So I'm going to be just walking you           13:09  
15          through a couple of excerpts in this exhibit. And           13:09  
16          it is quite long. So I'm only going to be pointing           13:09  
17          to certain sections.           13:09

18                    So with that said, as I am going through,           13:09  
19          if you want me to slow down or pause, or you want to           13:09  
20          read over something, just -- just let me know.           13:09

21                    So I'm going to ask you to turn to Page 99           13:09  
22          of the pdf. In the bottom right-hand corner, it           13:09  
23          will be stamped WVSSAC000216. And let me know           13:09  
24          whenever you happen to get there.           13:09

25          A.    What page again?           13:10

1 Q. So it's Page 99 of the pdf. But I believe 13:10  
2 it's Page 85 of the actual document. 13:10  
3 A. Okay. 13:10  
4 Q. And just for future reference, when I -- 13:10  
5 when I say Page 99 or Page 2, I'm referring the page 13:10  
6 of the pdf not the page numbers that may be written 13:10  
7 in the exhibit. 13:10  
8 MS. GREEN: His assistant is slow. He has 13:10  
9 got a really slow assistant over here who is paging 13:10  
10 through a page at a time. We should be back in 13:10  
11 about two weeks. 13:10  
12 THE WITNESS: Is it the organizational 13:10  
13 chart? 13:10  
14 BY MS. KANG: 13:10  
15 Q. That's correct. 13:10  
16 A. Okay. Yes. I am there. 13:10  
17 Q. Do you recognize this organizational 13:10  
18 chart? 13:10  
19 A. I do. 13:11  
20 Q. Do you believe that accurately reflects 13:11  
21 the organizational structure of the Commission? 13:11  
22 A. Except for the State Board of Education, 13:11  
23 they only have oversight of our -- they have final 13:11  
24 say of our rules. So that may be why they are 13:11  
25 placed at the top. 13:11

1           The Board of Directors -- I'm not sure it           13:11  
2 accurately reflects our organization. But yeah.           13:11  
3           Q.    Would --           13:11  
4           A.    The Board of Directors does not answer to           13:11  
5 the Board of Control, I guess.           13:11  
6           Q.    So, I guess, where would you place the           13:11  
7 Board of Directors in the organizational chart to           13:11  
8 make it more accurate?           13:11  
9           A.    Well, I would probably and will probably           13:11  
10 move State Board of Education, National Federation           13:11  
11 out of the chart, and Board of Directors would be at           13:11  
12 the top. Board of Control would be where the           13:11  
13 National Federation is.           13:12  
14           Q.    So is it fair to say that the Board of           13:12  
15 Directors is probably the one at the head of the           13:12  
16 organization?           13:12  
17           A.    That is correct.           13:12  
18           Q.    I'm just going to ask you few questions           13:12  
19 about a couple of these -- of these entries on the           13:12  
20 organizational chart.           13:12  
21                    Can you tell me a little more about the           13:12  
22 State Board of Education's relationship with the           13:12  
23 Board of Control specifically.           13:12  
24           A.    With the Board of Control, the State Board           13:12  
25 of Education has final -- they will review and put           13:12

1 the rules out for comments by the general public, 13:12

2 and they'll have the final say on the votes. 13:12

3 That's probably the only relationship the 13:12

4 State Board of Education has with the Board of 13:12

5 Control. 13:13

6 Q. I know you touched a bit on this earlier, 13:13

7 but could you tell me a bit more about what the 13:13

8 Board of Control's role is in the Commission. 13:13

9 A. The Board of Control's charge is to vote 13:13

10 for rule changes, either vote them up or down. 13:13

11 Q. What do you mean by "vote them up or 13:13

12 down"?. 13:13

13 A. When the -- they are put up for a vote, 13:13

14 whether it's to create a new rule or not, it's their 13:13

15 vote -- it's a majority of the Board of Control that 13:13

16 is there that day for the vote. 13:13

17 It either passes or it fails. If it 13:13

18 passes, it goes on to the State Board of Education. 13:13

19 Q. Does the State Board ever promulgate rules 13:13

20 that the Commission has to follow? 13:13

21 A. The State Board has a 2.0 policy that is 13:13

22 in our rule book, but it never passed our Board of 13:14

23 Control. It was -- it's a State Board of Education 13:14

24 policy. 13:14

25 Q. Does the Commission have to follow that 13:14

1 2.0 rule? 13:14

2 A. Yes. And all of our members. 13:14

3 Q. Are you aware of any other rules from the 13:14

4 State Board of Education? 13:14

5 A. Not really. 13:14

6 Q. What is the Board of Control's 13:14

7 relationship with the directors, if any? 13:14

8 A. Five of the Board of Directors are 13:14

9 principals; so five of those principals would be 13:14

10 members of the Board of Control. That's about 13:14

11 the -- the best relationship -- the only 13:14

12 relationship they have. 13:14

13 Q. What is the Board of Control's 13:14

14 relationship with the executive director? 13:14

15 A. None, really. I mean, the Board -- the 13:15

16 Board -- the five members of the Board of Directors 13:15

17 that are principals represented an administrative 13:15

18 district. And so the Board -- the Board of 13:15

19 Directors answers to schools in their district. So 13:15

20 that's the only indirect connection between myself 13:15

21 and the Board of Control. 13:15

22 Q. And there are ten Board of 13:15

23 Directors members; is that right? 13:15

24 A. Yes, ma'am. 13:15

25 Q. Does any member of the Board of Directors 13:15

1 ever promulgate or propose rules? 13:15

2 A. If they are one of the five principals 13:15

3 they can, yes. 13:15

4 Q. Can you tell me a little bit more about 13:15

5 what your assistant executive directors do in 13:16

6 relation to the rules in this handbook? 13:16

7 A. Basically they -- they can help interpret 13:16

8 the rules between our member schools, if there is 13:16

9 issues. 13:16

10 But they primarily are responsible for the 13:16

11 championships in their particular sports. But they 13:16

12 can answer questions and interpretations on disputes 13:16

13 of the rule book between schools. 13:16

14 Q. By overseeing the championship, does that 13:16

15 include issuing rules for the championship? 13:16

16 A. No. All of our playing rules are created 13:16

17 by the National Federation. There are some times 13:16

18 that they have -- by state adoption that you can 13:16

19 modify rules, but we follow the NFHS playing rules 13:16

20 100 percent. 13:17

21 Q. So the -- 13:17

22 A. Close a 100 percent. As close to a 13:17

23 100 percent as possible. 13:17

24 Q. So does -- so the Commission does not have 13:17

25 any of its own rules in relation to championship? 13:17

1           A.    No.  There are rules in there that govern       13:17  
2           how many people are at the game; you know, how many       13:17  
3           teams are at the game; where the game is going to be       13:17  
4           held.  All those things.  The time.  The place.       13:17  
5           Those are all determined by our Board of Directors.       13:17

6                     And then they are given the charge to       13:17  
7           myself or my -- my assistants to run those       13:17  
8           championships on those days.       13:17

9           Q.    What does the Sports Medicine Committee       13:17  
10          do?       13:17

11          A.    They advise us in all of our rules and       13:17  
12          regulations that go in for each sport for safety.       13:18  
13          For instance, concussion, heat illness, sudden       13:18  
14          cardiac arrest, whether we are making modifications       13:18  
15          to practice schedules based on their -- their       13:18  
16          expertise.       13:18

17                     And so they will make recommendations to       13:18  
18          us for modifying sports to make it more safe.       13:18

19          Q.    So who makes up the Sports Medicine       13:18  
20          Committee?       13:18

21          A.    There's a variety of doctors and athletic       13:18  
22          trainers.  I believe there is -- I mean, there is a       13:18  
23          number of them.  At least 12.  I'm not sure of the       13:18  
24          exact number because they come off and on.  But       13:18  
25          yeah.  So they -- that's who makes it up is a       13:18

1 variety of medical personnel. 13:18

2 Q. And do they report to you? 13:19

3 A. They would make recommendations to me to 13:19

4 give to the Board of Directors if we happen to have 13:19

5 changes about -- sport-specific things, practice, 13:19

6 things like that. Things that are not in the rule 13:19

7 book, but they are modifications or rules that they 13:19

8 would apply. 13:19

9 Heat illness is a big example. They are 13:19

10 providing recommendations on how long a practice is, 13:19

11 what you are allowed to do at a practice, and things 13:19

12 like that. 13:19

13 Q. Do you happen to know if anyone from the 13:19

14 West Virginia Legislature spoke with anyone from the 13:19

15 Sports Medicine Committee before H.B. 3293 was 13:19

16 passed? 13:19

17 A. Not that I know of. 13:19

18 MS. KANG: So I think now might be a good 13:19

19 time for a five- to ten-minute break, just let you 13:19

20 stretch your legs a little bit. 13:20

21 THE WITNESS: Okay. 13:20

22 MS. KANG: Roberta, are you all right with 13:20

23 that? 13:20

24 MS. GREEN: Yes. I think it's a good 13:20

25 time. 13:20

1 MS. KANG: All right. So why don't we -- 13:20  
2 why don't we take a break until about 1:30. 13:20  
3 THE WITNESS: Okay. 13:20  
4 THE VIDEOGRAPHER: This marks the end of 13:20  
5 Media Number 1. Going off the record. The time is 13:20  
6 1:20. 13:20  
7 (Brief recess.) 13:34  
8 THE VIDEOGRAPHER: This marks the 13:34  
9 beginning of Media Number 2 in the deposition of 13:34  
10 30(b)(6) Witness Bernie Dolan. 13:34  
11 Back on the record. The time is 1:35. 13:35  
12 BY MS. KANG: 13:35  
13 Q. Mr. Dolan, before I move on to my next 13:35  
14 topic, I just want to ask you two more quick 13:35  
15 questions about the Sports Medicine Committee. 13:35  
16 To your knowledge, has the Sports Medicine 13:35  
17 Committee or anyone from that committee ever made a 13:35  
18 recommendation regarding transgender participation 13:35  
19 in athletics? 13:35  
20 A. I don't believe it's ever been on the 13:35  
21 agenda, no. 13:35  
22 Q. Do you know if the Sports Medicine 13:35  
23 Committee has ever made a recommendation on girls 13:35  
24 playing on boys' teams? 13:35  
25 A. Not in my tenure here, no. I don't know 13:35

1 about previous. 13:35

2 Q. All right. So I'm going to have a similar 13:35

3 set of questions next. So just diving a little bit 13:35

4 more into the Commission's role at -- role in 13:35

5 sports. 13:35

6 Can you tell me -- I know you mentioned 13:35

7 some earlier -- what factors are currently used to 13:36

8 determine a student's eligibility? 13:36

9 A. Number one is do they live with their -- 13:36

10 are they enrolled in the school; 13:36

11 Number two, do they live with their 13:36

12 parents; 13:36

13 Number three, do they reside in the 13:36

14 district where their school is; 13:36

15 What's -- what's their age as of 13:36

16 August 1st of the -- that current year; 13:36

17 Are they playing on any other teams 13:36

18 outside the school team. 13:36

19 Those are the majority -- and do they have 13:36

20 a 2.0. 13:36

21 Those are the majority of the eligibility 13:36

22 reasons that somebody might not be eligible for a 13:36

23 period of time. 13:36

24 Q. If I could just put a pin in that. 13:36

25 So a student could be ineligible for a 13:36

1 certain period of time and then gain eligibility? 13:36

2 A. Yes. 13:37

3 Q. And the factors that are used to determine 13:37

4 a student's eligibility -- are those the rules and 13:37

5 regulations in the handbook plus the rules 13:37

6 promulgated by the State Board of Education? 13:37

7 A. It is the -- the rules that are in our 13:37

8 rule book, as well as the 2.0, which is the 13:37

9 West Virginia Department of ED's rule, State Board 13:37

10 of Education. 13:37

11 It's in our rule book, but it's not 13:37

12 technically our rule, but it's for all of our 13:37

13 member -- all of our public schools, and our private 13:37

14 schools follow it too. 13:37

15 Q. Do the -- do the county boards of 13:37

16 education in West Virginia have any rules that 13:37

17 determine a student's eligibility? 13:37

18 MS. GREEN: And I'll just object to the 13:37

19 form. 13:37

20 THE WITNESS: They are not supposed to 13:37

21 have any rules additional than ours. They have 13:38

22 given over the rights of overseeing sports to the 13:38

23 SSAC. 13:38

24 BY MS. KANG: 13:38

25 Q. When a student's eligibility is in 13:38

1 dispute, who makes the final determination as to 13:38  
2 that student's eligibility? 13:38  
3 A. I would make the initial -- well, the 13:38  
4 school makes the initial call. I would then either 13:38  
5 verify or overturn their decision based upon the 13:38  
6 facts. 13:38  
7 And then if they're not happy with the 13:38  
8 answer that I get, they want to appeal that, they 13:38  
9 take that to the Board of Directors. And if they 13:38  
10 are -- if my ruling is sustained at the Board of 13:38  
11 Directors, they have a Board of Review that they 13:38  
12 could go to to get one final opportunity for a 13:38  
13 waiver. 13:38  
14 Q. And the Board of Review is that different 13:39  
15 from the Board of Control? 13:39  
16 A. It is. The Board of Review is the final 13:39  
17 Board that has seven members and may or may not be 13:39  
18 connected to the schools. It's more general. But 13:39  
19 they are appointed by the State Board of Education. 13:39  
20 Q. Is the Board of Review a part of the 13:39  
21 Commission? 13:39  
22 A. They are appointed by the Board of -- or 13:39  
23 the State Board of Education. So I think you've 13:39  
24 seen them say WVSSAC Board of Review, but we have no 13:39  
25 input as to whether or not -- who the members are. 13:39

1 Q. Are any Commission members currently part 13:39  
2 of the Board of Review? 13:39  
3 A. There may be one member who is a Board 13:39  
4 office personnel who also serves on the 13:40  
5 Commission -- or on the Board of Review as the 13:40  
6 athletic director's association, but she is not a 13:40  
7 member -- she's not an employee of one of the 13:40  
8 schools. She works at the county office. 13:40  
9 Q. Which county office? 13:40  
10 A. I believe Lewis County office. 13:40  
11 Q. Okay. So I want us to go back to 13:40  
12 Exhibit 3. And this will be Page 16 of the pdf. 13:40  
13 And in the bottom right-hand corner it will be Bates 13:40  
14 stamped VSV- -- WVSSAC000133. And let me know 13:40  
15 whenever you get a chance to review it. 13:40  
16 MS. GREEN: And, Ms. Kang, what was the 13:40  
17 pdf page? 13:41  
18 MS. KANG: Sure. It's Page 16. 13:41  
19 MS. GREEN: 15 or 16? 13:41  
20 BY MS. KANG: 13:41  
21 Q. 16. 1,6. 13:41  
22 A. Okay. I'm at 14 now. 13:41  
23 MS. GREEN: Sorry. 13:41  
24 THE WITNESS: Okay. 13:41  
25 MS. GREEN: And what does it read at the 13:41

1 bottom? 13:42

2 BY MS. KANG: 13:42

3 Q. WVSSAC000133. 13:42

4 A. Yep. Okay. Yes. 13:42

5 Q. At the top of Exhibit 3, Page 16, you'll 13:42

6 note it says, "Title 127 Legislative Rule." 13:42

7 Do you know what a legislative rule is? 13:42

8 A. I assume -- no. All of our rules are 127. 13:42

9 So I think that's the area that we are in. But I 13:42

10 would probably be guessing if I did, you know. 13:42

11 MS. GREEN: Yeah. 13:42

12 THE WITNESS: Yeah. 13:42

13 BY MS. KANG: 13:42

14 Q. Do you know who promulgated this specific 13:42

15 rule? 13:42

16 MS. GREEN: I'll just object to the form. 13:42

17 THE WITNESS: Well, our rules have been in 13:42

18 place since 1916. So over time, all of our rules 13:42

19 have had some modification every year. 13:43

20 So as far as when that particular rule, 13:43

21 the most current part, I couldn't tell you. 13:43

22 It's probably -- well, it says it was 13:43

23 effective in September 9 of 2019. So that means 13:43

24 there was a rule change at the Board of Control in 13:43

25 2019. 13:43

1 BY MS. KANG: 13:43

2 Q. Okay. I just want to draw your attention 13:43

3 to the section on the same page it says "127-1-2 13:43

4 Name." 13:43

5 And in this paragraph -- I'll read out a 13:43

6 section. But take your time reading it as well. 13:43

7 It says [as read]: 13:43

8 "Extracurricular activities of the 13:43

9 students in the public secondary 13:43

10 schools are controlled pursuant to 13:43

11 W. Va. Code 18225, and authority for 13:43

12 the delegation of such control to the 13:43

13 Commission is granted by statute." 13:44

14 A. Yes. 13:44

15 Q. Now, did I -- did I read this correctly? 13:44

16 A. You did. 13:44

17 Q. Is this statement accurate? 13:44

18 A. I believe it's accurate. But it's not 13:44

19 inclusive if that's the -- because it's -- we have 13:44

20 private schools as members also. 13:44

21 But the legislature apparently, by 13:44

22 statute, only dealt with the public schools. 13:44

23 Q. Do you know how many private schools are 13:44

24 part of your membership? 13:44

25 A. Somewhere around 20. I don't know the 13:44

1 exact number. 13:44

2 Q. Are you familiar at all with West Virginia 13:44

3 Code 18225? 13:44

4 A. Yes. 13:44

5 Q. What is your understanding of it? 13:44

6 MS. GREEN: I'll just object to the extent 13:44

7 it would call for a legal conclusion. 13:44

8 THE WITNESS: It was when they authorized 13:45

9 the WVSSAC. 13:45

10 BY MS. KANG: 13:45

11 Q. What do you mean "authorized WVSSAC"? 13:45

12 A. We had been an organization since 1916. 13:45

13 And in the late '60s, they -- for some reason they 13:45

14 put us in the code, I guess. 13:45

15 Q. What does "extracurricular activities" in 13:45

16 this section mean? 13:45

17 A. It would be sports and band. 13:45

18 Q. Does it include club sports? 13:45

19 A. No. Not -- not in terms of the WVSSAC, 13:45

20 no. 13:45

21 Q. When does a club sport become a sport that 13:46

22 is controlled by the WVSSAC? 13:46

23 A. When there is more than 30 -- more than 20 13:46

24 we can recognize it. 13:46

25 At 32 teams, when there are 32 individual 13:46

1 teams, our Board can authorize a championship for 13:46  
2 one class. 13:46  
3 If there is 50 percent of our 13:46  
4 membership -- of the high school membership, they 13:46  
5 could authorize two classes; 75 percent they could 13:46  
6 authorize three. 13:46  
7 Q. So I'm going to draw your attention now 13:46  
8 staying on the same page on Exhibit 3 to the section 13:46  
9 that says, "127-1-3 Goals." 13:46  
10 And I'm also going to refer you to the 13:46  
11 section that says "3.1." And I'll read it out loud. 13:46  
12 And feel free to take your time reading it as well. 13:46  
13 [As read]: 13:46  
14 "This Commission, through the 13:46  
15 employment of instrumentalities 13:46  
16 hereinafter established, shall 13:47  
17 supervise and control interscholastic 13:47  
18 athletics and band activities among 13:47  
19 member schools." 13:47  
20 A. Okay. 13:47  
21 Q. Did I read this correctly? 13:47  
22 A. You did. 13:47  
23 Q. Is this statement accurate? 13:47  
24 MS. GREEN: Object to form. 13:47  
25 THE WITNESS: Yes. 13:47

1 BY MS. KANG: 13:47

2 Q. What does "supervise and control 13:47

3 interscholastic athletics" mean? 13:47

4 MS. GREEN: Object to the form. 13:47

5 THE WITNESS: Provide the rules and make 13:47

6 sure that everybody is following the rules. 13:47

7 BY MS. KANG: 13:47

8 Q. And how do you make sure that everyone is 13:47

9 following the rules? 13:47

10 A. Well, usually it -- you know, it's brought 13:47

11 to our attention either through members of the 13:47

12 public, schools in particular. Sometimes we see 13:47

13 violations in the newspaper, and we follow up on 13:47

14 them. 13:48

15 Q. By "follow up," you mean you reach out to 13:48

16 the individual member school? 13:48

17 A. Yes. And ask them for a written response 13:48

18 as to what the allegation might be. 13:48

19 Q. And do you have a rough estimate of how 13:48

20 many violations happen a year? 13:48

21 A. How many violations? Or how many times 13:48

22 are we called about a violation? 13:48

23 Q. Let's say, how many times you are called 13:48

24 for a violation. 13:48

25 A. If I had to guess, it would probably be 13:48

1 two or three a month. Not counting the appeals -- 13:48

2 the student appeals. 13:48

3 Q. How does a school stop being a member of 13:48

4 the WVSSAC? 13:48

5 A. To be honest with you, I'm not sure how a 13:49

6 public school does. 13:49

7 The private school simply writes us a 13:49

8 letter and says, "We no longer want to be a member 13:49

9 of your organization." There's no penalty for 13:49

10 withdrawal. 13:49

11 Q. Is there a reason why it's a different 13:49

12 rule for a private school versus a public school? 13:49

13 A. I guess a public could withdraw. 13:49

14 Q. To your knowledge, has any public school 13:49

15 ever withdrawn? 13:49

16 A. No. Just -- they have consolidated; and, 13:49

17 therefore, they become a new school, or they've 13:49

18 closed and have been absorbed into a new school. 13:49

19 But, to my knowledge, no public school has ever not 13:49

20 been a member. 13:49

21 Q. Are all public schools in West Virginia 13:49

22 currently members? 13:49

23 A. All public secondary schools 6 through 12, 13:49

24 yes. 13:49

25 Q. If a school is not a member of the 13:49

1 Commission, could it still offer interscholastic 13:49  
2 sports? 13:49  
3 A. Yes. 13:49  
4 Q. Can a school that is not a member compete 13:50  
5 with member schools? 13:50  
6 A. As long as they are a school, yes. 13:50  
7 Q. So now I would like to draw your attention 13:50  
8 to Page 17 of Exhibit 3, it should be just the next 13:50  
9 page down. 13:50  
10 And I'll ask you to look at the paragraph 13:50  
11 that starts "127-1-4. Membership." 13:50  
12 A. Okay. 13:50  
13 Q. And that paragraph says [as read]: 13:50  
14 "The WVSSAC shall be composed of the 13:50  
15 principals or designee, of those public 13:50  
16 or private secondary schools which have 13:50  
17 certified in writing to the State 13:50  
18 Superintendent of Schools of 13:50  
19 West Virginia [paren] (State 13:50  
20 Superintendent) that they have elected 13:50  
21 to delegate the control, supervision, 13:50  
22 and regulation of their interscholastic 13:50  
23 athletic and band activities." 13:50  
24 Did I read that correctly? 13:50  
25 A. Yes. 13:50

