

Exhibit 1

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.

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.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

DECLARATION OF HEATHER JACKSON

I, Heather Jackson, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I make this declaration of my own personal knowledge, and, if called as a witness, I could and would testify competently to the matters stated herein.
2. I am 54 years old. My husband, Wesley, and I are the parents of two sons, ages 20 and 14, and an 11-year-old daughter. We have been married for 21 years. We live in Lost Creek, West Virginia.
3. Our daughter's name is B.P.J. My daughter and I have a very deep connection and I believe she knows that she can come to me for anything—I love her very much.

4. Wesley and I are fiercely protective of B.P.J. As her parents, we want to see B.P.J. happy and achieve all her goals.

5. B.P.J. is bright and studious; she makes “straight As” and loves math and science.

6. B.P.J. is also transgender.

7. B.P.J. knew from a very young age that “she didn’t want her boy parts.” She never wanted to be naked for bathing because she was deeply uncomfortable with and did not want to see certain parts of her body. B.P.J. also did not like standing up to urinate. She would often ask me a lot of questions about my own body and about why our bodies were physically different, if we were both girls.

8. As a child, B.P.J. also presented differently than my other children, both of whom are boys. At or around the age of four, B.P.J. started asking and was allowed to play dress-up in my clothes around our home. Whenever B.P.J. was provided with the opportunity to pick out her clothes or toys, she always went straight for the “girly” items. I knew this was not a “phase” for her, and that there was something different happening.

9. When B.P.J. told us that she is a girl and wants to be addressed as a girl, we were not surprised because we spend so much time with her.

10. Because B.P.J. and I have such an open and communicative relationship, we would have conversations about how she was feeling. The more we talked and the more comfortable she became with expressing how she was feeling and who she is, the more she was able to clearly communicate that she knew she was a girl.

11. By the time B.P.J. was in the third grade she had chosen her name and was living as herself at home. Towards the end of that school year, B.P.J. informed her father and me that

she did not want to continue going to school “dressed as a boy.” We agreed she could start going to school dressed as herself.

12. In 2019, when B.P.J. was heading into the fourth grade, I met with several school staff at Norwood Elementary School to discuss and create a gender support plan for B.P.J. The Gender Support Plan is a document the school uses to help guide school staff in supporting B.P.J. in navigating her educational experience as her authentic self. The plan required school staff to be informed that B.P.J.’s authentic gender is female, and instructed school staff to refer to her with her female name and female pronouns. School staff were also instructed on how to support B.P.J. if she faced problems from others at school because of her gender. A true and correct copy of this Gender Support Plan is attached as Exhibit A.

13. In 2019, we brought B.P.J. to the UPMC Children’s Hospital of Pittsburgh’s Gender and Sexuality Development Program because B.P.J. was worried about the possibility of going through endogenous puberty. B.P.J. was diagnosed with gender dysphoria by the Medical Director of the Gender and Sexuality Program, Dr. Gerald T. Montano. When B.P.J. was initially diagnosed, we were told that puberty delaying treatment was not yet appropriate because she had not begun puberty. Dr. Montano told us about the first signs of puberty to look out for at home, and we made regular follow-up appointments to monitor B.P.J.’s development.

14. Once B.P.J. reached the beginning of puberty, Dr. Montano prescribed puberty-delaying treatment on June 15, 2020. B.P.J. has continuously receive puberty delaying treatment since June 15, 2020, under the care of a multidisciplinary team of providers with expertise in treating transgender adolescents.

15. Our family enjoys participating in sports, and I am proud to see B.P.J. enjoying sports too.

16. During the 2019-20 and 2020-21 school years, B.P.J. was a member of the cheerleading team for the Bridgeport Youth Football League. All members of that team were girls. Even before B.P.J. started cheering with her team, she spent a year learning all the cheer team's routines from the stands. When B.P.J. received her girls' cheer uniform, she was glowing. B.P.J. always wanted me to be in the front row of her competitions. During the 2019-20 season, for the first time ever, B.P.J.'s cheer team placed at a cheer competition.

17. Being on the cheer team dramatically increased B.P.J.'s confidence and happiness. B.P.J. was supported and accepted by the other girls on her team and her coaches. B.P.J.'s participation on her cheer team taught her the importance of responsibility, trust, and team building. B.P.J. is especially proud to have served as part of the base for her cheer team's pyramids because it demonstrated to her that her teammates trusted and relied on her in order to complete their routine.

18. Participating in cheer was a meaningful way for B.P.J. to learn responsibility. As her mother, I can preach about the importance of responsibility, but her position on her cheer team provided her with the real-life experience of having others rely on her to attend practice and participate, and this has helped her understand responsibility in a deeply personal and meaningful way.

19. Although B.P.J. enjoyed cheerleading, she joined the cheer team in part because it was one of the only sports offered to her grade level in which she was interested. When B.P.J. began junior high, however, she was excited to try out for Bridgeport Middle School's girls' cross-country and track teams.

20. Having the opportunity to run on the girls' cross-country and track teams is important to B.P.J. because B.P.J. comes from a family of runners. When she was younger, I

would take B.P.J. on runs with me through parks and she grew up watching her brothers run on their school teams. Additionally, she wanted a continued sense of belonging and camaraderie like she had with the cheer team and hoped to gain that through joining the girls' cross-country team in the fall.

21. Wesley and I were so excited for B.P.J. to run and I was truly looking forward to attending her future cross-country and track meets. B.P.J.'s brothers were also both excited for B.P.J. and looked forward to seeing their sister compete.

22. B.P.J. has the support of her family, coaches, instructors, and peers. Our family is very supportive, and my 76-year-old mother (B.P.J.'s grandmother), and my step-father (B.P.J.'s step-grandfather) are B.P.J.'s biggest supporters.

23. On May 18, 2021, I met with B.P.J.'s new Principal at Bridgeport Middle School, David Mazza, to discuss and create B.P.J.'s Gender Support Plan for the sixth grade. Like the plan we developed for B.P.J. at her elementary school, the plan for Bridgeport Middle School emphasizes that B.P.J. is secure in her identity as a girl and well supported by her parents, school administrators, teachers, and friends. A true and correct copy of that Gender Support Plan is attached as Exhibit B.

24. During the May 18, 2021 meeting I informed Principal Mazza that B.P.J. wanted to participate on the girls' cross-country and track team. Principal Mazza communicated to me that, due to H.B. 3293, my daughter would not be permitted to participate on the girls' cross-country or track teams.

25. On July 12, 2021, conditioning and practice started for the fall 2021 season of cross-country. While my daughter and I were happy to know she was able to participate in training and conditioning due to an agreement by the Defendants in this case to not enforce H.B.

3293 against her during that period, I was concerned about whether she would be able to try-out for and participate on the girls' cross-country team.

26. On July 21, 2021, I learned that the court ruled that my daughter would be allowed to try-out for the girls' cross-country and track teams! At the beginning of August, B.P.J. participated in try-outs for the girls' cross-country team and soon thereafter our family learned that she made the team.

27. During her first cross-country season, B.P.J. participated in the Mountain Hollar MS Invitational meet and the Doddridge Invitational meet. At the Mountain Hollar Invitational, B.P.J. placed 51 out of 66 participants and at the Doddridge Invitational, she placed 123 out of 150 participants.

28. B.P.J. told me that she learned a lot about team work, and that she made many friends through participating on the cross-country team. She said that she had no problems with any of her teammates and that they had a fun season. Photos from B.P.J.'s cross-country season are attached hereto as Exhibit C.

29. It was no surprise to me that by the time track season came, B.P.J. was ready to keep on running. At the beginning of March, my daughter participated in the required two-week try-outs for the girls' team and on March 11, 2022, we learned that she made the girls' track team.

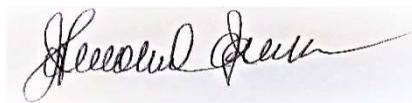
30. B.P.J. is a girl. It is wrong and senseless to try to make her participate on boys' sports teams when there are girls' teams available. Forcing B.P.J. to compete on the boys' cross-country or track teams when girls' teams are available would completely erase who she is, and it would devastate her because she is a girl. My daughter is simply saying, "Accept me for who I am."

31. B.P.J. was so happy to be able to run this school year, and she is so afraid of having that opportunity taken away from her. Prohibiting her from participating on the girls' team would also set back her medical treatment, which calls for her to be treated as the girl she is in all aspects of her life, and her mental health would suffer if she could no longer do the thing she loves because West Virginia refuses to treat her as a girl. Forcing her to run with the boys is a clear sign to her and others that the state refuses to see her and accept her for the girl that she is, and would be profoundly harmful to her.

* * *

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 04/19/2022

A handwritten signature in black ink, appearing to read "Heather Jackson", is written over a light gray rectangular background.

Heather Jackson

Exhibit A



Dr. Mark A. Manchin
Superintendent

- Confidential -
Gender Support Plan

The purpose of this document is to create shared understandings about the ways in which the student's authentic gender will be accounted for and supported at school. School staff, caregivers and the student should work together to complete this document.

School/County	Norwood Elementary - Harrison		Today's Date	8-23-19	
Name Student Uses:	B [redacted]	Name on Birth Certificate:	P [redacted]	J [redacted]	
Student's Gender Identity	Female	Assigned Sex at Birth	Male	Student Grade Level	4 th
Student's DOB:	[redacted]				
Parent(s), Guardian(s), or Caregiver(s) /relation to student	Heather Jackson, Wesley Pepper				
Meeting participants:	Sarah Starkey, Heather Jackson, B [redacted] Tara Shields, Jasmine Lowther, Nurse Tina				

PARENT/GUARDIAN INVOLVEMENT

Are guardian(s) of this student aware and supportive of their child's gender status? Yes No
If not, what considerations must be accounted for in implementing this plan? Mom very supportive, dad has struggled but coming around. seeking outside help through church and paternal side of family's help/support

CONFIDENTIALITY, PRIVACY AND DISCLOSURE Molly Oberfecht - Leggett - WVU

How public or private will information about this student's gender be (check all that apply)?

- County staff will be aware (Superintendent, Student Support Services, District Psychologist, etc.)
Specify the adult staff members: Dr. Manchin, Sarah Starkey
- Site level leadership/administration will know (Principal, counselor, etc.)
Specify the adult staff members: Tara Shields and school counselors
- Teachers and/or other school staff will know
Specify the adult staff members: All teachers
- Student will not be openly "out," but some students are aware of the student's gender
Specify the students:
- Student is open with others (adults and peers) about gender
Other - describe: B [redacted] is comfortable with others knowing her Gender Identity and transition.



If the student has asserted a degree of privacy, what steps will be taken if that privacy is compromised, or is believed to have been compromised?
N/A

How will a teacher/staff member respond to any questions about the student's gender from:

Other students? Be open and honest - she is B [redacted] and that makes her happy.

Staff members? Be open and honest - she is B [redacted]; and that makes her happy.

Parents/community? Be open and honest - she is B [redacted]; and that makes her happy.

STUDENT SAFETY

Who will be the student's "Trusted Adult" at School? feels comfortable with all teachers ->

If this person is not available, what should student do? feels comfortable with all teachers. We showed classrooms with "Safe Space" stickers.

What are expectations in the event the student is feeling unsafe and how will student signal their need for help:

During class Raise hand / Get up and walk to teacher - yell help

Field Trips - find closest trusted adult yell help

In the halls " "

Other _____

Other safety concerns/questions: B [redacted] feels safe and comfortable and very much supported.

What should the student's parents do if they are concerned about how others are treating their child at school?

Mom and/or Dad will contact Tara Shields.

NAMES, PRONOUNS AND STUDENT RECORDS

What name and gender marker are listed on the student's identity documents? [redacted] H [redacted] J [redacted]

Name/gender marker entered into the Student Information System male male but B [redacted] in ()

Name to be used when referring to the student B [redacted] Pronouns her, she hers

Can the student's name/gender marker be reflected in the SIS? _____ If so, how? If not, why not?

Gender will be male but B [redacted] will be in () next to birth name.

If not, what adjustments can be made to protect this student's privacy (see below)? _____

Who will be the point person at school for ensuring these adjustments are made and communicated as needed?

Tara Shields

How will instances be handled in which the incorrect name or pronoun are used by staff members?

if intentional - will be addressed by Principal and/or CO

By students? " "

B [redacted] will report to teacher, Mrs. Shields, counselor if continues to be intentional.

If unable to change the student's profile in the student information system, how will the student's privacy be accounted for and maintained in the following situations or contexts:

- During registration _____
- Completing enrollment _____
- With substitute teachers Jasmine will leave info in plans for sub teacher.
- Standardized tests Populated in Wevis
- School photos Name B [redacted] will be used
- IEPs/Other Services _____
- Student cumulative file Populated in Wevis
- After-school programs _____
- Lunch lines _____
- Taking attendance B [redacted] will be in ()
- Teacher grade book(s) Live Grades populated from Wevis
- Official school-home communication _____
- Unofficial school-home communication (PTA/other) _____
- Outside district personnel or providers _____
- Summons to office Staff will use name B [redacted]
- Yearbook B [redacted] P [redacted] - J [redacted]
- Student ID/library cards What parents fill out on picture form
- Posted lists _____
- Distribution of texts or other school supplies _____
- Assignment of IT accounts/email address _____
- PA announcements _____

If the student's guardians are not aware and/or supportive of the student's gender status, how will school-home communications be handled?

Parents are supportive

What are some other ways the school needs to anticipate the student's privacy being compromised? How will these be handled?

maintain confidentiality and handle as needed.

USE OF FACILITIES

Student will use the following bathroom(s) at school: In teacher lounge first on on (R)

Student will change clothes in the following place(s) " " "

If student/parent have questions/concerns about facilities, who should they contact? Tara Shields

What are the expectations regarding the use of facilities for any class trips? Use family/gender

natural Bathroom. Go to teacher & teacher make sure Bathroom empty (female) if No Gender natural Bathroom.

Are there any questions or concerns about the student's access to facilities? No

EXTRA CURRICULAR ACTIVITIES

In what extra-curricular programs or activities will the student be participating (sports, theater, clubs, etc)?

B [redacted] is on a cheerleading team outside of school. Strings or choir are optional.

What steps will be necessary for supporting the student there?

N/A

Does the student participate in an after-school program?

N/A

What steps will be necessary for supporting the student there?

N/A

Questions/Notes:

OTHER CONSIDERATIONS

Does the student have any sibling(s) at school?

Factors to be considered regarding sibling's needs?

Not at Norwood - brother is in Middle School BMS

Does the school have a dress code? Yes

How will this be handled?

Not gender specific - NO short shorts, or spaghetti straps common sense.

Are there lessons, units, content or other activities coming up this year to consider (growth and development, swim unit, social justice units, name projects, dance instruction, Pride events, school dances etc.)?

N/A Plan will be reviewed at least yearly. Health Education will be discussed next year.

Are there any specific social dynamics with other students, families or staff members that need to be discussed or accounted for?

No

What training(s) will the school engage in to build capacity for working with gender-expansive students? How will the school work to create more gender inclusive conditions for all students?

Norwood Staff received training on tolerance and cultural diversity and LGBTQ+IA on 8/21 and provided protocol and multiple resource sources.

Does the student use school- or district-provided transportation services? If so, how will the student's gender be accounted for?

Bus Driver Randy # 234 will be educated that B [redacted] is name to be used and of chosen pronouns.

Are there any other questions, concerns or issues to discuss? _____

N/A

SUPPORT PLAN REVIEW AND REVISION

How will this plan be monitored over time? Reviewed At least Yearly but can be Revisited at Any time within school year if needed.

What will be the process should the student, family, or school wish to revisit any aspects of the plan (or seek additions to the plan)? contact Tara Shields or teacher.

What are specific follow-ups or action items emerging from this meeting and who is responsible for them?

Action Item	Who?	When?
N/A		

Date/Time of next meeting or check-in _____ Location _____

Will schedule at End of School Year for next School year.

Sarah Starkey MSW, LGSW

[Handwritten signature]

b [Redacted]

Jana Cullen

Tara Shields
Gasmin Louthe

Exhibit



HARRISON COUNTY SCHOOLS

445 WEST MAIN STREET
 POST OFFICE BOX 1370
 CLARKSBURG, WEST VIRGINIA 26302-1370
 (304) 326-7300
 FAX (304) 326-7382

Dora L. Stutler
 Superintendent

Preferred Name Request Form

The Harrison County Board of Education is committed to inclusion and recognizes that students may need to use a preferred name to identify themselves comfortably. Please note that although the HCBOE recognizes the importance, in many instances, of using preferred name, your legal name may continue to be necessary for Board of Education business where the legal name is required. Students who use a preferred name should always be prepared to provide legal name identification when needed. Only the first name is permitted to be updated with the Preferred Name Request Form.

Please fill out this form clearly and completely and return it to the Principal of your school. Please note, a parent signature is required. If you have any questions or concerns, please contact the Principal of your school prior to the submission of this form. The preferred name will remain in use until and student requests that it be deactivated. This process for using a preferred name does not impact students who officially change their legal name.

Legal Name:

Legal first Name: [Redacted]	Legal Middle Name: [Redacted]	Legal Last Name: P [Redacted] - J [Redacted]
WVEIS # 330049261	School: BMS	Grade: 6

Preferred Name:

Preferred First Name:
B [Redacted]

Signature B [Redacted] P [Redacted] J [Redacted] Date _____

Parent Signature [Handwritten Signature] Date 5-18-2021

For Office Use Only:

Principal Signature: [Handwritten Signature]
Date Received: _____



Dora L. Stutler
Superintendent

- Confidential -

Gender Support Plan

The purpose of this document is to create shared understandings about the ways in which the student's authentic gender will be accounted for and supported at school. School staff, caregivers and the student should work together to complete this document.

School/County	Bridgeport Middle - Harrison		Today's Date	5/18/21
Name Student Uses:	Becky	Name on Birth Certificate:	Pepper-Jackson	
Student's Gender Identity	Female	Assigned Sex at Birth	male	Student Grade Level
Student's DOB:	5/11/10			6th
Parent(s), Guardian(s), or Caregiver(s) /relation to student	Heather Jackson, Wesley Pepper			
Meeting participants:	Tarra Shields, Amber Davis, David Mazza, Lauren Merrill, Heather Jackson, Becky Pepper-Jackson			

PARENT/GUARDIAN INVOLVEMENT

Are guardian(s) of this student aware and supportive of their child's gender status? Yes No
If not, what considerations must be accounted for in implementing this plan? _____

CONFIDENTIALITY, PRIVACY AND DISCLOSURE

How public or private will information about this student's gender be (check all that apply)?

- County staff will be aware (Superintendent, Student Support Services, District Psychologist, etc.)
Specify the adult staff members: Dora Stutler, Sarah Starkey
- Site level leadership/administration will know (Principal, counselor, etc.)
Specify the adult staff members: Mr. Mazza, Mr. Oldaker, and Lauren Merrill
- Teachers and/or other school staff will know
Specify the adult staff members: All teachers
- Student will not be openly "out," but some students are aware of the student's gender
Specify the students: _____
- Student is open with others (adults and peers) about gender

Other - describe: Becky is comfortable with others knowing her Gender Identity and transition.

If the student has asserted a degree of privacy, what steps will be taken if that privacy is compromised, or is believed to have been compromised?

N/A

EXHIBIT
tabbles WV-19

How will a teacher/staff member respond to any questions about the student's gender from:

Other students? Be open and honest - she is Becky; and that makes her happy.

Staff members? Be open and honest - she is Becky; and that makes her happy

Parents/community? Be open and honest - she is Becky; and that makes her happy

STUDENT SAFETY

Who will be the student's "Trusted Adult" at School? Mr. Mazza & Mrs. Merrill

If this person is not available, what should student do? find teacher(s) that Becky feels comfortable speaking with.

What are expectations in the event the student is feeling unsafe and how will student signal their need for help:

During class Raise hand / Get up and walk to teacher - yell help

Field Trips find closest trusted adult; yell help

In the halls "

Other _____

Other safety concerns/questions: Becky feels safe and comfortable and very much supported.

What should the student's parents do if they are concerned about how others are treating their child at school?

Mom and/or Dad will contact Mr. Mazza.

NAMES, PRONOUNS AND STUDENT RECORDS

What name and gender marker are listed on the student's identity documents? [redacted] Pepper-

Name/gender marker entered into the Student Information System Jackson; male Becky in () male

Name to be used when referring to the student Becky Pronouns her, she, hers

Can the student's name/gender marker be reflected in the SIS? _____ If so, how? If not, why not?

Gender will be male but Becky will be in () next to birth name

If not, what adjustments can be made to protect this student's privacy (see below)? _____

Who will be the point person at school for ensuring these adjustments are made and communicated as needed?

David Mazza

How will instances be handled in which the incorrect name or pronoun are used by staff members? If

intentional - will be addressed by Principal and/or Counselor

By students? "

Becky will report to teacher, Mr. Mazza, Counselor if it continues to be intentional

If unable to change the student's profile in the student information system, how will the student's privacy be accounted for and maintained in the following situations or contexts:

During registration _____

Completing enrollment _____

With substitute teachers Teachers will leave info in plans for sub teacher

Standardized tests Populated in WVELS

School photos Name Becky will be used

IEPs/Other Services _____

Student cumulative file Populated in WVELS

After-school programs _____

Lunch lines populated in WVELS

Taking attendance Becky will be in ()

Teacher grade book(s) Live Grades populated from WVELS

Official school-home communication _____

Unofficial school-home communication (PTA/other) _____

Outside district personnel or providers _____

Summons to office Staff will use name Becky

Yearbook Becky Pepper-Jackson

Student ID/library cards What parents fill out on picture form.

Posted lists _____

Distribution of texts or other school supplies _____

Assignment of IT accounts/email address _____

PA announcements _____

If the student's guardians are not aware and/or supportive of the student's gender status, how will school-home communications be handled?

Parents are supportive

What are some other ways the school needs to anticipate the student's privacy being compromised? How will these be handled?

Maintain confidentiality and handle as needed.

USE OF FACILITIES

Student will use the following bathroom(s) at school: In Counselor's/Nurse's Suite

Student will change clothes in the following place(s) " " "

If student/parent have questions/concerns about facilities, who should they contact? David Mazza

What are the expectations regarding the use of facilities for any class trips? Use family/Gender

neutral bathroom. Go to teacher & teacher make sure female

What are the expectations regarding rooming for any overnight trips? bathroom is empty if no gender/neutral bathroom option.

Are there any questions or concerns about the student's access to facilities? NO

EXTRA CURRICULAR ACTIVITIES

In what extra-curricular programs or activities will the student be participating (sports, theater, clubs, etc)?

Cross Country and Track

What steps will be necessary for supporting the student there? ~~###~~ Coaches would need to be aware of Becky's transition. If teammates have questions, they could approach the coach or administration.

Does the student participate in an after-school program? ~~###~~ Cross Country, Track, Band.

What steps will be necessary for supporting the student there? Teacher would need to be aware of transition and also feel comfortable with answering any student questions. If not, students can ask administration or counselor.

OTHER CONSIDERATIONS

Does the student have any sibling(s) at school? _____ Factors to be considered regarding sibling's needs?

Brother at Bridgeport Middle School.

Does the school have a dress code? Yes How will this be handled?

Not gender specific - No short shorts or spaghetti straps; common sense

Are there lessons, units, content or other activities coming up this year to consider (growth and development, swim unit, social justice units, name projects, dance instruction, Pride events, school dances etc.)? Plan will be reviewed at least yearly.