1 Q. Is this statement accurate? 13:51

2 MS. GREEN: Object to the form. 13:51

3 THE WITNESS: Yes. 13:51

4 BY MS. KANG: 13:51

5 Q. What does it mean to "delegate the 13:51

6 control, supervision, and regulation of their 13:51

7 interscholastic athletic and band activities"? 13:51

8 MS. GREEN: Object to the form. 13:51

9 THE WITNESS: It means that the WVSSAC and 13:51

10 its member schools will write rules and everybody 13:51

11 will follow them. 13:51

12 And so they can't have rules of their own 13:51

13 that are separate from the rules that we have all 13:51

14 agreed to. 13:51

15 BY MS. KANG: 13:51

16 Q. So just to be a clear, a member school 13:51

17 cannot issue its own rules -- is that -- for 13:51

18 interscholastic athletics; is that right? 13:51

19 A. Not if it's in conflict with our rule. 13:51

20 Q. Can it issue rules that are not in 13:51

21 conflict with the SSAC rules? 13:51

22 A. Sure. 13:51

23 Q. Did Bridgeport Middle School delegate its 13:52

24 control, supervision, and regulation of 13:52

25 interscholastic athletic activities to the 13:52

1 Commission? 13:52

2 A. I'm sure they did at one time, yes. 13:52

3 Q. So we're going to stay on the same page, 13:52

4 but I'm going to draw your attention to the section 13:52

5 that starts with 4.2.b. Says [as read]: 13:52

6 "The principal or designee is and 13:52

7 shall be responsible for conducting 13:52

8 interscholastic athletic

9 and band activities of the school in

10 accordance with the constitution,

11 bylaws, rules and regulations of the

12 Commission which have been adopted by

13 the Board of Control of the Commission

14 for the governing of such

15 activities." 13:52

16 A. Okay. 13:52

17 Q. Did I read this correctly? 13:52

18 A. Yes. 13:52

19 Q. Do you believe this statement is accurate? 13:52

20 MS. GREEN: Object to the form. 13:52

21 THE WITNESS: Yes. 13:52

22 BY MS. KANG: 13:52

23 Q. What happens if a principal or a designee 13:52

24 breaks one of the Commission's rules? 13:53

25 A. There's a -- depends upon what the rule is 13:53

1 and how often, it could be a letter of discipline, 13:53  
2 it could be a verbal warning, or it could go all the 13:53  
3 way up to suspension or fine. 13:53  
4 Q. So am I right that, when a member school 13:53  
5 makes a determination of what students are eligible 13:53  
6 to play secondary sports, it has to follow the rules 13:53  
7 and regulations of the Commission? 13:53  
8 A. Yes. 13:53  
9 Q. So now I'm going to ask you to scroll down 13:53  
10 two more pages to Page 19. It should be stamped 13:53  
11 WVSSAC000136 of Exhibit 3. Let me know whenever 13:53  
12 you're there. 13:53  
13 A. Okay. We're there. 13:53  
14 Q. I'm sorry. Let me actually take you to 13:54  
15 Page 20. That's Bates stamped -137 of Exhibit 3. 13:54  
16 A. Okay. 13:54  
17 Q. So in the section that says "127-1-8. 13:54  
18 Board of Directors," it says [as read]: 13:54  
19 "The Board of Directors shall have 13:54  
20 authority to administer the regulations 13:54  
21 of the WVSSAC." 13:54  
22 Did I read that correctly? 13:54  
23 A. You did. 13:54  
24 Q. Do you believe the statement is accurate? 13:54  
25 A. Yes. 13:54

1 Q. What does administer the regulations of 13:54  
2 the WVSSAC mean? 13:54  
3 MS. GREEN: Object to the form. 13:54  
4 THE WITNESS: Make sure everybody is 13:54  
5 following the rules as written and interpreted. 13:54  
6 (Simultaneously speaking.) 13:54  
7 BY MS. KANG: 13:54  
8 Q. By "interpreted," who -- 13:54  
9 A. The -- 13:55  
10 Q. -- makes -- oh, sorry. 13:55  
11 A. Just -- 13:55  
12 Q. Did you -- 13:55  
13 A. As the rules are written. 13:55  
14 Q. Does it mean anything else? 13:55  
15 A. No. 13:55  
16 Q. I'm going to ask you to scroll one more 13:55  
17 page down to the page that's Bates stamped 13:55  
18 WVSSAC -138. It should be Page 21 of the pdf of 13:55  
19 Exhibit 3. 13:55  
20 A. Okay. 13:55  
21 Q. So I'll draw your attention to 13:55  
22 Section 8.5, which says [as read]: 13:55  
23 "The Board of Directors shall have 13:55  
24 power to decide all cases of 13:55  
25 eligibility of students and 13:55

1 participants in interscholastic 13:55  
2 athletic and band activities. The 13:55  
3 Board may also exercise discretionary 13:55  
4 powers it may deem necessary for the 13:55  
5 furtherance of education and 13:55  
6 interscholastic athletic and band 13:55  
7 activities in the secondary schools of 13:56  
8 West Virginia." 13:56  
9 Did I read that correctly? 13:56  
10 A. You did. 13:56  
11 Q. Do you believe this statement is accurate? 13:56  
12 MS. GREEN: Object to the form. 13:56  
13 THE WITNESS: Yes. 13:56  
14 BY MS. KANG: 13:56  
15 Q. What does it mean "Shall have the power to 13:56  
16 decide all cases of eligibility of students and 13:56  
17 participants in interscholastic athletic and band 13:56  
18 activities"? 13:56  
19 MS. GREEN: Object to form. 13:56  
20 THE WITNESS: If I have -- if the school 13:56  
21 or I have determined somebody to be ineligible, they 13:56  
22 can grant a waiver to make them eligible. 13:56  
23 BY MS. KANG: 13:56  
24 Q. Can anyone other than the Commission grant 13:56  
25 a waiver? 13:56

1           A.    Well, the Commission cannot. The Board of    13:56  
2           Directors can. And then the Board of Review can.    13:56  
3           But the -- the office itself cannot grant waivers.    13:56  
4                    I'll take that back.                    13:56  
5                    I can grant a waiver if it's been ruled    13:56  
6           before in a similar fashion by the Board, but I    13:57  
7           don't have -- I don't execute that.                13:57  
8                    Q.    So is it fair to say that if the Board of    13:57  
9           Review issues a determination of a student's        13:57  
10          eligibility and the current student before you has a   13:57  
11          similar set of facts, you can rely on that previous   13:57  
12          determination?                                        13:57  
13                    MS. GREEN: Object to the form.            13:57  
14                    THE WITNESS: The rule says that, but        13:57  
15          they're never -- I've yet to find two cases that are   13:57  
16          exactly similar. So...                                13:57  
17                    BY MS. KANG:                                 13:57  
18                    Q.    But you have the ability to -- to do so?   13:57  
19                    A.    It says that we have the ability to do so,   13:57  
20          yes.   13:57  
21                    Q.    So now I'd like to -- we're staying on the   13:57  
22          same page -- draw your attention to Paragraph 8.7    13:57  
23          and 8.8.   13:57  
24                    So I'll read Paragraph 8.7 first. It says    13:57  
25          [as read]:   13:57

1 "At the request of the Board of 13:58  
2 Directors, a Deputy Board Member may 13:58  
3 investigate matters of eligibility and 13:58  
4 other violations of the rules and 13:58  
5 regulations of the WVSSAC. The Deputy 13:58  
6 Board Member shall submit to the Board 13:58  
7 of Directors a written report of 13:58  
8 findings and recommendations for 13:58  
9 disposition of the case(s)." 13:58  
10 Did I read that correctly? 13:58  
11 A. You did. 13:58  
12 Q. Do you believe this statement is accurate? 13:58  
13 MS. GREEN: Object to form. 13:58  
14 THE WITNESS: Yes. 13:58  
15 BY MS. KANG: 13:58  
16 Q. When would the Board of Directors request 13:58  
17 an investigation into matters of eligibility? 13:58  
18 A. If something was brought to them by a 13:58  
19 member school or the public at large. 13:58  
20 Q. Are there any Deputy Board Members 13:58  
21 currently? 13:58  
22 A. There are ten. 13:58  
23 Q. Who do they report to? 13:58  
24 A. They have very few -- very few 13:58  
25 responsibilities. We have not asked them to 13:59

1 investigate. We -- you know, we feel like it has 13:59  
2 put some them in difficult positions. So most of 13:59  
3 the investigations come out of our office. 13:59

4 Q. Can you tell me a little bit more about 13:59  
5 putting them in difficult positions; what you mean 13:59  
6 by that. 13:59

7 A. If they have to go into somebody else's 13:59  
8 school and make a determination on eligibility or 13:59  
9 where somebody lives, it could be a rival school and 13:59  
10 people might not want them there. 13:59

11 So, you know, we have taken it over 13:59  
12 because it's unbiased if we're looking at it. 13:59

13 Q. So are the Deputy Board Members designees 13:59  
14 or members of the member school? 13:59

15 A. They are principals of a member school, 13:59  
16 yes. 14:00

17 Q. So now on Paragraph 8.8 it says [as read]: 14:00

18 "The Board of Directors shall have 14:00  
19 the power to investigate through the  
20 Deputy Board Member, or in  
21 such other manner as may be found  
22 advisable, matters of eligibility and  
23 other violations of rules when the  
24 Board deems it advisable to do so on  
25 the basis of information furnished,

1 even though a formal protest is not  
2 filed."  
3 Did I read that correctly? 14:00  
4 A. You did. 14:00  
5 Q. Is this statement accurate? 14:00  
6 MS. GREEN: Object to the form. 14:00  
7 THE WITNESS: It is. 14:00  
8 BY MS. KANG: 14:00  
9 Q. So when would the Board -- when would the 14:00  
10 Board deem it advisable to investigate matters of 14:00  
11 eligibility even without formal protest? 14:00  
12 A. Sometimes they -- 14:00  
13 MS. GREEN: Object to the form. 14:00  
14 I'm sorry. 14:00  
15 THE WITNESS: Oh. I'm sorry. 14:00  
16 Sometimes they get anonymous letters that 14:00  
17 would supply some information; and, you know, they 14:00  
18 would -- now they would ask us because I also can 14:00  
19 investigate. And so we would do it and then -- 14:00  
20 instead of our Board -- Deputy Board just because we 14:01  
21 don't want to put them in a position where they 14:01  
22 would be ruling on a -- sometimes a competitor. 14:01  
23 BY MS. KANG: 14:01  
24 Q. And what is the difference between a 14:01  
25 formal protest versus an informal protest? 14:01

1           A.    A formal protest would be somebody's --           14:01  
2           has written it and put their name to it.           14:01  
3                    Informal would be an anonymous letter or a           14:01  
4           phone call.           14:01  
5           Q.    So I'm going to ask you to scroll one page           14:01  
6           down in Exhibit 3 to the page that is Bates           14:01  
7           Stamped -139. It should be Page 22 of the pdf.           14:01  
8           A.    Okay.           14:01  
9           Q.    So I am looking at Section 127-1-9 titled           14:01  
10          "Funds."           14:01  
11          A.    Okay.           14:01  
12          Q.    How -- how is the Commission funded?           14:01  
13          A.    All of our revenue comes from championship           14:02  
14          events, ticket sales at championship events;           14:02  
15                    Regional basketball ticket sales;           14:02  
16                    Playoffs for football;           14:02  
17                    Registering of officials;           14:02  
18                    Coaches Education;           14:02  
19                    And corporate partnership.           14:02  
20          Q.    Are there any other sources of revenue?           14:02  
21          A.    None of any significance.           14:02  
22          Q.    By "none of any significance," what do you           14:02  
23          mean?           14:02  
24          A.    There would be maybe some fines in there           14:02  
25          for people -- coaches not paying -- or not           14:02

1 evaluating their officials or not putting scores in. 14:02  
2 Things like that. 14:02  
3 Q. How much money are those fines usually? 14:02  
4 A. \$25 or \$50 or \$10, depending upon what it 14:02  
5 is for. 14:03  
6 Q. Now, you mentioned the Coaches Education. 14:03  
7 Could you tell me a bit more about what that is. 14:03  
8 A. The legislature requires that our coaches 14:03  
9 who are non-teachers must have a Coaches Education. 14:03  
10 And this is a State Board of Education. But they 14:03  
11 have charged us with providing the education, but 14:03  
12 State Board of Education would do the certification. 14:03  
13 Q. Do the coaches pay the Commission for this 14:03  
14 education? 14:03  
15 A. They do. 14:03  
16 Q. Is the Commission a for-profit 14:03  
17 organization? 14:03  
18 A. We are not. 14:03  
19 Q. Do you receive any funds from the federal 14:03  
20 government? 14:03  
21 A. We received from -- some pandemic funds. 14:03  
22 But that was all through the small 14:03  
23 business authority. 14:04  
24 Q. Anything else? 14:04  
25 A. We have received GEAR funding from -- 14:04

1 through the Department of Education for monies to go 14:04  
2 back to the school through AEDs, wet globe bulbs 14:04  
3 [verbatim], reimbursement for travel, things like 14:04  
4 that. 14:04

5 Because everybody was in short -- low 14:04  
6 attendance, and so we were trying to find a way to 14:04  
7 help them with their money. 14:04

8 Q. By "gear funding," do you mean sports gear 14:04  
9 or... 14:04

10 A. For them they also had limited attendance 14:04  
11 and limited games. So -- 14:04

12 Did I miss the question? 14:04

13 Okay. What was your question again? 14:04

14 Q. Oh. I just asked that by "gear funding," 14:04  
15 did you mean sports gear? 14:04

16 A. No. No. It is -- I think it's -- GEAR is 14:05  
17 the program. 14:05

18 Q. Understood. 14:05

19 And was this all during the pandemic? 14:05

20 A. Yes, ma'am. 14:05

21 Q. Do you receive any funds from your member 14:05  
22 schools? 14:05

23 A. The only funds we receive at this time 14:05  
24 would be fines that they would have to pay for not 14:05  
25 attending, not putting in scores. 14:05

1                   Sometimes our events might be held at                   14:05  
2                   their schools; so they would collect the gate and                   14:05  
3                   then write us a check.                   14:05

4                   But that's pretty much all we get from the                   14:05  
5                   schools.                   14:05

6                   Q.    And how much are the fines?                   14:05

7                   A.    For not putting in an evaluation, it's                   14:05  
8                   \$10;                   14:05

9                   For not doing your eligibility, it's \$25;                   14:05

10                  And if you don't put in a score, it's \$50.                   14:05

11                  Q.    Is any of the Commission's revenue shared                   14:06  
12                  with the member schools?                   14:06

13                  A.    Yes.                   14:06

14                  Q.    How is it shared?                   14:06

15                  A.    We -- we give reimbursement back to the                   14:06  
16                  schools. Each sport has a different formula, but we                   14:06  
17                  help with travel and meal money at most of the                   14:06  
18                  events.                   14:06

19                  At football they also get a commission of                   14:06  
20                  the gate. 20 percent the first week, 15 percent the                   14:06  
21                  second, 10 the third, and 5 at the championship.                   14:06

22                  Q.    If you had to estimate, what percentage of                   14:06  
23                  Commission funds go to the member schools?                   14:06

24                  A.    When you say go to the schools, you mean                   14:06  
25                  actually cash sent back to them? Or do you mean                   14:07

1 services to the school? 14:07

2 Q. Let's start with cash sent back to them. 14:07

3 MS. GREEN: Object to the form. 14:07

4 THE WITNESS: I would say \$300,000 out of 14:07

5 a probably \$1.5 million budget. 14:07

6 BY MS. KANG: 14:07

7 Q. So what about services? 14:07

8 A. The services -- oh. I'm sorry. 14:07

9 Services would be higher because -- I 14:07

10 would think it's probably closer to \$700,000 14:07

11 depending upon what you call as "giving back". 14:07

12 You know, if it's -- some people would say 14:07

13 that the expenses to put on tournaments is a way to 14:07

14 give back. 14:07

15 Direct expenses would be, you know, the 14:07

16 things that we are purchasing for them right now, 14:07

17 which would be the AED and the wet globe bulb and 14:07

18 the cooling submersion tubs. 14:07

19 Q. So what -- what is encompassed in the term 14:08

20 "services"? 14:08

21 A. Services. Each -- each season we travel 14:08

22 around the state to meet with all principals for a 14:08

23 regional principal meeting. 14:08

24 We also travel around the state to meet 14:08

25 with each sport during each -- at the beginning of 14:08

1 each season to make sure -- we go over all the rules 14:08  
2 and regulations that are current. 14:08  
3 Those are some of -- as well as expenses 14:08  
4 that we incur hosting the tournaments for them. 14:08  
5 And the coaches -- you know, we have -- we 14:08  
6 have expenses in materials for Coaches Education. 14:08  
7 Q. I believe you mentioned you stopped 14:09  
8 collecting dues from your members. 14:09  
9 Do you currently have any plans to resume 14:09  
10 collecting dues? 14:09  
11 A. No. We have a proposal from one of our 14:09  
12 principals for this year to strike out the -- all of 14:09  
13 the dues' language and inserting language in there 14:09  
14 that says, "Could resume at any time when 14:09  
15 necessary." 14:09  
16 Q. So, now, sticking with Exhibit 3, I'm 14:09  
17 actually going to ask you to go back up to Page 6 of 14:09  
18 the pdf and the Bates stamp is WVSSAC000123. And 14:09  
19 let me know whenever you get there. 14:09  
20 A. Okay. 14:10  
21 Q. So I'm going to direct you to the 14:10  
22 paragraph that begins with "Discrimination 14:10  
23 Prohibited." 14:10  
24 Take your time reading it, and let me know 14:10  
25 whenever you are finished reading that paragraph. 14:10

1 A. [Witness reviews document]. 14:10  
2 Okay. 14:10  
3 Q. Do you know who wrote this portion of the 14:10  
4 handbook? 14:10  
5 A. I do not. 14:10  
6 Q. Do you know how long this portion has been 14:10  
7 in the handbook? 14:10  
8 A. I do not. 14:10  
9 Q. Do you remember ever reviewing this 14:10  
10 section of the handbook? 14:10  
11 A. Yes. 14:10  
12 Q. When did you review it? 14:11  
13 A. I -- 14:11  
14 Q. Oh. Go ahead. 14:11  
15 A. I would say a couple of years ago. We've 14:11  
16 tried to have a book study and go through all of 14:11  
17 these. 14:11  
18 Q. When you reviewed it a couple of years 14:11  
19 ago, did you believe the Commission was required to 14:11  
20 comply with Title IX? 14:11  
21 A. Yes. 14:11  
22 Q. Is the Commission currently required to 14:11  
23 comply with Title IX? 14:11  
24 MS. GREEN: I'll just object to the form. 14:11  
25 THE WITNESS: I would believe that the 14:11

1 schools are required to follow Title IX. But I 14:11  
2 believe we believe it also. 14:11  
3 BY MS. KANG: 14:11  
4 Q. Now, I want to turn your attention to the 14:11  
5 section below that titled "Beliefs and Objectives." 14:11  
6 Take a moment to read the first paragraph 14:11  
7 and let me know whenever you are done. 14:11  
8 A. [Witness reviews document]. 14:11  
9 Okay. 14:12  
10 Q. What are "proper ideals of sportsmanship," 14:12  
11 as written in this paragraph? 14:12  
12 MS. GREEN: Object to the form. 14:12  
13 THE WITNESS: Are you on Paragraph 1 or 3? 14:12  
14 BY MS. KANG: 14:12  
15 Q. Paragraph 1 [verbatim] of the Beliefs and 14:12  
16 Objectives section. 14:12  
17 A. What was your question again? 14:12  
18 Q. Sure. 14:12  
19 What are -- what are the proper ideals of 14:12  
20 sportsmanship? 14:12  
21 I'm sorry. I -- 14:12  
22 A. The -- 14:12  
23 Q. I am referring to Paragraph 3. You had it 14:12  
24 right the first time. 14:12  
25 A. Okay. 14:12

1 Sportsmanship is that everybody's on a 14:12  
2 fair playing field. And the -- you should be 14:12  
3 gracious in losing and winning. 14:13  
4 Q. What do you mean by "fair playing field"? 14:13  
5 MS. GREEN: Object to the form. 14:13  
6 THE WITNESS: Same age. Same gender. 14:13  
7 BY MS. KANG: 14:13  
8 Q. Anything else? 14:13  
9 A. No. 14:13  
10 When I say "same age," it would be same 14:13  
11 programatic level. So middle -- middle school kids 14:13  
12 cannot play against high school but freshmen can 14:13  
13 play against seniors. 14:13  
14 Q. What are physical -- the physical and 14:13  
15 social benefits that are referenced in this 14:13  
16 paragraph? 14:13  
17 A. Just good -- for one, just good health. 14:13  
18 Participation. Also, you know, we believe that 14:13  
19 it's -- the competitive part is good, and the 14:14  
20 training part is beneficial to the student athlete. 14:14  
21 Q. Why do you believe it's beneficial? 14:14  
22 A. Studies we have read. And as a 14:14  
23 participant a long time ago. 14:14  
24 Q. What does "partisanship and prejudice" 14:14  
25 mean in this paragraph? 14:14

1           A.    Partisanship and prejudice would mean that    14:14  
2    it's equal.  You know, one side -- especially            14:14  
3    with -- you know, as far as equipment or what -- if       14:14  
4    you come to a game, you can't have lush seats for        14:15  
5    you and the other team have foldable chairs and           14:15  
6    things like that.  So that's part- -- partisan.           14:15

7            You know, all the equipment at a game has        14:15  
8    to be the same equipment everybody is using.  Same       14:15  
9    ball.  Same rims.  Everything is the same.               14:15

10          Q.    What do you mean by "prejudice" in this       14:15  
11    paragraph?    14:15

12          A.    Prejudice would mean, you know -- you       14:15  
13    know, is there some advantage to one team over           14:15  
14    another.   14:15

15          Q.    What sort of advantage are you referring     14:15  
16    to?    14:15

17          A.    Could be something as simple as a tarp        14:15  
18    over your bench as opposed to the other team not         14:15  
19    having it;   14:15

20                Could be as simple as a heater.  You might    14:16  
21    have a heater on a sideline at a cold game and they       14:16  
22    don't.   14:16

23                So things that would make the game unfair    14:16  
24    that are outside of the game.                               14:16

25          Q.    Is there anything else that you believe       14:16

1 would make the game unfair? 14:16

2 MS. GREEN: Object to the form. 14:16

3 THE WITNESS: There are probably other 14:16

4 things, but right off the top of my head not sure. 14:16

5 Could be something as simple as how far 14:16

6 you got to walk to your locker room in between 14:16

7 games. 14:16

8 BY MS. KANG: 14:16

9 Q. Do you believe that allowing transgender 14:16

10 students to participate on sports teams consistent 14:16

11 with their gender identity is consistent with the 14:16

12 goals identified in this paragraph? 14:16

13 MS. GREEN: Object to the form. 14:16

14 THE WITNESS: I believe our -- our Board 14:16

15 policy was that, if it was not safe or unfair 14:16

16 advantage, then it would be okay for them to 14:17

17 participate. 14:17

18 BY MS. KANG: 14:17

19 Q. Does Bridgeport Middle School 14:17

20 cross-country count as an interscholastic athletic? 14:17

21 A. It does. 14:17

22 MS. KANG: So I'm actually about to move 14:17

23 into the next session. I think we are up on an 14:17

24 hour. 14:17

25 Roberta, do you have preference as to 14:17

1           whether you want me to get started or you want to           14:17  
2           take a break now?           14:17  
3                    THE WITNESS: I'm good.           14:17  
4                    MS. GREEN: All right. Let's do --           14:17  
5                    THE WITNESS: I can't go to the bathroom.           14:17  
6                    MS. GREEN: I know. Really no need for a           14:17  
7           bathroom break over here.           14:18  
8                    MS. KANG: All right. Well, if it's okay           14:18  
9           with you, we'll go on a little bit longer.           14:18  
10                   Let me know if you do need a break.           14:18  
11                   So we can take down Exhibit 3.           14:18  
12           BY MS. KANG:           14:18  
13                   Q. And I want to talk a little bit about some           14:18  
14           of the statistics that the Commission turns over to           14:18  
15           various organizations.           14:18  
16                   So I'm going to introduce an exhibit that           14:18  
17           will be marked as Exhibit 4.           14:18  
18                   MS. KANG: And I'll let you know when it's           14:18  
19           in everyone's folders.           14:18  
20                   (Deposition Exhibit 4 was marked for           14:19  
21           identification and is attached hereto.)           14:19  
22                   MS. KANG: Exhibit 4 should now be in           14:19  
23           everyone's Marked Exhibit folder.           14:19  
24                   Let me know if anyone has trouble           14:19  
25           accessing it.           14:19