Are there any specific social dynamics with other students, families or staff members that need to be discussed or accounted for?

NO

What training(s) will the school engage in to build capacity for working with gender-expansive students? How will the school work to create more gender inclusive conditions for all students?

BMS will receive training on tolerance and cultural diversity and LGBTQ as arranged by Mr. Mazza during upcoming ~~###~~ school year.

Does the student use school- or district-provided transportation services? If so, how will the student's gender be accounted for?

Bus #281 Mr. Hollansworth and #294 Mr. Lantz will be informed of name being Becky and preferred pronouns.

Are there any other questions, concerns or issues to discuss? _____

N/A

SUPPORT PLAN REVIEW AND REVISION

How will this plan be monitored over time? Plan will be renewed yearly but can be revisited at any time per request.

What will be the process should the student, family, or school wish to revisit any aspects of the plan (or seek additions to the plan)? Contact Mr. Mazza

What are specific follow-ups or action items emerging from this meeting and who is responsible for them?

Action Item	Who?	When?
N/A		

Date/Time of next meeting or check-in _____ Location _____

Meeting will be scheduled at end of school year for next school year.

Lauren Merrill, BMS Counselor

[Signature] 5-18-2021

Becky Pepper Jackson

Mr. Mazza

Jan Shields

Amber Davis

Exhibit C



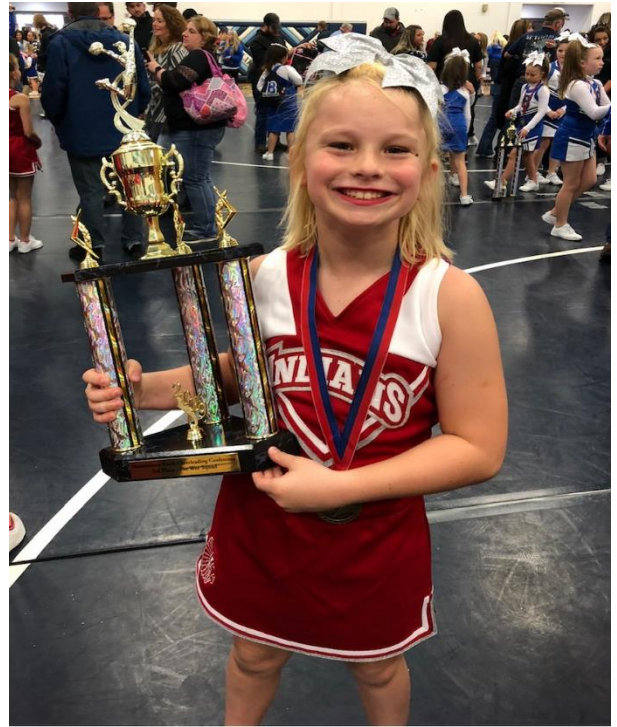




Exhibit 2

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.

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.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

DECLARATION OF J

I, B.P.J., pursuant to 28 U.S.C. § 1746, declare as follows:

1. I make this declaration of my own personal knowledge, and, if called as a witness, I could and would testify competently to the matters stated herein.
2. I am a girl who is also transgender. I am 11 years old, and I am in the sixth grade at Bridgeport Middle School. I have two older brothers, ages 14 and 20. I live with my brothers; my mom, Heather; and my dad, Wesley in Lost Creek, West Virginia.
3. Some of my favorite things to do include playing outside with our family's dogs, riding my bike, running with my friends and family, and jumping on the trampoline. I am very

passionate about math and science and make straight As in school. Also, I like to play videogames like Apex Legends, Minecraft, and Overwatch. I also got an Oculus this year, and I love playing the Beat Saber game.

4. I knew from when I was very little that I am a girl. When I was younger, I remember always feeling like I wasn't in the right body and wanting to play in my mom's clothing.

5. My mom has always been supportive of me, so it felt normal for me to talk to her about how I was feeling about being a girl and that I wanted to go by the name B.P.J. While talking to my dad was a little bit harder in the beginning, he supported me in wanting to be referred to as B.P.J. and in the fact that I am a girl.

6. During my fourth-grade year, I went to school dressed in clothes that girls wear, and teachers and staff were using my chosen name. My mom and I met with my principal, teacher, and others at my school to make a plan for how my school could best support me as a girl. I was happy with the plan we developed together, and I really felt supported by my classmates and by my school.

7. One of the ways my parents supported me in being the girl that I am is that they took me to see a team of healthcare professionals who work with transgender people. I was diagnosed with gender dysphoria in 2019.

8. I am currently on puberty-delaying medication and have been for almost two years.

9. In fourth grade, I joined a cheerleading team with other girls. I first got into cheering because my mom encouraged me to try a sport. Since I had spent time learning cheer

routines while in the stands at football games and my friends were also on the cheer team, I decided to pursue cheer.

10. I really liked being a cheerleader. It was fun. I liked having the chance to be on a team with my friends and learning how to do all the cheers. I never had any problems with the other girls on the team.

11. During my first year on the cheer team, our team placed at a cheer competition for the first time ever. It made me feel proud and good about myself to work hard and improve as a team.

12. Heading into junior high school, I was excited to try out for the girls' cross-country and track teams. Although I really enjoyed my time on the cheer team, I sometimes got "stage fright" and preferred to take up a new sport.

13. Since I was young, I have always enjoyed running and everyone in my family runs. My older brothers run cross-country, and my mom runs too. Seeing my family run has motivated me to want to try out and participate.

14. Last spring, my mom told me about a law called H.B. 3293 that prevents transgender girls like me from playing on girls' sports teams. Knowing that I could not try out for the girls' cross-country and track teams just because I am a transgender girl was horrible and made me feel angry and sad. It hurt to know that I would not be able to have the chance to run on the girls' team like my friends can because of who I am.

15. I am not a boy. I do not want to run with the boys when there is a girls' team and I should not have to run with the boys when there is a girls' team.

16. Running with the girls means a lot to me because I am a girl, and I should be treated like a girl, just like all my friends who are girls. If I did not get to participate in cross-

country or track, I would have missed out on the opportunity to spend time with my friends and grow with a new team.

17. In July 2021, I participated in training and conditioning before the August try-outs for the girls' cross-country team. Participating in training and conditioning was a positive experience—I had fun getting to know the coaches and teammates, and challenging myself to run as well as I could.

18. Following try-outs at the beginning of August, I learned that I made the girls' cross-country team. My first cross-country season was awesome, and I felt supported by my coaches and the other girls on the team. I made so many new friends and loved competing with and supporting my teammates. We learned about teamwork, having a positive attitude, and how to have fun while being competitive.

19. Since I was also interested in participating on the girls' track team, I looked forward to spring try-outs.

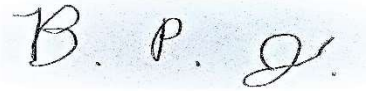
20. In early March, I participated in two weeks of try-outs for the girls' track team and on March 11, 2022, I learned that I made the girls' track team. I was ecstatic.

21. Ultimately, I just want to have the opportunity to participate in school sports like any other girl. Sports are an important part of my experience at school, and I was so happy to be able to have the chance to participate in cross-country and track this year with the other girls in my school. I look forward to many more years of running with my peers. It is so upsetting and hurtful that some people want to take that chance away from me and treat me differently from everyone else just because I am transgender.

* * *

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 04/19/2022

A handwritten signature in black ink, appearing to read "B. P. J.", is written over a light blue rectangular highlight. The signature is cursive and somewhat stylized.

B.P.J.

Exhibit 3

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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,

v.

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.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

PLAINTIFF'S SECOND SET OF SUPPLEMENTAL RESPONSES AND OBJECTIONS TO DEFENDANT THE STATE OF WEST VIRGINIA'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION

Pursuant to Federal Rules of Civil Procedure Rules 26 and 34, Plaintiff B.P.J. by her next friend and mother, Heather Jackson, responds as follows to Defendant the State of West Virginia's ("Defendant") First Set of Interrogatories ("Interrogatories") and Requests for Production ("Requests"):

GENERAL RESPONSES

1. B.P.J.'s response to the Interrogatories and Requests is made to the best of B.P.J.'s present knowledge, information, and belief. This response is at all times subject to such additional or different information that discovery or further investigation may disclose and, while based on the present state of B.P.J.'s recollection, is subject to such refreshing of

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recollection, and such additional knowledge of facts, as may result from B.P.J.'s further discovery or investigation.

2. To the extent B.P.J. agrees to produce documents or information in response to any particular Interrogatory or Request, B.P.J. will produce only non-privileged, responsive documents in her possession, custody, or control, and in accordance with Exhibit A of the parties' Rule 26(f) report filed on September 7, 2021 (ECF No. 92-1) in this action.
3. B.P.J. has no duty to, and will not, produce or identify documents or information that are not in her possession, custody, or control. By stating in these responses that B.P.J. will search for or produce documents or information, B.P.J. does not represent that any such documents or information actually exist. Rather, B.P.J. represents that she will undertake a good-faith search and reasonable inquiry to ascertain whether the documents or information described in any such response do, in fact, exist, and, if so, will produce responsive, non-privileged documents or information within B.P.J.'s possession, custody, or control in accordance with Exhibit A of the parties' Rule 26(f) report filed on September 7, 2021 (ECF No. 92-1) in this action.
4. B.P.J. reserves the right to make any use of, or to introduce at any hearing and at trial, documents responsive to the Interrogatories or Requests but discovered subsequent to the date of B.P.J.'s initial production, including, but not limited to, any documents obtained in discovery herein.
5. B.P.J. reserves the right to decide whether the documents produced for inspection shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories in the Interrogatories or Requests, in accordance with Federal Rule of Civil Procedure 34(b).

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6. B.P.J. reserves all objections or other questions as to the competency, relevance, materiality, privilege, or admissibility as evidence in any subsequent proceeding in or trial of this or any other action for any purpose whatsoever of this response and any document or thing produced in response to the Interrogatories or Requests.
7. B.P.J. reserves the right to object on any ground at any time to such other or supplemental requests for production as Defendant may at any time propound involving or relating to the subject matter of these Interrogatories or Requests.
8. B.P.J. is willing to meet and confer with Defendant regarding any response or objection to the Interrogatories or Requests.

GENERAL OBJECTIONS

B.P.J. makes the following general objections, whether or not separately set forth in response to each Interrogatory or Request, to each and every Definition, Instruction, Interrogatory, and Request made in Defendant's First Set of Interrogatories and Requests for Production:

1. B.P.J. objects generally to all Definitions, Instructions, Interrogatories, and Requests inclusive, insofar as each such request seeks production of documents or information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege. Such documents or information shall not be produced in response to the Interrogatories or Requests, and any inadvertent production thereof shall not be deemed a waiver of any privilege or right with respect to such documents or information or of any work product doctrine that may attach thereto.
2. B.P.J. objects to all Definitions, Instructions, Interrogatories, and Requests inclusive, to the extent they purport to enlarge, expand, or alter in any way the plain meaning and scope of

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any specific request on the ground that such enlargement, expansion, or alteration renders said request vague, ambiguous, unintelligible, unduly broad, and uncertain.

3. B.P.J. objects to all Definitions, Instructions, Interrogatories, and Requests inclusive, to the extent they seek documents not currently in B.P.J.'s possession, custody, or control, or refer to persons, entities, or events not known to B.P.J., on the grounds that such Instructions, Definitions, Interrogatories, or Requests seek to require more of B.P.J. than any obligation imposed by law, would subject B.P.J. to unreasonable and undue burden and expense, and would seek to impose upon B.P.J. an obligation to investigate or discover information or materials from third parties or services who are equally accessible to Defendant.
4. B.P.J.'s failure to object to the Interrogatories or Requests on a particular ground shall not be construed as a waiver of her right to object on that ground or any additional ground at any time.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

Without waiving or limiting in any manner any of the foregoing General Objections, but rather incorporating them into each of the following responses to the extent applicable, B.P.J. responds to the specific requests of Defendant's First Set of Interrogatories as follows:

Interrogatory No. 1:

1. Identify each and every Health Care Provider who has examined or treated the Plaintiff at any point during the last 7 years. For each Health Care Provider identified, state:
 - a. The date of each consultation, examination or treatment;
 - b. The injury, illness, condition, complaint or other reason or purpose for which each examination or treatment was conducted; and

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- c. Whether the injury, illness, condition, or complaint for which the examination or treatment was performed had been relieved or successfully, and if so, the approximate date of relief or completion of successful treatment.

B.P.J.'s Response To Interrogatory No. 1:

B.P.J. objects to this Interrogatory on the ground that it is overbroad, unduly burdensome, not relevant to a claim or defense, and not proportional to the needs of the case, as it seeks medical information unrelated to B.P.J.'s gender dysphoria diagnosis, and B.P.J. has specifically disclaimed any claim for damages based on emotional distress. In addition to being overbroad and unduly burdensome, B.P.J. objects to the Interrogatory on the ground that the period of time of "the last 7 years" far exceeds any period relevant to this action and therefore Defendant improperly seeks the production of information that is not material or necessary to any claim or defense in this action. B.P.J. additionally objects to this Interrogatory to the extent that it seeks documents protected by any applicable psychotherapist-patient privilege.

Subject to these general and specific objections, and without waiver thereof, B.P.J. provides the following responses regarding B.P.J.'s treatment for gender dysphoria. For the specific dates of each consultation, examination, or treatment, B.P.J. refers Defendant to the documents Bates stamped as BPJ_012 – BPJ_95 in the production.

Name	Position/Business Affiliation	Address	Phone Number
Gerald Montano	DO, UPMC Children's Hospital of Pittsburgh	4401 Penn Avenue Pittsburgh, PA 15224	412-692-6677
Kacie M. Kidd	MD, WVU Department of Pediatrics Division of Adolescent Medicine	PO Box 9214 Morgantown, WV 26506	412-692-6677

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Matthew D. Brunner	MD, West Virginia University Hospitals - Chestnut Ridge Center	930 Chestnut Ridge Road Morgantown, WV 26505	304-598-4835
Parth Bhatt	MD, Bridgeport Pediatrics, West Virginia University	900 Lodgeville Road Bridgeport, WV 26330	304-842-3311

B.P.J.'s Supplemental and Amended Response to Interrogatory No. 1:

B.P.J. reiterates her specific objections stated in her initial response to Interrogatory No. 1, and objects to Interrogatory No. 1 as overbroad, seeking irrelevant information, and not proportional to the needs of the case. As noted in correspondence between the parties, this case involves a straightforward constitutional challenge to H.B. 3293's exclusion of transgender girls from girls' sports teams, and there is no basis for turning this case into an irrelevant medical examination of B.P.J.

During Plaintiff's investigation and active process of seeking medical records from her providers, Plaintiff identified additional providers that had not been disclosed in her initial set of responses. Subject to and without waiving her General and Specific Objections, without waiver thereof, and without conceding the relevance of this information, B.P.J. therefore supplements her response as follows:

Name	Position/Business Affiliation	Address	Phone Number
Jean R. Someshwar	MD, West Virginia University Hospitals	61 Campus Drive Martinsburg, WV 25404	304-274-6343
Bradley Mitchell	MD, FAAP, Cardinal Pediatrics	139 Conference Center Way, Suite 113 Bridgeport, WV 26330	304-599-8000
Cardinal Pediatrics		Cardinal Pediatrics 139 Conference Center Way, Ste. 113 Bridgeport, WV 26330	304-599-8000

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Amanda Pennington	MD, Pediatrics	Davis Medical Center 812 Gorman Ave. Elkins, WV 26241	304-636-3300
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Plaintiff also amends her previous response, which had incorrectly identified one of B.P.J.'s medical providers as "Dr. Matthew D. Brunner," to "Matthew D. Bunner."

Interrogatory No. 2:

2. Identify each and every document provided to any expert or consultant with whom you have consulted, met or counseled in connection with this case and the experts and consultants to whom such documents were provided. This includes without limitation those whom you identified as experts in Plaintiff's Motion for Preliminary Injunction and experts and consultants whom you determined to not use as an expert or consultant in this case.

B.P.J.'s Response To Interrogatory No. 2:

B.P.J. objects to this Interrogatory as seeking discovery of information or documents that are beyond the scope of expert discovery permitted by Federal Rule of Civil Procedure 26(b)(4) and protected by the attorney-client privilege and/or the attorney work-product doctrine. Defendant's request that B.P.J. identify "each and every document" provided to "any" expert or consultant in the course of and in preparation of this litigation directly seeks work product-protected material, because such information and documents would disclose the thoughts, mental impressions, and strategic decisions of counsel.

Subject to these general and specific objections, and without waiver thereof, B.P.J. will provide appropriate, non-privileged information in response to this Interrogatory pursuant to the Court's Scheduling Order (ECF No. 93) and at the appropriate time.

CONFIDENTIAL**Interrogatory No. 3:**

3. Identify each and every employee, member, agent, and representative of any of the defendants with whom you have had discussions regarding Plaintiff's status or identity as a girl/female or boy/male or regarding Plaintiff's participation in sports or athletic events, including Plaintiff's participation in track and field events and the cheer team in which Plaintiff participated.

B.P.J.'s Response To Interrogatory No. 3:

B.P.J. objects on the ground that Defendant has failed to identify any limitation on period of time, and therefore Defendant improperly seeks the production of information that is not material or necessary to any claim or defense in this action. B.P.J. further objects to the phrase "Plaintiff's status or identity as a girl/female or boy/male" as vague, ambiguous, and overbroad. B.P.J. further objects to this Interrogatory on the ground that it is overbroad, unduly burdensome, and not proportional to the needs of the case, as it seeks the identities of all parties who may at any time have spoken to B.P.J. and/or any of her "agents, guardians, parents, representatives, and . . . attorneys" regarding B.P.J.'s "status," regardless of whether those communications are relevant to a claim or defense.

Subject to these general and specific objections, and without waiver thereof, B.P.J. will identify the representatives of Defendants that she and/or her mother communicated with regarding B.P.J.'s gender identity or athletics. Accordingly, B.P.J. responds as follows:

Name	Position/Business Affiliation	Address	Phone Number
David Mazza	Principal, Bridgeport Middle School	413 Johnson Ave Bridgeport, WV 26330	304-326-7142

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Danyelle Schoonmaker	Cross-Country Coach and Teacher, Bridgeport Middle School	413 Johnson Ave Bridgeport, WV 26330	304-326-7142
Rachel Miller Yates	Head of Cheerleading, Bridgeport Youth Football League	P.O. Box 22 Bridgeport, WV 26330	RAEYATES52@GMAIL.COM ¹
Dustin B. Vincent	Board Member, Bridgeport Youth Football League	P.O. Box 22 Bridgeport, WV 26330	304-842-0778
Sarah Starkey	MSW, LGSW, Social Worker, Harrison County Board of Education	445 W. Main Street Clarksburg, WV 26301	304-326-7300
Amber Davis	Guidance Counselor, Harrison County School District	8128 Kidd Ave Stonewood, WV 26301	304-326-7050
Lauren Merrill	Counselor, Bridgeport Middle School	413 Johnson Ave Bridgeport, WV 26330	304-326-7142

B.P.J.'s Supplemental Response to Interrogatory No. 3:

B.P.J. reiterates her specific objections stated in her initial response to Interrogatory No. 3.

In addition to her initial response, subject to the general and specific objections, and without waiver thereof, B.P.J. supplements her response as follows:

Name	Position/Business Affiliation	Address	Phone Number
David Mazza	Principal, Bridgeport Middle School	413 Johnson Ave Bridgeport, WV 26330	304-326-7142

¹ Plaintiff was unable to identify a phone number for Ms. Yates, and thus provides an email address in the alternative.

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Danyelle Schoonmaker	Cross-Country and Track Coach and Teacher, Bridgeport Middle School	413 Johnson Ave Bridgeport, WV 26330	304-326-7142
Rachel Miller Yates	Head of Cheerleading, Bridgeport Youth Football League	P.O. Box 22 Bridgeport, WV 26330	RAEYATES52@GMAIL.COM ²
Dustin B. Vincent	Board Member, Bridgeport Youth Football League	P.O. Box 22 Bridgeport, WV 26330	304-842-0778
Sarah Starkey	MSW, LGSW, Social Worker, Harrison County Board of Education	445 W. Main Street Clarksburg, WV 26301	304-326-7300
Amber Davis	Guidance Counselor, Harrison County School District	8128 Kidd Ave Stonewood, WV 26301	304-326-7050
Lauren Merrill	Counselor, Bridgeport Middle School	413 Johnson Ave Bridgeport, WV 26330	304-326-7142
David Robinson	Track Coach, Bridgeport Middle School	413 Johnson Avenue Bridgeport, WV 26330	304-842-6251
Meghan Flesher	Track Coach, Bridgeport Middle School	413 Johnson Avenue Bridgeport, WV 26330	304-842-6251

² Plaintiff was unable to identify a phone number for Ms. Yates, and thus provides an email address in the alternative.

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Interrogatory No. 4:

4. Identify each and every West Virginia legislator or staff member thereof (whether in the Senate or the House of Delegates) with whom you communicated with respect to participation of transgender athletes in sports or regarding H.B. 3293 or W. Va. Code §18-2-25d, during the period from January 1, 2021, to the present.

B.P.J.'s Response To Interrogatory No. 4:

B.P.J. objects on the ground that the period of time from January 1, 2021, to the present includes a time period predating counsel for B.P.J.'s participation in this case, and thus such period is not relevant to this action and is not relevant to any claim or defense in this action. B.P.J. further objects to this Interrogatory on the ground that it is overbroad, unduly burdensome, and not proportional to the needs of the case, as it seeks the identities of all third-party "West Virginia legislator[s] or staff member[s]" who have communicated to B.P.J. and/or any of her "agents, guardians, parents, representatives, and . . . attorneys," regardless of whether those third-parties or communications are relevant to the claims or defenses at issue in this action.

Subject to these general and specific objections, and without waiver thereof, B.P.J. will provide the identities of those West Virginia legislators or staff members that she or her representatives have communicated with in respect to the participation of transgender athletes in sports or regarding H.B. 3293 after the date of B.P.J.'s retention of legal counsel for this case. Accordingly, B.P.J. responds that she does not have information responsive to this Interrogatory.

B.P.J.'s Supplemental Response to Interrogatory No. 4:

Subject to and without waiving her General and Specific Objections, without waiver thereof, and without conceding the relevance of this information, B.P.J. provides the identities of

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those West Virginia legislators or staff members that she or her mother has communicated with in respect to the participation of transgender athletes in sports or regarding H.B. 3293.

Name	Position/Business Affiliation	Address	Phone Number
Mike Romano	Senator, West Virginia State Senate	Room 200W, Building 1 State Capitol Complex Charleston, WV 25305	304-357-7904
Patrick S. Martin	Senator, West Virginia State Senate	Room 213W, Building 1 State Capitol Complex Charleston, WV 25305	304-357-7845

Interrogatory No. 5:

5. Identify each and every school board member or other public employee with whom you communicated with respect to participation of transgender athletes in sports or regarding H.B. 3293 or W. Va. Code §18-2-25d, during the period from January 1, 2021, to the present.

B.P.J.'s Response To Interrogatory No. 5:

B.P.J. objects to this Interrogatory on the ground that it is overbroad, unduly burdensome, and not proportional to the needs of the case, as it seeks the identities of all third-party “school board member[s] or other public employee[s]” who have communicated to B.P.J. and/or any of her “agents, guardians, parents, representatives, and . . . attorneys,” regardless of whether those third-parties or communications are relevant to the claims or defenses at issue in this action. B.P.J. further objects to the phrase “other public employee” as vague, ambiguous, and overbroad.