1 BY MS. KANG: 14:19

2 Q. And, Mr. Dolan, let me know whenever you 14:19

3 have it up. 14:19

4 A. Okay. 14:19

5 MS. GREEN: Counsel, was there a certain 14:19

6 page in the exhibit? 14:19

7 MS. KANG: Yeah. 14:19

8 BY MS. KANG: 14:19

9 Q. If you go to Page 6 to start, that would 14:19

10 be great. And the Bates stamp is -365. 14:19

11 MS. GREEN: I'm sorry. 14:19

12 THE WITNESS: That's fine. 14:19

13 Is this the "2016-'17 Participation 14:19

14 Report"? 14:19

15 BY MS. KANG: 14:19

16 Q. Do you believe it is? 14:19

17 A. Okay. 14:20

18 [Witness reviews document]. 14:20

19 Okay. 14:20

20 Q. So I'm going to represent to you that this 14:20

21 is a document that was produced by your counsel in 14:20

22 response to one of plaintiff's discovery requests. 14:20

23 If you want to read the text of the 14:20

24 request, it's Request Number 15 in this same 14:20

25 document. 14:20

1 Do you recognize this document that is 14:20  
2 before you right now? 14:20  
3 A. I do. 14:20  
4 Q. What is it? 14:20  
5 A. This is a participation -- the National 14:20  
6 Federation of High School keeps track of how many 14:20  
7 participants are in each sport, trying to find 14:20  
8 trends among the sports, which ones are growing, 14:20  
9 which ones are falling; and if they are falling, how 14:20  
10 come. 14:20  
11 Q. What is the National Federation of State 14:21  
12 High School Associations? 14:21  
13 A. It is the association of 51 members, the 14:21  
14 50 states plus Washington, D.C., and they primarily 14:21  
15 provide the sport-specific rules for almost all of 14:21  
16 our events. 14:21  
17 Q. How long have you provided these 14:21  
18 statistics to the Federation? 14:21  
19 A. To be honest with you, they've been 14:21  
20 tracking them, but I couldn't tell you how long we 14:21  
21 have. 14:21  
22 Q. Do you think it's -- 14:21  
23 A. I would assume. 14:21  
24 Q. Go ahead. 14:21  
25 A. I would assume -- it's a -- it's an 14:21

1 ongoing thing; so I would think it's probably been 14:21  
2 done for a number of years. 14:21  
3 Q. More than ten? 14:21  
4 A. Yes. 14:21  
5 Q. More than 20? 14:21  
6 A. Probably. 14:21  
7 Q. Why do you provide these statistics to the 14:21  
8 NFHS? 14:22  
9 A. They -- they gather them for the whole 14:22  
10 country to try to monitor which sports are growing 14:22  
11 in popularity and which ones might not be. And the 14:22  
12 ones that aren't, they're trying to look and see 14:22  
13 why. 14:22  
14 Q. I'm just going to ask you a few questions 14:22  
15 to help me understand how to read this chart. 14:22  
16 Did you prepare this document? 14:22  
17 A. I personally did not prepare it. But this 14:22  
18 is a document prepared by our office, yes. 14:22  
19 Q. Do you know who prepared this document? 14:22  
20 A. Alice Goodwin in our office. 14:22  
21 Q. What's her position? 14:22  
22 A. Secretary. 14:22  
23 Q. Is she your secretary? 14:22  
24 A. No. 14:22  
25 Q. Do you know which secretary she is? 14:22



1 Q. So it's any grade from 9 to 12? 14:24

2 A. It's a combination of 9 through 12, yes. 14:24

3 Q. If we go over to the third column, the one 14:24

4 that says "Male," what does that mean? 14:24

5 A. That -- it's the same -- when we do our 14:24

6 eligibility sheets by sport, for instance, football, 14:24

7 football doesn't differentiate between boys and 14:24

8 girls. It's -- they're asking for the number of 14:24

9 participants. 14:25

10 When you get to girls' track, it can only 14:25

11 be done by girls; so, therefore, that -- that's why 14:25

12 there's not -- there's a zero in girls' track for 14:25

13 males and boys' track has a number but girls' does 14:25

14 not. 14:25

15 So football is the number of participants. 14:25

16 So in the blue column under "Male," it would be the 14:25

17 number of male -- or number of people in football. 14:25

18 Could be male or female because our eligibility 14:25

19 doesn't differentiate between the two. 14:25

20 Q. So just to be clear, even if a girl plays 14:25

21 on the football team, she will not show up in the 14:25

22 column that says "Female" for football? 14:25

23 A. That's correct. Because they're asking 14:25

24 for the number of participants in football, and it's 14:25

25 primarily football -- it's primarily a male sport. 14:26

1 So it falls under the male category. That's the 14:26  
2 best we could do for them. 14:26  
3 Similarly, cheer is primarily a cheer 14:26  
4 event, but there are boys. But there's no number in 14:26  
5 there. So we just -- it's just the total number in 14:26  
6 that -- for that particular sport. 14:26  
7 Q. Okay. Scroll all the way over to the 14:26  
8 gray-colored columns. They're labeled as 14:26  
9 "Mid/Junior." 14:26  
10 What does "Mid/Junior" mean? 14:26  
11 A. It was either middle school or junior high 14:26  
12 and -- you know. I don't believe we have any more 14:26  
13 junior high. So probably could be fixed to say just 14:26  
14 middle school. 14:26  
15 Q. What grades would those be? 14:26  
16 A. 6th through 8. 14:26  
17 Q. So now I'm going to ask you to -- to 14:26  
18 scroll down to Page 11. It will be Bates 14:27  
19 stamped -370. 14:27  
20 Let me know whenever you get there. 14:27  
21 A. Okay. 14:27  
22 Q. So the last year that you produced this 14:27  
23 document is 2020 to 2021. 14:27  
24 Do you know when the 2021 to 2022 14:27  
25 statistics will be published? 14:27



1 produced by your counsel in response to one of 14:29

2 plaintiff's discovery requests. 14:29

3 If you want the read the text of that 14:29

4 request, you can look at Request 14 on Page -4 of 14:29

5 this exhibit. 14:29

6 Do you recognize this document? 14:29

7 A. This is a form from the National 14:29

8 Federation that puts our participation numbers into 14:29

9 their chart. 14:29

10 So the numbers that came off of that chart 14:29

11 for '18/'19 would match these numbers. 14:29

12 All those sports that are activities that 14:29

13 are -- have zeros by them, those are activities or 14:29

14 sports that we do not offer. But they are offered 14:29

15 through the National Federation. 14:29

16 Q. So you do not -- you as a Commission do 14:29

17 not make this form? 14:29

18 A. No. They send this back to us. This is 14:29

19 basically a verification of the form we sent to 14:30

20 them. 14:30

21 Q. So is it fair to say that the National 14:30

22 Federation takes information that you give them and 14:30

23 puts it into this form? 14:30

24 A. Yes, ma'am. 14:30

25 Q. So I noticed that the year only goes to 14:30

1 2018 to 2019. Is there a reason why we don't have 14:30  
2 the 2019 to 2020 statistics? 14:30  
3 A. I don't know if that's the most recent 14:30  
4 one. Because obviously with COVID and them not 14:30  
5 working from the office for a long period of time, I 14:30  
6 don't know if they have not submitted the most 14:30  
7 recent years. 14:30  
8 Q. So in the column that says "Boys School," 14:30  
9 what does this column indicate? 14:30  
10 A. Are we still on Page 7? 14:30  
11 Q. Yes. We are -- we are on Page 12. 14:31  
12 A. 12. Okay. 14:31  
13 Q. The Bates stamp is -371. 14:31  
14 A. And which one am I looking for? 14:31  
15 Q. Yeah. So if you go over, it's the fourth 14:31  
16 column. It says "Boys School." 14:31  
17 A. Boys -- okay. 14:31  
18 Q. Yeah. 14:31  
19 A. These are -- these are the schools that 14:31  
20 are offering basketball. If you are looking at 14:31  
21 basketball, there is 124 schools who are offering 14:31  
22 boys' basketball. And there are 124 schools that 14:31  
23 are offering girls' basketball. 14:31  
24 You'll notice that "Baseball" has 122. 14:31  
25 There are no girls -- there are no girls' baseball 14:31

1 teams. That's why it is a "0." 14:31

2 Q. Got it. 14:31

3 And then the boys participation, does that 14:31

4 reflect that 3,052 boys participated of the 14:31

5 124 schools that offer boys' basketball? 14:32

6 A. Yes. 14:32

7 And I would believe this is just high 14:32

8 school. It's not middle school also. 14:32

9 Q. Do you know if co-ed teams are reflected 14:32

10 on the chart? 14:32

11 A. Again, co-ed teams would be -- they would 14:32

12 be reflected as the -- the majority sport. So, for 14:32

13 instance, baseball, it could be co-ed if a girl 14:32

14 wanted to play baseball. But she would be listed on 14:32

15 the -- the school was offering boys' baseball -- or 14:32

16 they are offering baseball, the girl would simply be 14:32

17 listed on the eligibility and be counted as a 14:32

18 baseball participant, not as a female. 14:33

19 So in this -- this study that they are 14:33

20 doing is simply the number of participants in that 14:33

21 sport, not a breakdown of boys and girls if it's 14:33

22 co-ed. 14:33

23 Q. Who determines whether to make a team 14:33

24 co-ed? 14:33

25 A. Well, if you have enough boys and have 14:33

1 enough girls to have a team, then if we are offering 14:33  
2 boys and girls, then you have to have a separate 14:33  
3 team. 14:33

4 For instance, cross-country, you can have 14:33  
5 one girl and she could make up a team or she could 14:33  
6 be the team. But if you only have one soccer girl, 14:33  
7 she couldn't be the team. So she would have to play 14:33  
8 with the boys. And that would be co-ed at the time. 14:34

9 Q. Is it fair to say that what makes a sport 14:34  
10 co-ed depends on the sport? 14:34

11 MS. GREEN: Object to the form. 14:34

12 THE WITNESS: It depends on the sport -- I 14:34  
13 would say depends upon the participants. 14:34

14 If there are enough of each gender to 14:34  
15 participate, we would have separate -- separate 14:34  
16 championships. 14:34

17 BY MS. KANG: 14:34

18 Q. So is it fair to say that once a certain 14:34  
19 number of participants is reached for boys and 14:34  
20 girls, they have to be separate? 14:34

21 A. At some point based on the number, we 14:34  
22 would make a recommendation to the Board of 14:34  
23 Directors that we now have enough to break them and 14:35  
24 have a stand-alone. 14:35

25 Q. Can you give me an example of when you 14:35

1 made that recommendation? 14:35

2 A. We haven't made it yet. But I will tell 14:35

3 you that we're -- you know, we have offered more 14:35

4 opportunities for girls in golf. And our number of 14:35

5 girls playing golf has gone up significantly. 14:35

6 We'll watch the numbers. And, as time 14:35

7 goes on, if we -- if the numbers continue to grow, 14:35

8 then they will have the opportunity to have a 14:35

9 stand-alone program for girls' golf. Right now, 14:35

10 they play on the boys' team or the co-ed team. 14:35

11 MS. KANG: So we can take down this 14:35

12 exhibit, and I'm going to introduce a different 14:35

13 document as the next exhibit, which I believe is 14:36

14 Exhibit 5. 14:36

15 (Deposition Exhibit 5 was marked for 14:36

16 identification and is attached hereto.) 14:36

17 MS. KANG: Exhibit 5 is now in everyone's 14:36

18 Marked Exhibit folder. Please let me know if you 14:36

19 have trouble accessing it. 14:36

20 BY MS. KANG: 14:36

21 Q. Mr. Dolan, let me know once you have it 14:36

22 up. 14:36

23 And once you have it up, if you could go 14:36

24 to Page 5 of the pdf, that would be great. 14:36

25 A. Okay. 14:36

1 Q. So I would like to draw your attention to 14:36  
2 Interrogatory Number 13 on Exhibit 5. 14:37  
3 What does "participation mixed as 14:37  
4 indicated to respond to demand" mean? 14:37  
5 A. "Identify all WVSSAC sponsored sports in 14:37  
6 which students may participate on a team designated 14:37  
7 as co-ed or mixed." 14:37  
8 Is that the question? And why cheer is 14:37  
9 considered mixed? 14:37  
10 Q. Yeah. That -- why don't we start there. 14:37  
11 Why is cheer considered mixed? 14:37  
12 A. It has both boys and girls. So it could 14:37  
13 be co-ed or mixed. 14:37  
14 Q. What is the difference between calling 14:37  
15 cheer mixed and saying that "participation mixed as 14:38  
16 indicated to respond to demand"? 14:38  
17 A. Basically because cheer almost always has 14:38  
18 boy members. Wrestling is starting to get a number 14:38  
19 of them. Baseball very seldom has -- it's very 14:38  
20 seldom a mixed sport. And football is very seldom. 14:38  
21 But golf is transitioning into its own sport. 14:38  
22 Q. By "seldom," do you mean girls seldom 14:38  
23 participate on those teams? 14:38  
24 A. That is correct. 14:38  
25 Q. Just to be clear, football is a boys' 14:38

1 team, but if a girl wants to play football, she 14:39  
2 would be permitted to play on that team? 14:39  
3 A. That's correct. 14:39  
4 Q. If a boy wanted to play on a girls' team, 14:39  
5 would they be permitted to? 14:39  
6 A. No. 14:39  
7 Q. Why not? 14:39  
8 A. Because girls have been -- they've been 14:39  
9 denied opportunity in the past, and by allowing boys 14:39  
10 to participate on girls' teams that are strictly 14:39  
11 girls, for instance, girls' soccer, girls' 14:39  
12 basketball, volleyball and softball, that girls 14:39  
13 would then lose opportunity. 14:39  
14 Q. Do you have any rules preventing a boy 14:39  
15 from playing on a girls' team? 14:39  
16 A. Yes. 14:39  
17 Q. What rule would that be? 14:39  
18 A. I have to find it in my rule book. 14:40  
19 Q. Why don't we go back to the rule book, and 14:40  
20 I'll ask you a few questions on that. 14:40  
21 So we'll go back to Exhibit 3. 14:40  
22 (Simultaneously speaking.) 14:40  
23 THE WITNESS: I'm trying to -- 14:40  
24 BY MS. KANG: 14:40  
25 Q. And it should be -- 14:40



1 BY MS. KANG: 14:42

2 Q. Is that the rule that you were thinking of 14:42

3 that prevented a transgender boy from playing on a 14:42

4 girls' team? 14:42

5 A. Yes. 14:42

6 MS. GREEN: Object to the form, if I 14:42

7 can -- 14:42

8 THE WITNESS: Okay. Back up? 14:42

9 MS. GREEN: Yes. 14:42

10 BY MS. KANG: 14:42

11 Q. Why was this rule enacted? 14:42

12 A. I would assume to -- it complies with 14:42

13 Title IX, but it's -- you know, we're trying to not 14:42

14 allow boys to participate in girls' events to either 14:42

15 hurt them or dominate them. 14:42

16 Q. When was this rule, Section 3.8, enacted? 14:42

17 A. I would have to find that out. I'd have 14:42

18 to go back through all of our rules and find when it 14:42

19 was -- when it was enacted. 14:42

20 Q. Do you believe that it was enacted within 14:43

21 the past five years? 14:43

22 A. No. 14:43

23 Q. Past ten? 14:43

24 A. No. 14:43

25 Q. Past 20? 14:43

1           A.    I -- I'm not sure.  I don't know if it's           14:43  
2           gone that far.  But I would say a significant           14:43  
3           number, yes.  I don't know if it's made it to 20.           14:43  
4           Q.    Fair enough.           14:43  
5                    So the team is separated by boys' and           14:43  
6           girls' teams.  Can a student ask to participate on a           14:43  
7           co-ed team?           14:43  
8           A.    If there is a boys' team and a girls'           14:43  
9           team -- are we talking about, like, boys' and girls'           14:43  
10          basketball and can the girls' basketball player play           14:44  
11          on the boys' team?  Is that what you're asking?           14:44  
12          Q.    Yes.           14:44  
13          A.    They cannot.  If there is a team for them,           14:44  
14          they must play on the team of their gender.           14:44  
15          Q.    Let's go back to Exhibit 5.           14:44  
16                    And then I think once we are done with           14:44  
17          that exhibit, we can take a break.           14:44  
18                    So let's go back to Page 5 of the pdf.  I           14:44  
19          just have a few follow-up questions.  Back to           14:44  
20          Interrogatory Number 13.           14:44  
21          A.    Okay.           14:44  
22          Q.    What grades does junior varsity cover?           14:44  
23          A.    It doesn't have a grade.  It could be 9 to           14:44  
24          12.  You could be a senior and still on the junior           14:44  
25          varsity.  If some -- some schools because of numbers           14:44

1 will have just the varsity. Some will have varsity 14:45  
2 and j- -- junior varsity. And some will have 14:45  
3 varsity, junior varsity, and a freshman team. 14:45  
4 So just different designation of those 14:45  
5 teams. 14:45  
6 Q. What does junior varsity mean? 14:45  
7 A. Junior varsity -- 14:45  
8 MS. GREEN: I was just going to object to 14:45  
9 the form. 14:45  
10 THE WITNESS: Okay. 14:45  
11 When you have too many kids and you 14:45  
12 have -- you want an opportunity for them, you have a 14:45  
13 junior varsity as long as you can get a schedule for 14:45  
14 them. 14:45  
15 BY MS. KANG: 14:45  
16 Q. What does "varsity" mean? 14:45  
17 A. You are the team that participates for the 14:45  
18 state championships. 14:45  
19 Q. What does "freshman" mean? 14:45  
20 A. Some large schools want to give more 14:45  
21 opportunity to their student athletes. So they have 14:45  
22 too many kids for a junior varsity, JV; so they have 14:46  
23 a separate freshman program. 14:46  
24 Q. Just to be clear, if a student wants to 14:46  
25 play a sport that is not in this list -- so it's not 14:46

1 cheer, wrestling, baseball, football, or golf -- 14:46

2 they have to join either the boys' or girls' team? 14:46

3 A. I think that's everybody that is not 14:46

4 included, yes. 14:46

5 Q. One last question before we take a break. 14:46

6 I would like to draw your attention to 14:46

7 Page 9 of Exhibit 5, and this is the response to 14:46

8 Interrogatory Number 14. 14:46

9 A. Okay. 14:46

10 Q. So just to be clear, to make sure I am 14:46

11 reading this chart correctly, in the first row that 14:46

12 starts with "Andrew Jackson Middle School," it 14:46

13 indicates that one girl participated in wrestling. 14:47

14 Is that an accurate -- is that an accurate 14:47

15 interpretation? 14:47

16 A. It is. 14:47

17 Q. How do you collect these statistics? 14:47

18 A. This was a survey of the schools because, 14:47

19 when they do their eligibility, it doesn't 14:47

20 distinguish between boys and girls. 14:47

21 So in order to find out who is playing 14:47

22 what sports, how many -- how many girls are 14:47

23 participating in -- in the sports that allow boys 14:47

24 and girls, the co-ed or mixed, we -- we have to 14:47

25 survey them to find out. 14:47

1 Q. When was this survey done? 14:47

2 A. In the last two weeks, I would imagine. I 14:47

3 forget. I mean, it was in the last three -- two to 14:47

4 three weeks. 14:47

5 Q. Why did you survey the schools? 14:47

6 A. Just to find out how many girls were 14:47

7 participating in our -- since we don't have accurate 14:47

8 data of how many girls are playing different sports, 14:48

9 this was our opportunity to go ahead and -- and poll 14:48

10 our membership. 14:48

11 Not every school replied. And we don't 14:48

12 have a way to verify it. It was just for us to have 14:48

13 an idea. We looked -- 14:48

14 Q. Are there any -- oh. Go ahead, please. 14:48

15 A. We would look at this data, for instance, 14:48

16 golf and wrestling, to determine how close we are to 14:48

17 having its own sport. 14:48

18 Q. Is this data the current data? Or is this 14:48

19 data, like, a participation across all years -- 14:48

20 A. And again -- 14:48

21 Q. -- of all time? 14:48

22 A. I believe -- you know, it wasn't a 14:48

23 certified data. Schools were primarily listing 14:48

24 second -- second -- or last year's spring sports and 14:48

25 this year's winter and fall. 14:49

1                   So, obviously, they don't know how many                   14:49  
2                   baseball, softball, track, and tennis participants                   14:49  
3                   we have coming up because we haven't had our teams                   14:49  
4                   yet.                   14:49

5                   MS. KANG: Okay. I think now is a good                   14:49  
6                   time for everybody to take a break, if that is all                   14:49  
7                   right with you, Mr. Dolan.                   14:49

8                   THE WITNESS: Sure.                   14:49

9                   Okay. Roberta, is that -- does that work                   14:49  
10                  for you?                   14:49

11                  MS. GREEN: Sure. Thank you.                   14:49

12                  MS. KANG: Of course.                   14:49

13                  THE VIDEOGRAPHER: This marks the end of                   14:49  
14                  Media Number 2.                   14:49

15                  Going off the record. The time is 2:49.                   14:49

16                  (Brief recess.)                   14:59

17                  THE VIDEOGRAPHER: This marks the                   15:00  
18                  beginning of Media Number 3 in the deposition of                   15:00  
19                  30(b)(6) Witness Bernie Dolan.                   15:00

20                  Back on the record. The time is 3:01.                   15:00

21                  BY MS. KANG:                   15:00

22                  Q. Mr. Dolan, would it be harmful to a                   15:01  
23                  student if they were forbidden from playing school                   15:01  
24                  sports?                   15:01

25                  MS. GREEN: Object to the form.                   15:01

1 THE WITNESS: There are lots of kids who 15:01  
2 are, I think, not allowed to participate for 15:01  
3 whatever reason. It could be eligibility things. 15:01  
4 So happens to a lot of kids right now. 15:01  
5 We do think there are benefits to 15:01  
6 participation. 15:01  
7 BY MS. KANG: 15:01  
8 Q. What sort of benefits does playing a 15:01  
9 school sport afford? 15:01  
10 A. Giving an opportunity for leadership, 15:01  
11 personal health, camaraderie, cooperation. 15:01  
12 Q. I want to talk a little bit about House 15:01  
13 Bill 3293, or H.B. 3293, and a little bit more about 15:01  
14 the Commission's policy for H.B. 3293 was enacted. 15:01  
15 A. Okay. 15:02  
16 Q. Do you believe that H.B. 3293 forbids 15:02  
17 B.P.J. from playing on a girls' team? 15:02  
18 MS. GREEN: Object to the perform. 15:02  
19 THE WITNESS: I would believe it did 15:02  
20 before the court case. Yes. 15:02  
21 BY MS. KANG: 15:02  
22 Q. Have you ever talked to any organizations 15:02  
23 outside of the State of West Virginia regarding 15:02  
24 H.B. 3293? 15:02  
25 A. Not that I know of. 15:02

1 Q. Have you ever talked to any organizations 15:02  
2 outside of West Virginia concerning transgender 15:02  
3 athletes generally? 15:02

4 A. We may have talked -- you know, our 15:02  
5 National Federation, it was probably on a -- one of 15:02  
6 our either winter meetings or summer meetings there 15:02  
7 was probably a topic. 15:02

8 And I would have to go back and look, but 15:02  
9 the state may have put up a presentation on whatever 15:02  
10 their -- whatever their rule was. 15:02

11 Q. Do you remember when this meeting 15:03  
12 occurred? 15:03

13 A. I do not. 15:03

14 Q. Do you know which state proposed a rule? 15:03

15 MS. GREEN: Object to the form. 15:03

16 THE WITNESS: I believe the presentation 15:03  
17 was from Connecticut. 15:03

18 BY MS. KANG: 15:03

19 Q. Do you remember what the rule they 15:03  
20 proposed was? 15:03

21 MS. GREEN: Object to the form. 15:03

22 THE WITNESS: I don't know. They weren't 15:03  
23 proposing a rule; they were explaining their rule. 15:03

24 BY MS. KANG: 15:03

25 Q. Do you remember what their rule was? 15:03

1           A.    I believe it was full participation by           15:03  
2           gender identity.   15:03

3           Q.    Okay.  So I'm going to ask you a few           15:03  
4           questions about the Commission's policy.  Before I    15:03  
5           do so, just to be totally clear on the record, I'm    15:03  
6           just going to give you some terms that I'll explain   15:04  
7           my definitions for.  So whenever I ask you           15:04  
8           questions, this is what I mean.                       15:04

9                       When I use the term "cisgender," I am           15:04  
10          referring to someone whose gender identity matches   15:04  
11          the sex they were assigned at birth.  So, for       15:04  
12          example, if someone was assigned male at birth and   15:04  
13          they identify as a male, that person would be a     15:04  
14          cisgender boy.   15:04

15                 When I use the term "transgender," I am       15:04  
16          referring to someone whose gender identity does not   15:04  
17          match the sex they were assigned at birth.  So, for   15:04  
18          example, if someone was assigned male at birth but   15:04  
19          then they identify as female, that person would be a   15:04  
20          transgender girl or woman.                           15:04

21                 And so for purposes of the questions I       15:04  
22          will be asking next, I'll be using these definitions   15:04  
23          for -- for clarity.                                   15:04

24                 Are you all right with that?                15:04

25          A.    Yes.   15:04

1 MS. GREEN: Objection to form. 15:04

2 THE WITNESS: Sorry. 15:04

3 Yes. 15:04

4 BY MS. KANG: 15:04

5 Q. And then you may already understand this, 15:04

6 but when I use the phrase "H.B. 3293," I am 15:04

7 referring to House Bill 3293. 15:04

8 Are you familiar with this bill? 15:05

9 A. Yes. 15:05

10 Q. To your knowledge, has a cisgender boy 15:05

11 ever played on a girl's sports team? 15:05

12 MS. GREEN: Objection to the form. 15:05

13 THE WITNESS: Not to my knowledge. 15:05

14 BY MS. KANG: 15:05

15 Q. To your knowledge, has it ever been raised 15:05

16 as an issue? 15:05

17 MS. GREEN: Object to the form. 15:05

18 THE WITNESS: No. 15:05

19 BY MS. KANG: 15:05

20 Q. Currently, if a cisgender girl wants to 15:05

21 play football, is she permitted to do so on the 15:05

22 boys' team? 15:05

23 A. Yes. Because there's no girls' team at 15:05

24 the moment. 15:05

25 Q. Before H.B. 3293 was enacted, did the 15:05

1 Commission allow transgender students to participate 15:06  
2 on sports teams consistent with their gender 15:06  
3 identity? 15:06  
4 MS. GREEN: Object to the form. 15:06  
5 THE WITNESS: Our policy ident- -- 15:06  
6 whatever the school identified them in WVEIS was how 15:06  
7 we recognize them. 15:06  
8 BY MS. KANG: 15:06  
9 Q. Can you tell me a little bit more about 15:06  
10 this policy? 15:06  
11 MS. GREEN: Object to the form. 15:06  
12 THE WITNESS: Basically, it was to protect 15:06  
13 athletes from harm or unfairness because of physical 15:06  
14 abilities. So whatever the school identified them 15:06  
15 at if -- if everybody was okay with that, they got 15:06  
16 to participate. 15:06  
17 If it ever came to a point where somebody 15:07  
18 was too big, too strong, or it wasn't safe for that 15:07  
19 person to play, then they could appeal to the Board. 15:07  
20 BY MS. KANG: 15:07  
21 Q. Can you tell me a little bit more about 15:07  
22 what you mean by "it wasn't safe" for them to play? 15:07  
23 A. Could be a volleyball player who could 15:07  
24 jump much higher than the girls, much stronger. And 15:07  
25 when he hits the ball, could hurt the -- hurt the 15:07

1 other participants. 15:07

2 Q. How did the Commission come up with this 15:07

3 policy? 15:07

4 A. It was actually created by my predecessor. 15:07

5 And just came in in the beginnings of my time. And 15:07

6 they were just addressing an issue that hadn't come 15:07

7 to West Virginia at this point, but they wanted to 15:08

8 have something in there as a temporary stopgap 15:08

9 measure. 15:08

10 And to this point, no one has written a 15:08

11 rule to be voted on -- our -- by our membership. So 15:08

12 that has been the -- our guidance since 2016. 15:08

13 Q. Who was your predecessor? 15:08

14 A. Gary Ray. 15:08

15 Q. And why did he feel the need to enact this 15:08

16 policy? 15:08

17 MS. GREEN: Object to the form. 15:08

18 THE WITNESS: As we went to the national 15:08

19 meetings more and more, people were saying this was 15:08

20 an issue, and so they wanted -- you know, it had not 15:08

21 hit West Virginia yet but wanted to have something 15:08

22 in place to protect the kids. 15:09

23 BY MS. KANG: 15:09

24 Q. Did you ever receive any complaints about 15:09

25 this policy? 15:09



1 looked to WVEIS to determine a student's gender? 15:10

2 A. We have -- we don't have access to WVEIS. 15:10

3 We would ask the school to provide what they have 15:10

4 designated the student as in WVEIS. 15:10

5 Q. Has this always been the case? 15:11

6 A. I would assume that it's always been the 15:11

7 case. Even before we had a policy, the school 15:11

8 determined what they put in WVEIS. 15:11

9 Q. Have you received any complaints about 15:11

10 B.P.J.'s participation? 15:11

11 A. Not that I know of. 15:11

12 Q. And to be clear, you haven't received any 15:11

13 complaints about transgender students participating 15:11

14 in West Virginia? 15:11

15 A. No. 15:11

16 Q. Have any transgender students ever asked 15:11

17 the Commission if they could participate in sports 15:11

18 at a secondary school level? 15:11

19 MS. GREEN: Object to the form. 15:11

20 THE WITNESS: I had one boy who wanted to 15:11

21 be a -- play volleyball, and we told him he couldn't 15:12

22 play volleyball because it was a girls' sport. And 15:12

23 he said, "Then I'll be a boy -- I'll be a girl." 15:12

24 And -- but he wasn't -- he never did 15:12

25 anything else with it. And we assumed he just 15:12

1 wanted to play volleyball because it never came back 15:12  
2 up. 15:12  
3 I did have contact with a school who said 15:12  
4 they had one student who one day identified as a 15:12  
5 girl, next day a boy, and back and forth. But we 15:12  
6 have not heard anything more from that student. 15:12  
7 So... 15:12  
8 BY MS. KANG: 15:12  
9 Q. When was that? 15:12  
10 A. That would have been in the last year. 15:12  
11 Q. Do you remember which school it was from? 15:12  
12 A. Yes. 15:12  
13 Q. Which school was it? 15:12  
14 A. South Charleston High School. 15:12  
15 Q. So I'm going to introduce a document 15:13  
16 that's going to be marked as Exhibit 6. 15:13  
17 I'll let you know when it's available in 15:13  
18 your folder. 15:13  
19 (Deposition Exhibit 6 was marked for 15:13  
20 identification and is attached hereto.) 15:13  
21 MS. KANG: Exhibit 6 is now available in 15:13  
22 the shared exhibit folder. 15:13  
23 BY MS. KANG: 15:13  
24 Q. Mr. Dolan, let me know when you have had a 15:13  
25 chance to look at it. 15:13



1 closely with that student and the parents and the 15:15  
2 family on a daily basis. 15:15  
3 BY MS. KANG: 15:15  
4 Q. Why did the Commission think transgender 15:15  
5 students should be able to participate on teams 15:15  
6 consistent with their identity? 15:15  
7 MS. GREEN: Object to the form. 15:15  
8 THE WITNESS: I assume that the school 15:15  
9 would put them in the proper place, wherever the 15:15  
10 school decided based on all the factors. 15:15  
11 BY MS. KANG: 15:15  
12 Q. Did you ever consider implementing a 15:15  
13 hormone requirement in this policy? 15:15  
14 MS. GREEN: I'm sorry. I didn't hear what 15:15  
15 you said, Ms. Kang. 15:15  
16 MS. KANG: Sure. 15:15  
17 BY MS. KANG: 15:15  
18 Q. Did you ever consider implementing a 15:15  
19 hormone requirement in this policy? 15:15  
20 MS. GREEN: Thank you. 15:15  
21 Object to the form. 15:15  
22 THE WITNESS: Our -- it was my 15:15  
23 predecessor's. So I'm not sure of their discussion 15:15  
24 as to whether or not they were going to put that in 15:16  
25 or not. 15:16

1 BY MS. KANG: 15:16

2 Q. Did you or your staff ever consider 15:16

3 putting in this policy -- putting in a hormone 15:16

4 requirement? 15:16

5 MS. GREEN: Object to the form. 15:16

6 THE WITNESS: No. Because we would not 15:16

7 change the policy. I think it would -- if it was 15:16

8 going to change, it was going to be changed by a 15:16

9 rule by our membership and was never brought forward 15:16

10 as a rule proposal. 15:16

11 BY MS. KANG: 15:16

12 Q. Am I right to say that this policy was not 15:16

13 a rule? 15:16

14 A. That's correct. 15:16

15 Q. What's the difference between this policy 15:16

16 versus a rule? 15:16

17 A. This never went before the membership to 15:16

18 have a vote; so I don't think it has the power of a 15:16

19 rule. 15:16

20 Q. What sort of power would that be? 15:16

21 A. Well, this was giving guidance to a Board 15:16

22 of Directors. 15:17

23 But a rule is voted on and -- and approved 15:17

24 by the State Board of Education; so it is the rule 15:17

25 of law for high school athletics from the WVSSAC. 15:17

1 Q. What do you mean by it provided guidance 15:17  
2 to the Board of Directors? 15:17  
3 A. Would allow them to grant waivers if 15:17  
4 somebody -- if it was unsafe or unfair to other 15:17  
5 students or to this student. 15:17  
6 Q. By unfair to the student, do you mean 15:17  
7 unfair to the trans student? 15:17  
8 A. Either one. Either one. For safety or 15:17  
9 given them advantages that made it unfair. 15:17  
10 Q. Am I right that this policy does not 15:18  
11 mention anything about WVEIS? 15:18  
12 MS. GREEN: Object to the form. 15:18  
13 THE WITNESS: I don't believe it -- I 15:18  
14 don't believe it mentions WVEIS. It does say that 15:18  
15 the school will make the initial determination. 15:18  
16 BY MS. KANG: 15:18  
17 Q. Under this policy, what happens if a 15:18  
18 student's gender marker in WVEIS is, let's say -- 15:18  
19 let's say, male, but the school treats the student 15:18  
20 as female? What would the SAC do in that situation? 15:18  
21 MS. GREEN: I'll object to the form. 15:18  
22 Speculative. 15:18  
23 THE WITNESS: I think we would have to 15:18  
24 look at all the factors that were involved in -- you 15:18  
25 know, I'm not even sure what the factors would be, 15:19

1 but I think we would have to, you know, have 15:19  
2 everything presented to us to make a determination. 15:19  
3 BY MS. KANG: 15:19  
4 Q. So is it fair to say, in that case you 15:19  
5 would not strictly follow WVEIS? 15:19  
6 MS. GREEN: Object to the form. 15:19  
7 THE WITNESS: We would -- it would be in 15:19  
8 the cases where it was unsafe and unfair that we 15:19  
9 would not be following WVEIS. If we felt like it 15:19  
10 was unsafe or unfair to the participants, other 15:19  
11 participants or the transgender student, then the 15:19  
12 Board can override it. 15:19  
13 BY MS. KANG: 15:19  
14 Q. Okay. I'm going to ask you to turn your 15:19  
15 attention to a document that I'm going to be marking 15:19  
16 as Exhibit 7. 15:19  
17 MS. KANG: And I'll let you know when it's 15:19  
18 available in everyone's folder. 15:19  
19 (Deposition Exhibit 7 was marked for 15:20  
20 identification and is attached hereto.) 15:20  
21 MS. KANG: Exhibit 7 should now be 15:20  
22 available in everyone's Marked Exhibit folder. 15:20  
23 BY MS. KANG: 15:20  
24 Q. And let me know, Mr. Dolan, whenever you 15:20  
25 have a chance to -- to look at it. 15:20





1 THE WITNESS: Can you scroll down to the 15:23  
2 next page and see... 15:23  
3 MS. GREEN: Okay. 15:23  
4 THE WITNESS: Keep going. See if 15:23  
5 there's... 15:23  
6 [Witness reviews document]. 15:24  
7 I do not remember. I would assume it was 15:24  
8 all of my Board of Directors, though. 15:24  
9 BY MS. KANG: 15:24  
10 Q. How often does the Board of Directors 15:24  
11 meet? 15:24  
12 A. Mostly once a month. There a couple of 15:24  
13 months that we don't meet. So about ten times a 15:24  
14 year. 15:24  
15 Q. Is this Board of Directors report given to 15:24  
16 anyone outside of the Board of Directors? 15:24  
17 MS. GREEN: Object to the form. 15:24  
18 THE WITNESS: I'm not sure because we 15:24  
19 don't give it out anymore. So I don't know if 15:24  
20 that's -- if this came from the interscholastic or 15:24  
21 if it was Board of Directors report that somebody 15:24  
22 would have submitted. 15:24  
23 I don't do it currently; so I don't know 15:25  
24 if it was -- who it went to in the past. 15:25  
25 ///

1 BY MS. KANG: 15:25

2 Q. Did it used to go to someone before? 15:25

3 A. I don't know. That's what I... 15:25

4 Q. So I want to draw your attention to Page 2 15:25

5 of the pdf. It's been Bates Stamped -283. And it's 15:25

6 Bullet Point 4 "Legal Update." 15:25

7 And in Bullet Point 4, you'll see another 15:25

8 Bullet Point iv that says "Transgender." 15:25

9 Read that paragraph and let me know when 15:25

10 you are finished. 15:25

11 A. [Witness reviews document]. 15:25

12 Okay. 15:25

13 Q. Regarding this specific topic, what was 15:25

14 discussed? 15:26

15 MS. GREEN: Object to the form. 15:26

16 THE WITNESS: Based on the information 15:26

17 there -- obviously, I can't remember in 2016 -- but 15:26

18 we were discussing the policy and how it was -- how 15:26

19 schools would -- how it would work with the schools. 15:26

20 BY MS. KANG: 15:26

21 Q. And what do you mean "how it would work 15:26

22 with the schools"? 15:26

23 A. Well, it says, Number 1, the school would 15:26

24 make the first determination; did they meet all 15:26

25 other eligibility requirements; was it fair 15:26

1 competition if the school allows; you know, was 15:26  
2 there an appeal process; and then make sure that we 15:26  
3 look at each case on an individual basis and kind 15:26  
4 of -- where the Board stood. 15:26

5 Q. What do you mean by "where the Board 15:26  
6 stood"? 15:26

7 A. I don't know what the discussion was at 15:27  
8 that point. 15:27

9 Q. I notice that in this line it says 15:27  
10 [as read]: 15:27

11 "Editing our transgender policy and 15:27  
12 guidelines...." 15:27

13 As far as you know, was there any editing 15:27  
14 that was done to the policy? 15:27

15 A. I don't believe we edited anything because 15:27  
16 it's still the exact same policy that -- that they 15:27  
17 approved months earlier. 15:27

18 Q. Do you remember if the Board of 15:27  
19 Directors -- the Board of Directors unanimously 15:27  
20 approved this policy? 15:27

21 A. I don't know. 15:27

22 Q. Do you remember if anything was ever 15:27  
23 conveyed outside of the Board of Directors regarding 15:27  
24 this policy? 15:27

25 MS. GREEN: Object to the form. 15:27

1 THE WITNESS: When we meet with our 15:27  
2 principals and -- when we meet with our principals 15:27  
3 and also at an administrative workshop for a number 15:28  
4 of years, we indicated that whatever they determined 15:28  
5 we would accept as long as it was not unsafe or 15:28  
6 unfair. 15:28  
7 BY MS. KANG: 15:28  
8 Q. So is it fair to say that your member 15:28  
9 schools were aware of this policy? 15:28  
10 A. Well, I would think at different times. 15:28  
11 Again, the turnover at schools is high. So if -- 15:28  
12 did somebody -- every person -- did we verify that 15:28  
13 they heard it? I don't know. 15:28  
14 But the turnover is relatively high at all 15:28  
15 of our schools, especially at the principal level. 15:28  
16 So... 15:28  
17 Q. Would it be fair to say that at one point 15:28  
18 you did inform the member schools about this policy? 15:28  
19 MS. GREEN: Object to the form. 15:28  
20 THE WITNESS: As long as they attended our 15:29  
21 meetings, yes. They might not -- 15:29  
22 BY MS. KANG: 15:29  
23 Q. And by -- 15:29  
24 A. -- have attended. 15:29  
25 Q. And by "meetings," do you mean the Board 15:29

1 of Directors meetings? 15:29

2 A. No. It would be our regional principals 15:29

3 meetings that we did at the beginning of each year. 15:29

4 Q. Does the Commission report H.B. 3293? 15:29

5 MS. GREEN: Object to form. 15:29

6 THE WITNESS: I don't think we ever -- 15:29

7 there was ever a position on it. I think our 15:29

8 position has been we support Title IX and try to 15:29

9 give more opportunities for girls. But bottom line 15:29

10 is we are not allowed to discriminate by our rule -- 15:29

11 by our policies. 15:29

12 BY MS. KANG: 15:29

13 Q. By "not allowed to discriminate," do you 15:29

14 mean also not allowed to discriminate against 15:29

15 transgender students? 15:30

16 A. I would think we are not allowed to -- we 15:30

17 are not allowed to discriminate against transgender. 15:30

18 That's correct. 15:30

19 Q. Could you tell me a little bit more about 15:30

20 what you mean by advance Title IX? 15:30

21 A. Well, we continued to offer more 15:30

22 opportunities and protect the opportunities that 15:30

23 girls have. 15:30

24 We have increased the opportunities for 15:30

25 girl golfers to participate just against girls. So 15:30

1 our number of girls' golfers has risen tremendously. 15:30

2 We also have supported a girls' only 15:30

3 wrestling invitational that has allowed more girls 15:30

4 to participate in wrestling. 15:30

5 We have encouraged schools to make sure 15:31

6 that Title IX is followed when they are putting in 15:31

7 fields, putting in locker rooms, money for programs, 15:31

8 and things like that. 15:31

9 Q. Do you believe that Title IX also protects 15:31

10 transgender girls? 15:31

11 MS. GREEN: Object to the form. 15:31

12 THE WITNESS: I -- I am not sure. I think 15:31

13 that it -- it has been ruled that way, yes. 15:31

14 BY MS. KANG: 15:31

15 Q. Have there ever been any safety concerns 15:31

16 with girls playing on the boys' team? 15:31

17 MS. GREEN: Object to the form. 15:31

18 THE WITNESS: The girls are choosing to 15:31

19 participate. So I think all kids there's -- there's 15:31

20 an oppor- -- there's a possibility of injury. And 15:31

21 so, you know, it -- it's brought out in their 15:31

22 preparticipation physical that, you know, there is a 15:31

23 possibility of injury. 15:32

24 BY MS. KANG: 15:32

25 Q. To your knowledge, have there been any 15:32

1 injuries from a girl playing on a boys' team? 15:32

2 MS. GREEN: Object to the form. 15:32

3 THE WITNESS: Oh, I'm sure. I mean, I 15:32

4 don't know specifically. But there's -- people get 15:32

5 hurt every day in every sport. So I'm sure somebody 15:32

6 has gotten hurt in football or wrestling. 15:32

7 BY MS. KANG: 15:32

8 Q. In the context of school sports, what is 15:32

9 competitive skill? 15:32

10 MS. GREEN: Object to the form. 15:32

11 THE WITNESS: Skill needed to be 15:32

12 successful in that sport. 15:32

13 BY MS. KANG: 15:32

14 Q. Does cross-country require competitive 15:32

15 skill? 15:32

16 MS. GREEN: Object to the form. 15:32

17 THE WITNESS: I would think so. 15:32

18 BY MS. KANG: 15:32

19 Q. Do you know whether any girls who tried 15:32

20 out for cross-country at Bridgeport Middle School 15:32

21 for the fall of 2021 were unable to join the team? 15:32

22 MS. GREEN: Object to the form. 15:33

23 THE WITNESS: We were not involved in the 15:33

24 selection. So I don't know. 15:33

25 ///

1 BY MS. KANG: 15:33

2 Q. Believe it or not, I am on my last set of 15:33

3 questions. So thank you for bearing with me so far. 15:33

4 Hopefully, we can get this done early. 15:33

5 So now I want to talk a little bit more 15:33

6 about House Bill 3293. 15:33

7 Were you involved at all in the passage of 15:33

8 H.B. 3293? 15:33

9 MS. GREEN: Object to the form. 15:33

10 THE WITNESS: I wouldn't say I was 15:33

11 involved in the passage. 15:33

12 Oftentimes I get asked to come down and 15:33

13 speak. And I was asked to speak to the Democratic 15:33

14 caucus. And I pretty much said what I said earlier. 15:33

15 We support girls' sports and continued to offer more 15:33

16 opportunities for them. But we're not allowed to 15:33

17 discriminate. 15:34

18 BY MS. KANG: 15:34

19 Q. Besides the Democratic caucus, did you 15:34

20 speak to anyone else? 15:34

21 A. I had communication with Melissa White, 15:34

22 who was -- is the counsel for House Ed. 15:34

23 Q. And did you think -- 15:34

24 A. And I think that -- 15:34

25 Q. Go ahead. 15:34

1           A.    I don't think -- I don't think we spoke           15:34  
2    about it.  She had sent me an email about it.           15:34  
3           Q.    Did you speak to any legislative committee    15:34  
4    about H.B. 3293?   15:34  
5           MS. GREEN:  Object to the form.                   15:34  
6           THE WITNESS:  I spoke to the caucus.  I           15:34  
7    was down there as a witness in front of finance, I    15:34  
8    believe, Senate finance -- or House finance.  But I    15:34  
9    was never called in to -- to give an opinion or any    15:34  
10   information.   15:34  
11   BY MS. KANG:   15:34  
12           Q.    So you were called in as a witness but you   15:34  
13   didn't testify?   15:34  
14           A.    They told me to be available.               15:34  
15           Q.    Were you told anything about H.B. 3293    15:35  
16   before it was passed?                                   15:35  
17           MS. GREEN:  Object to the form.                   15:35  
18           THE WITNESS:  Actually, I was sent an           15:35  
19   email from Melissa White.  But when I looked at it,    15:35  
20   the beginning of it was a home school bill.           15:35  
21                    So I assumed she sent the wrong bill.    15:35  
22   And -- but it did say "transgender" at the top.  So    15:35  
23   I sent it to the legal counsel who was helping us    15:35  
24   with legislative activity.  Or --                       15:35  
25           MS. GREEN:  And I'll object to the form.        15:35