Subject to these general and specific objections, and without waiver thereof, B.P.J. will identify the school authorities that she and/or her mother communicated with at B.P.J.'s elementary or middle school regarding B.P.J.'s participation in athletics or regarding H.B. 3293. Accordingly, B.P.J. responds as follows:

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Name	Position/Business Affiliation	Address	Phone Number
David Mazza	Principal, Bridgeport Middle School	413 Johnson Ave Bridgeport, WV 26330	304-326-7142
Danyelle Schoonmaker	Cross Country Coach/Teacher, Bridgeport Middle School	413 Johnson Ave Bridgeport, WV 26330	304-326-7142
Sarah Starkey	MSW, LGSW, Social Worker, Harrison County Board of Education	445 W. Main Street Clarksburg, WV 26301	304-326-7300
Tarra Shields	Principal, Norwood Elementary School	8128 Kidd Ave Stonewood, WV 26301	304-326-7050
Jasmine Lowther	Teacher, Norwood Elementary School	8128 Kidd Ave Stonewood, WV 26301	304-326-7050
Amber Davis	Guidance Counselor, Harrison County School District	8128 Kidd Ave Stonewood, WV 26301	304-326-7050
Lauren Merrill	Counselor, Bridgeport Middle School	413 Johnson Ave Bridgeport, WV 26330	304-326-7142
Tina DeMary	Nurse, Norwood Elementary School	8128 Kidd Ave Stonewood, WV 26301	304-326-7050

CONFIDENTIAL**B.P.J.'s Supplemental Response to Interrogatory No. 5:**

Subject to and without waiving her General and Specific Objections, without waiver thereof, and without conceding the relevance of this information, B.P.J. respectfully refers the State to her response in Interrogatory No. 4.

B.P.J.'s Second Supplemental Response to Interrogatory No. 5:

B.P.J. reiterates her specific objections stated in her initial response to Interrogatory No. 5.

In addition to her initial response, subject to the general and specific objections, and without waiver thereof, B.P.J. supplements her response as follows:

Name	Position/Business Affiliation	Address	Phone Number
David Mazza	Principal, Bridgeport Middle School	413 Johnson Ave Bridgeport, WV 26330	304-326-7142
Danyelle Schoonmaker	Cross-Country and Track Coach and Teacher, Bridgeport Middle School	413 Johnson Ave Bridgeport, WV 26330	304-326-7142
Sarah Starkey	MSW, LGSW, Social Worker, Harrison County Board of Education	445 W. Main Street Clarksburg, WV 26301	304-326-7300
Tarra Shields	Principal, Norwood Elementary School	8128 Kidd Ave Stonewood, WV 26301	304-326-7050
Jasmine Lowther	Teacher, Norwood Elementary School	8128 Kidd Ave Stonewood, WV 26301	304-326-7050
Amber Davis	Guidance Counselor, Harrison County School District	8128 Kidd Ave Stonewood, WV 26301	304-326-7050

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Lauren Merrill	Counselor, Bridgeport Middle School	413 Johnson Ave Bridgeport, WV 26330	304-326-7142
Tina DeMary	Nurse, Norwood Elementary School	8128 Kidd Ave Stonewood, WV 26301	304-326-7050
David Robinson	Track Coach, Bridgeport Middle School	413 Johnson Avenue Bridgeport, WV 26330	304-842-6251
Meghan Flesher	Track Coach, Bridgeport Middle School	413 Johnson Avenue Bridgeport, WV 26330	304-842-6251

Interrogatory No. 6:

6. Identify each and every preschool, public or private school, or other educational institution that B.P.J. has attended to date.

B.P.J.'s Response To Interrogatory No. 6:

B.P.J. objects to this Interrogatory on the ground that it is overbroad, unduly burdensome, and not proportional to the needs of the case, as it seeks the identification of all “educational institution[s]” that B.P.J. has attended, regardless of whether those institutions are relevant to the claims or defenses at issue in this action. B.P.J. further objects to this Interrogatory on the ground that Defendant has failed to identify any limitation on period of time, and therefore Defendant improperly seeks the production of information that is not material or necessary to any claim or defense in this action. B.P.J. further objects to the phrase “other educational institution” as vague, ambiguous, and overbroad.

Subject to these general and specific objections, and without waiver thereof, B.P.J. responds as follows:

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- Norwood Elementary School
- Bridgeport Middle School

Interrogatory No. 7:

7. Identify each and every witness whom you intend to call at any hearing or at trial.

B.P.J.'s Response To Interrogatory No. 7:

B.P.J. objects to this Interrogatory on the basis that it is premature and not reasonably practicable for B.P.J. to identify “each and every” witness she intends to rely on at “any hearing” or at trial prior to the completion of discovery.

Subject to these general and specific objections, and without waiver thereof, B.P.J. will provide appropriate, non-privileged information in response to this Interrogatory in accordance with Federal Rule of Civil Procedure 26(a)(3) pursuant to the Court’s Scheduling Order (ECF No. 93) at the appropriate time.

Interrogatory No. 8:

8. Identify all cases where any of Plaintiff’s counsel have used any of Plaintiff’s Experts (as defined in the Requests for Production below) and, as to each case, the expert(s) used.

B.P.J.'s Response To Interrogatory No. 8:

B.P.J. objects to this Interrogatory on the basis that it is premature and not reasonably practicable for B.P.J. to identify “all cases” of all of “Plaintiff’s Experts,” including those “who [B.P.J.] may call to testify at trial or rely upon in future filings” prior to the completion of discovery. In addition, B.P.J. objects to the phrase “used” as vague, ambiguous, and overbroad. B.P.J. further objects on the ground that this interrogatory seeks information beyond the scope of Federal Rule of Civil Procedure 26(a)(2)(B)(v).

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Subject to these general and specific objections, and without waiver thereof, B.P.J. will provide appropriate, non-privileged information in response to this Interrogatory in accordance with Federal Rule of Civil Procedure 26(a)(2)(B)(v) pursuant to the Court's Scheduling Order (ECF No. 93) at the appropriate time.

Interrogatory No. 9:

9. Name and identify all athletic teams or organized athletic activities, including but not limited to cheer, in which B.P.J has participated during the past 7 years.

B.P.J.'s Response To Interrogatory No. 9:

B.P.J. objects to this Interrogatory on the grounds that the phrase "organized athletic activities" is vague, ambiguous, and overbroad. B.P.J. further objects on the ground that this Interrogatory is overbroad, unduly burdensome, and not proportional to the needs of the case, as the time period of "the past 7 years" far exceeds any period relevant to this action and therefore Defendant improperly seeks information that is not material or necessary to any claim or defense in this action.

Subject to these general and specific objections, and without waiver thereof, B.P.J. responds as follows:

- Bridgeport Youth Football League Cheerleading Team
- Bridgeport Middle School Cross Country Team

B.P.J.'s Supplemental Response to Interrogatory No. 9:

B.P.J. reiterates her specific objections stated in her initial response to Interrogatory No. 9.

In addition to her initial response, subject to the general and specific objections, and without waiver thereof, B.P.J. supplements her response as follows:

- **Bridgeport Youth Football League Cheerleading Team**

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- **Bridgeport Middle School Cross Country Team**
- **Bridgeport Middle School Track Team**

SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS

Without waiving or limiting in any manner any of the foregoing General Objections, but rather incorporating them into each of the following responses to the extent applicable, Plaintiff responds to the specific requests of Defendant's First Set of Requests for Production of Documents as follows:

Request for Documents No. 1:

1. All documents or other record or recorded media that reflect or contain reports, correspondences, and records from (a) each and every Health Care Provider who has treated, examined, consulted with, conferred with or counseled with the Plaintiff at any point during the last 7 years, (b) each and every medical facility where the Plaintiff has been treated, examined, or otherwise attended or admitted either as an inpatient or as an outpatient at any point during the last 7 years, and (c) each and every Health Care Provider with whom any parent of Plaintiff has consulted, conferred or counseled regarding Plaintiff at any point during the last 7 years.

B.P.J.'s Response to Request for Documents No. 1:

B.P.J. objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case to the extent it requests "all" documents and records that "reflect" or "contain" information regarding "each and every Health Care Provider" who has treated B.P.J. or "each and every Health Care Provider" with whom any parent of B.P.J. has consulted during the last 7 years. In addition to being overbroad and unduly burdensome, B.P.J. further objects to the Request to the extent that it seeks sensitive medical information unrelated to B.P.J.'s gender dysphoria diagnosis, as B.P.J. has specifically disclaimed any claim for damages based on emotional distress. B.P.J.

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further objects on the ground that the period of time of “the last 7 years” far exceeds any period relevant to this action and therefore Defendant improperly seeks the production of documents that are not material or necessary to any claim or defense in this action. B.P.J. additionally objects to this Request to the extent that it seeks documents protected by any applicable psychotherapist-patient privilege.

Subject to these general and specific objections, and without waiver thereof, B.P.J. will produce non-privileged documents showing B.P.J.’s treatment for gender dysphoria.

B.P.J.’s Supplemental Response to Request for Documents No. 1:

B.P.J. reiterates her specific objections stated in her initial response to Request for Documents No. 1, and objects to Request for Documents No. 1 as overbroad, seeking irrelevant information, and not proportional to the needs of the case. As noted in correspondence between the parties, this case involves a straightforward constitutional challenge to H.B. 3293’s exclusion of transgender girls from girls’ sports teams, and there is no basis for turning this case into an irrelevant medical examination of B.P.J.

As noted in Plaintiff’s supplemental response to Interrogatory No. 1, during Plaintiff’s investigation and active process of seeking medical records from her providers, Plaintiff identified additional providers that had not been disclosed in her initial set of responses. Subject to and without waiving her General and Specific Objections, without waiver thereof, B.P.J. has therefore supplemented her production with medical records from these providers.

Regarding medical records provided by Mr. Bunner, B.P.J. also objects to producing the content of communications between B.P.J. and Mr. Bunner during therapy sessions as protected by the psychotherapist-patient privilege. Without conceding their relevance, Plaintiff has produced unredacted versions of the documents subject to the Parties’ stipulation that producing

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such material does not constitute a waiver of privilege or otherwise affect Plaintiff's right to object to their further use or admission into evidence.

Request for Documents No. 2:

2. All documents that reflect or contain the name, home address, or business address of all individuals contacted as potential witnesses for this litigation.

B.P.J.'s Response to Request for Documents No. 2:

B.P.J. objects to this Request as seeking discovery of information or documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Defendant's request that B.P.J. identify "all documents" reflecting information regarding "all individuals" contacted as "potential witnesses" directly seeks work product-protected material, because such documents would disclose the thoughts, mental impressions, and strategic decisions of counsel.

Subject to these general and specific objections, and without waiver thereof, B.P.J. will disclose the identities of the witnesses she intends to rely upon in accordance with Federal Rule of Civil Procedure 26(a)(3) pursuant to the Court's Scheduling Order (ECF No. 93) at the appropriate time.

Request for Documents No. 3:

3. All documents that reflect or contain resumes or qualifications of all experts whose reports, publications, statements, or work have been cited by or included within any of Plaintiff's filings in this matter or who you may call to testify at trial or rely upon in future filings ("Plaintiff's Experts"). This includes without limitation Joshua D. Safer, Mary D. Fry, and Deanna Atkins.

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B.P.J.'s Response to Request for Documents No. 3:

B.P.J. objects to this Request on the basis that it is premature, as it seeks documents and information that will be produced in due course pursuant to the Court's Scheduling Order filed on September 8, 2021 (ECF No. 93). B.P.J. further objects to this Request on the basis that it is premature and not reasonably practicable for B.P.J. to identify "each and every" witness or expert she intends to rely on at "any hearing" or at trial prior to the completion of discovery. In addition, B.P.J. objects to the phrase "reflect" as vague, ambiguous, and overbroad. B.P.J. further objects on the ground that this interrogatory seeks information beyond the scope of Federal Rule of Civil Procedure 26(a)(2)(B)(iv).

Subject to these general and specific objections, and without waiver thereof, B.P.J. will provide appropriate, non-privileged documents in response to this Request in accordance with Federal Rule of Civil Procedure 26(a)(2)(B)(iv) pursuant to the Court's Scheduling Order (ECF No. 93) at the appropriate time.

Request for Documents No. 4:

4. All correspondence or communications between you and any school authorities, employees, agents, or representatives or other public authorities, employees, agents, or representatives regarding Plaintiff, including, but not limited to communications regarding Plaintiff's gender identity or gender dysphoria or Plaintiff's participation in any athletic program or activity, and any recordings or records pertaining to such correspondence or communication.

B.P.J.'s Response to Request for Documents No. 4:

B.P.J. objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case to the extent it requests "all" correspondence or communications regarding

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B.P.J., regardless of whether they relate to B.P.J.'s gender dysphoria diagnosis and athletics. B.P.J. further objects to this Request as overbroad, unduly burdensome, and not proportionate to the needs of the case in that it seeks not only communications, but also documents pertaining to such communications. In addition, B.P.J. objects to the phrases "school authorities," "other public authorities," and "athletic program or activity" as vague, ambiguous, and overbroad. B.P.J. additionally objects on the ground that Defendant has failed to identify any limitation on period of time, and therefore Defendant improperly seeks the production of information that is not material or necessary to any claim or defense in this action.

Subject to these general and specific objections, and without waiver thereof, B.P.J. will produce non-privileged communications from the past three years between herself and/or her mother and school authorities at B.P.J.'s elementary and middle school regarding B.P.J.'s gender dysphoria and participation on school athletics teams.

Request for Documents No. 5:

5. All communications to or from Plaintiff, Plaintiff's parents, or Plaintiff's counsel to or from any of Plaintiff's Experts or any other consultant or person who was contacted or interviewed to serve or potentially serve as an expert or consultant in this case.

B.P.J.'s Response to Request for Documents No. 5:

B.P.J. objects to this Request as seeking discovery of information or documents that are beyond the scope of expert discovery permitted by Federal Rule of Civil Procedure 26(b)(4) and protected by the attorney-client privilege and/or the work-product doctrine. Defendant's request that B.P.J. identify "all communications" to or from persons who were "contacted or interviewed to serve or potentially serve as an expert or consultant" in this litigation directly seeks work

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product-protected material, because such communications would disclose the thoughts, mental impressions, and strategic decisions of counsel.

Subject to these general and specific objections, and without waiver thereof, B.P.J. will provide the required expert disclosures in response to this Request in accordance with Federal Rule of Civil Procedure 26(a)(2)(B) pursuant to the Court's Scheduling Order (ECF No. 93) at the appropriate time.

Request for Documents No. 6:

6. All documents that reflect or contain reports, draft reports, manuals, textbooks, policy sheets, communications or any other information sent by you to any expert, potential expert, witness, or potential witness in preparation for this litigation.

B.P.J.'s Response to Request for Documents No. 6:

B.P.J. objects to this Request as seeking discovery of information or documents that are beyond the scope of expert discovery permitted by Federal Rule of Civil Procedure 26(b)(4) and protected by the attorney-client privilege and/or the attorney work-product doctrine. Defendant's request that B.P.J. provide "all documents" or "any other information" sent "in preparation for this litigation" directly seeks work product-protected material, because such information would disclose the thoughts, mental impressions, and strategic decisions of counsel.

Subject to these general and specific objections, and without waiver thereof, B.P.J. will provide the required expert disclosures in response to this Request in accordance with Federal Rule of Civil Procedure 26(a)(2)(B) pursuant to the Court's Scheduling Order (ECF No. 93) at the appropriate time.

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Request for Documents No. 7:

7. All documents of Plaintiff's Experts with respect to cases or lawsuits in which any of the Plaintiff's Experts has submitted declarations or affidavits or has testified as an expert at trial or by deposition.

B.P.J.'s Response to Request for Documents No. 7:

B.P.J. objects to this Request because the request for "all documents of Plaintiff's Experts with respect to cases or lawsuits" is vague, ambiguous, and overbroad. B.P.J. further objects to the extent that it exceeds the scope of Federal Rule of Civil Procedure 26(a)(2)(B)(v).

Subject to these general and specific objections, and without waiver thereof, B.P.J. will provide the required expert disclosures in response to this Request in accordance with Federal Rule of Civil Procedure 26(a)(2)(B) pursuant to the Court's Scheduling Order (ECF No. 93) at the appropriate time.

Request for Documents No. 8:

8. All documents that reflect or contain reports, draft reports, manuals, textbooks, policy sheets, communications or any other information which any expert, potential expert, witness, or potential witness has consulted or reviewed as a result of, or in preparation for this litigation or that person's deposition or trial testimony.

B.P.J.'s Response to Request for Documents No. 8:

B.P.J. objects to this Request on the basis that it is premature, as it seeks documents and information that are beyond the scope of expert discovery permitted by Federal Rule of Civil Procedure 26(b)(4) and protected by the attorney-client privilege and/or the work-product doctrine. B.P.J. further objects to this Request on the basis that it is premature and not reasonably practicable

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for B.P.J. to identify documents consulted or reviewed as a result of, or in preparation for “deposition” or “trial” prior to the completion of discovery.

Subject to these general and specific objections, and without waiver thereof, B.P.J. will provide the required expert disclosures in response to this Request in accordance with Federal Rule of Civil Procedure 26(a)(2)(B) pursuant to the Court’s Scheduling Order (ECF No. 93) at the appropriate time.

Request for Documents No. 9:

9. All documents that reflect or contain literature, studies, journals, papers, pamphlets, or other publications upon which Plaintiff’s Experts have relied for their respective opinions, segregating said documents by the expert who has relied on said documents.

B.P.J.’s Response to Request for Documents No. 9:

B.P.J. objects to this Request on the basis that it is premature, as it seeks documents and information that will be produced in due course pursuant to the Court’s Scheduling Order filed on September 8, 2021 (ECF No. 93). B.P.J. further objects to this Request on the basis that it is premature and not reasonably practicable for B.P.J. to identify documents consulted or reviewed as a result of, or in preparation for “deposition” or “trial” prior to the completion of discovery. B.P.J. further objects to this Request to the extent that it is duplicative of Request No. 8.

Subject to these general and specific objections, and without waiver thereof, B.P.J. will provide the required expert disclosures in response to this Request in accordance with Federal Rule of Civil Procedure 26(a)(2)(B) pursuant to the Court’s Scheduling Order (ECF No. 93) at the appropriate time.

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Request for Documents No. 10:

10. All documents that reflect or contain reports, drafts of reports, or any other testimonial material of Plaintiff's Experts which they have prepared for this or any other litigation.

B.P.J.'s Response to Request for Documents No. 10:

B.P.J. objects to this Request as seeking discovery of information or documents that are beyond the scope of expert discovery permitted by Federal Rule of Civil Procedure 26(b)(4) and protected by the attorney-client privilege and/or the work-product doctrine. Defendant's request that B.P.J. identify "all documents" "prepared for" litigation directly seeks work product-protected material, because such documents would disclose the thoughts, mental impressions, and strategic decisions of counsel. B.P.J. further objects to the extent that it exceeds the scope of Federal Rule of Civil Procedure 26(a)(2)(B)(v).

Subject to these general and specific objections, and without waiver thereof, B.P.J. will provide the required expert disclosures in response to this Request in accordance with Federal Rule of Civil Procedure 26(a)(2)(B) pursuant to the Court's Scheduling Order (ECF No. 93) at the appropriate time.

Request for Documents No. 11:

11. All documents that reflect or contain the current fee schedule for each of Plaintiff's Experts.

B.P.J.'s Response to Request for Documents No. 11:

B.P.J. objects to this Request as seeking discovery of information or documents beyond the scope of FRCP 26(a)(2)(B)(v) and FRCP 26(b)(4)(C)(i). Subject to these general and specific objections, and without waiver thereof, B.P.J. responds that she will disclose the compensation to be paid for each expert in accordance with FRCP 26(a)(2)(B)(vi) pursuant to the Court's Scheduling Order (ECF No. 93) at the appropriate time.

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Request for Documents No. 12:

12. A complete copy of the entire file of each expert consulted in connection with this case, including any and all documents generated by said expert, copies of all photographs, videos, or depictions in the possession of the expert, copies of all notes, draft reports, demonstrations, all documents and authorities reviewed or relied upon by each said expert, a list of all cases in which the expert has been deposed or given trial testimony in the past five years, all articles authored by the expert, and compensation to be paid to the expert.

B.P.J.'s Response to Request for Documents No. 12:

B.P.J. objects to this Request as seeking discovery of information or documents outside the scope of Federal Rule of Civil Procedure 26(a)(2) and 26(b)(4) and protected by the attorney-client privilege and/or the attorney work-product doctrine.

Subject to these general and specific objections, and without waiver thereof, B.P.J. will provide the required expert disclosures in response to this Request in accordance with Federal Rule of Civil Procedure 26(a)(2)(B) pursuant to the Court's Scheduling Order (ECF No. 93) at the appropriate time.

Request for Documents No. 13:

13. Any document issued by any government agency that identifies Plaintiff's gender.

B.P.J.'s Response to Request for Documents No. 13:

B.P.J. objects to this Request on the ground that it is overbroad, unduly burdensome, and not relevant to the claims and defenses, as Defendant has failed to identify any limitation on period of time, and therefore Defendant improperly seeks the production of information that is not material or necessary to any claim or defense in this action. In addition, B.P.J. objects to the phrases "gender" and "government agency" as vague, ambiguous, and overbroad.

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Subject to these general and specific objections, and without waiver thereof, B.P.J. will produce non-privileged documents responsive to this Request.

Request for Documents No. 14:

14. A signed copy of the attached Medical Release form.

B.P.J.'s Response to Request for Documents No. 14:

B.P.J. objects to this Request on the ground that Interrogatory No. 1 and Request for Documents No. 1 are overbroad, unduly burdensome, and not relevant to the claims and defenses in this action as currently written. B.P.J. further objects to this Request because it would allow Defendants to access sensitive and private information without restrictions or further dissemination of that information or other privacy protections. Subject to these general and specific objections, and without waiver thereof, if B.P.J. and Defendant are able to agree upon the scope of Interrogatory No. 1 and Request for Documents No. 1, B.P.J. will produce information and non-privileged documents responsive to Request for Documents No. 1 and Interrogatory No. 1 that will render Request for Documents No. 14 unnecessary.

Request for Documents No. 15:

15. A signed copy of the attached FERPA Consent to Release Student Information forms, with the missing information filled in.

B.P.J.'s Response to Request for Documents No. 15:

B.P.J. objects to this Request on the ground that Interrogatory Nos. 3, 5, 6 and Request for Documents No. 4 are overbroad, unduly burdensome, and not relevant to the claims and defenses in this action as currently written. B.P.J. further objects to this Request because it would allow Defendant to access sensitive and private information without restrictions or further dissemination of that information or other privacy protections. Subject to these general and specific objections,

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and without waiver thereof, if B.P.J. and Defendant are able to agree upon the scope of Interrogatory Nos. 3, 5, 6 and Request for Documents No. 4, B.P.J. will produce non-privileged documents responsive to those Requests that will render Request for Documents No. 15 unnecessary.

Request for Documents No. 16:

16. Copies of all documents and materials produced in response to and any written responses to any discovery requests to Plaintiff from any other party in this matter.

B.P.J.'s Response to Request for Documents No. 16:

Subject to the general objections, and without waiver thereof, B.P.J. will produce non-privileged documents responsive to this Request.

Request for Documents No. 17:

17. Copies of all documents and materials received or obtained via any subpoena in this matter.

B.P.J.'s Response to Request for Documents No. 17:

Subject to the general objections, and without waiver thereof, B.P.J. will produce non-privileged documents responsive to this Request and relevant to the claims in this case.

Request for Documents No. 18:

18. Copies of all documents and materials received or obtained via a Freedom of Information Act request submitted to Defendant, West Virginia State Board of Education; Defendant, Harrison County Board of Education; or any state officer, official, agency, or entity regarding Plaintiff, H.B. 3293, or W. Va. Code § 18-2-25d.

B.P.J.'s Response to Request for Documents No. 18:

Subject to the general objections, and without waiver thereof, B.P.J. will produce non-privileged documents responsive to this Request and relevant to the claims in this case.

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Dated: April 1, 2022

Joshua Block*
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad St.
New York, NY 10004
Phone: (212) 549-2569
jblock@aclu.org

Avatara Smith-Carrington*
LAMBDA LEGAL
3500 Oak Lawn Avenue, Suite 500
Dallas, TX 75219
Phone: (214) 219-8585
asmithcarrington@lambdalegal.org

Carl Charles*
Tara Borelli*
LAMBDA LEGAL
158 West Ponce De Leon Ave., Ste. 105
Decatur, GA 30
Phone: (404) 897-1880
ccharles@lambdalegal.org

Sruti Swaminathan*
LAMBDA LEGAL
120 Wall Street, 19th Floor
New York, NY 10005
Phone: (212) 809-8585
sswaminathan@lambdalegal.org

Andrew Barr*
COOLEY LLP
1144 15th St. Suite 2300
Denver, CO 80202-5686
Phone: (720) 566-4000
abarr@cooley.com

Respectfully submitted,
/s/ Loree Stark

Loree Stark (Bar No. 12936)
Nick Ward (Bar No. 13703)
AMERICAN CIVIL LIBERTIES UNION OF WEST
VIRGINIA FOUNDATION
P.O. Box 3952
Charleston, WV 25339-3952
Phone: (914) 393-4614
lstark@acluwv.org

Kathleen Hartnett*
Julie Veroff*
Zoë Helstrom*
COOLEY LLP
3 Embarcadero Center, 20th Floor
San Francisco, CA 94111
Phone: (415) 693-2000
khartnett@cooley.com

Katelyn Kang*
Valeria M. Pelet del Toro*
COOLEY LLP
55 Hudson Yards
New York, NY 10001-2157
Phone: (212) 479-6000
kkang@cooley.com

Elizabeth Reinhardt*
COOLEY LLP
500 Boylston Street, 14th Floor
Boston, MA 02116-3736
Phone: (617) 937-2305
ereinhardt@cooley.com

**Visiting Attorneys*

Attorneys for Plaintiff

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.

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.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

VERIFICATION

After being first duly sworn, I, Heather Jackson, depose and say that I have read the foregoing responses in Plaintiff's Second Set of Supplemental Responses and Objections to Defendant the State of West Virginia's First Set of Interrogatories and Requests for Production dated April 1, 2022 and know its contents. The foregoing is true to my knowledge, except to those matters stated to be alleged on information and belief, and as to those matters I believe them to be true.

Heather Jackson

STATE OF WEST VIRGINIA,

COUNTY OF Harrison, to-wit:

Taken, subscribed and sworn to before me, the undersigned Notary Public, this date,
April 1, 2022.

My commission expires:

Video Meeting

Video ID: tapfWqpJQ2, Recording URL: <https://ds4u.cc/tapfWqpJQ2>, Passcode: 0272

Video Meeting

Video ID: tapfWqpJQ2, Recording URL: <https://ds4u.cc/tapfWqpJQ2>, Passcode: 0272

Exhibit 4

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

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

Plaintiff,

vs.

Civil Action No. 2:21-cv-00316
Hon. 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;
PATRICK MORRISEY in his official
capacity as Attorney General; and THE
STATE OF WEST VIRGINIA,

Defendants.

**RESPONSES TO PLAINTIFF’S FIRST SET OF INTERROGATORIES
TO DEFENDANT, STATE OF WEST VIRGINIA**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and the applicable Local Rules of the District of West Virginia and this Court, Defendant the State of West Virginia provides the following in response to Plaintiff’s First Set of Interrogatories to Defendant, State of West Virginia (“First Set of Interrogatories”).

GENERAL OBJECTIONS

1) The State of West Virginia objects to the following definition as stated in Plaintiff’s First Set of Interrogatories:

“YOU, YOUR, or YOURS means the State of West Virginia and its governors, attorneys general, agencies, legislators, officials, affiliates, attorneys, accountants, consultants, representatives, and agents.”

In this case, the State of West Virginia alone intervened and was then added as a named defendant via the Amended Complaint, and the Attorney General represents only the State of West Virginia. The Attorney General does not represent any of the other entities or individuals listed in the foregoing definition and cannot provide information from or documents within the custody or control of those entities and individuals. Plaintiff may obtain information and documents from specific entities and individuals listed in the definition as permitted by the procedures set forth in the Federal Rules of Civil Procedure. To explain this objection further, the State of West Virginia is a sovereign state consisting of a specific geographic area and the residents therein. Its Constitution designates three independent branches with multiple officers and officials, who are elected or appointed separately, and typically constituted with multiple agencies or bodies. The Attorney General of West Virginia is the chief legal officer for the State of West Virginia and has constitutional and statutory authority to, among other things, represent officers and agencies of state government and to pursue or defend the interests on behalf of the State in courts and other tribunals. *See* W. Va. Const. art. VII, § 1; W. Va. Code § 5-3-2; *see also* syl. pt. 4, *State ex rel. McGraw v. Burton*, 569 S.E.2d 99 (2002). As is the case in most States, “all agencies and departments within the executive branch do not speak with a single voice.” *Com. v. Ortho-McNeil-Janssen Pharms., Inc.*, No. CIV.A. 2011-2811-BLS, 2012 WL 5392617, at *2 (Mass. Super. Oct. 5, 2012) (citing *New York v. National R.R. Passenger Corp.*, 233 F.R.D. 259 (N.D.N.Y. 2006)). In legal proceedings, agencies and officers are separate entities, and each may have its own counsel, though related officers and agencies often are represented by the same counsel as is the situation with the West Virginia State Board of Education and the State Superintendent in this case. Indeed, such entities are in some cases adverse to one another. While the Attorney General may at various times represent some of

these entities and officers, he was not been called upon to do so here. Rather, only the State of West Virginia—not any agencies or officers of its state government—is represented by the Attorney General here. Accordingly, Defendant State of West Virginia will respond to these discovery requests as though they seeks information possessed by the State of West Virginia, subject to all other objections available to it or its counsel.

2) In addition, the State of West Virginia objects to any other instruction or definition that imposes burdens beyond the scope of the Federal Rules of Civil Procedure or other law and further presumes that the requests do not seek attorney work product, which is non-discoverable.

INTERROGATORIES

Without waiving and subject to the general objections, which are incorporated into each response, Defendant State of West Virginia answers Plaintiff's First Set of Interrogatories as follows:

INTERROGATORY NO. 1: Identify all PERSONS who provided information in preparation of YOUR Answer and Motion to Dismiss the First Amended Complaint, and for each such PERSON, state the following:

- (a) **Their name, address, and telephone number:**
- (b) **Their relationship to YOU and/or Plaintiff: and**
- (c) **A detailed description of such knowledge and/or information.**

RESPONSE: Defendant State objects to this interrogatory as it requests information subject to the work-product privilege and that it implies Defendant State has filed a motion to dismiss in this action, which it has not. Without waiving any objections, Defendant State identifies its counsel of record, (a) whose address and telephone number are indicated in the pleadings, (b) that they are counsel to the State and have no relationship with the Plaintiff, other than in their capacities as public servants to West Virginia residents,

including Plaintiff, and (c) that they are aware of the legal arguments in this case, are familiar with the allegations made by Plaintiff, and are investigating the relevant facts.

INTERROGATORY NO. 2: Identify all of YOUR internal or external COMMUNICATIONS regarding the participation of students who are transgender playing on school sports teams, and the date and content of the COMMUNICATION.

RESPONSE: Defendant State objects to this interrogatory as it requests information subject to the work-product privilege and is vague and unclear and overly burdensome. As written, this interrogatory contemplates the compilation of every utterance of “facts, ideas, inquiries, or otherwise” regarding “the participation of students who are transgender playing on school sports teams” irrespective of any limitations, such as to time, persons involved, or relation to Plaintiff’s claims and allegations. Further objecting, the information sought is not relevant because the core of Plaintiff’s claims address the validity and constitutionality of the Protection of Women’s Sports Act, and whether or not the State of West Virginia has ever had any such communications is not relevant to the validity of such law. Even if such communications were limited to any time from January 1, 2019, to the present, the same objection would remain valid. The scope of this interrogatory is also duplicative of Interrogatory 5. Further objecting, many such communications would likely be protected by the attorney work product and/or attorney client privileges. Without waiver of any objections, the State of West Virginia has no such communications. However, the State of West Virginia takes notice of communications regarding “the participation of students who are transgender playing on school sports teams” as are available in the public

domain. *See, e.g.* reports of biological males participating on female sports teams in Connecticut and Montana. The State is also aware of public statements of biological female athletes and women’s advocacy organizations commenting on this issue, including those opposing participation of biological males in biological female sports. Such communications are equally available to the Plaintiff in the public sphere. Further answering, the State of West Virginia notes that Plaintiff may seek the information contemplated by this interrogatory from governmental agencies and/or officers directly or through their respective counsel, as appropriate.

INTERROGATORY NO. 3: Identify all PERSONS involved in drafting, lobbying for, testifying in support of, and/or advancing H.B. 3293, or any other potential legislation in 2020 or 2021 regarding the participation of transgender athletes in West Virginia.

For each such PERSON, state the following:

- (a) **Their name, address, and telephone number:**
- (b) **Their relationship to YOU and/or B.P.J.; and**
- (c) **A detailed description of their involvement.**

RESPONSE: Defendant State objects to this interrogatory as it is vague and unclear and overly burdensome. As written, this interrogatory requests the State of West Virginia compile a listing of persons involved in myriad parts of legislative processes and efforts over 2 years and not limited to the statute challenged by Plaintiff but inclusive of “any other potential legislation ... regarding the participation of transgender athletes in West Virginia.” It is unclear to the State just what is meant by this quoted language and by the use of “advancing” as these are subject to multiple meanings and interpretations. Regardless, several categories of persons described in

this interrogatory relative to H.B. 3293 can be discerned through publicly-available resources. Further objecting, the requested information is not relevant because the identities or views of such persons does not affect the validity of the Protection of Women’s Sports Act. As long as the subject law meets the required standard of review, the views of the drafters or sponsors as to its purposes do not affect its validity. “[A] classification cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose. [...] Further, a legislature that creates these categories need not ‘actually articulate at any time the purpose or rationale supporting its classification.’” *Heller v. Doe by Doe*, 509 U.S. 312, 320, (1993) (internal citations omitted). To the extent a heightened level of scrutiny might apply, courts look to see if “the proffered purpose for the challenged law be the actual purpose,” *United States v. Virginia*, 518 U.S. 515, 559 (1996), not individual legislator comments. *See e.g. Kofa v. U.S. I.N.S.*, 60 F.3d 1084, 1088 (4th Cir. 1995) (“The text of the statute, and not the private intent of the legislators, is the law.... So the text is law and legislative intent a clue to the meaning of the text, rather than the text being a clue to legislative intent.”) (citing *Continental Can Co. v. Chicago Truck Drivers, Helpers & Warehouse Workers Union (Indep.) Pension Fund*, 916 F.2d 1154, 1157–58 (7th Cir.1990)).

Without waiver of any objections, Defendant State of West Virginia has no independent knowledge of such individuals. However, the State of West Virginia takes notice of the alleged transcript (the “Alleged Transcript”) filed by the Plaintiff in this case, which purportedly contains information which may be instructive for identifying persons sought by this interrogatory.

INTERROGATORY NO. 4: Identify all PERSONS responsible for implementing or enforcing H.B. 3293.

RESPONSE: Defendant State objects to this unclear and unduly burdensome. Further objecting, the requested information is not relevant. Specifically, it is unclear how the requested information is relevant to the validity of the subject statute and the breadth of meaning for “responsible” in this context. Also, the State of West Virginia is not responsible for determining the “PERSONS responsible for implementing or enforcing” the Protecting Women’s Sports Act. Without waiver of any objections, the State of West Virginia presently anticipates that local school boards, coaches, school administrators throughout the State would be involved in the implementation of the Protection of Women’s Sports Act. It is possible that the other named defendants may also have such responsibilities; however, in providing this observation, the State does not assert any position contrary to those parties’ assertions in their respective Motions to Dismiss. The identification of all of the “local school boards, coaches, school administrators throughout the State” is a matter of public record which is equally available to the Plaintiff as it is to the State. Accordingly, the State is not obligated to locate this information for the Plaintiff. Plaintiff may seek such information from those parties directly or through their respective counsel, as appropriate.

INTERROGATORY NO. 5: Identify all of YOUR internal or external COMMUNICATIONS regarding H.B. 3293. or any other potential legislation in 2020

or 2021 regarding the participation of transgender athletes in West Virginia, and the date and content of the COMMUNICATION.

RESPONSE: Defendant State objects to this interrogatory as it requests information subject to the work-product privilege and is vague and unclear and overly burdensome. As written, this interrogatory contemplates the compilation of every utterance of “facts, ideas, inquiries, or otherwise” regarding “potential legislation in 2020 or 2021 regarding the participation of transgender athletes in West Virginia” without limitations as to persons involved or relation to Plaintiff’s claims and allegations. Further objecting, the requested information is not relevant because the core of Plaintiff’s claims address the validity and constitutionality of the Protection of Women’s Sports Act and whether or not the State of West Virginia has ever had any such communications about “other potential legislation”—the meaning of which is not clear—is not relevant to the validity of such law. Also, though the scope of this interrogatory is somewhat narrower than that of Interrogatory 1, the overlap makes these interrogatories duplicative and, thus, burdensome. Further objecting, many such communications would likely be protected by the attorney work product and/or attorney client privileges. Without waiver of any objections, the State of West Virginia provides that it has no such communications. However, the State of West Virginia takes notice of communications regarding “the participation of transgender athletes in West Virginia” as are available in the public domain. *See e.g.* news releases and media reports regarding Plaintiff and this matter. Further answering, the State of West Virginia notes that Plaintiff may seek the information contemplated by this interrogatory from governmental agencies and/or officers directly or through their respective counsel, as appropriate.

INTERROGATORY NO. 6: Identify all governmental interests that YOU believe are advanced by H.B. 3293.

RESPONSE: The State objects to the word “believe” as used in this interrogatory; the State is not a natural person capable of belief or non-belief. Further objecting, the government interests advanced by the Protection of Women’s Sports Act, also known as H.B 3293, are a subject of legal determination. Without waiver of any objections, the State asserts the following interests, primarily and in general, which are advanced by the Protection of Women’s Sports Act:

1. To Protect Women’s Sports
2. To follow Title IX
3. To protect women’s safety in female athletic sports.

The State reserves the right to further address this issue as this matter progresses, either in its discovery responses, its expert witness disclosures, or its legal briefing.

INTERROGATORY NO. 7: Identify all ways that YOU believe the governmental interests identified in Interrogatory No. 6 are advanced by H.B. 3293.

RESPONSE: Defendant State of West Virginia incorporates the specific objections to Interrogatory 6 above into this response. The State also objects to the extent that this interrogatory seeks to preview legal arguments relative to governmental interests, which are a subject of legal determination, and is therefore inappropriate. Without waiver of any objections, Defendant State of West Virginia notes its Brief in Opposition to Motion for Preliminary Injunction and its attached materials and other documents. In addition, the State may provide further materials and documents through additional expert witness

testimony in this case pursuant to the scheduling order and references any such materials, documents, and testimony in response to this interrogatory. The State is also aware of public statements of biological female athletes and women's' advocacy organizations commenting on this issue and opposing participation of biological males in biological female sports.

INTERROGATORY NO. 8: Identify all information known to YOU prior to April 9, 2021 that support YOUR argument that the identified governmental interests are advanced by H.B. 3293.

RESPONSE: Defendant State of West Virginia incorporates the specific objections to Interrogatory 6 above into this response. The State also objects to the extent that this interrogatory seeks to preview legal arguments relative to governmental interests, which are a subject of legal determination, and is therefore inappropriate. Without waiver any objections, Defendant State of West Virginia asserts that it was not involved in this matter prior to April 9, 2021, and thus has no responsive information.

INTERROGATORY NO. 9: State all facts that support YOUR argument that the identified governmental interests are advanced by H.B. 3293.

RESPONSE: Defendant State of West Virginia incorporates the specific objections to Interrogatory 6 above into this response. The State also objects to the extent that this interrogatory seeks to preview legal arguments relative to governmental interests, which are a subject of legal determination, and is therefore inappropriate. Without waiver of any objections, Defendant State of West Virginia notes its Brief in Opposition to Motion

for Preliminary Injunction and its attached materials and other documents. In addition, the State may provide further materials and documents through additional expert witness testimony in this case pursuant to the scheduling order and references any such materials, documents, and testimony in response to this interrogatory. The State is also aware of public statements of biological female athletes and women's advocacy organizations commenting on this issue and opposing participation of biological males in biological female sports. The State may develop other information, documents, or material as this matter proceeds and will supplement this response accordingly.

INTERROGATORY NO. 10: Identify all employees, contractors, or other personnel affiliated with YOU who maintain records CONCERNING B.P.J. and describe the general nature of those records.

RESPONSE: Defendant State of West Virginia objects to this interrogatory to the extent that it seeks information subject to the attorney work-product privilege. Without waiver of any objections, any records maintained by the Defendant State of West Virginia concerning B.P.J. are litigation related.

INTERROGATORY NO. 11: Identify all COMMUNICATIONS between YOU and any officer, director, employee, partner, corporate parent, subsidiary, affiliate, attorney, accountant, consultant, representative, or agent of Alliance Defending Freedom and state the date and the contents of such COMMUNICATIONS.

RESPONSE: Defendant State of West Virginia objects as the information sought is overbroad and not relevant. As written, this interrogatory contemplates the compilation of every contact

that related “facts, ideas, inquiries, or otherwise” to or with any person seemingly having any contact or connection to an organization appearing as counsel of record for Lainey Armistead, who is seeking to intervene in this matter. The requested information is not relevant because the core of Plaintiff’s claims address the validity and constitutionality of the Protection of Women’s Sports Act, and whether or not Defendant State of West Virginia has ever had any communications with Alliance Defending Freedom is not relevant to the validity of such law. Even if such interrogatory is limited in time, the same objection remains valid. Further objecting, any such communications would be subject to the attorney work product.

Respectfully,

STATE OF WEST VIRGINIA,

By counsel,
PATRICK MORRISEY,
ATTORNEY GENERAL

/s/ Curtis R. A. Capehart (by permission)
Douglas P. Buffington, II (WV Bar # 8157)
Chief Deputy Attorney General
Curtis R. A. Capehart (WV Bar # 9876)
Deputy Attorney General
David C. Tryon (visiting attorney admitted pro hac
vice)
Special Assistant to the Attorney General
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305-0220
Email: Curtis.R.A.Capehart@wvago.gov
Telephone: (304) 558-2021
Facsimile: (304) 558-0140

*Counsel for Defendant, STATE OF WEST
VIRGINIA*

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

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

Plaintiff,

vs.

Civil Action No. 2:21-cv-00316
Hon. 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; and,
DORA STUTLER in her official capacity as
Harrison County Superintendent,

Defendants.

CERTIFICATE OF SERVICE

I caused a true copy of this Certificate of Service for “Responses to Plaintiff’s *First Set of Interrogatories to Defendant, State of West Virginia*” to be served on all parties via the CM/ECF System this November 23, 2021, with a copy of said requests addressed to counsel as follows:

Loree Stark
ACLU of WV Foundation
P.O. Box 3952
Charleston, WV 25339-3952
lstark@acluwv.org
Counsel for Plaintiff

Avatar Smith-Carrington
Lambda Legal
3500 Oak Lawn Avenue, Suite 500
Dallas, TX 75219
asmithcarrington@lambdalegal.org
Counsel for Plaintiff

Carl Charles
Tara Borelli

Andrew Barr
Cooley LLP
1144 15th St., Suite 2300
Denver, CO 80202-5686
Counsel for Plaintiff

Kathleen R. Hartnett
Julie Veroff
Cooley LLP
101 California Street, 5th Floor
San Francisco, CA 94111-5800
khartnett@cooley.com
Counsel for Plaintiff

Elizabeth Reinhardt
Cooley LLP

Lambda Legal
730 Peachtree Street NE, Suite 640
Atlanta, GA 30308-1210
ccharles@lambdalegal.org
Counsel for Plaintiff

Sruti Swaminathan
Lambda Legal
120 Wall Street, 19th Floor
New York, NY 10005
Counsel for Plaintiff

Joshua Block
Taylor Brown
Chase Strangio
American Civil Liberties Foundation
125 Broad Street
New York, NY 10004
jblock@aclu.org
Counsel for Plaintiff

Susan L. Deniker
Steptoe @ Johnson PLLC
400 White Oaks Boulevard
Bridgeport, WV 26330
susan.deniker@steptoe-johnson.com
*Counsel for Defendants, Harrison County
Board of Education and Dora Stutler*

Kelly C. Morgan
Michael W. Taylor
Kristen V. Hammond
Bailey & Wyant, PLLC
500 Virginia Street East, Suite 600
P.O. Box 3710
Charleston, WV 25337-3710
kmorgan@baileywyant.com
mtaylor@baileywyant.com
khammond@baileywyant.com
*Counsel for Defendants, West Virginia
State Board of Education and W. Clayton
Burch*

500 Boylston Street, 14th Floor
Boston, MA 02116-3736
ereinhardt@cooley.com
Counsel for Plaintiff

Katelyn Kang
Cooley LLP
55 Hudson Yards
New York, NY 10001-2157
kkang@cooley.com
Counsel for Plaintiff

Whitney M. Pellegrino
Aria S. Vaughan
Michelle L. Tucker
Amanda K. Dallo
United States Department of Justice
Civil Rights Division
Educational Opportunities Section
950 Pennsylvania Ave., NW
4CON, 10th Floor
Washington, DC 20530
Aria.Vaughan@usdoj.gov
United States Department of Justice

Lisa G. Johnson
Fred B. Westfall, Jr.
Jennifer M. Mankins
300 Virginia Street East, Room 4000
Charleston, WV 25301
Fred.Westfall@usdoj.gov
United States Attorney's Office

Roberta F. Green
Shuman McCuskey & Slicer PLLC
P.O. Box 3953
Charleston, WV 25339-3953
rgreen@shumanlaw.com
*Counsel for Defendant, West Virginia
Secondary School Activities Commission*

PATRICK MORRISEY
ATTORNEY GENERAL

/s/ Curtis R. A. Capehart

Douglas P. Buffington, II (WV Bar # 8157)

Chief Deputy Attorney General

Curtis R. A. Capehart (WV Bar # 9876)

Deputy Attorney General

David C. Tryon (visiting attorney admitted pro hac
vice)*

Special Assistant to the Attorney General

State Capitol Complex

Building 1, Room E-26

Charleston, WV 25305-0220

Email: Curtis.R.A.Capehart@wvago.gov

Telephone: (304) 558-2021

Facsimile: (304) 558-0140

*Admitted in Ohio. Practicing under the supervision of West
Virginia attorneys.