1 THE WITNESS: Okay. 15:35

2 MS. GREEN: Caution him regarding 15:35

3 conversations with counsel. 15:35

4 THE WITNESS: Okay. 15:35

5 BY MS. KANG: 15:35

6 Q. By "counsel," was it counsel at the 15:35

7 Commission? 15:35

8 A. It is counsel -- 15:35

9 MS. GREEN: I'll just -- 15:35

10 THE WITNESS: Okay. 15:35

11 MS. GREEN: -- object to the form. 15:36

12 THE WITNESS: Okay. 15:36

13 It was counsel we've had at -- that we 15:36

14 used during legislative time. 15:36

15 BY MS. KANG: 15:36

16 Q. Who is this person? 15:36

17 MS. GREEN: I'll just object to the form. 15:36

18 I think they're in the privilege log. We identified 15:36

19 them. 15:36

20 Do you know the name of the firm? 15:36

21 THE WITNESS: Dinsmore & Shohl is the law 15:36

22 firm. 15:36

23 BY MS. KANG: 15:36

24 Q. Did any legislators tell you about the 15:36

25 purpose of H.B. 3293? 15:36

1 MS. GREEN: Object to the form. 15:36

2 THE WITNESS: I don't remember having that 15:36

3 conversation with any of them. I had one email from 15:36

4 Senator Unger, who sent me the NCAA guidelines at 15:36

5 the time. It was unsolicited and didn't have 15:36

6 anything, really, with it, just a link to the NCAA 15:36

7 guidelines. 15:37

8 BY MS. KANG: 15:37

9 Q. Did you respond to that email? 15:37

10 A. I did not. 15:37

11 Q. Has the Commission taken any steps to 15:37

12 contemplate policies or rules concerning the 15:37

13 implementation of H.B. 3293? 15:37

14 MS. GREEN: Object to the form. 15:37

15 THE WITNESS: The legislation 3293 charged 15:37

16 the Department of Ed with creating the rule. So 15:37

17 we're going to wait for those guidelines to come out 15:37

18 and then probably just bring them into our rule book 15:37

19 like we did the 2.0. 15:37

20 BY MS. KANG: 15:37

21 Q. But to be clear, if the State Board 15:37

22 promulgates a rule, will the Commission have to 15:37

23 follow that rule? 15:38

24 A. Our schools would have to follow it, 15:38

25 which, if all of our schools have to follow it, I 15:38

1 would say we're following it, yes. 15:38

2 Q. Okay. I'm going to introduce a document 15:38

3 as Exhibit 9, and I'll let you know when it's 15:38

4 available. 15:38

5 (Deposition Exhibit 9 was marked for 15:38

6 identification and is attached hereto.) 15:39

7 MS. KANG: Exhibit 9 is now available in 15:39

8 the Marked Exhibits folder. 15:39

9 BY MS. KANG: 15:39

10 Q. And let me know when you have a chance to 15:39

11 pull it up, Mr. Dolan. 15:39

12 A. Okay. 15:39

13 Q. So these are some text messages that your 15:39

14 counsel produced in response to Plaintiff's 15:39

15 discovery requests. It's been Bates stamped 15:39

16 WVSSAC000001. And I'm going to represent to you 15:39

17 that these are texts between you and 15:39

18 Stephen Baldwin. 15:39

19 Do you remember this conversation? 15:39

20 A. Yes. 15:39

21 MS. GREEN: Object to the form. 15:39

22 THE WITNESS: Yes, I do. 15:39

23 BY MS. KANG: 15:39

24 Q. Who is Stephen Baldwin? 15:39

25 A. Senator from Greenbrier County. 15:39

1 Q. Is this the same Democratic office that 15:40  
2 you were just talking about? 15:40  
3 A. Yes, ma'am. 15:40  
4 Q. Why did you decide to participate in this 15:40  
5 meeting? 15:40  
6 MS. GREEN: Object to the form. 15:40  
7 THE WITNESS: Oftentimes I -- I don't feel 15:40  
8 like I have a choice. When the legislature calls, I 15:40  
9 need to go down and be heard. 15:40  
10 BY MS. KANG: 15:40  
11 Q. Did you bring any documents with you to 15:40  
12 this meeting? 15:40  
13 A. Just the -- just our board policy. 15:40  
14 Q. Do you remember if you were shown any 15:40  
15 documents at the meeting? 15:40  
16 A. I don't remember. 15:40  
17 Q. Did the Democratic Caucus give you any 15:40  
18 documents? 15:40  
19 A. I don't remember if they gave me the bill 15:40  
20 at that time or not. So I'm not sure. 15:40  
21 Q. So if you scroll down to the document 15:41  
22 that's Bates Stamped -006. And I believe it's 15:41  
23 Page 6 of 7 of the pdf of Exhibit 9. 15:41  
24 A. Okay. 15:41  
25 Q. Do you know who Rucker is? 15:41





1           A.    I believe in the Title IX document it says    15:45  
2    you can't discriminate.  And so we support Title IX;    15:45  
3    so we have to support the whole thing.                    15:45

4           Q.    You also say in your response that            15:45  
5    [as read]:    15:45

6                        "This has increased the quantity and        15:45  
7                        quality of opportunities for girls in        15:45  
8                        our schools."                                15:45

9                        What opportunities do you believe has been    15:45  
10    increased?    15:45

11           A.    Well, when I was in school, which would        15:45  
12    have been the early -- early '70s, may or may not        15:45  
13    have had girls' basketball at all and wouldn't have        15:45  
14    had volleyball or soccer, for sure, swim.  So over        15:45  
15    the last 50 years, we have increased the sports that        15:45  
16    girls can participate in a hundred times over.            15:45

17           Q.    Do you believe that B.P.J. should have the    15:45  
18    right to these opportunities?                                15:46

19                        MS. GREEN:  Object to the form.            15:46

20                        THE WITNESS:  I believe we'll follow the    15:46  
21    rule -- the law.    15:46

22                        BY MS. KANG:                                    15:46

23           Q.    What do you mean by "follow the law"?

24           A.    Whatever -- whatever the Department of Ed    15:46  
25    writes as the rule, then we have to implement that        15:46

1 with all of our schools. 15:46

2 Q. Do you believe that B.P.J.'s participation 15:46

3 in cross-country harms any of these opportunities? 15:46

4 MS. GREEN: Object to the form. 15:46

5 THE WITNESS: Well, "harm" is a -- a 15:46

6 unique word because harm might be that it might not 15:46

7 physically harm somebody, but they -- you know, harm 15:46

8 might be that you take somebody's position on the 15:46

9 team. 15:46

10 In cross-country, only the top seven kids 15:46

11 get to compete on the varsity team, whether it's 15:46

12 middle school or high school. If you are 15:46

13 number seven and you get bumped out, there might be 15:46

14 harm. 15:47

15 But, in general, physical harm, I don't 15:47

16 believe so. 15:47

17 BY MS. KANG: 15:47

18 Q. Do you know if B.P.J. has, as you say, 15:47

19 bumped out another girl? 15:47

20 A. I do not. 15:47

21 MS. GREEN: Object to the form. 15:47

22 THE WITNESS: Okay. 15:47

23 MS. KANG: So I am going to introduce 15:47

24 another document as Exhibit 11. 15:47

25 ///

1 (Deposition Exhibit 11 was marked for 15:47  
2 identification and is attached hereto.) 15:48  
3 MS. GREEN: Okay. 15:48  
4 MS. KANG: Exhibit 11 is now available in 15:48  
5 everyone's Marked Exhibit folder. 15:48  
6 BY MS. KANG: 15:48  
7 Q. Let me know when you have it up. 15:48  
8 And, Mr. Dolan, we can take a five-minute 15:48  
9 break, I think, after -- after this email, before we 15:48  
10 wrap up. 15:48  
11 A. Okay. 15:48  
12 Scroll down. 15:48  
13 Okay. 15:48  
14 Q. Do you recognize this email? 15:48  
15 A. I do. 15:48  
16 Q. Do you remember this email? 15:48  
17 A. I don't know if I remember it. But I 15:48  
18 recognize it, yes. 15:48  
19 Q. Who is Josh Weekley? 15:48  
20 A. He runs RunWV which keeps track of all 15:48  
21 boys' and girls' track and cross-country times and 15:49  
22 posts them on runwv.com. 15:49  
23 Q. Why did you contact him? 15:49  
24 A. I was looking for data in comparing girls' 15:49  
25 times to boys' times. 15:49

1 Q. Why did you want that data? 15:49

2 A. Just curious to see if there were 15:49

3 advantages that boy -- if -- what the actual data 15:49

4 showed for comparison of boys' and girls' times. 15:49

5 Q. Did you ask in response to any questions 15:49

6 from the West Virginia Legislature? 15:49

7 A. I don't remember the time frame of this; 15:49

8 so I don't know if it was before or after or during 15:49

9 the legislative time. 15:49

10 Q. Did you ever get the data from Josh 15:49

11 Weekley? 15:50

12 A. Did not. Did not. They had computer 15:50

13 problems and so... 15:50

14 Q. What did you mean by "a transgender issue" 15:50

15 on the -- 15:50

16 A. Again -- 15:50

17 Q. -- first page? 15:50

18 A. I was asking -- I was just telling him. I 15:50

19 was trying to compare boys' times and girls' times 15:50

20 and what hap- -- you know, what the actual times 15:50

21 were of boys and girls competing against each other. 15:50

22 MS. GREEN: Okay. I think if folks are 15:50

23 all right, we will take a five-minute break, and 15:50

24 then I should have -- let's see -- I should have a 15:50

25 couple more exhibits to go through. 15:50

1                   But we'll take a pause here and come back                   15:50  
2                   around 3:56.                   15:50  
3                   THE WITNESS: Okay.                   15:50  
4                   THE VIDEOGRAPHER: Going off the record.                   15:50  
5                   The time is 3:51.                   15:50  
6                   (Brief recess.)                   15:57  
7                   THE VIDEOGRAPHER: Back on the record.                   15:57  
8                   The time is 3:57.                   15:57  
9                   BY MS. KANG:                   15:57  
10                  Q. Mr. Dolan, I'm going to introduce another                   15:57  
11                  document as Exhibit 12.                   15:57  
12                  A. Okay.                   15:57  
13                  Q. And I'll let you know when it's in there.                   15:57  
14                  (Deposition Exhibit 12 was marked for                   15:57  
15                  identification and is attached hereto.)                   15:58  
16                  MS. KANG: Okay. Exhibit 12 is now                   15:58  
17                  available in the Marked Exhibits folder.                   15:58  
18                  BY MS. KANG:                   15:58  
19                  Q. Let me know when you have had a chance to                   15:58  
20                  pull it up.                   15:58  
21                  A. Scroll down.                   15:58  
22                  That's it. Okay.                   15:58  
23                  Okay.                   15:58  
24                  Q. Is this the same Melissa White as the one                   15:59  
25                  you were referencing earlier?                   15:59



1                   Was this the first time that Melissa White       16:00  
2                   spoke to you about H.B. 3293?                               16:00  
3                   MS. GREEN: Object to the form.                               16:00  
4                   THE WITNESS: I believe it was. I may                       16:00  
5                   have been underlining that as I was gathering my       16:00  
6                   documents to make sure I got them all out of my       16:00  
7                   email. So that might be why that was underlined.       16:00  
8                   BY MS. KANG:   16:00  
9                   Q. In this email, she asks for your thoughts               16:00  
10                   on H.B. 3293.   16:00  
11                   Did you provide her with any thoughts?                   16:00  
12                   A. I did not. It was -- it -- I thought                   16:00  
13                   there was an attachment to that, and I sent it off.       16:01  
14                   Was there -- oh, yeah. There it is. Down               16:01  
15                   at the bottom.   16:01  
16                   And I didn't -- I didn't open it. I sent               16:01  
17                   it off to Dinsmore & Shohl.                               16:01  
18                   Q. Did you ever have any verbal                               16:01  
19                   communications with Melissa White about this bill?       16:01  
20                   A. The only communication I could -- might               16:01  
21                   have had is that when she asked me to come to the       16:01  
22                   finance meeting and wait outside. And then I was       16:01  
23                   told I wasn't needed.   16:01  
24                   MS. KANG: I'm going to introduce a                       16:01  
25                   document as Exhibit 13.                                       16:01

1 (Deposition Exhibit 13 was marked for 16:02  
2 identification and is attached hereto.) 16:02  
3 MS. KANG: Exhibit 13 is now available in 16:02  
4 everyone's Marked Exhibit folder. 16:02  
5 BY MS. KANG: 16:02  
6 Q. So let me know when you have it up. And 16:02  
7 once you have it up, if you could scroll to the very 16:02  
8 last page that has been Bates stamped -370. Let me 16:02  
9 know. 16:02  
10 A. Okay. 16:02  
11 Q. Do you recognize this text exchange? 16:02  
12 A. Yes. 16:02  
13 Q. Is the Melissa at the top of the thread 16:03  
14 referring to Melissa White? 16:03  
15 A. Yes. 16:03  
16 Q. Do you know why she asked for the 16:03  
17 transgender policy? 16:03  
18 MS. GREEN: Object to the form. 16:03  
19 THE WITNESS: At some point, I don't -- 16:03  
20 I'm not sure of the date. But at some point we 16:03  
21 were -- you know, we had told them that we had a 16:03  
22 Board policy for transgender. 16:03  
23 So I'm sure she was trying to get a copy 16:03  
24 of that. 16:03  
25 ///

1 BY MS. KANG: 16:03

2 Q. Who is "them"? 16:03

3 A. House -- House Education. 16:03

4 Q. Did you provide the policy to her? 16:03

5 A. I'm sure I did. 16:03

6 Q. Did she say anything to you afterwards 16:03

7 about the transgender policy? 16:03

8 A. Not that I recall. 16:03

9 Q. Did the two of you discuss H.B. 3293 after 16:03

10 this text conversation at any point? 16:04

11 MS. GREEN: Object to the form. 16:04

12 THE WITNESS: Not that I recall. 16:04

13 MS. KANG: I'm just going to introduce one 16:04

14 last exhibit, Exhibit 14. 16:04

15 (Deposition Exhibit 14 was marked for 16:04

16 identification and is attached hereto.) 16:04

17 MS. KANG: Exhibit 14 is now available in 16:04

18 the Marked Exhibits folder. 16:04

19 BY MS. KANG: 16:04

20 Q. And let me know when you have it up. 16:04

21 THE WITNESS: That is 11. 16:04

22 MS. GREEN: Oh. I'm sorry. Uploaded 16:04

23 error there. 16:04

24 THE WITNESS: It was 9. Yeah. 16:04

25 There it is. 16:04

1 MS. GREEN: I'm sorry. 16:04

2 THE WITNESS: Okay. 16:05

3 BY MS. KANG: 16:05

4 Q. So on the first page that is Bates 16:05

5 Stamped -286, you will see it reads "Regional 16:05

6 Principals' Meetings." 16:05

7 What is the purpose of the Regional 16:05

8 Principals' Meetings? 16:05

9 A. It's when we make sure that any new rules, 16:05

10 we go over them. And then also -- most importantly, 16:05

11 they get their C&I cards, which are all the coaches 16:05

12 get in free to games. 16:05

13 And so that's the only reason why they 16:05

14 come to the meeting, sadly to say, not to hear me 16:05

15 speak. 16:06

16 Q. And apologies for my ignorance. But 16:06

17 what's a C&I card? 16:06

18 A. Courtesy and identification card. It's 16:06

19 like a free pass into all high school games. 16:06

20 Q. All right. Scroll down one page in 16:06

21 Exhibit 14 to the page Bates Stamped -287. 16:06

22 A. Is it the schedule? 16:06

23 Q. No. It's just the first -- 16:06

24 A. Regional Principals' Meeting? 16:06

25 Q. That's correct. 16:06



1 A. This would have been Cindy Daniel. 16:08

2 Q. And she is one of your -- 16:08

3 A. Assistant executive directors. 16:08

4 Q. So in the second bullet point here, it 16:08

5 says [as read]: 16:08

6 "WVSSAC's current position is that 16:08

7 gender is identified in WVEIS for 16:08

8 athletic participation purposes." 16:08

9 What does this mean? 16:08

10 A. Well, I think this was before the ruling 16:08

11 that B.P.J. could participate; so that we were still 16:08

12 reiterating it in our policy at the time until we 16:08

13 got the final ruling from the Department of Ed. 16:09

14 Q. Just to be clear, if someone's gender in 16:09

15 WVEIS is male, does that mean they would have to 16:09

16 play on the boys' team? 16:09

17 A. Yes. 16:09

18 Q. Before H.B. 3293 was enacted and under 16:09

19 your trans policy, did you just rely on the school's 16:09

20 determination of gender or would you go into WVEIS 16:09

21 and look at WVEIS? 16:09

22 A. We don't have access to WVEIS; so we 16:09

23 wouldn't be able to. And, to our knowledge, we 16:09

24 didn't have any other cases prior to this. 16:09

25 Q. So in this slide, when it says "the 16:09

1 current position is that gender is identified in 16:09  
2 WVEIS," would you have to depend on the school's 16:09  
3 determination? 16:09  
4 A. Yes. 16:09  
5 Q. Can the information in WVEIS for someone's 16:10  
6 gender be changed? 16:10  
7 MS. GREEN: Object to the form. 16:10  
8 THE WITNESS: I'm not sure what the rules 16:10  
9 are for WVEIS. 16:10  
10 BY MS. KANG: 16:10  
11 Q. Do you know who contributes information to 16:10  
12 WVEIS? 16:10  
13 MS. GREEN: Object to the form. 16:10  
14 THE WITNESS: Each school does, but I'm 16:10  
15 not sure, like, who in each school. 16:10  
16 BY MS. KANG: 16:10  
17 Q. Do you remember if this slide was 16:10  
18 discussed during the regional principals' meeting? 16:10  
19 A. Probably was. I would say yes. 16:10  
20 Q. What was discussed? 16:10  
21 MS. GREEN: Object to the form. 16:10  
22 THE WITNESS: Just what was on the slide, 16:10  
23 that current law is being challenged, and we were 16:10  
24 waiting for final ruling from the Department of Ed. 16:10  
25 ///

1 BY MS. KANG: 16:10

2 Q. Anything else? 16:10

3 A. As it relates to transgender as it relates 16:10

4 to this slide, you mean? 16:10

5 Q. That's correct. 16:11

6 A. I don't think there was anything more 16:11

7 discussed, from my knowledge. 16:11

8 MS. KANG: So I believe that is all my 16:11

9 questions. 16:11

10 I'm going to go off the record for about 16:11

11 five minutes or so and see if there's anything else 16:11

12 I need to ask. 16:11

13 But, otherwise, I think we're at the 16:11

14 finish line, Mr. Dolan. 16:11

15 THE WITNESS: Good. 16:11

16 THE VIDEOGRAPHER: Off the record. The 16:11

17 time is 4:11. 16:11

18 (Brief recess.) 16:17

19 THE VIDEOGRAPHER: Back on the record. 16:17

20 The time is 4:18. 16:17

21 MS. KANG: Mr. Dolan, I am finished asking 16:17

22 my questions. I will reserve the right to ask any 16:17

23 questions depending on other parties' questions. 16:18

24 I'll also reserve the right to ask questions if 16:18

25 there are changes in the errata. But otherwise I 16:18

1 think we're -- you're done with me for today. 16:18

2 THE WITNESS: Okay. Thank you. 16:18

3 THE VIDEOGRAPHER: Is there anybody else 16:18

4 with questions or should I go ahead and close out? 16:18

5 MR. SCRUGGS: This is Jonathan Scruggs for 16:18

6 the intervenor. No questions from us. 16:18

7 MS. MORGAN: This is Kelly Morgan. 16:18

8 No questions for the State Board and 16:18

9 Superintendent Burch. 16:18

10 MR. CROPP: This is Jeffrey Cropp for 16:18

11 Harrison County Board of Education and Dora Stutler. 16:18

12 16:18

13 EXAMINATION 16:18

14 BY MR. CROPP: 16:18

15 Q. I just have a couple of follow-up 16:18

16 questions, Mr. Dolan. 16:19

17 A. Okay. 16:19

18 Q. Regarding Exhibit 6, which is the 16:19

19 transgender policy, was a copy of that policy ever 16:19

20 distributed to the member schools? 16:19

21 A. I don't believe so. 16:19

22 Q. Okay. Was a copy of the transgender 16:19

23 policy ever given to the principals? 16:19

24 A. I don't believe so. 16:19

25 Q. Was a copy of that transgender policy ever 16:19

1 given to the County Boards of Education? 16:19

2 A. I don't believe so. 16:19

3 Q. Was a copy of the transgender policy ever 16:19  
4 given to the county superintendents? 16:19

5 A. I don't believe so. 16:19

6 Q. You mentioned that -- at a regional 16:19  
7 meeting that that policy was reviewed with the 16:19  
8 principals who attended the -- that meeting. 16:19

9 But my question is, is that -- was that 16:19  
10 just at the first meeting where the policy was 16:19  
11 introduced, or did you go over that policy every 16:19  
12 regional meeting after it was introduced? 16:19

13 MS. GREEN: Object to the form. 16:19

14 THE WITNESS: Normally, we would -- you 16:20  
15 mean each year? Or do you mean, like, when we do 16:20  
16 ten of them, was it brought up at each ten? 16:20

17 BY MR. CROPP: 16:20

18 Q. Each year. So it was introduced in one 16:20  
19 year. My question is at the subsequent years -- did 16:20  
20 you go over that policy during the subsequent years 16:20  
21 at that -- at all ten regional meetings? 16:20

22 A. I would say it was -- I don't know when it 16:20  
23 came off, but it was on the agenda for a number of 16:20  
24 years, yes. 16:20

25 Q. Whether you say -- 16:20



1 I did hear that there will be an errata 16:21

2 sheet. So is the witness reviewing? 16:21

3 MS. GREEN: Yes. We'll read and sign. 16:21

4 And if I could -- 16:21

5 This is Roberta Green. 16:21

6 So if I could please have it sent to me, 16:21

7 and I'll get with Mr. Dolan. 16:21

8 THE REPORTER: Thank you. 16:21

9 THE VIDEOGRAPHER: Thank you. 16:21

10 We are off the record at 4:22 p.m. EST, 16:21

11 and this concludes today's testimony given by 16:22

12 30(b)(6) Witness Bernie Dolan. The total number of 16:22

13 Media Units used was three. And will be retained by 16:22

14 Veritext Legal Solutions. 16:22

15 (Whereupon, at 4:22 p.m., the deposition

16 of BERNARD DOLAN was adjourned.)

17 --- oOo ---

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I, BERNARD DOLAN, hereby certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2022, at \_\_\_\_\_, California.

\_\_\_\_\_  
BERNARD DOLAN

30(b)(6) DEPOSITION

WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION

1 STATE OF CALIFORNIA )  
2 COUNTY OF LOS ANGELES ) SS.

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I, Dayna Hester, C.S.R. No. 9970, in  
and for the State of California, do hereby certify:

That, prior to being examined, the witness named  
in the foregoing deposition was by me duly sworn to  
testify to the truth, the whole truth, and nothing but the  
truth;

That said deposition was taken down by me in  
shorthand at the time and place therein named and  
thereafter reduced to typewriting under my direction, and  
the same is a true, correct, and complete transcript of  
said proceedings;

That if the foregoing pertains to the original  
transcript of a deposition in a Federal Case, before  
completion of the proceedings, review of the transcript  
{ XX } was { } was not required;

I further certify that I am not interested in  
the event of the action.

Witness my hand this 26th day of February,  
2022.



Certified Shorthand Reporter  
for the State of California

1 ROBERTA F. GREEN, ESQ.

2 RGREEN@SHUMANLAW.COM

3 February 28, 2022

4 RE: B.P.J. vs. WEST VIRGINIA STATE BOARD OF EDUCATION

5 February 11, 2022, BERNARD DOLAN, JOB NO. 5079532

6 The above-referenced transcript has been

7 completed by Veritext Legal Solutions and

8 review of the transcript is being handled as follows:

9 \_\_\_ Per CA State Code (CCP 2025.520 (a)-(e)) - Contact Veritext  
10 to schedule a time to review the original transcript at  
11 a Veritext office.