*Counsel for Defendant, STATE OF WEST
VIRGINIA*

Exhibit 5

**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.

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

LAINIEY ARMISTEAD,

Defendant-Intervenor.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

**RESPONSES TO PLAINTIFF’S SECOND SET OF REQUESTS FOR ADMISSION
TO DEFENDANT, STATE OF WEST VIRGINIA**

Pursuant to Federal Rules of Civil Procedure 33 and 36 and the applicable Local Rules of the Southern District of West Virginia and this Court, the Defendant, State of West Virginia (the “State”), provides these responses to Plaintiff’s Second Set of Requests for Admission to Defendant, State of West Virginia (“Second Set of RFAs”).

GENERAL OBJECTIONS

The State objects to the definitions of the terms “Cisgender,” “Gender Identity,” “Transgender,” and “Transgender Girl” in the Second Set of RFAs’ instructions. Those terms have no definitive legally recognized definition, and those terms do not have an agreed or stipulated meaning in this matter. Any requests for admissions based on these disputed and unproven definitions would necessarily be admissions as to Plaintiff’s definitions, which the State declines to do at this point in the litigation.

Objecting further, Plaintiff's instructions state: "3. GENDER IDENTITY is synonymous with the meaning used in Plaintiff's First Amended Complaint, paragraphs 19-23." Yet those paragraphs do not contain any definition of the term "gender identity." Accordingly, the instructions for the Second Set of RFAs, even if otherwise acceptable, are vague and unclear.

Further objecting, the Defendant State objects to the definition of "YOU," "YOUR," and "YOURS." As previously discussed in this case, the State of West Virginia alone intervened and was then added as a named defendant via the Amended Complaint, and the Attorney General represents only the State of West Virginia. The Attorney General does not represent any of the other entities or individuals listed in the definition of "YOU, YOUR or YOURS" in these requests and cannot speak on behalf of those entities and individuals here. Accordingly—and consistent with other discovery responses in this matter—any responses are on behalf of the State only.

Further objecting, to the extent that the RFAs ask that the Defendant State admit to its awareness, it is unclear how "awareness" is meant to be applied to the State of West Virginia as (i) "awareness" is distinct from "knowledge" and (ii) the State is an entity which does not have "awareness" as that term is typically understood. Any RFAs seeking such an admission are unclear and consequently seem inappropriate.

Further objecting, the Defendant State objects to any instructions which go beyond Federal Rule 36 and will follow that rule in the event the instructions conflict or go beyond that rule.

RESPONSES TO REQUESTS FOR ADMISSION

Defendant State of West Virginia incorporates by reference all of the foregoing objections into each of the responses below. Any admission in the responses below are made without waiver of the foregoing objections.

REQUEST NO. 5: Admit that Plaintiff B.P.J. has been diagnosed with gender dysphoria.

RESPONSE: The State objects to this request as it is vague in the sense that the term "diagnosed" suggests a medical diagnosis. The assertion of a diagnosis of gender dysphoria relates to a subjective psychological diagnosis, and it is the State's understanding that the standards for such diagnosis vary and that different medical providers reach such a diagnosis differently. Further responding, the State denies for lack of knowledge. The State acknowledges and admits that there are medical records that record and reflect a diagnosis of gender dysphoria for BPJ that was provided by Dr. Montano and that there has been deposition testimony consistent with these records, but denies all other requests included within this Request.

REQUEST NO. 6: Admit that in 2021 Plaintiff B.P.J. was a member of Bridgeport Middle School's girls' cross-country team.

RESPONSE: The State admits this Request.

REQUEST NO. 7: Admit that Plaintiff B.P.J. placed 51 out of 66 competitors in the girls' middle school cross country Mountain Hollar MS Invitational meet in 2021.

RESPONSE: The State denies this Request for lack of knowledge. The State has no knowledge of the source of this information or the validity of such information.

REQUEST NO. 8: Admit that Plaintiff B.P.J. placed 123 out of 150 competitors in the girls' middle school cross country Doddridge Invitational meet in 2021.

RESPONSE: The State denies this Request for lack of knowledge. The State has no knowledge of the source of this information or the validity of such information.

REQUEST NO. 9: Admit that you have not received any complaints associated with Plaintiff B.P.J.'s membership on Bridgeport Middle School's girls' cross country team.

RESPONSE: The State objects to this request as it would not be the recipient of such complaints. Without waiver of the foregoing, the State admits this Request.

REQUEST NO. 10: Admit that no middle school girl was harmed as a result of B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021.

RESPONSE: The State objects to this request as the term "harmed" is vague and has multiple meanings. Without waiver of the foregoing, the State denies for lack of knowledge and further states that it is perhaps unknowable what effect B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021 has had on other participants on that team, participants on other teams, or on others who wanted to participate in this or other events but were dissuaded from such participation or otherwise felt harmed in some way, psychologically or otherwise. Further responding, the State has no knowledge of any physical harm to any middle school girl as a result of Plaintiff B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021.

REQUEST NO. 11: Admit that no middle school girl was injured as a result of Plaintiff B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021.

RESPONSE: The State objects to this request as the term "injured" is vague and has multiple meanings. Without waiver of the foregoing, the State denies for lack of knowledge and further states that it is perhaps unknowable what effect B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021 has had on other participants on that team, participants on other teams, or on others who wanted to participate in this or other events but were dissuaded from such participation or otherwise felt injured in some way, psychologically or otherwise. Further responding, the State has no knowledge of any physical injury to any middle school girl as a result of Plaintiff B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021.

REQUEST NO. 12: Admit that no Bridgeport Middle School girl student was prohibited from joining Bridgeport Middle School's girls' cross-country team in 2021.

RESPONSE: The State denies this Request for lack of knowledge. This type of information is not within the knowledge of the State.

REQUEST NO. 13: Admit that Bridgeport Middle School’s girls’ cross-country team did not turn anyone away from participating due to lack of space on the roster in 2021.

RESPONSE: The State denies this Request for lack of knowledge. This type of information is not within the knowledge of the State.

REQUEST NO. 14: Admit that Plaintiff B.P.J. does not have an unfair athletic advantage over other girls participating on the Bridgeport Middle School girls’ cross-country team.

RESPONSE: The State objects to this Request as the use of the word “over” makes the meaning of this request unclear. Without waiving the foregoing, the State denies this Request. As expert witness testimony has or will show, biological boys statistically have an athletic advantage over biological girls, even at 11 years of age. The State views this as an unfair advantage. Because B.P.J. is a biological boy, B.P.J. does have an advantage.

REQUEST NO. 15: Admit that Plaintiff B.P.J. does not have an unfair athletic advantage over girls competing against the Bridgeport Middle School girls’ cross-country team.

RESPONSE: The State objects to this Request as the use of the word “over” makes the meaning of this request unclear. Without waiving the foregoing, the State denies this Request. As expert witness testimony has or will show, biological boys statistically have an athletic advantage over biological girls, even at 11 years of age. The State views this as an unfair advantage. Because B.P.J. is a biological boy, B.P.J. does have an advantage.

REQUEST NO. 16: Admit that cross country is a sport that requires “competitive skill” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: The State admits this Request.

REQUEST NO. 17: Admit that cross country is a sport that requires “competitive skill” as that phrase is used in 34 C.F.R. § 106.41(b).

RESPONSE: The State admits this Request.

REQUEST NO. 18: Admit that cross country is not a “contact sport” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: The State admits this Request.

REQUEST NO. 19: Admit that cross country is not a “contact sport” as that phrase is used in 34 C.F.R. § 106.41(b).

RESPONSE: The State admit this Request.

REQUEST NO. 20: Admit that, but for the injunction issued in this case (Dkt. 67), Plaintiff B.P.J. would not have been permitted to be a member of Bridgeport Middle School’s girls’ cross-country team in 2021 because of H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: The State objects to this Request relative to the terms “permitted” and “because of.” Further responding, the State admits that H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)) directs that biological males, such as B.P.J, are not eligible to be members of any athletic teams designated for females, such as Bridgeport Middle School’s girls’ cross-country team.

REQUEST NO. 21: Admit that, but for the injunction issued in this case (Dkt. 67), Plaintiff B.P.J. would not be permitted to be a member of any girls’ athletic team offered at Bridgeport Middle School because of H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: The State objects to this Request relative to the terms “permitted” and “because of.” Further responding, the State admits that H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)) directs that biological males, such as B.P.J, are not eligible to be members of any athletic teams designated for females, including girls’ athletic teams offered at Bridgeport Middle School.

REQUEST NO. 22: Admit that H.B. 3293 prohibits Plaintiff B.P.J. from participating on girls’ athletic teams at all public secondary schools located in West Virginia.

RESPONSE: The State admits this Request.

REQUEST NO. 23: Admit that the State Board of Education and the State Superintendent must comply with H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: The State admits this Request.

REQUEST NO. 24: Admit that H.B. 3293 prohibits the State Board of Education and the State Superintendent from adopting or enforcing a policy that would allow B.P.J. to participate on girls’ athletic teams at Bridgeport Middle School.

RESPONSE: The State denies that H.B. 3293 contains an express prohibition to this effect, but, responding further, admits that the State Board and State Superintendent must comply with the statute.

REQUEST NO. 25: Admit that the Harrison County Board of Education and the Harrison County School Superintendent must comply with H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: The State admits this Request.

REQUEST NO. 26: Admit that H.B. 3293 prohibits the Harrison County Board of Education and the Harrison County Superintendent from adopting or enforcing a policy that would allow B.P.J. to participate on girls’ athletic teams at Bridgeport Middle School.

RESPONSE: The State denies that H.B. 3293 contains an express prohibition to this effect, but, responding further, admits that the County Board and Harrison County Superintendent must comply with the statute.

REQUEST NO. 27: Admit that the West Virginia Secondary School Athletic Commission must comply with H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: The State admits this Request.

REQUEST NO. 28: Admit that H.B. 3293 prohibits the West Virginia Secondary School Athletic Commission from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School.

RESPONSE: The State denies that H.B. 3293 contains an express prohibition to this effect, but, responding further, admits that the West Virginia Secondary School Activities Commission must comply with the statute.

REQUEST NO. 29: Admit that there are no athletic teams designated as "coed or mixed," as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), offered at Bridgeport Middle School.

RESPONSE: The State denies this Request based on the testimony of the County Board that some teams are coed or mixed.

REQUEST NO. 30: Admit that there are no athletic teams designated as "coed or mixed," as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that compete interscholastically offered at any public secondary school located in West Virginia.

RESPONSE: The State denies this Request based on the testimony of the West Virginia Secondary Schools Activities Commission that some teams are coed or mixed.

REQUEST NO. 31: Admit that there are no cross-country teams designated as "coed or mixed," as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that compete interscholastically offered by any member school of the West Virginia Secondary School Activities Commission.

RESPONSE: The State denies this Request for lack of knowledge. This information is not within the knowledge of the State. The State understands that the Plaintiff is seeking this information directly from the State Board and West Virginia Secondary School Activities Commission, which are in a position to respond to this inquiry.

REQUEST NO. 32: Admit that there are no athletic leagues designated as "coed or mixed," as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that comprise teams from more than one school supervised by the West Virginia Secondary School Activities Commission.

RESPONSE: The State denies this Request for lack of knowledge. This information is not within the knowledge of the State. The State understands that the Plaintiff is seeking this information directly from the State Board and West Virginia Secondary School Activities Commission, which are in a position to respond to this inquiry.

REQUEST NO. 33: Admit that there are no athletic teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)),” that compete interscholastically offered by any public secondary school under the supervision of the West Virginia State Board of Education.

RESPONSE: The State denies this Request based on the testimony of the West Virginia Secondary Schools Activities Commission that some teams are coed or mixed.

REQUEST NO. 34: Admit that H.B. 3293 does not prohibit a cisgender girl student at Bridgeport Middle School from joining a girls’ athletic team offered at Bridgeport Middle School.

RESPONSE: The State objects as the terms utilized in this Request are not included in H.B. 3293, and therefore the State denies this Request. Without waiver of the foregoing, the State admits that H.B. 3293 does not prohibit a biological girl student at Bridgeport Middle School from joining a girls’ athletic team offered at Bridgeport Middle School.

REQUEST NO. 35: Admit that H.B. 3293 does not prohibit a cisgender girl student at any public secondary school in West Virginia from joining a girls’ athletic team offered by her public secondary school.

RESPONSE: The State objects as the terms utilized in this Request are not included in H.B. 3293, and therefore the State denies this Request. Without waiver of the foregoing, the State admits that H.B. 3293 does not prohibit a biological girl student at any secondary school in West Virginia from joining a girls’ athletic team offered at the public secondary school where such biological girl attends.

REQUEST NO. 36: Admit that H.B. 3293 prohibits a Bridgeport Middle School transgender girl student from joining a girls’ athletic team offered at Bridgeport Middle School.

RESPONSE: The State objects to this Request as H.B. 3293 does not use the term “transgender girl,” and therefore the State denies this Request. Without waiver of the foregoing, the State admits that H.B. 3293 prohibits a biological boy attending Bridgeport Middle School from joining a girls’ athletic team offered at Bridgeport Middle School.

REQUEST NO. 37: Admit that H.B. 3293 prohibits any transgender girl secondary school student located in West Virginia from joining a girls’ athletic team offered by her public secondary school.

RESPONSE: The State objects to this Request as H.B. 3293 does not use the term “transgender girl,” and therefore the State denies this Request. Without waiver of the foregoing, the State admits that H.B. 3293 prohibits a biological boy attending a secondary school in West Virginia from joining a girls’ athletic team offered at the school where such biological boy attends.

REQUEST NO. 38: Admit that prior to the enactment of H.B. 3293, cisgender boy students at Bridgeport Middle School were prohibited from joining girls' athletic teams offered at Bridgeport Middle School.

RESPONSE: The State objects to this Request as it appears to seek a legal opinion on the legal question of whether a biological boy was permitted to participate on a girls' athletic team under West Virginia law prior to the enactment of H.B. 3293. The following cases may contain legal analysis which may have been used to address this issue: *Gregor v. W. Virginia Secondary Sch. Activities Comm'n*, No. 2:20-CV-00654, 2020 WL 5997057, at *1 (S.D.W. Va. Oct. 9, 2020); *Israel by Israel v. W. Virginia Secondary Sch. Activities Comm'n*, 182 W. Va. 454, 388 S.E.2d 480 (1989). Further objecting. Accordingly, the State denies this Request.

REQUEST NO. 39: Admit that prior to the enactment of H.B. 3293, a cisgender boy student at any public secondary school in West Virginia was prohibited from joining girls' athletic teams offered at his public secondary school.

RESPONSE: The State objects to this Request as it appears to seek a legal opinion on the legal question of whether a biological boy was permitted to participate on a girls team under West Virginia law prior to the enactment of H.B. 3293. The following cases may contain legal analysis which may have been used to address this issue: *Gregor v. W. Virginia Secondary Sch. Activities Comm'n*, No. 2:20-CV-00654, 2020 WL 5997057, at *1 (S.D.W. Va. Oct. 9, 2020); *Israel by Israel v. W. Virginia Secondary Sch. Activities Comm'n*, 182 W. Va. 454, 388 S.E.2d 480 (1989). Further objecting, this seeks the answer to a hypothetical question. Accordingly, the State denies this Request.

REQUEST NO. 40: Admit that prior to the enactment of H.B. 3293, you are not aware of any transgender student athlete participating on an athletic team offered by Bridgeport Middle School.

RESPONSE: To the extent that the State is capable of having "awareness," the State admits that, prior to the enactment of H.B. 3293, the State was not aware of any biological male students claiming to identify as female, any biological female students claiming to identify as male, or any students describing themselves as "transgender" participating on an athletic team offered by Bridgeport Middle School.

REQUEST NO. 41: Admit that prior to the enactment of H.B. 3293, you are not aware of any transgender student athlete participating on an athletic team offered by a public secondary school in West Virginia.

RESPONSE: To the extent that the State is capable of having "awareness," the State admits that, prior to the enactment of H.B. 3293, the State was not aware of any biological male students claiming to identify as female, any biological female students claiming to identify as male, or any students describing themselves as "transgender" participating on an athletic team offered by a public secondary school in West Virginia.

REQUEST NO. 42: Admit that other than Plaintiff B.P.J., you are not aware of a transgender student athlete participating on an athletic team offered by Bridgeport Middle School.

RESPONSE: To the extent that the State is capable of having “awareness,” the State admits that, other than Plaintiff B.P.J., it is not aware of any biological male students claiming to identify as female, any biological female students claiming to identify as male, or any students describing themselves as “transgender” participating on an athletic team offered by Bridgeport Middle School.

REQUEST NO. 43: Admit that other than Plaintiff B.P.J., you are not aware of a transgender student athlete participating on an athletic team offered by a public secondary school in West Virginia.

RESPONSE: To the extent that the State is capable of having “awareness,” the State admits that, other than Plaintiff B.P.J., it has no awareness of any biological male students identifying as female, any biological female students identifying as male, or any students describing themselves as “transgender” participating on an athletic team offered by a public secondary school in West Virginia.

REQUEST NO. 44: Admit that students derive social benefits from participation on athletic teams offered by public secondary schools in West Virginia.

RESPONSE: The State objects to this Request as it is vague, overbroad and speculative in that it seeks to include all students and the State would have to speculate as to whether any or all students “derive social benefits” and what are “social benefits.” Without waiver of the foregoing, the State states that it is likely that some students who participate in athletic teams feel that they have benefited in some fashion or fashions and it is likely that some students who participate in athletic teams feel that they have not so benefited.

REQUEST NO. 45: Admit that students derive psychological benefits from participation on athletic teams offered by public secondary schools in West Virginia.

RESPONSE: The State objects to this Request as it is vague, overbroad and speculative in that it seeks to include all students and the State would have to speculate as to whether any or all students “derive psychological benefits” and what are “psychological benefits.” Without waiver of the foregoing, the State states that it is likely that some students who participate in athletic teams feel that they have benefited in some fashion or fashions and it is likely that some students who participate in athletic teams feel that they have not so benefited.

REQUEST NO. 46: Admit that interscholastic athletic competition benefits middle school students.

RESPONSE: The State objects to this Request as it is vague, overbroad and speculative in that it seeks to include all students and what constitutes a benefit for students. Further, the State would have to speculate as to whether it benefits any or all middle school students. Without waiver of the foregoing, the State states that it is likely that interscholastic athletic competition benefits some middle school students in some fashion or fashions but also may not benefit other students.

REQUEST NO. 47: Admit that middle school students who participate in interscholastic athletics receive benefits regardless whether they win or lose.

RESPONSE: The State objects to this Request as it is vague, overbroad and speculative in that it seeks to include all participating students and what constitutes a benefit for students. Each student would likely have an opinion unique to that student. Further, the State would have to speculate as to the answer for each and every child. Further objecting, the terms “win” or “lose” are somewhat vague and may or may not apply to all athletic situations. Without waiver of the foregoing, the State states that it is likely that some middle school students who participate in interscholastic athletics feel that they receive benefits regardless whether they outright “win” or “lose” and that others do not.

Respectfully,

STATE OF WEST VIRGINIA,

By counsel,
PATRICK MORRISEY,
ATTORNEY GENERAL

/s/ Curtis R. A. Capehart
Douglas P. Buffington, II (WV Bar # 8157)
Chief Deputy Attorney General
Curtis R. A. Capehart (WV Bar # 9876)
Deputy Attorney General
David C. Tryon (WV Bar # 14145)
Deputy Solicitor General
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305-0220
Email: Curtis.R.A.Capehart@wvago.gov
Telephone: (304) 558-2021
Facsimile: (304) 558-0140

Counsel for Defendant, STATE OF WEST VIRGINIA

Exhibit 6

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
Hon. Joseph R. Goodwin, District Judge

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, PATRICK
MORRISEY in his official capacity as Attorney
General, and THE STATE OF WEST VIRGINIA,

Defendants,

and

LAINEY ARMISTEAD,

Defendant-Intervenor.

**DEFENDANT SUPERINTENDENT DORA STUTLER'S RESPONSES AND
OBJECTIONS TO PLAINTIFF'S SECOND SET OF REQUESTS FOR ADMISSION**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Defendant Superintendent Dora Stutler ("Superintendent Stutler") hereby responds and objects to "Plaintiff's Second Set of Requests for Admission to Defendant Harrison County Superintendent Dora Stutler" as follows:

GENERAL OBJECTION: Superintendent Stutler objects to the definitions of "County Board" and "County Superintendent" as set forth in Plaintiff's requests for admission.

Those definitions are overly broad and outside the permissible scope of discovery under the Federal Rules of Civil Procedure as the definitions improperly broaden the identity of parties in this case. For instance, the definitions of the “County Board” and the “County Superintendent” also include their “officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives and agents.” Superintendent Stutler objects to providing responses pursuant to the broadened definitions of “County Board” and “County Superintendent.” Superintendent Stutler further objects to the Definitions and Instructions set forth in Plaintiff’s requests to the extent they are inconsistent with the Federal Rules of Civil Procedure or applicable law.

REQUEST NO. 5: Admit that Plaintiff B.P.J. has been diagnosed with gender dysphoria.

RESPONSE: Superintendent Stutler admits that medical records produced in this case state that Plaintiff B.P.J. has been diagnosed with gender dysphoria.

REQUEST NO. 6: Admit that in 2021 Plaintiff B.P.J. was a member of Bridgeport Middle School’s girls’ cross-country team.

RESPONSE: Admitted.

REQUEST NO. 7: Admit that Plaintiff B.P.J. placed 51 out of 66 competitors in the girls’ middle school cross country Mountain Hollar MS Invitational meet in 2021.

RESPONSE: Upon information and belief, and based on information provided on RunWV.com regarding the results of the race, Superintendent Stutler admits this request.

REQUEST NO. 8: Admit that Plaintiff B.P.J. placed 123 out of 150 competitors in the girls' middle school cross country Doddridge Invitational meet in 2021.

RESPONSE: Upon information and belief, and based on information provided on RunWV.com regarding the results of the race, Superintendent Stutler admits this request.

REQUEST NO. 9: Admit that you have not received any complaints associated with Plaintiff B.P.J.'s membership on Bridgeport Middle School's girls' cross country team.

RESPONSE: Admitted.

REQUEST NO. 10: Admit that no middle school girl was harmed as a result of B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to this request because it is vague. Superintendent Stutler does not know what Plaintiff means by the term "harmed." Subject to and without waiving the objection, Superintendent Stutler admits that no student was cut from the Bridgeport Middle School's girls' cross country team in 2021. Superintendent Stutler otherwise denies this request because it is unclear what Plaintiff is asking.

REQUEST NO. 11: Admit that no middle school girl was injured as a result of Plaintiff B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to this request because it is vague. Superintendent Stutler does not know what Plaintiff means by the term "injured." Subject to and without waiving the objection, Superintendent Stutler admits that no student was cut from the Bridgeport Middle School's girls' cross country team in 2021. Superintendent Stutler otherwise denies this request because it is unclear what Plaintiff is asking.