12 \_\_\_ Per CA State Code (CCP 2025.520 (a)-(e)) - Locked .PDF  
13 Transcript - The witness should review the transcript and  
14 make any necessary corrections on the errata pages included  
15 below, notating the page and line number of the corrections.  
16 The witness should then sign and date the errata and penalty  
17 of perjury pages and return the completed pages to all  
18 appearing counsel within the period of time determined at  
19 the deposition or provided by the Code of Civil Procedure.

20 \_\_\_ Waiving the CA Code of Civil Procedure per Stipulation of  
21 Counsel - Original transcript to be released for signature  
22 as determined at the deposition.

23 \_\_\_ Signature Waived - Reading & Signature was waived at the  
24 time of the deposition.

25

Page 164

1     \_x\_ Federal R&S Requested (FRCP 30(e)(1)(B)) - Locked .PDF  
2           Transcript - The witness should review the transcript and  
3           make any necessary corrections on the errata pages included  
4           below, notating the page and line number of the corrections.  
5           The witness should then sign and date the errata and penalty  
6           of perjury pages and return the completed pages to all  
7           appearing counsel within the period of time determined at  
8           the deposition or provided by the Federal Rules.  
9     \_\_ Federal R&S Not Requested - Reading & Signature was not  
10           requested before the completion of the deposition.

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1 B.P.J. vs. WEST VIRGINIA STATE BOARD OF EDUCATION  
2 BERNARD DOLAN (#5079532)

3 E R R A T A S H E E T

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## TRANSGENDER POLICY

### WVSSAC BOARD OF DIRECTORS

In the event a member school, or its governing authority, determines to permit transgender students to participate in interscholastic athletics, the WVSSAC has adopted the following policy to govern such participation:

#### I.

##### Definitions

*Transgender Student* – a student whose gender identity differs from the student's assigned sex at birth.

*Gender Identity* – a person's deeply-felt internal sense of being male or female.

#### II.

##### WVSSAC Transgender Student Policy

A Transgender Student shall be eligible to participate in interscholastic athletics in a manner consistent with a member school policy that meets the minimum standards designated by the WVSSAC Board of Directors policy.

The WVSSAC Board of Directors has designated the following as the minimum standards a member school must consider when determining whether a transgender student may participate in interscholastic athletics in a particular sport. A separate determination shall be made by the member school for each sport in which the student seeks to participate.

1. The transgender student's school shall make the initial determination as to whether a student may participate in interscholastic athletics in a gender that does not match the gender assigned to him or her at birth. When determining whether a transgender student is eligible to participate in interscholastic athletics in a manner consistent with the student's gender identity a member school must consider the following:
  - a. Whether the student is a "transgender student" as determined based upon applicable regulations and policies of the member school or its governing authority.
  - b. Whether the student meets all applicable academic and enrollment eligibility requirements.
  - c. Whether fair competition among high school teams would be impacted by the student's participation.
2. The determination of a student's gender assignment for interscholastic athletics shall remain in effect for the duration of the student's high school eligibility.
3. Any member school may appeal the eligibility of a transgender student on the grounds that the student's participation in interscholastic athletics would adversely affect competitive equity or safety of teammates or opposing players.
  - a. Any such appeal will be heard by the WVSSAC Board of Directors.
  - b. The identity of the student shall remain confidential. All discussion and documentation will be kept confidential and the proceedings will also be confidential unless the student and family make a specific request otherwise.
  - c. The WVSSAC Board of Directors will not consider whether the school has properly determined the student's sex assignment. The board's deliberations will be limited to the question of whether the transgender student represents a threat to competitive equity or the safety of teammates or opposing players. Factors to be considered will include, but not be limited to, the age of the student; the athletic experience of the student; the degree to which the student presents a risk of harm to other competitors due to his or her strength, size, or speed; the nature of the sport; and the degree to which fair competition among high school teams would be impacted by the student's participation.

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**[male - mother]**

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**[power - quantity]**

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**[question - repetitive]**

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## [s - september]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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*Disability Rights S.C. v. McMaster*

United States Court of Appeals for the Fourth Circuit

December 9, 2021, Argued; January 25, 2022, Decided

No. 21-2070

**Reporter**

2022 U.S. App. LEXIS 2292 \*; 24 F.4th 893

DISABILITY RIGHTS SOUTH CAROLINA; ABLE SOUTH CAROLINA; AMANDA MCDOUGALD SCOTT, individually and on behalf of P.S., a minor; MICHELLE FINNEY, individually and on behalf of M.F., a minor; LYUDMYLA TSYKALOVA, individually and on behalf of M.A., a minor; EMILY POETZ, individually and on behalf of L.P., a minor; SAMANTHA BOEVERS, individually and on behalf of P.B., a minor; TIMICIA GRANT, individually and on behalf of E.G., a minor; CHRISTINE COPELAND, individually and on behalf of L.C., a minor; HEATHER PRICE, individually and on behalf of H.P., a minor; CATHY LITTLETON, individually and on behalf of Q.L., a minor, Plaintiffs - Appellees, v. HENRY DARGAN MCMASTER, in his official capacity as Governor of South Carolina; ALAN WILSON, in his official capacity as Attorney General of South Carolina, Defendants - Appellants, and MOLLY SPEARMAN, in her official capacity as State Superintendent of Education; GREENVILLE COUNTY SCHOOL DISTRICT; HORRY COUNTY SCHOOL DISTRICT; LEXINGTON COUNTY SCHOOL DISTRICT ONE; OCONEE COUNTY SCHOOL DISTRICT; DORCHESTER COUNTY SCHOOL DISTRICT TWO; CHARLESTON COUNTY SCHOOL DISTRICT; PICKENS COUNTY SCHOOL DISTRICT, Defendants.AMERICAN ACADEMY OF PEDIATRICS; SOUTH CAROLINA CHAPTER OF AMERICAN ACADEMY OF PEDIATRICS; UNITED STATES OF AMERICA, Amici Supporting Appellees.

**Prior History:** [\*1] Appeal from the United States District Court for the District of South Carolina, at

Columbia. (3:21-cv-02728-MGL). Mary G. Lewis, District Judge.

*Disability Rights S.C. v. McMaster, 2021 U.S. Dist. LEXIS 185495, 2021 WL 4444841 (D.S.C., Sept. 28, 2021)*

**Disposition:** VACATED IN PART, REMANDED WITH INSTRUCTIONS.

**Counsel:** ARGUED: William Grayson Lambert, OFFICE OF THE GOVERNOR OF SOUTH CAROLINA, Columbia, South Carolina, for Appellants.

John A. Freedman, ARNOLD & PORTER KAYE SCHOLER LLP, Washington, D.C., for Appellees.

ON BRIEF: Alan Wilson, Attorney General, Robert D. Cook, Solicitor General, J. Emory Smith, Jr., Deputy Solicitor General, OFFICE OF THE ATTORNEY GENERAL OF SOUTH CAROLINA, Columbia, South Carolina, for Appellant Attorney General Wilson.

Thomas A. Limehouse, Jr., Chief Legal Counsel, Michael G. Shedd, Deputy Legal Counsel, OFFICE OF THE GOVERNOR OF SOUTH CAROLINA, Columbia, South Carolina, for Appellant Governor McMaster.

David Allen Chaney Jr., AMERICAN CIVIL LIBERTIES UNION OF SOUTH CAROLINA, Charleston, South Carolina; Adam Protheroe, SOUTH CAROLINA APPLESEED LEGAL JUSTICE CENTER, Columbia, South Carolina; B. Randall Dong, Anna Maria Conner, Amanda C. Hess, DISABILITY RIGHTS SOUTH CAROLINA, Columbia, South Carolina; Rita Bolt

Barker, WYCHE, P.A., Greenville, South Carolina; Elisabeth S. Theodore, Anthony [\*2] J. Franze, Tara Williamson, ARNOLD & PORTER KAYE SCHOLER LLP, Washington, D.C.; Louise Melling, Jenessa Calvo Friedman, New York, New York, Susan Mizner, AMERICAN CIVIL LIBERTIES UNION FOUNDATION, San Francisco, California, for Appellees.

Jeffrey B. Dubner, Jessica Anne Morton, Samara M. Spence, Sean A. Lev, DEMOCRACY FORWARD FOUNDATION, Washington, D.C., for Amici South Carolina Chapter of American Academy of Pediatrics and American Academy of Pediatrics.

Kristen Clarke, Assistant Attorney General, Bonnie I. Robin-Vergeer, Alisa C. Philo, Sydney A.R. Foster, Appellate Section, Civil Rights Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; Elizabeth M. Brown, General Counsel, Francisco Lopez, Mary Rohmiller, Office of the General Counsel, UNITED STATES DEPARTMENT OF EDUCATION, Washington, D.C.; M. Rhett DeHart, Acting United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, South Carolina, for Amicus United States.

**Judges:** Before NIEMEYER, WYNN, and THACKER, Circuit Judges. Judge Thacker wrote the opinion, in which Judge Niemeyer joined. Judge Wynn wrote a dissenting opinion.

**Opinion by:** THACKER

## Opinion

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THACKER, Circuit Judge:

The South Carolina legislature included a provision in the [\*3] South Carolina state budget that prohibits school districts from using appropriated funds to impose mask mandates. Nine parents of students with disabilities who attend South Carolina public schools and two disability advocacy organizations filed suit against seven school

districts, the state superintendent of education, the governor, and the attorney general to challenge this law. The district court granted a preliminary injunction enjoining the law's enforcement, and the governor and the attorney general appealed.

Because we conclude that the parents and the disability advocacy organizations lack standing to sue the governor and the attorney general, we vacate the district court's order granting the preliminary injunction as to those defendants and remand with instructions to dismiss them from this case.

I.

In the appropriations act for the 2021-2022 fiscal year, the South Carolina General Assembly included a budget proviso that precludes primary and secondary schools' use of appropriated funds to impose mask mandates for students and staff:

No school district, or any of its schools, may use any funds appropriated or authorized pursuant to this act to require that its students and/or [\*4] employees wear a facemask at any of its education facilities. This prohibition extends to the announcement or enforcement of any such policy.

Act of June 21, 2021, pt. IB, § 1.108, *2021 S.C. Acts I*, 256 (the "Proviso"); *see* J.A. 144.<sup>1</sup>

For the school year immediately preceding the Proviso's enactment -- that is, the 2020-2021 school year -- the South Carolina Department of Education instituted a policy "requiring face coverings to be worn on school buses and within public school facilities." S.C. Dep't of Educ. Face Covering Guidelines for K-12 Public Schools (Aug. 3, 2020), <https://ed.sc.gov/state-board/state-board-of-education/additional-resources/south-carolina-department-of-education-face-covering-guidelines-for-k-12-public-schools/>. Shortly after the Proviso was ratified, however, South Carolina

<sup>1</sup>Citations to the "J.A." refer to the Joint Appendix filed by the parties in this appeal.

Superintendent of Education Molly M. Spearman ("Spearman") issued a memorandum to the superintendents of local school districts that explained, "The South Carolina Department of Education . . . interprets the [Proviso] to mean that school districts are prohibited from requiring students and employees to wear a facemask while in any of its educational facilities for the 2021-2022 school year. [\*5] . . . [D]istricts may not create or enforce any policy[] which would require the wearing of face coverings." J.A. 146.

Despite the Proviso and Spearman's interpretation of it, some school districts continued to follow universal masking requirements, consistent with medical guidance from the federal Centers for Disease Control and Prevention. In response, South Carolina Attorney General Alan Wilson ("Wilson") filed suit against the City of Columbia, South Carolina, asserting that its ordinances requiring masks to be worn in primary and secondary schools violated the Proviso. See *Wilson ex rel. State v. City of Columbia*, 434 S.C. 206, 863 S.E.2d 456 (S.C. 2021). The Supreme Court of South Carolina held that the Proviso was a valid exercise of the South Carolina General Assembly's legislative power and struck down the ordinances as inconsistent with the Proviso because "the enforcement provisions in the . . . ordinances make clear that school personnel -- paid at least in part with 'funds appropriated or authorized pursuant to the [2021-2022 Appropriations Act]' -- are responsible for enforcing the . . . mask mandate." *Id.* at 461, 462-63. The court nonetheless left open "the possibility that a local government could impose a mask mandate without contravening [the Proviso]." *Id.* at 461.

Thereafter, [\*6] a local school district, Richland County School District Two, which had not itself imposed a mask mandate but was subject to the ordinances struck down in *Wilson*, also filed suit challenging the Proviso. See *Richland Cnty. Sch. Dist. 2 v. Lucas*, 434 S.C. 299, 862 S.E.2d 920 (S.C. 2021). At issue in *Richland* was whether the Proviso prevented the school district "from (1)

apportioning its budget so that any mask requirement is funded by federal or local funds, (2) functionally announcing and enforcing a mask requirement without using any funding whatsoever, and (3) designating an employee or series of employees to enforce mask requirements who would be paid exclusively with federal or local funds." *Id.* at 924. The Supreme Court of South Carolina reiterated its *Wilson* holdings and specifically explained, "[The Proviso] prohibits the use of funds appropriated or authorized by the 2021-2022 Appropriations Act to announce or enforce a mask mandate. . . . [W]e do not reject the possibility that funds not appropriated or authorized by that act may be used to announce or enforce a mask mandate." *Id.*

On August 24, 2021, before the Supreme Court of South Carolina issued its decisions in *Wilson* and *Richland*, two nonprofit advocacy organizations for individuals with disabilities -- Disability Rights South Carolina [\*7] and Able South Carolina -- and nine parents of students with disabilities who attend South Carolina public schools (collectively, "Appellees") brought this action against Spearman, Wilson, seven local school districts --the Greenville County School District, the Horry County School District, Lexington County School District One, the Oconee County School District, Dorchester County School District Two, the Charleston County School District, and the Pickens County School District -- and South Carolina Governor Henry McMaster ("McMaster"), seeking to enjoin the Proviso's enforcement. Appellees contend that the Proviso prohibits local school districts from imposing mask mandates, which violates *Title II of the Americans with Disabilities Act* and *Section 504 of the Rehabilitation Act* because children with disabilities are at increased risk of severe symptoms from COVID-19 compared to other children, and without mask mandates for students and staff, children with disabilities cannot safely attend in-person schooling and are deprived of its benefits.

Several weeks after the Supreme Court of South Carolina issued its opinion in *Wilson*, and two days

before it issued its opinion in *Richland*, the district court in this case granted Appellees' [\*8] request for a preliminary injunction and enjoined the named defendants from enforcing the Proviso. McMaster and Wilson (collectively, "Appellants") - - but none of the other named defendants -- timely appealed the district court's order.

## II.

Our "judicial Power" extends only to "Cases" and "Controversies." *U.S. Const. art. III, § 2*. "Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy" that "limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016). "To satisfy the irreducible constitutional minimum of standing, a plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Deal v. Mercer Cnty. Bd. of Educ.*, 911 F.3d 183, 187 (4th Cir. 2018) (alterations and internal quotation marks omitted). Appellees, as "the part[ies] invoking federal jurisdiction, bear[] the burden of establishing these elements." *Spokeo, Inc.*, 578 U.S. at 338.

The existence of standing is a legal issue that we review de novo. *Buscemi v. Bell*, 964 F.3d 252, 258 (4th Cir. 2020) (citing *South Carolina v. United States*, 912 F.3d 720, 726 (4th Cir. 2019)). "When a question of standing is apparent, but was not raised or addressed in the lower court,<sup>2</sup> it is our

responsibility to raise and decide the issue sua sponte." [\*9] *Benham v. City of Charlotte*, 635 F.3d 129, 134 (4th Cir. 2011) (citing *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 480 (4th Cir. 2005)). "If we conclude that [Appellees'] lack of standing deprived the district court of jurisdiction, 'we have jurisdiction on appeal, not of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit.'" *Id.* (quoting *Stephens v. City of Albemarle*, 524 F.3d 485, 490 (4th Cir. 2008)).

## III.

Appellees do not have standing to pursue this action against Appellants. Even assuming Appellees possess standing against some of the individuals and entities named as defendants in this case, the standing inquiry must be evaluated separately as to each defendant. See *Bostic v. Schaefer*, 760 F.3d 352, 370-71 (4th Cir. 2014) ("The Plaintiffs' claims can therefore survive Schaefer's standing challenge as long as one couple satisfies the standing requirements with respect to each defendant."); see also *Calzone v. Hawley*, 866 F.3d 866, 869 (8th Cir. 2017) ("Article III standing to sue each defendant . . . requires a showing that each defendant caused [the plaintiff's] injury and that an order of the court against each defendant could redress the injury." (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992))); *Mahon v. Ticor Title Ins. Co.*, 683 F.3d 59, 62 (2d Cir. 2012) (rejecting plaintiff's argument that "Article III . . . permits suits against non-injurious defendants as long as one of the defendants in the suit injured the

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<sup>2</sup>Before the district court granted Appellees' motion for preliminary injunction, Wilson moved to dismiss this action for lack of standing, but the district court denied his motion. *Disability Rights S.C. v. McMaster*, No. 3:21-cv-02728-MGL, 2021 U.S. Dist. LEXIS 185497, 2021 WL 4449446 (D.S.C. Sept. 28, 2021). The district court held that Appellees' alleged injuries were "fairly traceable" to Wilson "due to his enforcement of [the Proviso]" via a letter he wrote to the City of Columbia threatening legal action against the ordinances that were the subject of the *Wilson* case before the Supreme Court of South Carolina. 2021 U.S. Dist. LEXIS 185497, [WL] at \*3. The district court also held, without further elaboration, that "a partial

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remedy for plaintiffs will satisfy the redressability prong here." *Id.* (citing *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 801, 209 L. Ed. 2d 94 (2021)). Wilson has not appealed the district court's order. See J.A. 297-98. However, since Appellants filed their notice of appeal, they both have filed motions to dismiss (Continued) Appellees' claims against them that assert lack of standing as a reason for dismissal. Governor McMaster's Motion to Dismiss Plaintiffs' Amended Complaint at 6-8, *Disability Rights S.C. v. McMaster*, No. 3:21-cv-2728-MGL (D.S.C. filed Oct. 22, 2021); Motion of Attorney General to Dismiss Amended Complaint at 1, *Disability Rights S.C. v. McMaster*, No. 3:21-cv-2728-MGL (D.S.C. filed Oct. 29, 2021). Those motions remain pending before the district court.

plaintiff').

[\*10] Appellees assert that the Proviso has injured them by increasing the risk that their disabled children will contract COVID-19, denying their children meaningful access to in-person education, and causing them to enroll their children in private schools that are not subject to the Proviso.<sup>3</sup> Although Appellees have alleged a nexus between their claimed injuries and the Proviso -- at least prior to the Supreme Court of South Carolina's decisions in Wilson ex rel. State v. City of Columbia, 434 S.C. 206, 863 S.E.2d 456 (S.C. 2021), and Richland County School District 2 v. Lucas, 434 S.C. 299, 862 S.E.2d 920 (S.C. 2021) -- they have not established that such injuries are fairly traceable to Appellants' conduct or would be redressed by a favorable ruling against Appellants.

A.

#### Traceability

A plaintiff's injury satisfies the traceability element of standing when there is "a causal connection between the injury and the [defendant's] conduct complained of by the plaintiff." Air Evac EMS, Inc. v. Cheatham, 910 F.3d 751, 760 (4th Cir. 2018) (internal quotation marks omitted). "While the defendant's conduct need not be the last link in the causal chain, the plaintiff must be able to demonstrate that the alleged harm was caused by the defendant, as opposed to the 'independent action of some third party not before the court.'" *Id.* (quoting Frank Krasner Enters., Ltd. v.

Montgomery Cnty., 401 F.3d 230, 234 (4th Cir. 2005)).

Appellees' traceability arguments focus on Superintendent of Education Spearman, who "directed that, pursuant to [the Proviso], 'school districts are *prohibited* from requiring students and employees to wear a facemask while in any of its educational facilities [\*11] for the 2021-22 school year,'" and one of the defendant school districts, the Greenville County School District, which "directly attributed its no-mask requirement to [the Proviso]." Appellees' Resp. Br. at 22. Critically, however, unlike the defendants that Appellees focus on, Appellants have not taken any action enforcing the Proviso relative to Appellees -- and Appellees do not assert that they plan to.

1.

Appellees' complaint alleges that McMaster signed the appropriations act containing the Proviso and "has publicly advocated for [the Proviso] to remain in effect and be vigorously enforced." J.A. 32. As we have made clear in the Eleventh Amendment context, however, "[t]he mere fact that a governor is under a general duty to enforce state laws does not make him a proper defendant in every action attacking the constitutionality of a state statute." Waste Mgmt. Holdings, Inc. v. Gilmore, 252 F.3d 316, 331 (4th Cir. 2001) (quoting Shell Oil Co. v. Noel, 608 F.2d 208, 211 (1st Cir. 1979)). The same is true with respect to "[t]he fact that [the governor] has publicly endorsed and defended the challenged statutes." *Id.* Rather, in order to be a proper defendant in an action to enjoin an allegedly unconstitutional state law, the governor must have "a specific duty to enforce" that law. *Id.*; see Hutto v. S.C. Ret. Sys., 773 F.3d 536, 550 (4th Cir. 2014) ("The Ex parte Young exception to Eleventh Amendment immunity applies [\*12] only where a party 'defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional' has 'some connection with the enforcement of the act.'" (quoting Ex parte Young, 209 U.S. 123, 157, 28 S. Ct. 441, 52 L. Ed. 714 (1908))).

<sup>3</sup> Appellees' claimed injuries focus on the plaintiff parents. Appellees do not endeavor to explain how the two plaintiff nonprofit disability advocacy organizations have been injured or have standing to sue. Still, "once it is established that at least one party has standing to bring the claim, no further inquiry is required as to another party's standing to bring that claim." Md. Shall Issue, Inc. v. Hogan, 971 F.3d 199, 209 (4th Cir. 2020) (citing Horne v. Flores, 557 U.S. 433, 446-47, 129 S. Ct. 2579, 174 L. Ed. 2d 406 (2009); Watt v. Energy Action Educ. Found., 454 U.S. 151, 160, 102 S. Ct. 205, 70 L. Ed. 2d 309 (1981)). We therefore do not analyze whether the plaintiff organizations have standing to bring this action.

These principles apply with equal force in the standing context. See Okpalobi v. Foster, 244 F.3d 405, 426 (5th Cir. 2001) (en banc) ("The requirements of Lujan are entirely consistent with the long-standing rule that a plaintiff may not sue a state official who is without any power to enforce the complained-of statute."). To establish standing, "[a] plaintiff who challenges a statute must demonstrate a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289, 298, 99 S. Ct. 2301, 60 L. Ed. 2d 895 (1979) (emphasis supplied) (citing O'Shea v. Littleton, 414 U.S. 488, 494, 94 S. Ct. 669, 38 L. Ed. 2d 674 (1974)). When a defendant has no role in enforcing the law at issue, it follows that the plaintiff's injury allegedly caused by that law is not traceable to the defendant.

The dissent suggests that we should reject McMaster's assertion that he has no authority to enforce the Proviso because McMaster has also argued in this appeal that he would be irreparably harmed by an injunction barring the Proviso's enforcement. *Post* at 34-35. The dissent views this argument as an "admission" that McMaster can enforce the Proviso. *Id.* But even if we accept [\*13] this so-called "admission," it is based on nothing more than McMaster's status as the Governor of South Carolina and his general duty to execute state laws. As we have just explained, and as the dissent recognizes, *see id.* at 33, this general duty does not make McMaster a proper defendant in this action.