REQUEST NO. 12: Admit that no Bridgeport Middle School girl student was prohibited from joining Bridgeport Middle School’s girls’ cross-country team in 2021.

RESPONSE: Admitted.

REQUEST NO. 13: Admit that Bridgeport Middle School’s girls’ cross-country team did not turn anyone away from participating due to lack of space on the roster in 2021.

RESPONSE: Admitted.

REQUEST NO. 14: Admit that Plaintiff B.P.J. does not have an unfair athletic advantage over other girls participating on the Bridgeport Middle School girls’ cross-country team.

RESPONSE: Even with a reasonable inquiry, Superintendent Stutler cannot admit or deny this request because the information she knows or can readily obtain is insufficient to enable Superintendent Stutler to admit or deny the request.

REQUEST NO. 15: Admit that Plaintiff B.P.J. does not have an unfair athletic advantage over girls competing against the Bridgeport Middle School girls’ cross-country team.

RESPONSE: Even with a reasonable inquiry, Superintendent Stutler cannot admit or deny this request because the information she knows or can readily obtain is insufficient to enable Superintendent Stutler to admit or deny the request.

REQUEST NO. 16: Admit that cross country is a sport that requires “competitive skill” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler cannot admit or deny this request because “competitive skill” is not defined in H.B. 3293.

REQUEST NO. 17: Admit that cross country is a sport that requires “competitive skill” as that phrase is used in 34 C.F.R.§106.41(b).

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler cannot admit or deny this request because “competitive skill” is not defined in 34 C.F.R.§106.41(b).

REQUEST NO. 18: Admit that cross country is not a “contact sport” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler cannot admit or deny this request because “contact sport” is not defined in H.B. 3293.

REQUEST NO. 19: Admit that cross country is not a “contact sport” as that phrase is used in 34 C.F.R.§106.41(b).

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler admits that “cross country” is not specifically identified as a “contact sport” in 34 C.F.R.§106.41(b).

REQUEST NO. 20: Admit that, but for the injunction issued in this case (Dkt. 67), Plaintiff B.P.J. would not have been permitted to be a member of Bridgeport Middle

School's girls' cross-country team in 2021 because of H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler states as follows: Because, as it is currently drafted, H.B. Bill 3293 (codified at West Virginia Code § 18- 2-25d) applies to public secondary schools and states that “[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport[,]” because of the definitions set forth in H.B. 3293, and absent the injunction issued in this case, Superintendent Stutler admits this request.

REQUEST NO. 21: Admit that, but for the injunction issued in this case (Dkt. 67), Plaintiff B.P.J. would not be permitted to be a member of any girls' athletic team offered at Bridgeport Middle School because of H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler states as follows: Because, as it is currently drafted, H.B. Bill 3293 (codified at West Virginia Code § 18- 2-25d) applies to public secondary schools and states that “[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport[,]” because of the definitions set forth in H.B. 3293, and absent the injunction issued in this case, Superintendent Stutler admits this request.

REQUEST NO. 22: Admit that H.B. 3293 prohibits Plaintiff B.P.J. from participating on girls' athletic teams at all public secondary schools located in West Virginia.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler states as follows: Because, as it is currently drafted, H.B. Bill 3293 (codified at West Virginia Code § 18- 2-25d) applies to public secondary schools and states that “[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport[,]” because of the definitions set forth in H.B. 3293, and absent the injunction issued in this case, Superintendent Stutler admits this request.

REQUEST NO. 23: Admit that the State Board of Education and the State Superintendent must comply with H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler is not in a position to admit or deny this request because it concerns the State Board of Education and State Superintendent's obligations under H.B. 3293.

REQUEST NO. 24: Admit that H.B. 3293 prohibits the State Board of Education and the State Superintendent from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler is not in a position to admit or deny this request because it concerns the State Board of Education and State Superintendent's obligations under H.B. 3293.

REQUEST NO. 25: Admit that the Harrison County Board of Education and the Harrison County School Superintendent must comply with H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler states as follows: Because H.B. 3293 is a West Virginia State law that applies to County Boards of Education, including the Harrison County Board of Education (“County Board”) and its County Superintendent, because H.B. 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the County Board, and while the County Board and its County Superintendent did not devise and have not adopted H.B. Bill 3293 as their own policy, Superintendent Stutler admits this request because, absent an injunction by a court, the County Board and the County Superintendent would be compelled and required to enforce H.B. Bill 3293 because it is a mandatory State law that affords the County Board and the County Superintendent no discretion.

REQUEST NO. 26: Admit that H.B. 3293 prohibits the Harrison County Board of Education and the Harrison County Superintendent from adopting or enforcing a policy that would allow B.P.J. to participate on girls’ athletic teams at Bridgeport Middle School.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler states as follows: Because H.B. 3293 is a West Virginia State law that applies to County Boards of Education, including the County Board and its County Superintendent, because H.B. 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the County Board, and while the County Board and its County

Superintendent did not devise and have not adopted H.B. Bill 3293 as their own policy, Superintendent Stutler admits this request because, absent an injunction by a court, the County Board and the County Superintendent would be compelled and required to enforce H.B. Bill 3293 because it is a mandatory State law that affords the County Board and the County Superintendent no discretion.

REQUEST NO. 27: Admit that the West Virginia Secondary School Athletic Commission must comply with H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler is not in a position to admit or deny this request because it concerns the West Virginia Secondary School Athletic Commission's obligations under H.B. 3293.

REQUEST NO. 28: Admit that H.B. 3293 prohibits the West Virginia Secondary School Athletic Commission from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler is not in a position to admit or deny this request because it concerns the West Virginia Secondary School Athletic Commission's obligations under H.B. 3293.

REQUEST NO. 29: Admit that there are no athletic teams designated as "coed or mixed," as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), offered at Bridgeport Middle School.

RESPONSE: Denied.

REQUEST NO. 30: Admit that there are no athletic teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that compete interscholastically offered at any public secondary school located in West Virginia.

RESPONSE: Denied.

REQUEST NO. 31: Admit that there are no cross-country teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that compete interscholastically offered by any member school of the West Virginia Secondary School Activities Commission.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the scope of this request. Subject to and without waiving the objection, Superintendent Stutler can only answer on behalf of schools in Harrison County, and admits that there are no “co-ed or mixed” cross country teams in Harrison County.

REQUEST NO. 32: Admit that there are no athletic leagues designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that comprise teams from more than one school supervised by the West Virginia Secondary School Activities Commission.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, and even with a reasonable inquiry, Superintendent Stutler cannot admit or deny this request because the information she knows or can readily obtain is insufficient to enable Superintendent Stutler to admit or deny the request.

REQUEST NO. 33: Admit that there are no athletic teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)),” that compete interscholastically offered by any public secondary school under the supervision of the West Virginia State Board of Education.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to this request because it is vague. Subject to and without waiving the objection, Superintendent Stutler denies the request because there are “co-ed” teams in Harrison County, but Superintendent Stutler cannot admit or deny the rest of the request based on how it is phrased.

REQUEST NO. 34: Admit that H.B. 3293 does not prohibit a cisgender girl student at Bridgeport Middle School from joining a girls’ athletic team offered at Bridgeport Middle School.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, and based on the language used in H.B. 3293, Superintendent Stutler admits this request.

REQUEST NO. 35: Admit that H.B. 3293 does not prohibit a cisgender girl student at any public secondary school in West Virginia from joining a girls’ athletic team offered by her public secondary school.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, and based on the language used in H.B. 3293, Superintendent Stutler admits this request.

REQUEST NO. 36: Admit that H.B. 3293 prohibits a Bridgeport Middle School transgender girl student from joining a girls’ athletic team offered at Bridgeport Middle School.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler states as follows: Because, as it is currently drafted, H.B. Bill 3293 (codified at West Virginia Code § 18- 2-25d) applies to public secondary schools and states that “[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport[,]” because of the definitions set forth in H.B. 3293, and absent the injunction issued in this case, Superintendent Stutler admits this request.

REQUEST NO. 37: Admit that H.B. 3293 prohibits any second (sic) school transgender girl student located in West Virginia from joining a girls’ athletic team offered by her public secondary school.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler states as follows: Because, as it is currently drafted, H.B. Bill 3293 (codified at West Virginia Code § 18- 2-25d) applies to public secondary schools and states that “[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport[,]” because of the definitions set forth in H.B. 3293, and absent the injunction issued in this case, Superintendent Stutler admits this request.

REQUEST NO. 38: Admit that prior to the enactment of H.B. 3293, cisgender boy students at Bridgeport Middle School were prohibited from joining girls' athletic teams offered at Bridgeport Middle School.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler admits that there is a West Virginia Secondary School Activities Commission rule that may apply to this situation.

REQUEST NO. 39: Admit that prior to the enactment of H.B. 3293, a cisgender boy student at any public secondary school in West Virginia was prohibited from joining girls' athletic teams offered at his public secondary school.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler admits that there is a West Virginia Secondary School Activities Commission rule that may apply to this situation.

REQUEST NO. 40: Admit that prior to the enactment of H.B. 3293, you are not aware of any transgender student athlete participating on an athletic team offered by Bridgeport Middle School.

RESPONSE: Admitted.

REQUEST NO. 41: Admit that prior to the enactment of H.B. 3293, you are not aware of any transgender student athlete participating on an athletic team offered by a public secondary school in West Virginia.

RESPONSE: Admitted.

REQUEST NO. 42: Admit that other than Plaintiff B.P.J., you are not aware of a transgender student athlete participating on an athletic team offered by Bridgeport Middle School.

RESPONSE: Admitted.

REQUEST NO. 43: Admit that other than Plaintiff B.P.J., you are not aware of a transgender student athlete participating on an athletic team offered by a public secondary school in West Virginia.

RESPONSE: Admitted.

REQUEST NO. 44: Admit that students derive social benefits from participation on athletic teams offered by public secondary schools in West Virginia.

RESPONSE: Admitted.

REQUEST NO. 45: Admit that students derive psychological benefits from participation on athletic teams offered by public secondary schools in West Virginia.

RESPONSE: Admitted.

REQUEST NO. 46: Admit that interscholastic athletic competition benefits middle school students.

RESPONSE: Admitted.

REQUEST NO. 47: Admit that middle school students who participate in interscholastic athletics receive benefits regardless whether they win or lose.

RESPONSE: Admitted.

REQUEST NO. 48: Admit that when enforcing West Virginia State law you act on behalf of the State of West Virginia.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler admits this request.

REQUEST NO. 49: Admit that when enforcing West Virginia State law you are a State Actor for purposes of 42 U.S.C. § 1983.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler admits this request.

REQUEST NO. 50: Admit that you are required to enforce H.B. 3293 assuming the Court has not enjoined you from doing so.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler states as follows: Because H.B. 3293 is a West Virginia State law that applies to County Boards of Education, including the County Board and its County Superintendent, because H.B. 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the County Board, and while the County Board and its County Superintendent did not devise and have not adopted H.B. Bill 3293 as their own policy, Superintendent Stutler admits this request because, absent an injunction by a court, the County Board and the County Superintendent would be compelled and required to enforce H.B. Bill 3293 because it is a mandatory State law that affords the County Board and the County Superintendent no discretion.

REQUEST NO. 51: Admit that you are required to ensure that the Harrison County Board of Education enforces H.B. 3293 assuming the Court has not enjoined it from doing so.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler states as follows: Because H.B. 3293 is a West Virginia State law that applies to County Boards of Education, including the County Board and its County Superintendent, because H.B. 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the County Board, and while the County Board and its County Superintendent did not devise and have not adopted H.B. Bill 3293 as their own policy, Superintendent Stutler admits this request because, absent an injunction by a court, the County Board and the County Superintendent would be compelled and required to enforce H.B. Bill 3293 because it is a mandatory State law that affords the County Board and the County Superintendent no discretion.

REQUEST NO. 52: Admit that you are required to ensure that Bridgeport Middle School enforces H.B. 3293 assuming the Court has not enjoined it from doing so.

RESPONSE: **OBJECTION.** Superintendent Stutler objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, Superintendent Stutler states as follows: Because H.B. 3293 is a West Virginia State law that applies to County Boards of Education, including the County Board and its County Superintendent, because H.B. 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the County Board, and while the County Board and its County Superintendent did not devise and have not adopted H.B. Bill 3293 as their own policy,

Superintendent Stutler admits this request because, absent an injunction by a court, the County Board and the County Superintendent would be compelled and required to enforce H.B. Bill 3293 because it is a mandatory State law that affords the County Board and the County Superintendent no discretion.

Dated this the 10th day of March, 2022.

STEPTOE & JOHNSON PLLC
OF COUNSEL

/s/ Susan L. Deniker

Susan L. Deniker (WV ID #7992)

Jeffrey M. Cropp (WV ID #8030)

400 White Oaks Boulevard

Bridgeport, WV 26330-4500

(304) 933-8000

*Counsel for Defendants Harrison County Board
of Education and Dora Stutler*

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
Hon. Joseph R. Goodwin, District Judge

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, PATRICK
MORRISEY in his official capacity as Attorney
General, and THE STATE OF WEST VIRGINIA,

Defendants,

and

LAINY ARMISTEAD,

Defendant-Intervenor.

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of March, 2022, I electronically filed the foregoing Certificate of Service of “Defendant Harrison County Superintendent Dora Stutler’s Responses and Objections to Plaintiff’s Second Set of Requests for Admission” with the Clerk of the Court using the CM/ECF system, and a true and exact copy of such filing was sent by email to the following counsel of record:

Joshua A. Block, Esquire
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street 18th Floor
New York, NY 10004
Counsel for Plaintiff

Loree Beth Stark, Esquire
Nicholas P. Ward, Esquire
AMERICAN CIVIL LIBERTIES UNION
OF WEST VIRGINIA
1614 Kanawha Boulevard East
Charleston, WV 25311
Counsel for Plaintiff

Avatara A. Smith-Carrington, Esquire
LAMBDA LEGAL
3500 Oak Lawn Avenue Suite 500
Dallas, TX 75219
Counsel for Plaintiff

Carl Solomon Charles, Esquire
Tara L. Borelli, Esquire
LAMBDA LEGAL
158 West Ponce De Leon Avenue, Suite 105
Decatur, GA 30030
Counsel for Plaintiff

Sruti J. Swaminathan, Esquire
LAMBDA LEGAL
120 Wall Street 19th Floor
New York, NY 10005
Counsel for Plaintiff

Kathleen R. Hartnett, Esquire
Julie Veroff, Esquire
Zoë Helstrom, Esquire
COOLEY LLP
3 Embarcadero Center, 20th Floor
San Francisco, CA 94111
Counsel for Plaintiff

Katelyn Kang, Esquire
Valeria M. Pelet del Toro, Esquire
COOLEY LLP
55 Hudson Yards
New York, NY 10001
Counsel for Plaintiff

Elizabeth Reinhardt, Esquire
COOLEY LLP
500 Boylston Street, 14th Floor
Boston, MA 02116-3736
Counsel for Plaintiff

Andrew D. Barr, Esquire
COOLEY LLP
1144 15th Street Suite 2300
Denver, CO 80202
Counsel for Plaintiff

Roberta F. Green, Esquire
Kimberly M. Bandy, Esquire
Shannon M. Rogers, Esquire
SHUMAN McCUSKEY & SLICER
PO Box 3953
Charleston, WV 25339-3953
*Counsel for Defendant WV Secondary
School Activities Commission*

Kelly C. Morgan, Esquire
Kristen Vickers Hammond, Esquire
Michael W. Taylor, Esquire
BAILEY & WYANT
PO Box 3710
Charleston, WV 25337-3710
*Counsel for Defendants WV State Board of
Education and W. Clayton Burch*

Douglas P. Buffington, II, Esquire
Curtis R. Capehart, Esquire
David C. Tryon, Esquire
WV ATTORNEY GENERAL'S
OFFICE
State Capitol Complex
Building 1, Room 26E
1900 Kanawha Boulevard East
Charleston, WV 25305-0220
*Counsel for Defendant The State of
West Virginia*

Brandon Steele, Esquire
Joshua D. Brown, Esquire
THE LAW OFFICES OF BRANDON S.
STEELE
3049 Robert C. Byrd Drive, Suite 100
Beckley, WV 25801
*Counsel for Defendant-Intervenor Lainey
Armistead*

Jonathan Scruggs, Esquire
Roger G. Brooks, Esquire
Henry W. Frampton, IV, Esquire
ALLIANCE DEFENDING FREEDOM
15100 N. 90th Street
Scottsdale, AZ 85260
*Counsel for Defendant-Intervenor
Lainey Armistead*

Christina Holcomb, Esquire
ALLIANCE DEFENDING FREEDOM
440 First Street NW, Suite 600
Washington, DC 20001
*Counsel for Defendant-Intervenor Lainey
Armistead*

Rachel Csutoros, Esquire
Tyson Langhofer, Esquire
ALLIANCE DEFENDING FREEDOM
44180 Riverside Parkway
Lansdowne, VA 20176
*Counsel for Defendant-Intervenor
Lainey Armistead*

Travis Barham, Esquire
ALLIANCE DEFENDING FREEDOM
1000 Hurricane Shoals Rd NE
STE D-1100
Lawrenceville GA 30043
*Counsel for Defendant-Intervenor Lainey
Armistead*

Timothy D. Ducar, Esquire
Law Offices of Timothy D. Ducar, PLC
7430 E. Butherus Drive, Suite E
Scottsdale, AZ 85260
*Counsel for Defendant-Intervenor
Lainey Armistead*

STEPTOE & JOHNSON PLLC
OF COUNSEL

/s/ Susan L. Deniker

Susan L. Deniker (WV ID #7992)
Jeffrey M. Cropp (WV ID #8030)
400 White Oaks Boulevard
Bridgeport, WV 26330-4500
(304) 933-8000

*Counsel for Defendants Harrison County Board
of Education and Dora Stutler*

Exhibit 7

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
Hon. Joseph R. Goodwin, District Judge

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, PATRICK
MORRISEY in his official capacity as Attorney
General, and THE STATE OF WEST VIRGINIA,

Defendants,

and

LAINEY ARMISTEAD,

Defendant-Intervenor.

**DEFENDANT HARRISON COUNTY BOARD OF EDUCATION’S RESPONSES AND
OBJECTIONS TO PLAINTIFF’S SECOND SET OF REQUESTS FOR ADMISSION**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Defendant Harrison County Board of Education (“County Board”) hereby responds and objects to “Plaintiff’s Second Set of Requests for Admission to Defendant Harrison County Board of Education” as follows:

GENERAL OBJECTION: The County Board objects to the definitions of “County Board” and “County Superintendent” as set forth in Plaintiff’s requests for admission. Those definitions are overly broad and outside the permissible scope of discovery under the

Federal Rules of Civil Procedure as the definitions improperly broaden the identity of parties in this case. For instance, the definitions of the “County Board” and the “County Superintendent” also include their “officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives and agents.” The County Board objects to providing responses pursuant to the broadened definitions of “County Board” and “County Superintendent.” The County Board further objects to the Definitions and Instructions set forth in Plaintiff’s requests to the extent they are inconsistent with the Federal Rules of Civil Procedure or applicable law.

REQUEST NO. 5: Admit that Plaintiff B.P.J. has been diagnosed with gender dysphoria.

RESPONSE: The County Board admits that medical records produced in this case state that Plaintiff B.P.J. has been diagnosed with gender dysphoria.

REQUEST NO. 6: Admit that in 2021 Plaintiff B.P.J. was a member of Bridgeport Middle School’s girls’ cross-country team.

RESPONSE: Admitted.

REQUEST NO. 7: Admit that Plaintiff B.P.J. placed 51 out of 66 competitors in the girls’ middle school cross country Mountain Hollar MS Invitational meet in 2021.

RESPONSE: Upon information and belief, and based on information provided on RunWV.com regarding the results of the race, the County Board admits this request.

REQUEST NO. 8: Admit that Plaintiff B.P.J. placed 123 out of 150 competitors in the girls' middle school cross country Doddridge Invitational meet in 2021.

RESPONSE: Upon information and belief, and based on information provided on RunWV.com regarding the results of the race, the County Board admits this request.

REQUEST NO. 9: Admit that you have not received any complaints associated with Plaintiff B.P.J.'s membership on Bridgeport Middle School's girls' cross country team.

RESPONSE: Admitted.

REQUEST NO. 10: Admit that no middle school girl was harmed as a result of B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021.

RESPONSE: **OBJECTION.** The County Board objects to this request because it is vague. The County Board does not know what Plaintiff means by the term "harmed." Subject to and without waiving the objection, the County Board admits that no student was cut from the Bridgeport Middle School's girls' cross country team in 2021. The County Board otherwise denies this request because it is unclear what Plaintiff is asking.

REQUEST NO. 11: Admit that no middle school girl was injured as a result of Plaintiff B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021.

RESPONSE: **OBJECTION.** The County Board objects to this request because it is vague. The County Board does not know what Plaintiff means by the term "injured." Subject to and without waiving the objection, the County Board admits that no student was cut from the Bridgeport Middle School's girls' cross country team in 2021. The County Board otherwise denies this request because it is unclear what Plaintiff is asking.

REQUEST NO. 12: Admit that no Bridgeport Middle School girl student was prohibited from joining Bridgeport Middle School’s girls’ cross-country team in 2021.

RESPONSE: Admitted.

REQUEST NO. 13: Admit that Bridgeport Middle School’s girls’ cross-country team did not turn anyone away from participating due to lack of space on the roster in 2021.

RESPONSE: Admitted.

REQUEST NO. 14: Admit that Plaintiff B.P.J. does not have an unfair athletic advantage over other girls participating on the Bridgeport Middle School girls’ cross-country team.

RESPONSE: Even with a reasonable inquiry, the County Board cannot admit or deny this request because the information it knows or can readily obtain is insufficient to enable the County Board to admit or deny the request.

REQUEST NO. 15: Admit that Plaintiff B.P.J. does not have an unfair athletic advantage over girls competing against the Bridgeport Middle School girls’ cross-country team.

RESPONSE: Even with a reasonable inquiry, the County Board cannot admit or deny this request because the information it knows or can readily obtain is insufficient to enable the County Board to admit or deny the request.

REQUEST NO. 16: Admit that cross country is a sport that requires “competitive skill” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board cannot admit or deny this request because “competitive skill” is not defined in H.B. 3293.

REQUEST NO. 17: Admit that cross country is a sport that requires “competitive skill” as that phrase is used in 34 C.F.R.§106.41(b).

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board cannot admit or deny this request because “competitive skill” is not defined in 34 C.F.R.§106.41(b).

REQUEST NO. 18: Admit that cross country is not a “contact sport” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board cannot admit or deny this request because “contact sport” is not defined in H.B. 3293.

REQUEST NO. 19: Admit that cross country is not a “contact sport” as that phrase is used in 34 C.F.R.§106.41(b).

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board admits that “cross country” is not specifically identified as a “contact sport” in 34 C.F.R.§106.41(b).

REQUEST NO. 20: Admit that, but for the injunction issued in this case (Dkt. 67), Plaintiff B.P.J. would not have been permitted to be a member of Bridgeport Middle

School's girls' cross-country team in 2021 because of H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board states as follows: Because, as it is currently drafted, H.B. Bill 3293 (codified at West Virginia Code § 18- 2-25d) applies to public secondary schools and states that “[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport[,]” because of the definitions set forth in H.B. 3293, and absent the injunction issues in this case, the County Board admits this request.

REQUEST NO. 21: Admit that, but for the injunction issued in this case (Dkt. 67), Plaintiff B.P.J. would not be permitted to be a member of any girls' athletic team offered at Bridgeport Middle School because of H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board states as follows: Because, as it is currently drafted, H.B. Bill 3293 (codified at West Virginia Code § 18- 2-25d) applies to public secondary schools and states that “[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport[,]” because of the definitions set forth in H.B. 3293, and absent the injunction issued in this case, the County Board admits this request.

REQUEST NO. 22: Admit that H.B. 3293 prohibits Plaintiff B.P.J. from participating on girls' athletic teams at all public secondary schools located in West Virginia.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board states as follows: Because, as it is currently drafted, H.B. Bill 3293 (codified at West Virginia Code § 18- 2-25d) applies to public secondary schools and states that “[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport[,]” because of the definitions set forth in H.B. 3293, and absent the injunction issued in this case, the County Board admits this request.

REQUEST NO. 23: Admit that the State Board of Education and the State Superintendent must comply with H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board is not in a position to admit or deny this request because it concerns the State Board of Education and State Superintendent's obligations under H.B. 3293.

REQUEST NO. 24: Admit that H.B. 3293 prohibits the State Board of Education and the State Superintendent from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board is not in a position to admit or deny this request because it concerns the State Board of Education and State Superintendent's obligations under H.B. 3293.

REQUEST NO. 25: Admit that the Harrison County Board of Education and the Harrison County School Superintendent must comply with H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board states as follows: Because H.B. 3293 is a West Virginia State law that applies to County Boards of Education, including the County Board and its County Superintendent, because H.B. 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the County Board, and while the County Board and its County Superintendent did not devise and have not adopted H.B. Bill 3293 as their own policy, the County Board admits this request because, absent an injunction by a court, the County Board would be compelled and required to enforce H.B. Bill 3293 because it is a mandatory State law that affords the County Board no discretion.

REQUEST NO. 26: Admit that H.B. 3293 prohibits the Harrison County Board of Education and the Harrison County Superintendent from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board states as follows: Because H.B. 3293 is a West Virginia State law that applies to County Boards of Education, including the County Board and its County Superintendent, because H.B. 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the County Board, and while the County Board and its County Superintendent did not devise and have not adopted H.B. Bill 3293 as their own policy, the County Board admits this

request because, absent an injunction by a court, the County Board would be compelled and required to enforce H.B. Bill 3293 because it is a mandatory State law that affords the County Board no discretion.

REQUEST NO. 27: Admit that the West Virginia Secondary School Athletic Commission must comply with H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board is not in a position to admit or deny this request because it concerns the West Virginia Secondary School Athletic Commission’s obligations under H.B. 3293.

REQUEST NO. 28: Admit that H.B. 3293 prohibits the West Virginia Secondary School Athletic Commission from adopting or enforcing a policy that would allow B.P.J. to participate on girls’ athletic teams at Bridgeport Middle School

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board is not in a position to admit or deny this request because it concerns the West Virginia Secondary School Athletic Commission’s obligations under H.B. 3293.

REQUEST NO. 29: Admit that there are no athletic teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), offered at Bridgeport Middle School.

RESPONSE: Denied.

REQUEST NO. 30: Admit that there are no athletic teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-

25d(c)(1)(C)), that compete interscholastically offered at any public secondary school located in West Virginia.

RESPONSE: Denied.

REQUEST NO. 31: Admit that there are no cross-country teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that compete interscholastically offered by any member school of the West Virginia Secondary School Activities Commission.

RESPONSE: **OBJECTION.** The County Board objects to the scope of this request. Subject to and without waiving the objection, the County Board can only answer on behalf of schools in Harrison County, and admits that there are no “co-ed or mixed” cross country teams in Harrison County.

REQUEST NO. 32: Admit that there are no athletic leagues designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that comprise teams from more than one school supervised by the West Virginia Secondary School Activities Commission.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, and even with a reasonable inquiry, the County Board cannot admit or deny this request because the information it knows or can readily obtain is insufficient to enable the County Board to admit or deny the request.

REQUEST NO. 33: Admit that there are no athletic teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-

25d(c)(1)(C)),” that compete interscholastically offered by any public secondary school under the supervision of the West Virginia State Board of Education.

RESPONSE: **OBJECTION.** The County Board objects to this request because it is vague. Subject to and without waiving the objection, the County Board denies the request because there are “co-ed” teams in Harrison County, but the County Board cannot admit or deny the rest of the request based on how it is phrased.

REQUEST NO. 34: Admit that H.B. 3293 does not prohibit a cisgender girl student at Bridgeport Middle School from joining a girls’ athletic team offered at Bridgeport Middle School.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, and based on the language used in H.B. 3293, the County Board admits this request.

REQUEST NO. 35: Admit that H.B. 3293 does not prohibit a cisgender girl student at any public secondary school in West Virginia from joining a girls’ athletic team offered by her public secondary school.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, and based on the language used in H.B. 3293, the County Board admits this request.

REQUEST NO. 36: Admit that H.B. 3293 prohibits a Bridgeport Middle School transgender girl student from joining a girls’ athletic team offered at Bridgeport Middle School.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County

Board states as follows: Because, as it is currently drafted, H.B. Bill 3293 (codified at West Virginia Code § 18- 2-25d) applies to public secondary schools and states that “[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport[,]” because of the definitions set forth in H.B. 3293, and absent the injunction issued in this case, the County Board admits this request.

REQUEST NO. 37: Admit that H.B. 3293 prohibits any transgender girl secondary school student located in West Virginia from joining a girls’ athletic team offered by her public secondary school.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board states as follows: Because, as it is currently drafted, H.B. Bill 3293 (codified at West Virginia Code § 18- 2-25d) applies to public secondary schools and states that “[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport[,]” because of the definitions set forth in H.B. 3293, and absent the injunction issued in this case, the County Board admits this request.

REQUEST NO. 38: Admit that prior to the enactment of H.B. 3293, cisgender boy students at Bridgeport Middle School were prohibited from joining girls’ athletic teams offered at Bridgeport Middle School.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County

Board admits that there is a West Virginia Secondary School Activities Commission rule that may apply to this situation.

REQUEST NO. 39: Admit that prior to the enactment of H.B. 3293, a cisgender boy student at any public secondary school in West Virginia was prohibited from joining girls' athletic teams offered at his public secondary school.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board admits that there is a West Virginia Secondary School Activities Commission rule that may apply to this situation.

REQUEST NO. 40: Admit that prior to the enactment of H.B. 3293, you are not aware of any transgender student athlete participating on an athletic team offered by Bridgeport Middle School.

RESPONSE: Admitted.

REQUEST NO. 41: Admit that prior to the enactment of H.B. 3293, you are not aware of any transgender student athlete participating on an athletic team offered by a public secondary school in West Virginia.

RESPONSE: Admitted.

REQUEST NO. 42: Admit that other than Plaintiff B.P.J., you are not aware of a transgender student athlete participating on an athletic team offered by Bridgeport Middle School.

RESPONSE: Admitted.

REQUEST NO. 43: Admit that other than Plaintiff B.P.J., you are not aware of a transgender student athlete participating on an athletic team offered by a public secondary school in West Virginia.

RESPONSE: Admitted.

REQUEST NO. 44: Admit that students derive social benefits from participation on athletic teams offered by public secondary schools in West Virginia.

RESPONSE: Admitted.

REQUEST NO. 45: Admit that students derive psychological benefits from participation on athletic teams offered by public secondary schools in West Virginia.

RESPONSE: Admitted.

REQUEST NO. 46: Admit that interscholastic athletic competition benefits middle school students.

RESPONSE: Admitted.

REQUEST NO. 47: Admit that middle school students who participate in interscholastic athletics receive benefits regardless whether they win or lose.

RESPONSE: Admitted.

REQUEST NO. 48: Admit that but for the injunction issued in this case, the Harrison County School Board and schools within the Harrison County School District would comply with H.B. 3293.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County

Board states as follows: Because H.B. 3293 is a West Virginia State law that applies to County Boards of Education, including the County Board and its County Superintendent, because H.B. 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the County Board, and while the County Board and its County Superintendent did not devise and have not adopted H.B. Bill 3293 as their own policy, the County Board admits this request because, absent an injunction by a court, the County Board would be compelled and required to enforce H.B. Bill 3293 because it is a mandatory State law that affords the County Board no discretion.

REQUEST NO. 49: Admit that but for the injunction in this case (Dkt. 67) the Harrison County School Board and schools within the Harrison County School District would not take any actions that violated H.B. 3293.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board states as follows: Because H.B. 3293 is a West Virginia State law that applies to County Boards of Education, including the County Board and its County Superintendent, because H.B. 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the County Board, and while the County Board and its County Superintendent did not devise and have not adopted H.B. Bill 3293 as their own policy, the County Board admits this request because, absent an injunction by a court, the County Board would be compelled and required to enforce H.B. Bill 3293 because it is a mandatory State law that affords the County Board no discretion.

REQUEST NO. 50: Admit that, but for the injunction in this case (Dkt. 67), the Harrison County School Board and Bridgeport Middle School would not have permitted Plaintiff

B.P.J. to try out for the Bridgeport Middle School's girls' cross-country team in 2021 because of H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board states as follows: Because H.B. 3293 is a West Virginia State law that applies to County Boards of Education, including the County Board and its County Superintendent, because H.B. 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the County Board, and while the County Board and its County Superintendent did not devise and have not adopted H.B. Bill 3293 as their own policy, the County Board admits this request because, absent an injunction by a court, the County Board would be compelled and required to enforce H.B. Bill 3293 because it is a mandatory State law that affords the County Board no discretion.

REQUEST NO. 51: Admit that, but for the injunction in this case (Dkt. 67), the Harrison County School Board and Bridgeport Middle School would not have allowed Plaintiff B.P.J. to participate on the Bridgeport Middle School's girls' cross-country team in 2021 because of H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board states as follows: Because H.B. 3293 is a West Virginia State law that applies to County Boards of Education, including the County Board and its County Superintendent, because H.B. 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the County Board, and while the County Board and its County Superintendent did not devise and have not adopted H.B. Bill 3293 as their own policy, the County Board admits this

request because, absent an injunction by a court, the County Board would be compelled and required to enforce H.B. Bill 3293 because it is a mandatory State law that affords the County Board no discretion.

REQUEST NO. 52: Admit that, but for the injunction in this case (Dkt. 67), the Harrison County School Board and Bridgeport Middle School would not permit Plaintiff B.P.J. to try out for any girls' athletic team offered at Bridgeport Middle School because of H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board states as follows: Because H.B. 3293 is a West Virginia State law that applies to County Boards of Education, including the County Board and its County Superintendent, because H.B. 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the County Board, and while the County Board and its County Superintendent did not devise and have not adopted H.B. Bill 3293 as their own policy, the County Board admits this request because, absent an injunction by a court, the County Board would be compelled and required to enforce H.B. Bill 3293 because it is a mandatory State law that affords the County Board no discretion.

REQUEST NO. 53: Admit that, but for the injunction issued in this case (Dkt. 67), the Harrison County School Board and Bridgeport Middle School would not permit Plaintiff B.P.J. to be a member of any girls' athletic team offered at Bridgeport Middle School because of H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County

Board states as follows: Because H.B. 3293 is a West Virginia State law that applies to County Boards of Education, including the County Board and its County Superintendent, because H.B. 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the County Board, and while the County Board and its County Superintendent did not devise and have not adopted H.B. Bill 3293 as their own policy, the County Board admits this request because, absent an injunction by a court, the County Board would be compelled and required to enforce H.B. Bill 3293 because it is a mandatory State law that affords the County Board no discretion.

REQUEST NO. 54: Admit that Plaintiff B.P.J.’s gender is identified as “male” in the West Virginia Education Information System (“WVEIS”).

RESPONSE: Admitted.

REQUEST NO. 55: Admit that you have the ability to change Plaintiff B.P.J.’s gender in WVEIS to “female.”

RESPONSE: **OBJECTION.** The County Board objects to the request because it seeks information that is not relevant to any party’s claim or defense and is not proportional to the needs of the case. Subject to and without waiving the objection, the County Board admits that it has the ability to change data in WVEIS.

REQUEST NO. 56: Admit that H.B. 3293 allows a student to bring an action against you for alleged violations of H.B. 3293.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board admits this request.

REQUEST NO. 57: Admit that you are required to regulate athletic activities offered by public secondary schools in Harrison County. See Code of West Virginia §18-2-25.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board admits that the provisions of West Virginia Code §18-2-25 require it to regulate athletic activities of public secondary schools in Harrison County.

REQUEST NO. 58: Admit that you are required to control interscholastic athletic events in which Bridgeport Middle School participates. See Code of West Virginia §18-2-25.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board admits that the provisions of West Virginia Code §18-2-25 require it to control athletic activities of public secondary schools in Harrison County.

REQUEST NO. 59: Admit that you are required supervise interscholastic athletic events in which Bridgeport Middle School participates. See Code of West Virginia §18-2-25.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board admits that the provisions of West Virginia Code §18-2-25 require it to supervise athletic activities of public secondary schools in Harrison County.

REQUEST NO. 60: Admit that you are required regulate interscholastic athletic events in which Bridgeport Middle School participates. See Code of West Virginia §18-2-25.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County

Board admits that the provisions of West Virginia Code §18-2-25 require it to regulate athletic events in which Bridgeport Middle School participates.

REQUEST NO. 61: Admit that Bridgeport Middle School is a member school of the West Virginia Secondary School Activities Commission.

RESPONSE: Admitted.

REQUEST NO. 62: Admit that you have delegated control over interscholastic athletic events in Harrison County to the West Virginia Secondary School Activities Commission.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board admits that it has delegated some, but not all, control over interscholastic athletic events in Harrison County to the West Virginia Secondary School Activities Commission.

REQUEST NO. 63: Admit that you have delegated supervision over interscholastic athletic events to the West Virginia Secondary School Activities Commission.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board admits that it has delegated some, but not all, supervision over interscholastic athletic events to the West Virginia Secondary School Activities Commission.

REQUEST NO. 64: Admit that you have delegated regulation of interscholastic athletic events to the West Virginia Secondary School Activities Commission.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County

Board admits that it has delegated some, but not all, regulation of interscholastic athletic events to the West Virginia Secondary School Activities Commission.

REQUEST NO. 65: Admit that the State Board of Education controls you. See Code of West Virginia §18-2-5.

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board denies this request because West Virginia Code §18-2-5 states that “the State Board of Education shall exercise general supervision of the public schools of the state, and shall promulgate rules[.]”

REQUEST NO. 66: Admit that you receive federal financial assistance.

RESPONSE: Admitted.

REQUEST NO. 67: Admit that you must comply with Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 *et seq.*

RESPONSE: **OBJECTION.** The County Board objects to the extent this request is seeking a legal conclusion. Subject to and without waiving the objection, the County Board admits this request.

Dated this the 10th day of March, 2022.

STEPTOE & JOHNSON PLLC
OF COUNSEL

/s/ Susan L. Deniker

Susan L. Deniker (WV ID #7992)
Jeffrey M. Cropp (WV ID #8030)
400 White Oaks Boulevard
Bridgeport, WV 26330-4500
(304) 933-8000

*Counsel for Defendants Harrison County Board of
Education and Dora Stutler*

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
Hon. Joseph R. Goodwin, District Judge

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, PATRICK
MORRISEY in his official capacity as Attorney
General, and THE STATE OF WEST VIRGINIA,

Defendants,

and

LAINY ARMISTEAD,

Defendant-Intervenor.

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of March, 2022, I electronically filed the foregoing Certificate of Service of “Defendant Harrison County Board of Education’s Responses and Objections to Plaintiff’s Second Set of Requests for Admission” with the Clerk of the Court using the CM/ECF system, and a true and exact copy of such filing was sent by email to the following counsel of record:

Joshua A. Block, Esquire
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street 18th Floor
New York, NY 10004
Counsel for Plaintiff

Loree Beth Stark, Esquire
Nicholas P. Ward, Esquire
AMERICAN CIVIL LIBERTIES UNION
OF WEST VIRGINIA
1614 Kanawha Boulevard East
Charleston, WV 25311
Counsel for Plaintiff

Avatara A. Smith-Carrington, Esquire
LAMBDA LEGAL
3500 Oak Lawn Avenue Suite 500
Dallas, TX 75219
Counsel for Plaintiff

Carl Solomon Charles, Esquire
Tara L. Borelli, Esquire
LAMBDA LEGAL
158 West Ponce De Leon Avenue, Suite 105
Decatur, GA 30030
Counsel for Plaintiff

Sruti J. Swaminathan, Esquire
LAMBDA LEGAL
120 Wall Street 19th Floor
New York, NY 10005
Counsel for Plaintiff

Kathleen R. Hartnett, Esquire
Julie Veroff, Esquire
Zoë Helstrom, Esquire
COOLEY LLP
3 Embarcadero Center, 20th Floor
San Francisco, CA 94111
Counsel for Plaintiff

Katelyn Kang, Esquire
Valeria M. Pelet del Toro, Esquire
COOLEY LLP
55 Hudson Yards
New York, NY 10001
Counsel for Plaintiff

Elizabeth Reinhardt, Esquire
COOLEY LLP
500 Boylston Street, 14th Floor
Boston, MA 02116-3736
Counsel for Plaintiff

Andrew D. Barr, Esquire
COOLEY LLP
1144 15th Street Suite 2300
Denver, CO 80202
Counsel for Plaintiff

Roberta F. Green, Esquire
Kimberly M. Bandy, Esquire
Shannon M. Rogers, Esquire
SHUMAN McCUSKEY & SLICER
PO Box 3953
Charleston, WV 25339-3953
*Counsel for Defendant WV Secondary
School Activities Commission*

Kelly C. Morgan, Esquire
Kristen Vickers Hammond, Esquire
Michael W. Taylor, Esquire
BAILEY & WYANT
PO Box 3710
Charleston, WV 25337-3710
*Counsel for Defendants WV State Board of
Education and W. Clayton Burch*

Douglas P. Buffington, II, Esquire
Curtis R. Capehart, Esquire
David C. Tryon, Esquire
WV ATTORNEY GENERAL'S
OFFICE
State Capitol Complex
Building 1, Room 26E
1900 Kanawha Boulevard East
Charleston, WV 25305-0220
*Counsel for Defendant The State of
West Virginia*

Brandon Steele, Esquire
Joshua D. Brown, Esquire
THE LAW OFFICES OF BRANDON S.
STEELE
3049 Robert C. Byrd Drive, Suite 100
Beckley, WV 25801
*Counsel for Defendant-Intervenor Lainey
Armistead*

Jonathan Scruggs, Esquire
Roger G. Brooks, Esquire
Henry W. Frampton, IV, Esquire
ALLIANCE DEFENDING FREEDOM
15100 N. 90th Street
Scottsdale, AZ 85260
*Counsel for Defendant-Intervenor
Lainey Armistead*

Christina Holcomb, Esquire
ALLIANCE DEFENDING FREEDOM
440 First Street NW, Suite 600
Washington, DC 20001
*Counsel for Defendant-Intervenor Lainey
Armistead*

Rachel Csutoros, Esquire
Tyson Langhofer, Esquire
ALLIANCE DEFENDING FREEDOM
44180 Riverside Parkway
Lansdowne, VA 20176
*Counsel for Defendant-Intervenor
Lainey Armistead*

Travis Barham, Esquire
ALLIANCE DEFENDING FREEDOM
1000 Hurricane Shoals Rd NE
STE D-1100
Lawrenceville GA 30043
*Counsel for Defendant-Intervenor Lainey
Armistead*

Timothy D. Ducar, Esquire
Law Offices of Timothy D. Ducar, PLC
7430 E. Butherus Drive, Suite E
Scottsdale, AZ 85260
*Counsel for Defendant-Intervenor
Lainey Armistead*

STEPTOE & JOHNSON PLLC
OF COUNSEL

/s/ Susan L. Deniker

Susan L. Deniker (WV ID #7992)
Jeffrey M. Cropp (WV ID #8030)
400 White Oaks Boulevard
Bridgeport, WV 26330-4500
(304) 933-8000

*Counsel for Defendants Harrison County Board of
Education and Dora Stutler*

Exhibit 8

**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.

**DEFENDANT WEST VIRGINIA STATE BOARD OF EDUCATION'S RESPONSES
TO PLAINTIFF'S SECOND SET OF REQUESTS FOR ADMISSION**

NOW COMES Defendant West Virginia State Board of Education (hereinafter "WVBOE"), by and through counsel, Kelly C. Morgan, Kristen V. Hammond, Michael W. Taylor, and the law firm of Bailey & Wyant, P.L.L.C., and, pursuant to Rule 33 of the *Federal Rules of Civil Procedure*, hereby responds and objects to "*Plaintiff's Second Set of Requests for Admissions to Defendant West Virginia State Board of Education*" as follows:

GENERAL OBJECTIONS AND PRELIMINARY STATEMENT

A. WVBOE objects to the definitions as stated in Plaintiff's Second Set of Requests for

Admission, including specifically the following definitions:

“STATE BOARD means the West Virginia State Board of Education, as well as its officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents.”

“STATE SUPERINTENDENT means W. Clayton Burch in his official capacity as Superintendent of the STATE BOARD, as includes each of the officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents that report to him in his official capacity. It also means any PERSON who assumes any of Mr. Burch’s official positions or responsibilities in part, whether temporarily or permanently.”

These definitions are overly broad and outside the permissible scope of discovery under the *Federal Rules of Civil Procedure* as these definitions improperly broaden the identity of parties in this case.

These responses are made by WVBOE only.

B. These responses are based upon information and documentation presently available to WVBOE and which it believes to be complete and accurate. Said responses are made without prejudice to WVBOE’s right to rely upon subsequently discovered facts or evidence.

C. No incidental or implied admission of fact by WVBOE is made as to the responses provided herein. The fact that WVBOE has responded to the discovery requests of Plaintiff, may not properly be taken as an admission that WVBOE accepts or admits the existence of any facts set forth or assumed by such response or that such response constitutes admissible evidence.

D. Responses to Plaintiff’s discovery requests may be supplemented by WVBOE upon further investigation and acquisition of information or documentation which it does not possess or have knowledge of at this time. However, any such further supplementation shall be made only in accordance with *Federal Rules of Civil Procedure*.

E. WVBOE objects to each and every request insofar as it seeks information which is protected by the attorney-client privilege, or which falls within the scope of the work-product doctrine. WVBOE also objects to Plaintiff’s discovery requests to the extent that the information

and/or documentation sought has or could have been obtained from other sources that were more convenient, less burdensome, or less expensive.

F. WVBOE objects to any definitions and instructions set forth in Plaintiff's discovery requests to the extent that such definitions and instructions are inconsistent and confusing, and to the extent that they attempt to impose requirements which are more burdensome or in addition to those set forth in Rule 26 of the *Federal Rules of Civil Procedure*.

G. WVBOE objects to Plaintiff's discovery requests to the extent that they seek to discover confidential information or documentation. WVBOE will produce such information and/or documentation, if essential to the litigation, only upon the entry of an appropriate Protective Order and upon permission of any third parties with whom WVBOE may have obligations concerning confidential information.

H. WVBOE objects to Plaintiff's discovery requests based on insufficient information, knowledge, or belief to admit or deny any assertions set forth in such requests.