Moreover, the dissent overlooks the most critical fact in the case at this point --Appellees bear the burden to demonstrate that they have standing to sue McMaster. Spokeo, Inc. v. Robins, 578 U.S. 330, 338, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016). And they have failed to do so. Appellees do not even purport to allege that McMaster has any duty to enforce the Proviso or that he has attempted to enforce it in a manner that directly affects them. They certainly do not argue, as the dissent does, that there are unresolved factual issues or questions

of state law that first need to be evaluated by the district court before we can determine that McMaster is not equipped with the authority to enforce the Proviso. Therefore, Appellees have not demonstrated that their alleged injuries caused by the Proviso are fairly traceable to McMaster.

2.

By contrast, Appellees' complaint alleges that Wilson has authority to enforce the Proviso and has filed suit against the City of Columbia [\*14] to declare its ordinances imposing mask mandates in primary and secondary schools invalid because of the Proviso. J.A. 32; *see Wilson ex rel. State v. City of Columbia*, 434 S.C. 206, 863 S.E.2d 456 (S.C. 2021). But, significantly, the City of Columbia was not a defendant in this action below, and counsel for Appellees acknowledged at oral argument that none of the plaintiff parents in this case have children who attend school there. Oral Argument at 35:27-35:53, *Disability Rights S.C. v. McMaster*, No. 21-2070 (4th Cir. Dec. 9, 2021), <http://www.ca4.uscourts.gov/oral-argument/listen-to-oral-arguments>. Appellees have also not alleged that any of the districts where their children attend school have rescinded a mask mandate pursuant to a threat from Wilson that he would seek to enforce the Proviso to void that mask mandate.

The dissent asserts that we "fail[] to appreciate the predictable chilling effect" that Wilson's enforcement of the Proviso against the City of Columbia has on other school districts that seek to impose mask mandates. *Post* at 32 n.8. But the dissent's contention "that Wilson's efforts to enforce the Proviso for some districts chilled other school districts from imposing their own mask mandates," *id.*, has not borne out to be true. As detailed below, [\*15] to date, very few school districts in South Carolina have implemented mask mandates, even after the district court in this case enjoined the Proviso's enforcement. This indicates that the claimed "chilling effect" is not as strong as the dissent suggests.

When a criminal statute is at issue, a plaintiff has

standing to sue if he shows that "there exists a credible threat of prosecution" pursuant to that statute. Babbitt, 442 U.S. at 298. However, "imaginary or speculative" fears of prosecution are not sufficient to convey standing. *Id.* Although the Proviso is not a criminal statute, these principles are nonetheless pertinent in this case. Essentially, Appellees have not demonstrated a "credible threat" that Wilson will enforce the Proviso in a manner that directly affects them. Therefore, even if we agree with the dissent that Wilson has made some implausible arguments about his ability or intentions to enforce the Proviso, the connection between Appellees' claimed injuries and Wilson's enforcement of the Proviso against the City of Columbia is weak, and Appellees have not established that those claimed injuries are fairly traceable to Wilson.

B.

#### Redressability

"An injury is redressable if it is 'likely, as opposed [\*16] to merely speculative, that the injury will be redressed by a favorable decision.'" Doe v. Va. Dep't of State Police, 713 F.3d 745, 755 (4th Cir. 2013) (quoting Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167, 181, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000)), cert. denied, 572 U.S. 1015, 134 S. Ct. 1538, 188 L. Ed. 2d 556 (2014). A plaintiff's burden to establish redressability "is not onerous": he must only "show that [he] personally would benefit in a tangible way from the court's intervention." Deal, 911 F.3d at 189 (quoting Sierra Club v. U.S. Dep't of the Interior, 899 F.3d 260, 284 (4th Cir. 2018)). To that end, "[t]he removal of even one obstacle to the exercise of one's rights, even if other barriers remain, is sufficient to show redressability." *Id.* at 190 (quoting Sierra Club, 899 F.3d at 285). But redressability is "problematic when third persons not party to the litigation must act in order for an injury to arise or be cured." Doe, 713 F.3d at 755.

An order enjoining Appellants' enforcement of the

Proviso would not redress Appellees' claimed injuries. As we have already explained, McMaster has no responsibility for enforcing the Proviso, so such an order would have no effect on his conduct. And Wilson has neither implemented nor threatened to implement his enforcement authority against the districts where Appellees' children attend school, so it is wholly speculative that proscribing his ability to enforce the Proviso would cause the school districts where Appellees' children attend school to impose mask mandates and thereby enable Appellees' [\*17] children to return to classes in person.

In fact, counsel for Appellants represented at oral argument that even with the injunction in place, the overwhelming majority of school districts in South Carolina have not imposed universal masking for students and staff. Oral Argument at 54:15-54:30, *Disability Rights S.C. v. McMaster*, No. 21-2070 (4th Cir. Dec. 9, 2021), <http://www.ca4.uscourts.gov/oral-argument/listen-to-oral-arguments>. Appellees' children do not attend school in any of the districts that have imposed mask mandates since the injunction was issued, although two children have returned to in-person schooling as a result of a "citywide [mask] mandate." See Appellees' Resp. Br. at 25. This suggests that the Proviso -- and Wilson's onetime enforcement of it against a municipality where none of Appellees' children attend school -- is not the significant barrier to universal masking in the schools Appellees' children attend that Appellees contend it is.

Moreover, as the Supreme Court of South Carolina made clear in Wilson and Richland, the Proviso does not prohibit a school district from imposing a mask mandate. This, of course, is contrary to Appellees' interpretation of the Proviso in their complaint, which was filed before the decisions in those cases were issued. [\*18] But consistent with that interpretation, Appellees sought, in part, relief preventing Appellants from "prohibiting school districts from requiring masks for their students and staff" via their enforcement of the Proviso. J.A. 57.

Arguably, Wilson and Richland have already provided Appellees this relief: Following these decisions, a school district can, in fact, use funds other than those appropriated in the 2021-2022 appropriations act to implement a mask mandate. Indeed, at least one school district -- the Charleston County School District, which was named as a defendant below -- has done so, although its initial mask mandate was lifted beginning November 10, 2021. *See* Update on CCSD Board of Trustees' Decision About Face Coverings, Charleston County School District (last visited Jan. 13, 2022), <https://www.ccsdschools.com/site/default.aspx?PageType=3&DomainID=4&ModuleInstanceID=488&ViewID=6446EE88-D30C-497E-9316-3F8874B3E108&RenderLoc=0&FlexDataID=32769&PageID=1>. In response to increasing COVID-19 cases in the area, the Charleston County School District also imposed a temporary mask mandate in effect from January 4 until January 14, 2022. *See* Facemasks Enforcement, Charleston County School District [\*19] (last visited Jan. 13, 2022), <https://www.ccsdschools.com/facemasks>. Clearly, the school districts where Appellees' children attend school have chosen not to impose ongoing mask mandates. This demonstrates that ultimately, the injunction enjoining Appellants' enforcement of the Proviso has not served to return Appellees' children to the classroom, which is the only way Appellees assert their claimed injuries can be redressed. Therefore, Appellees have not established that an order enjoining Appellants' enforcement of the Proviso would redress their claimed injuries.

IV.

For the foregoing reasons, we vacate the district court's order as it relates to Appellants and remand this action to the district court with instructions to dismiss Appellees' claims against Appellants for lack of standing.

VACATED IN PART, REMANDED WITH INSTRUCTIONS

**Dissent by:** WYNN

## Dissent

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WYNN, Circuit Judge, dissenting:

The Appellants in this matter are Henry McMaster in his capacity as the Governor of South Carolina and Alan Wilson in his capacity as Attorney General for South Carolina ("McMaster and Wilson"). The Appellees in this matter are disability-rights groups, parents, and South Carolina public school students with medical disabilities, [\*20] but like my colleagues in the majority, I address only whether the plaintiff-parents have standing to sue individually and on behalf of their children ("Parents"). *See* Majority Op. at 10 n.3 ("Appellees do not endeavor to explain how the two plaintiff nonprofit disability advocacy organizations have been injured or have standing to sue.").

McMaster and Wilson urge us to conclude that the Parents lack standing to sue them. But McMaster and Wilson's inconsistent—and demonstrably false—arguments must be rejected. Because I believe that the Parents have standing to enjoin McMaster and Wilson from enforcing a clearly discriminatory budget proviso, I must, respectfully, dissent.

I.

To establish standing, a plaintiff must show "(1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Env't Servs.*, 528 U.S. 167, 180-81, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)).

The Parents persuasively allege that they and their children are injured by South Carolina budget

proviso § 1.108 ("the Proviso").<sup>1</sup> The [\*21] Proviso states that "[n]o school district, or any of its schools, may use any funds appropriated or authorized pursuant to [the 2021-2022 Appropriations Act] to require that its students and/or employees wear a facemask at any of its education facilities."<sup>2</sup> 2021 S.C. Acts No. 94, pt. IB, § 1.108. This prohibition also extends "to the announcement or enforcement of any such policy." *Id.*

The Parents produced convincing record evidence showing that (1) a prohibition on mask mandates increases their children's risk of contracting COVID-19; and (2) disabled students like the Parents' children are more susceptible to contract and suffer serious effects from COVID-19. Under our precedent, there is "no doubt" that this "increased risk . . . constitutes cognizable harm."<sup>3</sup> *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 160 (4th Cir. 2000) (en banc); see also, e.g., *ARC of Iowa v. Reynolds*, No. 4:21-CV-00264, 2021 U.S. Dist. LEXIS 172685, 2021 WL 4166728, at \*7 (S.D. Iowa Sept. 13, 2021) (finding disabled students alleged a "concrete and particularized injury" from the operation of a ban on school mask mandates).

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<sup>1</sup> The majority opinion does not dispute that the Parents have alleged an adequate injury. See Majority Op. at 10.

<sup>2</sup> Though the Proviso refers to "school district[s]" and "schools," I refer to them collectively as "school districts."

<sup>3</sup> The Parents also allege that the Proviso effectively denies disabled students meaningful access to in-person education and financially harms parents by forcing them to enroll their children in more expensive schools. They claim that these injuries are "independent" of the increased risk of contracting COVID. Response Br. at 21. Not so. If there was no increased threat of contracting COVID, then the Parents could not manufacture an "independent" injury by pulling their children out of class or enrolling them in different schools. Of course, there could be other reasons parents might make such decisions that would support an injury, but the Parents have not alleged any such reasons. Cf. *Deal v. Mercer Cnty. Bd. of Educ.*, 911 F.3d 183, 190 (4th Cir. 2018) (noting, in the *First Amendment Establishment Clause* context, that a student's "feelings of marginalization" by a school can "constitute an independently actionable injury").

McMaster and Wilson wisely focus their arguments instead on the causation and redressability requirements. After all, "when the plaintiff is not himself the object of the government action or inaction he challenges," causation and redressability are "ordinarily [\*22] substantially more difficult to establish." *Lujan*, 504 U.S. at 562 (citation and internal quotation marks omitted). That is the situation here: the Parents are complaining about the Proviso's regulation of third parties—the school districts—not the Proviso's regulation of the Parents or their children directly.

But while it may be more difficult to establish causation and redressability in such a situation, "standing is not precluded." *Id.* In fact, it is well established that a plaintiff may properly allege an "injury produced by *determinative or coercive effect* upon the action of someone else." *Bennett v. Spear*, 520 U.S. 154, 169, 117 S. Ct. 1154, 137 L. Ed. 2d 281 (1997) (emphasis added). This coercive effect need not be certain to succeed; so long as a plaintiff can show that their injury flows from "the *predictable* effect of Government action on the decisions of third parties," the elements of standing are satisfied. *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2566, 204 L. Ed. 2d 978 (2019) (emphasis added). And it is certainly "predictable" here that school districts forbidden from using state funds to impose mask mandates will not impose such mandates—especially when Attorney General Wilson has already demonstrated a marked willingness to sue to enforce compliance with the Proviso.

Nonetheless, McMaster and Wilson counter that this relatively [\*23] straightforward conclusion is improper for three reasons. None are persuasive.

A.

McMaster and Wilson first claim that the Proviso does not do what it was clearly intended to do: bar school districts from requiring, announcing, or enforcing mask mandates *period*. They seize on the fact that the Proviso, by its terms, "prevents *only* the use of *state-authorized* or-appropriated funds to

announce o[r] enforce [mask] mandates." Opening Br. at 13 (emphases added). Thus, according to McMaster and Wilson, school districts still have the option of using "*federal or local* funds, rather than *state* funds, if they [wish] to enforce a mask mandate." Reply Br. at 7 (emphases added). And since the "Proviso does not actually prohibit all mask mandates in public schools," they argue that we cannot trace the Parents' injuries to McMaster and Wilson's enforcement of the Proviso or find those injuries would likely be redressed by enjoining said enforcement. Opening Br. at 13-14.

This argument is flatly inconsistent with prior statements made by nearly every entity to consider the Proviso. To start, Harvey Peeler, Jr., President of the South Carolina Senate, and Jay Lucas, Speaker of the South Carolina House, [\*24] have stated that the Proviso—which is fittingly entitled a "Mask Mandate Prohibition," 2021 S.C. Acts No. 94 § 1.108—"is clear and unambiguous": it "*prohibits face-covering mandates* in public schools no matter where in the state they are located," J.A. 200 (emphasis added). Similarly, the U.S. Secretary of Education believes the Proviso categorically "*prohibit[s]* local [school districts] from adopting requirements for the universal wearing of masks." J.A. 214 (emphasis added). So does South Carolina's Director of Health and Environmental Control. *See* J.A. 40 (observing that the Proviso "*prohibits* the implementation of mask mandates in schools" (emphasis added)).

Even the other defendants in the case below—South Carolina Superintendent of Education Molly Spearman and several school districts—have interpreted the Proviso "to mean that school districts are *prohibited* from requiring students and employees to wear a facemask while in any of its educational facilities for the 2021-22 school year." J.A. 146 (statement of Superintendent Spearman) (emphasis added); *accord Safe Return to In-Person Instruction & Continuity of Services Plan*, Greenville Cnty. Sch. Dist. (2021), <https://www.greenville.k12.sc.us/greerhs/Upload/Uploads/SafeReturntoInPersonInstructi> [\*25]

on82020[1].pdf ("[M]asks cannot be required under a State Budget Proviso."); *Back-to-School 2021-22 FAQs*, Horry Cnty. Schs. (Aug. 26, 2021), <https://www.horrycounty-schools.net/Page/16552> ("According to South Carolina Law (Proviso 1.108), neither students nor employees can be required by a public school district to wear a face mask at any of its educational facilities.").

Governor McMaster and Attorney General Wilson are not exceptions. For months, they argued in letters, public statements, and legal filings—including documents filed with the court below—that the "Proviso simply prohibits mask mandates in public schools." D. Ct. Docket No. 58 at 2-3 (Governor McMaster legal memorandum) (emphasis omitted);<sup>4</sup> *accord* D. Ct. Docket No. 55 at 6 (Attorney General Wilson legal memorandum) ("Proviso 1.108 . . . prohibits mask mandates by school districts."); *see also* J.A. 114 ("The terms of the Proviso . . . overwhelmingly demonstrate the legislature's intent that schools funded with State appropriations must not impose or implement mask mandates." (quoting Attorney General Wilson's Pet. for Original Jurisdiction and Expedited Consideration at 13, *Wilson ex rel. State v. City of Columbia*, 434 S.C. 206, 863 S.E.2d 456 (S.C. 2021) (No. 2021-000889) [hereinafter "Wilson Petition"])); [\*26] J.A. 107 ("The Proviso is quite clear that masks are not to be mandated by government for the schools of this State." (quoting Wilson Petition at 6)); J.A. 192 (statement of Governor McMaster) ("State law now prohibits school administrators from requiring students to wear a mask.").

The reason why all these sophisticated parties believed—and evidently still believe, *see infra*—that the Proviso effectively bans mask mandates is obvious: while the Proviso may only bar the use of state funding for mask mandates, it is "nearly impossible to entirely separate activity within

<sup>4</sup>D. Ct. Docket No. \_\_" refers to documents filed in the underlying matter, *Disability Rts. S.C. v. McMaster*, No. 3:21-02728-MGL (D.S.C.).

public schools from state-appropriated funds." Meg Kinnard, *Gov. SC Law 'Very Clear' in Banning School Mask Mandates*, Associated Press (Aug. 6, 2021), <https://apnews.com/article/business-health-coronavirus-pandemic-only-on-ap-d59d210e30de0b7b39a3b8b9d4666437> (paraphrasing Governor McMaster); *see also* J.A. 188-97 (media sources discussing the purpose of the Proviso as expressed by Governor McMaster).

Governor McMaster recognized as much in filings with the district court, where he acknowledged that "while it is theoretically possible that a local government could impose a mask mandate [\*27] without running afoul of the Proviso, practically speaking, *virtually any enforcement or announcement of a mask mandate in a public school would require some use of state-appropriated funds.*" D. Ct. Docket No. 58 at 3 n.1 (emphasis added).

Similarly, in briefing before the Supreme Court of South Carolina, Attorney General Wilson wrote that "[t]he Proviso *cannot be avoided* through a bookkeeping ploy such as the use of federal or local funds." Brief for Petitioner at 6, [\*Wilson\*, 863 S.E.2d 456](#) (No. 2021-000889) (emphasis added); *accord id.* at 14 ("Other funds such as federal monies or local revenues or the provision of masks cannot circumvent the prohibition of a mask mandate."); *see also* J.A. 114 (arguing that the "expenditure of public funds will necessarily be involved in a school district's" attempt to enforce a City of Columbia mask mandate, "even if the City provide[d] the masks" to the schools (quoting Wilson Petition at 13)). He further argued that "[i]f Petitioners *could* evade the Proviso, based upon a bookkeeper's tracing of the funding source, the law would be *eviscerated* and the appropriations power marginalized." Brief for Amicus Att'y Gen. Wilson at 5, *Richland Cnty. Sch. Dist. 2 v. Lucas*, 434 S.C. 299, 862 S.E.2d 920 (S.C. 2021) (No. 2021-000892) (emphases added). Thus, [\*28] if we take McMaster and Wilson at their word, the Proviso *is* the source of the Parents' injuries because it forbids school districts from enforcing *virtually any* mask

mandate and "cannot be avoided through the back door" use of federal or local funding. *Id.*

Fast-forward a few months and McMaster and Wilson now claim that the "Proviso does not actually prohibit all mask mandates in public schools," Opening Br. at 13, and that given the availability of "federal and local funds, it is hard to fathom that a [school] district that wanted to enact a mask mandate could not do so," Reply Br. at 12 n.2. According to McMaster and Wilson, the reason for this stunning 180-degree reversal is the Supreme Court of South Carolina's decision in *Richland County School District 2 v. Lucas*. There, the court rejected a state constitutional challenge to the Proviso. [\*862 S.E.2d at 924\*](#). Along the way, it *declined* to hold that school districts could impose mask mandates "funded by federal or local funds"; instead, it simply noted that its opinion did "*not reject the possibility* that funds not appropriated or authorized by [the 2021-2022 Appropriations Act] may be used to announce or enforce a mask mandate." *Id.* (emphasis added). [\*29]

McMaster and Wilson seize on this "do not reject the possibility" language, arguing that the Supreme Court of South Carolina "has spoken" and held "that the Proviso does not actually prohibit all mask mandates in public schools." Opening Br. at 13; *see also id.* ("Whatever trepidation any district may have initially had about enacting one while the Proviso was in effect, [\*Richland\*](#) . . . necessarily removes it."); Reply Br. at 4-5 ("[T]his Court should take the S.C. Supreme Court at its word: The Proviso does not ban mask mandates in public schools . . ." (cleaned up) (citation omitted)); *id.* at 10 (arguing that the state Supreme Court "has left *no doubt* that mask mandates" are enforceable with federal or local funds (emphasis added)).

But that simply does not follow. Choosing not to reject the possibility of a proposition is not the same thing as accepting that proposition. For example, not rejecting the possibility that Bigfoot might exist surely does not mean accepting that Bigfoot *does* exist. *See* Courtney Taylor, *What 'Fail*

to Reject' Means in a Hypothesis Test, ThoughtCo. (Jan. 28, 2019), <https://www.thoughtco.com/fail-to-reject-in-a-hypothesis-test-3126424> (observing that as a matter of [\*30] mathematics and logic, the "failure to reject' a [proposition] should not be confused with acceptance"). Likewise, the Supreme Court of South Carolina's comment that it did not reject the possibility that a purely federally or locally funded mandate could be imposed does not mean that court endorsed or accepted that approach.

In fact, just weeks before its decision in *Richland*, the Supreme Court of South Carolina in *Wilson ex rel. State v. City of Columbia* likewise declined to "outright reject the possibility that a local government could impose a mask mandate without contravening [the] Proviso"—but nevertheless suggested that attempting to partition federal or local funds for a mask mandate would likely be an exercise in futility. *863 S.E.2d at 461* (emphasis added). The court noted that it "strains credulity" to argue that a mask mandate could be imposed on public schools "without any assistance from school personnel and without [expending] a penny of state funds."<sup>5</sup> *Id.* (emphases added).

After all, as Governor McMaster previously explained, "state funds permeate just about everything that the school [system] does." Kinnard, *supra*. That's why Attorney General Wilson believes that any "schools funded with State appropriations must not impose [\*31] or implement mask mandates." J.A. 114 (emphasis

added) (quoting Wilson Petition at 13).

The Supreme Court of South Carolina cases of *Wilson* and *Richland* did not change this calculus. At best, they left open the question of whether a purportedly federally or locally funded mandate would violate the Proviso. At worst, they suggested that it would be virtually impossible to impose such mandates "without [spending] a penny of state funds." *Wilson, 863 S.E.2d at 461*. Either way, there remains reason to doubt that school districts will be able to partition their funding streams in a way that avoids legal liability, which creates a predictable chilling effect on school districts that might otherwise consider implementing mask mandates.<sup>6</sup>

McMaster and Wilson counter that segregating funding streams is not as difficult as *Wilson* made it out to be. Reply Br. at 11. Perhaps so. But the Parents are not required to show that it would be impossible for school districts to impose mask mandates with the Proviso in place. They are merely required to show that the Proviso has a "predictable" coercive [\*32] effect on school districts. *Dept of Com., 139 S. Ct. at 2566* (emphasis added). And again, it is "predictable" that school districts barred from using state funds to impose mask mandates won't impose such mandates, especially given the uncertainty over whether the comingled nature of school funding

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<sup>5</sup> McMaster and Wilson argue that this language was aimed at the specific mask mandate in *Wilson*, "which sought to fine school officials for violations of the city's ordinance." Reply Br. at 4. Not so. The Supreme Court of South Carolina first found it improbable that the City of Columbia "will itself fund and enforce the mandate in the City's public schools" without "using any state-appropriated funds to do so." *Wilson, 863 S.E.2d at 461*. It then separately noted that, as a factual matter, the City's ordinance actually required school personnel to help enforce the mask mandate or face fines. *Id.* Therefore, the attempt by McMaster and Wilson to limit *Wilson* to its facts must fail—especially given that Governor McMaster himself has argued that *Wilson* should be read to apply broadly to bar "virtually any" mask mandate. D. Ct. Docket No. 58 at 3 n.1 (emphasis added).

<sup>6</sup> To be sure, at least one school district—Charleston County—tempted fate by purporting to implement a mask mandate using only federal or local funding after *Wilson* was decided. See *Update on CCSD Board of Trustees' Decision about Face Coverings*, Charleston Cnty. Sch. Dist., <https://tinyurl.com/nw2s9c3e> (last visited Jan. 5, 2022). But soon after, private plaintiffs sued to block the school district's mask mandate. See *Compl., Cooke v. Charleston Cnty. Sch. Dist.*, No. 2021-CP-10-04295 (S.C. Ct. Com. Pl.). And as support for their subsequent motion for a temporary restraining order, those plaintiffs cited a letter from Attorney General Wilson that (1) suggested that private litigants may sue to enforce the Proviso and (2) interpreted the *Wilson* decision as holding that the Proviso "leave[s] to parents the masking decision." Mot. for TRO, Ex. B at 2, *Cooke v. Charleston Cnty. Sch. Dist.*, No. 2021-CP-10-04295 (S.C. Ct. Com. Pl.) (emphasis added). Litigation is currently ongoing, but the plaintiffs recently filed a notice of voluntary dismissal without prejudice.

streams would make a federally or locally funded mandate vulnerable to legal challenge. *See, e.g.*, Chase Laudenslager, *Dorchester District Two Not Moving Forward with Mask Requirement Despite Majority Support*, Count on 2 News (Sept. 28, 2021), <https://www.counton2.com/news/local-news/dorchester-county-news/dorchester-district-two-not-moving-forward-with-mask-requirement-despite-majority-support/> (Dorchester School District Two noting the "difficult[y of] separat[ing] funds for [a mask mandate] due to comingling of funds" and "[l]egal challenges connected to [the] Proviso" as "support for not implementing a face covering requirement"). In the end, McMaster and Wilson never account for the predictable chilling effect that the Proviso, its enforcement by them, and their own statements have had on curbing school mask mandates.

Even setting aside their previous assertions that the Proviso bans *all* mask mandates in public schools, [\*33] McMaster and Wilson have taken inconsistent positions on this matter before *this* Court. To be sure, when it suits them, McMaster and Wilson eagerly argue that since federal and local funding is available, school districts retain "the *ultimate authority* to decide whether to require all teachers, students, staff, and visitors to wear masks." Supp. Br. at 17-18 (emphasis added); *see also* Reply Br. at 9 (opining that "the decision whether to enact a mask mandate remains where it has always been: with the school districts"); Opening Br. at 13 (arguing whether students will be required to wear masks "turns on what that school district chooses to do").

But in the same breath, McMaster and Wilson repeatedly state that the "Proviso represents the General Assembly's preference to leave the *ultimate decision* on whether children wear masks in schools *to parents, rather than have [schools] decide* whether children must wear masks." Supp. Br. at 5 (emphases added) (citation and internal quotation marks omitted); *accord id.* ("The state legislature has elected to leave the decision [over masking] to parents." (quoting *Wilson, 863 S.E.2d*

*at 459*)); Reply Br. at 13 ("[T]he Proviso represents 'the policy of the state legislature [\*34] to leave to parents the masking decision' . . . ." (quoting *Wilson, 863 S.E.2d at 459*)); *see also* D. Ct. Docket No. 58 at 8 ("[T]he Governor's consistent message about masks in schools is that parents should have the ultimate say in whether their children wear masks."). But if *parents* have ultimate decision-making authority over whether their children wear masks at school, then *school districts* must lack the ability to impose mask mandates. McMaster and Wilson cannot have it both ways.

In sum, McMaster and Wilson have spent months telling the public, school districts, state courts, and federal courts that the Proviso leaves school districts with no choice: they cannot impose mask mandates, period. McMaster and Wilson have also forcefully argued that any attempt to work around the Proviso by using federal and local funds must fail, since it would be virtually impossible to enforce any mandate without spending a penny of state funds.

Now McMaster and Wilson shamelessly claim exactly the opposite: school districts can still decide to impose mandates, and federal and local funds can easily be used to enforce such mandates. As a result, they argue, the injuries alleged by the Parents are due to the independent decisions [\*35] made by each school district to impose or not impose a mandate—not the entirely predictable effects of the Proviso or their enforcement of the Proviso. We should not condone this blatant—and convenient—flip-flopping.

B.

A similar flip-flopping gambit underlies McMaster and Wilson's second argument against causation and redressability. To wit, they claim that under our related *Eleventh Amendment* jurisprudence, "a proper defendant must be an official who has 'some connection with the enforcement of the act.'" Supp. Br. at 13 (quoting *Ex parte Young, 209 U.S. 123, 157, 28 S. Ct. 441, 52 L. Ed. 714 (1908)*). And they contend neither the "Governor's general authority"

as the State's chief executive [nor] 'the Attorney General's role as a legal advisor'" are sufficiently connected to the enforcement of the Proviso "to make them proper defendants" in this action. *Id.* (quoting *Doyle v. Hogan*, 1 F.4th 249, 255 (4th Cir. 2021)). Remarkably, in proceedings below, Attorney General Wilson went so far as to say that he "has *no* enforcement responsibility as to the Proviso." D. Ct. Docket No. 55 at 1 (emphasis added). And since McMaster and Wilson are not connected to the enforcement of the Proviso, their argument goes, their actions cannot truly be the cause of the Parents' injuries, nor would enjoining them redress those injuries. [\*36]<sup>7</sup>

That argument flies in the face of McMaster and Wilson's previous statements and actions. Only a few months ago, Attorney General Wilson told the Supreme Court of South Carolina, in no uncertain terms, that "it is the Attorney General's role to bring to the Court's attention violations of the Constitution and the rule of law." J.A. 116 (quoting Wilson Petition at 15). For that reason, "the executive branch, via the Attorney General, *must enforce*" the Proviso's "prohibiti[on] [on] mask mandates in the schools." J.A. 112-13 (emphasis added) (quoting Wilson Petition at 11-12).

True to his word, Attorney General Wilson then sued the City of Columbia to enforce the Proviso in *Wilson* and joined in the defense of the Proviso as an amicus in *Richland*. But "Wilson cannot take such action to specifically enforce the laws at issue and then hope to [defeat causation and redressability] under a theory that he simply has"

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<sup>7</sup>McMaster and Wilson baldly claim that a "self-executing funding decision like the Proviso has *no official* subject to federal jurisdiction charged with enforcing it, so there is *no way* for a federal court to review the [Proviso]" at all. Supp. Br. at 13 (emphases added). In other words, no one could *ever* have standing to sue to enjoin the enforcement of the Proviso and budget provisions like it, no matter how blatantly unlawful or unconstitutional they may be. The majority opinion does not address this breathtakingly broad argument, which would seemingly allow state officials to have their cake and eat it too: they can sue to enforce the Proviso when they wish but then retreat behind the fact that the Proviso does not specifically *charge* them with enforcing it when sued themselves.

no ability or responsibility to enforce the Proviso.<sup>8</sup> *Bradacs v. Haley*, 58 F. Supp. 3d 499, 513 (D.S.C. 2014) (criticizing Attorney General Wilson for a similar about-face).

Attorney General Wilson weakly counters that the "Attorney General's suit to invalidate Columbia's

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<sup>8</sup>The majority opinion fails to appreciate the predictable chilling effect of Attorney General Wilson's enforcement efforts. Though it acknowledges that a state official may be properly sued if they have "some connection with the enforcement of the [Proviso]"—which Wilson obviously does—it faults the Parents for failing to *also* show that "any of the districts where their children attend school have rescinded a mask mandate pursuant to a threat from Wilson that he would seek to enforce the Proviso to void that mask mandate." Majority Op. at 12, 14 (quoting *Hutto v. S.C. Ret. Sys.*, 773 F.3d 536, 550 (4th Cir. 2014)).

In effect, the majority opinion is asking for the Parents to produce a smoking gun when Article III only requires that their injuries be "fairly traceable" to McMaster and Wilson's enforcement efforts. See *Gaston Copper*, 204 F.3d at 161 ("[T]raceability does not mean that plaintiffs must show to a scientific certainty that [a] defendant's [conduct] . . . caused the precise harm suffered by the plaintiffs." (citation and internal quotation marks omitted)); *Dep't of Com.*, 139 S. Ct. at 2566 (stating that "Article III 'requires no more than de facto causality'" (quoting *Block v. Meese*, 793 F.2d 1303, 1309, 253 U.S. App. D.C. 317 (D.C. Cir. 1986) (Scalia, J.))).

Requiring the Parents to show that "Wilson will enforce the Proviso in a manner that *directly* affects them" misunderstands the *indirect* nature of the injury alleged by the Parents: that Wilson's efforts to enforce the Proviso for some districts chilled other school districts from imposing their own mask mandates. Majority Op. at 14. Put differently, the Parents are injured regardless of whether Wilson has sued their children's school districts specifically or the districts next door; his enforcement efforts will predictably deter schools from sticking their own necks out to impose mask mandates. See Laudenslager, *supra* (reporting this precise effect on Dorchester District Two).

The majority opinion dismisses this chilling effect as evidently "not [very] strong," since "very few school districts" implemented mandates after the injunction was entered. Majority Op. at 14. If the majority is criticizing the Parents for failing to allege a big enough injury, that is irrelevant to our Article III inquiry. See *Gaston Copper*, 204 F.3d at 156 (holding an injury "need not be large"—"an identifiable trifle will suffice" (citation omitted)). What's more, the fact that *some* school districts—including Chester, Hampton, Jasper, Marlboro, Richland, Sumter, and certain districts in Florence County—*did* impose mandates following the injunction suggests that Wilson's enforcement efforts *were* stopping them from enforcing mask mandates.

ordinance [\*37] did not implicate federal law" but rather only "ensured a municipality followed state funding law." Reply Br. at 6. That's a distinction without difference or relevance. Whether the Attorney General's efforts to enforce the Proviso "implicate[d]" federal or state law is immaterial for standing purposes; the point is that he sought to, and succeeded in, enforcing the Proviso. The fact that it was a municipality sued, rather than a school district, does not dissipate the chilling effect his enforcement efforts may have had on school districts. Under our precedent, in order for a plaintiff "to sue a state officer for an injunction" in an *Ex parte Young* action, "the officer sued must be able to enforce, if he so chooses, the specific law the plaintiff challenges." *Doyle, 1 F.4th at 254-55*. That is unquestionably the case for Attorney General Wilson.

Governor McMaster has a slightly better argument that he is an improper defendant. Though the Parents note that Governor McMaster "is responsible under South Carolina law for ensuring [that] 'the laws be faithfully executed,'" J.A. 32 (quoting *S.C. Const. art. IV, § 15*), we have consistently held that the "mere fact that a governor is under a general duty to enforce state laws does not make him a proper [\*38] defendant in every action attacking the [validity] of a state statute." *Waste Mgmt. Holdings, Inc. v. Gilmore, 252 F.3d 316, 331 (4th Cir. 2001)* (quoting *Shell Oil Co. v. Noel, 608 F.2d 208, 211 (1st Cir. 1979)*). After all, "it is not enough that the officer [sued] possesses the '[g]eneral authority to enforce the laws of the state' broadly if the officer cannot enforce the [specific] law at issue." *Doyle, 1 F.4th at 255* (quoting *Waste Mgmt. Holdings, 252 F.3d at 331*). However, other arguments made by *McMaster and Wilson themselves* suggest that the Governor *can* enforce the Proviso.

Critically, in their opening brief, McMaster and Wilson argue that the public interest and other equities weigh against an injunction because "the Governor and Attorney General, as well as the State, are *irreparably harmed* . . . whenever 'a State

is enjoined by a court *from effectuating statutes* enacted by representatives of its people." Opening Br. at 32 (emphases added) (quoting *Maryland v. King, 567 U.S. 1301, 1303, 133 S. Ct. 1, 183 L. Ed. 2d 667 (2012)* (Roberts, C.J., in chambers)). In other words, McMaster and Wilson admit that (1) they have the power to "effectuat[e]" (enforce) the Proviso and (2) the injunction harms them by barring said enforcement. But McMaster and Wilson cannot simultaneously claim that they have *no* obligation or ability to enforce the Proviso and that they will *also* be irreparably harmed if they are enjoined from enforcing the Proviso. [\*39]

That's like saying I have no obligation or ability to make my friend stop eating broccoli, but I will be irreparably harmed if you prevent me from stopping him from eating broccoli. If that makes no sense, it's because I just cannot have it both ways—either I *have* the obligation and ability to force my friend to cease his broccoli eating and I *will* be harmed if you stop me from doing so, or I have *no* obligation or ability to do so and I will suffer *no* consequences if you stop me from policing my friend.

Likewise, if Governor McMaster had no responsibility or ability to enforce the Proviso, then he wouldn't suffer any harm from the injunction at all. The injunction would simply prevent him from doing something he already cannot do.

But according to McMaster and Wilson, that is not the case; the Governor *can* effectuate the Proviso and, in their words, will be "irreparably harmed" if he is not allowed to. Opening Br. at 32. Thus, the Governor, by his own admission, has "the ability . . . to enforce the [Proviso] under his statutory or constitutional powers," and has "demonstrated[, by negative implication, a] willingness . . . to enforce the [Proviso]." *Okpalobi v. Foster, 244 F.3d 405, 417 (5th Cir. 2001)* (en banc). That is enough to establish [\*40] standing to sue him.<sup>9</sup>

<sup>9</sup>The majority opinion ducks this conclusion because it assumes—without any citation to the record, the parties' briefs, or legal authority—that the enforcement powers McMaster claims to wield

Ultimately, McMaster and Wilson are asking us to dismiss them from the case because they say they are not sufficiently connected to the enforcement of the Proviso—even though Attorney General Wilson has said he "*must enforce*" the Proviso, Wilson *has sued to enforce the Proviso*, and both of them claim they will be *irreparably harmed* if we stop them from enforcing the Proviso. We should reject their inconsistent legal arguments to the contrary.

C.

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over the Proviso are "*nothing more* than [his] status as the Governor of South Carolina and his general [constitutional] duty to execute state laws," which is insufficient to confer standing to sue him. Majority Op. at 12-13 (emphasis added). But unlike the majority, I do not presume to know the source of authority McMaster claims gives him the power to enforce the Proviso, nor do I presume to know South Carolina law well enough to know whether his claim has merit. I only know that he *himself* claims to wield that authority, which is enough for Article III.

If we are unsure about this conclusion, the proper course of action would be to remand to the district court, not dismiss the Governor from the case entirely. The Governor did not raise standing as a defense in his first motion to dismiss; only the Attorney General did. As a result, the district court only had the opportunity to consider Attorney General Wilson's [Eleventh Amendment](#)—adjacent arguments regarding traceability and redressability. Governor McMaster did raise similar concerns as a defense in his second motion to dismiss, but we assumed jurisdiction before the district court had a chance to rule on it.

Typically, we have held "that the district court should have the opportunity to address [[Eleventh Amendment](#)—adjacent] issue[s] [like this] in the first instance." [Lytle v. Griffith](#), 240 F.3d 404, 411 (4th Cir. 2001). This seems especially appropriate when, as here: (1) the Governor's own inconsistent statements about the scope of his enforcement powers make his "connection, if any, to the enforcement of the [Proviso]" a "disputed" question of state law, [id.](#) at 410, and (2) the Parents have alleged numerous facts that suggest McMaster may be likely to pursue enforcement, *see* J.A. 32 (reporting that "Defendant McMaster signed the budget legislation containing Proviso 1.108"; McMaster "encouraged the Legislature to enact Proviso 1.108"; the Governor "has publicly advocated for Proviso 1.108 to remain in effect and to be vigorously enforced"; and "Defendant McMaster enacted an Executive Order containing a similar prohibition on mask mandates").

Because the "District Court is [likely] in the best position to address in the first instance the competing questions of fact and state law necessary to resolve the [Governor's enforcement powers]. . . . we [should] remand for that purpose." *Id.* (quoting [Keller v. Prince George's Cnty.](#), 827 F.2d 952, 964 (4th Cir. 1987)).

Finally, McMaster and Wilson engage in a bit of Monday-morning quarterbacking using extra-record evidence to prop up their redressability argument. Specifically, they say that "after the preliminary injunction was entered," six of the seven "school districts named as defendants in this case did not impose mask mandates,"<sup>10</sup> and "[a]t least three of them . . . affirmatively decided not to impose a mandate." Opening Br. at 11 (emphasis added). These developments allegedly confirm that "enjoining the Proviso does not make it more likely that the school districts where [the Parents'] children attend school will enact a mask mandate," so the Parents' injuries must not be redressable by the injunction. *Id.* [\*41] at 14.

This argument fundamentally misunderstands the law of standing. A plaintiff "need not show that a favorable decision will relieve [their] every injury." [Sierra Club v. U.S. Dep't of the Interior](#), 899 F.3d 260, 284 (4th Cir. 2018) (quoting [Larson v. Valente](#), 456 U.S. 228, 242-44, 243 n.15, 102 S. Ct. 1673, 72 L. Ed. 2d 33 (1982)). Rather, a plaintiff need only show that they "personally would benefit in a tangible way from the court's intervention." [Gaston Copper](#), 204 F.3d at 162 (quoting [Warth v. Seldin](#), 422 U.S. 490, 508, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975)). For that reason, "removal of even one obstacle to the exercise of one's rights, *even if other barriers remain*, is sufficient to show redressability." [Sierra Club](#), 899 F.3d at 285 (emphasis added).

That is precisely what the district court's injunction accomplished. True, the Parents have not gotten *complete* relief from some of the school districts they sued—at least so far<sup>11</sup>—but enjoining the

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<sup>10</sup> The exception was Charleston County School District, which implemented a mask mandate but allowed it to lapse later in the fall.

<sup>11</sup> After letting its earlier mask mandate expire, the Charleston County School District recently decided to temporarily reimpose a mask mandate for the start of classes following winter break. Charleston County School District, [Masks Requirement Effective January 3, 2022](#), <https://www.ccsdschools.com/site/default.aspx?PageType=3&DomainID=4&ModuleInstanceID=488&ViewID=6446EE88-D30C-497E->

Proviso at least removed "one obstacle" standing in the way of the mask mandates that the Parents say will protect their children from a dangerous disease.<sup>12</sup> *Id.* Under our precedent, that "is surely a tangible benefit sufficient to confer standing." *Deal v. Mercer Cnty. Bd. of Educ.*, 911 F.3d 183, 190 (4th Cir. 2018) (citation and internal quotation marks omitted) (holding that a plaintiff who had left her home school district due to a Bible-study program had standing to seek an injunction against the program because it would provide her the "opportunity" to return to her home district, even [\*42] though she did not avow that she *would* return to that district).

McMaster and Wilson struggle to counter this point. First, they acknowledge that while "a partial remedy is sufficient for redressability[,] . . . that remedy must provide relief by force of law." Reply Br. at 10. And since the injunction "does not require a single school district to change its mask policy," it "does not" provide such relief. *Id.* But this is just a recycled way of saying that the Parents will not get complete relief via an injunction against the Proviso. And again, that is not required

under our precedent. See *Sierra Club*, 899 F.3d at 284-85.

Second, trying a slightly different tack, McMaster and Wilson argue that an injunction "must redress an injury-in-fact 'through a decree of a conclusive character,'" which did not occur here "because school districts already had the authority to enact mask mandates, which is what would redress any injury from schools being too dangerous without mask mandates." Reply Br. at 10 (quoting *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477, 110 S. Ct. 1249, 108 L. Ed. 2d 400 (1990)). But this is just a recycled [\*43] way of saying that school districts are free to use federal and local funds for a mandate, which, as explained above, is likely illusory.

In the end, satisfying the redressability "requirement is not onerous." *Deal*, 911 F.3d at 189. The Parents need only show that "granting the requested relief [is likely to] at least mitigate . . . the alleged harm." *Sierra Club*, 899 F.3d at 285. And no amount of extra-record, post-hoc evidence can paper over the fact that an injunction against the Proviso would mitigate the Parents' injuries.

## II.

Disabled students already face numerous barriers to fully participating in school. McMaster and Wilson urge us to allow them to escape comeuppance for erecting and enforcing yet another barrier—one that will keep countless children from being able to participate in in-person classes. Shamelessly, they seek to do so based on a series of fatally flawed legal positions supported by baldly inconsistent evidence. Because that undermines the integrity of the judicial process, I must, respectfully, dissent.

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(last visited Jan. 6, 2021). With infections from the omicron variant of the novel Coronavirus surging, I doubt it will be the last district or school to do so. See Caitlin Herrington, *Positive COVID Rates Jump Sharply Across South Carolina Over Holiday Weekend, DHEC Says*, Greenville News (Dec. 29, 2021), <https://www.greenvilleonline.com/story/news/2021/12/29/cdc-covid-19-cases-rate-sharp-increase-omicron-sc/9037711002/> (explaining that the percent positive test rate "jump[ed] up from the 9.2% last reported on Dec. 22" to "23.8%" five days later and attributing this increase to the omicron variant).

<sup>12</sup>The majority opinion also fails to appreciate this nuance. Like McMaster and Wilson, it faults the Parents for failing to allege that an injunction "would cause the school districts where [the Parents'] children attend school to *impose mask mandates* and thereby enable [the Parents'] children to *return to classes in person*." Majority Op. at 15-16 (emphases added). In effect, the majority opinion is requiring the Parents to show that an injunction would "relieve [their] every injury" and return their children to class. *Sierra Club*, 899 F.3d at 284. In doing so, it neglects to note that enjoining a ban on mask mandates is a "tangible benefit" that gets the Parents one step closer to returning their children to in-person classes. *Deal*, 911 F.3d at 190. That is all that Article III requires.



Enrolled Version - Final Version

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| [Email](#)

Key: **Green** = existing Code. **Red** = new code to be enacted

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

### ENROLLED

## House Joint Resolution 102

By Delegates Espinosa, Tully, G. Ward, Maynor, Crouse, Clark, Linville, Barnhart, Barrett, Hanna, and Kimble

[Adopted by the Legislature on March 3, 2022.]

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2022, which proposed amendment is that section 2, article XII thereof, be amended and reenacted to read as follows:

#### **ARTICLE XII. EDUCATION.**

##### **§2. Supervision of free schools.**

Subject to the provisions of this section, the general supervision of the free schools of the State is vested in the West Virginia Board of Education which shall perform the duties prescribed by law. Under its supervisory duties, the West Virginia Board of Education may promulgate rules or policies which shall be submitted to the Legislature for its review and approval, amendment, or

Proposing an amendment to the Constitution of the State of West Virginia, amending section 2, article XII thereof, relating to education and the supervision of free schools; clarifying that the policy-making and rule-making authority of the State Board of Education is subject to legislative review, approval, amendment, or rejection; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2022, which proposed amendment is that section 2, article XII thereof, be amended and reenacted to read as follows:

## **ARTICLE XII. EDUCATION.**

### **§2. Supervision of free schools.**

Subject to the provisions of this section, the general supervision of the free schools of the State is vested in the West Virginia Board of Education which shall perform the duties prescribed by law. Under its supervisory duties, the West Virginia Board of Education may promulgate rules or policies which shall be submitted to the Legislature for its review and approval, amendment, or rejection, in whole or in part, in the manner prescribed by general law. The board shall consist of nine members to be appointed by the Governor, by and with the advice and consent of the Senate, for overlapping terms of nine years. No more than five members of the board shall belong to the same political party, and in addition to the general qualifications otherwise required by the Constitution, the Legislature may require other specific qualifications for membership on the board. No member of the board may be removed from office by the Governor except for official misconduct, incompetence, neglect of duty, or gross immorality, and then only in the manner prescribed by law for the removal by the Governor of state elective officers.

The West Virginia Board of Education shall, in the manner prescribed by law, select the State Superintendent of Free Schools who shall serve at its will and pleasure. He or she shall be the chief school officer of the state and shall perform the duties prescribed by law.

The State Superintendent of Free Schools shall be a member of the Board of Public Works as provided by subsection B, section fifty-one, article VI of this Constitution.

*Resolved further*, That in accordance with the provisions of §3-11-1 *et seq.* of the Code of West Virginia, 1931, as amended, the amendment is hereby numbered "Amendment No. 1" and designated as the "Education Accountability Amendment" and the purpose of the proposed amendment is summarized as follows: "The purpose of this amendment is to clarify that the rules and policies promulgated by the State Board of Education, are subject to legislative review, approval, amendment, or rejection."

The Joint Committee on Enrolled Bills hereby certifies that the foregoing joint resolution is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

Adopted by the Legislature on March 3, 2022.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