I. WVBOE states that the word usage and sentence structure may be that of the attorney assisting in the preparation of the following responses and, thus, does not necessarily purport to be the precise language of the executing party.

J. WVBOE is answering and responding to these discovery requests in conformity with the requirements set forth in *Federal Rules of Civil Procedure* and not necessarily in compliance with the instructions and definitions set forth in "*Plaintiff's Second Set of Requests for Admission to Defendant West Virginia State Board of Education.*"

K. WVBOE objects to the discovery requests to the extent that the information and/or documents sought are not in its possession.

REQUESTS FOR ADMISSION

REQUEST NO. 5:

Admit that Plaintiff B.P.J. has been diagnosed with gender dysphoria.

RESPONSE: WVBOE has made a reasonable inquiry and admits that Plaintiff B.P.J. has produced documentation that attests Plaintiff B.P.J. has been diagnosed with gender dysphoria and that Plaintiff B.P.J.'s witnesses have testified to the same. However, WVBOE lacks sufficient independent knowledge to admit or deny the assertions set forth in this Request.

REQUEST NO. 6:

Admit that in 2021 Plaintiff B.P.J. was a member of Bridgeport Middle School's girls' cross-country team.

RESPONSE: WVBOE has made a reasonable inquiry and admits that Plaintiff B.P.J. has produced documentation that attests Plaintiff B.P.J. was a member of Bridgeport Middle School's girls' cross-country team in 2021 and that Plaintiff B.P.J.'s witnesses have testified to the same. However, WVBOE lacks sufficient independent knowledge to admit or deny the assertions in this Request.

REQUEST NO. 7:

Admit that Plaintiff B.P.J. placed 51 out of 66 competitors in the girls' middle school cross country Mountain Hollar MS Invitational meet in 2021.

RESPONSE: WVBOE has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 8:

Admit that Plaintiff B.P.J. placed 123 out of 150 competitors in the girls' middle school cross country Doddridge Invitational meet in 2021.

RESPONSE: WVBOE has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 9:

Admit that you have not received any complaints associated with Plaintiff B.P.J.'s membership on Bridgeport Middle School's girls' cross country team.

RESPONSE: WVBOE admits this Request.

REQUEST NO. 10:

Admit that no middle school girl was harmed as a result of B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021.

RESPONSE: WVBOE has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 11:

Admit that no middle school girl was injured as a result of Plaintiff B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021.

RESPONSE: WVBOE has made a reasonable inquiry and lacks sufficient knowledge or

information to admit or deny the assertions in this Request.

REQUEST NO. 12:

Admit that no Bridgeport Middle School girl student was prohibited from joining Bridgeport Middle School's girls' cross-country team in 2021.

RESPONSE: WVBOE has made a reasonable inquiry and admits that Plaintiff B.P.J. and Defendant Dora Stutler have testified that all Bridgeport Middle School girl students who tried out for Bridgeport Middle School's girls' cross-country team in 2021 made the team. However, WVBOE lacks sufficient independent knowledge to admit or deny the assertions in this Request.

REQUEST NO. 13:

Admit that Bridgeport Middle School's girls' cross-country team did not turn anyone away from participating due to lack of space on the roster in 2021.

RESPONSE: WVBOE has made a reasonable inquiry and admits that Plaintiff B.P.J. and Defendant Dora Stutler have testified that all Bridgeport Middle School girl students who tried out for Bridgeport Middle School's girls' cross-country team in 2021 made the team. However, WVBOE lacks sufficient independent knowledge to admit or deny the assertions in this Request.

REQUEST NO. 14:

Admit that Plaintiff B.P.J. does not have an unfair athletic advantage over other girls participating on the Bridgeport Middle School girls' cross-country team.

RESPONSE: Objection. The phrase “unfair athletic advantage” is vague, undefined, and subject to multiple interpretation. Without waiving this objection, WVBOE has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 15:

Admit that Plaintiff B.P.J. does not have an unfair athletic advantage over girls competing against the Bridgeport Middle School girls’ cross-country team.

RESPONSE: Objection. The phrase “unfair athletic advantage” is vague, undefined, and subject to multiple interpretation. Without waiving this objection, WVBOE has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 16:

Admit that cross country is a sport that requires “competitive skill” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: WVBOE denies as “competitive skill” is not defined in H.B. 3293 or *West Virginia Code* § 18-2-25d and said provision has not yet been defined by a Court having jurisdiction over WVBOE or through regulations.

REQUEST NO. 17:

Admit that cross country is a sport that requires “competitive skill” as that phrase is used in 34 C.F.R. § 106.41(b).

RESPONSE: WVBOE denies as “competitive skill” is not defined in 34 C.F.R. § 106.41(b) and said provision has not yet been defined by a Court having jurisdiction over WVBOE or through regulations.

REQUEST NO. 18:

Admit that cross country is not a “contact sport” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: WVBOE denies as “contact sport” is not defined in H.B. 3293 or *West Virginia Code* § 18-2-25d and said provision has not yet been defined by a Court having jurisdiction over WVBOE or through regulations.

REQUEST NO. 19:

Admit that cross country is not a “contact sport” as that phrase is used in 34 C.F.R. § 106.41(b).

RESPONSE: WVBOE denies as “contact sport” is not fully defined in 34 C.F.R. § 106.41(b) and WVBOE is not aware of any exhaustive definition by a Court having jurisdiction over it or through regulations.

REQUEST NO. 20:

Admit that, but for the injunction issued in this case (Dkt. 67), Plaintiff B.P.J. would not have been permitted to be a member of Bridgeport Middle School’s girls’ cross-country team in 2021 because of H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: WVBOE admits that the plain language of H.B. 3293 (codified at *West Virginia*

Code § 18-2-25d(c)(2)) would not have been permitted Plaintiff B.P.J. to be a member of Bridgeport Middle School's girls' cross-country team after July 8, 2021 and that the injunction issued in this case permitted Plaintiff B.P.J. to be a member of the same.

REQUEST NO. 21:

Admit that, but for the injunction issued in this case (Dkt. 67), Plaintiff B.P.J. would not be permitted to be a member of any girls' athletic team offered at Bridgeport Middle School because of H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: WVBOE admits that the plain language of H.B. 3293 (codified at *West Virginia Code* § 18-2-25d(c)(2)) would not have been permitted Plaintiff B.P.J. to be a member of any girls' athletic team offered at Bridgeport Middle School after July 8, 2021 and that the injunction issued in this case would have permitted Plaintiff B.P.J. to be a member of the same.

REQUEST NO. 22:

Admit that H.B. 3293 prohibits Plaintiff B.P.J. from participating on girls' athletic teams at all public secondary schools located in West Virginia.

RESPONSE: WVBOE admits that the plain language of H.B. 3293 (codified at *West Virginia Code* § 18-2-25d) prohibits Plaintiff B.P.J. from participating on girls' athletic teams at all public secondary schools located in West Virginia.

REQUEST NO. 23:

Admit that the State Board of Education and the State Superintendent must comply with

H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: WVBOE admits as all persons and entities must comply with the law, unless enjoined from doing so by a court.

REQUEST NO. 24:

Admit that H.B. 3293 prohibits the State Board of Education and the State Superintendent from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School.

RESPONSE: WVBOE admits that all persons and entities must comply with the law but denies the remaining request as it misstates the law. H.B. 3293 only requires WVBOE to promulgate rules to "implement" *West Virginia Code* § 18-2-25d, not to enforce it.

REQUEST NO. 25:

Admit that the Harrison County Board of Education and the Harrison County School Superintendent must comply with H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: WVBOE admits that all persons and entities must comply with the law, unless enjoined from doing so by a court.

REQUEST NO. 26:

Admit that H.B. 3293 prohibits the Harrison County Board of Education and the Harrison County Superintendent from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School.

RESPONSE: WVBOE admits as all persons and entities must comply with the law, unless

enjoined from doing so by a court.

REQUEST NO. 27:

Admit that the West Virginia Secondary School Athletic Commission must comply with H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: WVBOE admits as all persons and entities must comply with the law, unless enjoined from doing so by a court.

REQUEST NO. 28:

Admit that H.B. 3293 prohibits the West Virginia Secondary School Athletic Commission from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School.

RESPONSE: WVBOE admits as all persons and entities must comply with the law, unless enjoined from doing so by a court.

REQUEST NO. 29:

Admit that there are no athletic teams designated as "coed or mixed," as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), offered at Bridgeport Middle School.

RESPONSE: WVBOE has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 30:

Admit that there are no athletic teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that compete interscholastically offered at any public secondary school located in West Virginia.

RESPONSE: WVBOE has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 31:

Admit that there are no cross-country teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that compete interscholastically offered by any member school of the West Virginia Secondary School Activities Commission.

RESPONSE: WVBOE has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 32:

Admit that there are no athletic leagues designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that comprise teams from more than one school supervised by the West Virginia Secondary School Activities Commission.

RESPONSE: WVBOE has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 33:

Admit that there are no athletic teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)),” that compete interscholastically offered by any public secondary school under the supervision of the West Virginia State Board of Education.

RESPONSE: WVBOE has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 34:

Admit that H.B. 3293 does not prohibit a cisgender girl student at Bridgeport Middle School from joining a girls’ athletic team offered at Bridgeport Middle School.

RESPONSE: WVBOE admits that the plain language of H.B. 3293 (codified at *West Virginia Code* § 18-2-25d) does not prohibit a cisgender girl student at Bridgeport Middle School from joining a girls’ athletic team offered at Bridgeport Middle School.

REQUEST NO. 35:

Admit that H.B. 3293 does not prohibit a cisgender girl student at any public secondary school in West Virginia from joining a girls’ athletic team offered by her public secondary school.

RESPONSE: WVBOE admits that the plain language of H.B. 3293 (codified at *West Virginia Code* § 18-2-25d) does not prohibit a cisgender girl student at any public secondary school in West Virginia from joining a girls’ athletic team offered by her public secondary school.

REQUEST NO. 36:

Admit that H.B. 3293 prohibits a Bridgeport Middle School transgender girl student from

joining a girls' athletic team offered at Bridgeport Middle School.

RESPONSE: WVBOE admits that the plain language of H.B. 3293 (codified at *West Virginia Code* § 18-2-25d) prohibits a Bridgeport Middle School transgender girl student from joining a girls' athletic team offered at Bridgeport Middle School.

REQUEST NO. 37:

Admit that H.B. 3293 prohibits any transgender girl secondary school student located in West Virginia from joining a girls' athletic team offered by her public secondary school.

RESPONSE: WVBOE admits that the plain language of H.B. 3293 (codified at *West Virginia Code* § 18-2-25d) prohibits any transgender girl secondary school student located in West Virginia from joining a girls' athletic team offered by her public secondary school.

REQUEST NO. 38:

Admit that prior to the enactment of H.B. 3293, cisgender boy students at Bridgeport Middle School were prohibited from joining girls' athletic teams offered at Bridgeport Middle School.

RESPONSE: This Defendant admits to the extent that Section 3.8 of 127 C.S.R. 2 is applicable.

REQUEST NO. 39:

Admit that prior to the enactment of H.B. 3293, a cisgender boy student at any public secondary school in West Virginia was prohibited from joining girls' athletic teams offered at his public secondary school.

RESPONSE: This Defendant admits to the extent that Section 3.8 of 127 C.S.R. 2 is applicable.

REQUEST NO. 40:

Admit that prior to the enactment of H.B. 3293, you are not aware of any transgender student athlete participating on an athletic team offered by Bridgeport Middle School.

RESPONSE: WVBOE admits this Request.

REQUEST NO. 41:

Admit that prior to the enactment of H.B. 3293, you are not aware of any transgender student athlete participating on an athletic team offered by a public secondary school in West Virginia.

RESPONSE: WVBOE admits this Request.

REQUEST NO. 42:

Admit that other than Plaintiff B.P.J., you are not aware of a transgender student athlete participating on an athletic team offered by Bridgeport Middle School.

RESPONSE: WVBOE admits this Request.

REQUEST NO. 43:

Admit that other than Plaintiff B.P.J., you are not aware of a transgender student athlete participating on an athletic team offered by a public secondary school in West Virginia.

RESPONSE: WVBOE admits this Request.

REQUEST NO. 44:

Admit that students derive social benefits from participation on athletic teams offered by public secondary schools in West Virginia.

RESPONSE: Objection. The phrase “derive social benefits” is vague, undefined, and subject to multiple interpretations. Without waiving this objection, WVBOE admits that there are certain benefits to students from participation on athletic teams offered by public secondary schools in West Virginia.

REQUEST NO. 45:

Admit that students derive psychological benefits from participation on athletic teams offered by public secondary schools in West Virginia.

RESPONSE: Objection. The phrase “derive psychological benefits” is vague, undefined, and subject to multiple interpretations. Without waiving this objection, WVBOE admits that there are certain benefits to students from participation on athletic teams offered by public secondary schools in West Virginia.

REQUEST NO. 46:

Admit that interscholastic athletic competition benefits middle school students.

RESPONSE: Objection. The phrase “benefits” is vague, undefined, and subject to multiple interpretations. Without waiving this objection, WVBOE admits that there are certain benefits to middle school students who participate in interscholastic sports.

REQUEST NO. 47:

Admit that middle school students who participate in interscholastic athletics receive benefits regardless whether they win or lose.

RESPONSE: Objection. The phrase “benefits” is vague, undefined, and subject to multiple

interpretations. Without waiving this objection, WVBOE admits that there are certain benefits to middle school students who participate in interscholastic sports.

REQUEST NO. 48:

Admit that Plaintiff B.P.J.'s gender is identified as "male" in the West Virginia Education Information System ("WVEIS").

RESPONSE: WVBOE admits this Request.

REQUEST NO. 49:

Admit that you have the ability to change Plaintiff B.P.J.'s gender in WVEIS to "female."

RESPONSE: WVBOE denies this Request as it does not have this ability.

REQUEST NO. 50:

Admit that you are required to supervise public secondary schools in West Virginia.

RESPONSE: WVBOE admits that it has general supervision and oversight over the free schools of the state of West Virginia, not including private schools.

REQUEST NO. 51:

Admit that you have control over the county boards of education in West Virginia.

RESPONSE: WVBOE admits that it can only exercise such "control" as it possesses by West Virginia Constitution or statute. WVBOE denies this request to the extent that W.Va. Code §18-2-25 speaks for itself.

REQUEST NO. 52:

Admit that you have control over Defendant Harrison County Board of Education.

RESPONSE: OBJECTION. WVBOE admits that it can only exercise such “control” as it possesses by West Virginia Constitution or statute. WVBOE denies this request to the extent that W.Va. Code §18-2-25 speaks for itself.

REQUEST NO. 53:

Admit that you have control over Defendant West Virginia Secondary School Activities Commission.

RESPONSE: OBJECTION. WVBOE admits that it can only exercise such “control” as it possesses by West Virginia Constitution or statute. WVBOE denies this request to the extent that W.Va. Code §18-2-25 speaks for itself.

REQUEST NO. 54:

Admit that you have delegated control over public secondary school athletics to the county boards of education.

RESPONSE: WVBOE admits that it can only exercise such “control” as it possesses by West Virginia Constitution or statute. WVBOE denies this request to the extent that W.Va. Code §18-2-25 speaks for itself.

REQUEST NO. 55:

Admit that you have delegated control over public secondary school athletics to Defendant West Virginia Secondary School Activities Commission.

RESPONSE: WVBOE admits that it can only exercise such “control” as it possesses by West Virginia Constitution or statute. WVBOE denies this request to the extent that W.Va. Code §18-2-25 speaks for itself.

REQUEST NO. 56:

Admit that you have delegated control over Bridgeport Middle School’s athletics to the Harrison County Board of Education.

RESPONSE: WVBOE denies this request to the extent that W.Va. Code §18-2-25 speaks for itself.

REQUEST NO. 57:

Admit that you have delegated control over Bridgeport Middle School’s athletics to Defendant West Virginia Secondary School Activities Commission.

RESPONSE: WVBOE denies this request to the extent that W.Va. Code §18-2-25 speaks for itself.

REQUEST NO. 58:

Admit that you must approve all rules issued by the West Virginia Secondary School Activities Commission.

RESPONSE: WVBOE admits this Request.

REQUEST NO. 59:

Admit that you receive federal financial assistance.

RESPONSE: WVBOE admits this Request.

REQUEST NO. 60:

Admit that you are required to promulgate rules implementing H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: WVBOE admits this Request as it must comply with the law.

REQUEST NO. 61:

Admit that any rules you promulgate pursuant to H.B. 3293 cannot conflict with the plain language of H.B. 3293.

RESPONSE: WVBOE admits this Request as it must comply with the law.

REQUEST NO. 62:

Admit that under any rules you promulgate pursuant to H.B. 3293, students defined as “male” under H.B. 3293 would not be allowed to participate on girls’ athletic teams offered by public secondary schools in West Virginia.

RESPONSE: WVBOE admits this Request as it must comply with the law.

REQUEST NO. 63:

Admit that under and rules you promulgate pursuant to H.B. 3293 Plaintiff B.P.J. would not be allowed to participate on girls’ athletic teams offered by public secondary schools in West Virginia.

RESPONSE: WVBOE admits this Request as all persons and entities must comply with the

law.

REQUEST NO. 64:

Admit that the West Virginia Secondary School Activities Commission must comply with any rule you promulgate pursuant to H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: WVBOE admits this Request as all persons and entities must comply with the law, unless enjoined from doing so by a court.

REQUEST NO. 65:

Admit that the Harrison County Board of Education and Harrison County School Superintendent must comply with any rule you promulgate pursuant to H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: WVBOE admits this Request as all persons and entities must comply with the law, unless enjoined from doing so by a court.

REQUEST NO. 66:

Admit that you selected Heather Hutchens to be the person responsible for promulgating rules implementing H.B. 3293.

RESPONSE: This Defendant denies this request as stated; however, this Defendant admits that Heather Hutchens and/or other counsel on behalf of the West Virginia Department of Education are generally tasked with drafting rules.

REQUEST NO. 67:

Admit that you must comply with Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*

RESPONSE: WVBOE admits this Request as it must comply with the law.

REQUEST NO. 68:

Admit that you are required to enforce H.B. 3293 assuming the Court has not enjoined you from doing so.

RESPONSE: WVBOE denies this Request as *West Virginia Code* § 18-2-25d only requires it to promulgate rules, including emergency rules, pursuant to *West Virginia Code* § 29A-3B-1 *et seq.*, to implement the provisions of this section.

**WEST VIRGINIA STATE BOARD
OF EDUCATION,**

By Counsel,

/s/ Kelly C. Morgan
Kelly C. Morgan (WV Bar #9519)
Kristen V. Hammond (WV Bar #9727)
Michael W. Taylor (WV Bar #11715)
Bailey & Wyant, PLLC
500 Virginia Street, East, Suite 600
P.O. Box 3710
Charleston, WV 25337-3710
Telephone: 304.345.4222
Facsimile: 304.343.3133
kmorgan@baileywyant.com
khammond@baileywyant.com
mtaylor@baileywyant.com

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

LAINEY ARMISTEAD,

Defendant-Intervenor.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing “**Defendant West Virginia State Board of Education’s Responses to Plaintiff’s Second Set of Requests for Admission**” was served upon the following parties through the Court’s Electronic Case Filing (ECF) system and via electronic mail on this day, Thursday, March 10, 2022:

Loree Beth Stark
Nicholas Ward
American Civil Liberties Union of West Virginia Foundation
P.O. Box 3952
Charleston, WV 25339-3952
lstark@acluwv.org
nward@acluwv.org
Counsel for Plaintiff

Avatara Smith-Carrington

Lambda Legal
3500 Oak Lawn Avenue, Suite 500
Dallas, TX 75219
asmithcarrington@lambdalegal.org
Counsel for Plaintiff

Carl Charles
Lambda Legal
730 Peachtree Street NE, Suite 640
Atlanta, GA 30308-1210
ccharles@lambdalegal.org
Counsel for Plaintiff

Sruti Swaminathan
Lambda Legal
120 Wall Street, 19th Floor
New York, NY 10005
sswaminathan@lambdalegal.org
Counsel for Plaintiff

Joshua A. Block
American Civil Liberties Union Foundation
125 Broad Street
New York, NY 10004
jblock@aclu.org
Counsel for Plaintiff

Kathleen Hartnett
Julie Veroff
Cooley LLP
101 California Street 5th Floor
San Francisco, CA 94111-5800
khartnett@cooley.com
jveroff@cooley.com
Counsel for Plaintiff

Elizabeth Reinhardt
Cooley LLP
500 Boylston Street, 14th Floor
Boston, MA 02116-3736
ereinhardt@cooley.com
Counsel for Plaintiff

Andrew D. Barr

Cooley LLP
1144 15th St., Suite 2300
Denver, CO 80202-5686
abarr@cooley.com
Counsel for Plaintiff

Katelyn Kang
Cooley LLP
55 Hudson Yards
New York, NY 10001-2157
kkang@cooley.com
Counsel for Plaintiff

Meredith Taylor Brown
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004
tbrown@aclu.org
Counsel for Plaintiff

Tara L. Borelli
Lamda Legal Defense and Education Fund
1 West Court Square, Suite 105
Decatur, GA 30030
tborelli@lambdalegal.org
Counsel for Plaintiff

Roberta F. Green
Kimberly M. Bandy
Shuman McCuskey & Slicer PLLC
P.O. Box 3953
Charleston, WV 25339-3953
rgreen@Shumanlaw.com
Counsel for Defendant West Virginia Secondary School Activities Commission

Susan L. Deniker
Jeffrey M. Cropp
Steptoe & Johnson PLLC
400 White Oaks Boulevard
Bridgeport, WV 26330
susan.deniker@steptoe-johnson.com
Counsel for Defendants Harrison County Board of Education and Dora Stutler

Douglas P. Buffington, II

Curtis R. A. Capehart
David C. Tryon
Jessica A. Lee
West Virginia Attorney General's Office
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305-0220
Curtis.R.A.Capehart@wvago.gov
Counsel for Intervenor State of West Virginia

Aria S. Vaughan
United States Department of Justice
Civil Rights Division
Educational Opportunities Section
950 Pennsylvania Ave., NW
4CON, 10th Floor
Washington, DC 20530
Aria.Vaughan@usdoj.gov
Interested Party United States of America

Fred B. Westfall, Jr.
Jennifer M. Mankins
United States Attorney's Office
300 Virginia Street East, Room 4000
Charleston, WV 25301
Fred.Westfall@usdoj.gov
Interested Party United States of America

Brandon S. Steele
Joshua D. Brown
The Law Office of Brandon S. Steele
3049 Robert C. Byrd Drive, Suite 100
Beckley, WV 25801
bstelelawoffice@gmail.com
joshua_brown05@hotmail.com
Counsel for Movant Lainey Armistead

Christiana M. Holcomb
Alliance Defending Freedom
440 First Street, NW
Washington, DC 2001
cholcomb@adfllegal.org
Counsel for Movant Lainey Armistead

Jonathan Scruggs

Alliance Defending Freedom
15100 North 90th Street
Scottsdale, AZ 85260
jscruggs@alliancedefendingfreedom.org
Counsel for Movant Lainey Armistead

Timothy D. Ducar
Law Office of Timothy D. Ducar
7430 East Butherus Drive, Suite E
Scottsdale, AZ 85260
orders@azlawyers.com
Counsel for Movant Lainey Armistead

/s/ Kelly C. Morgan
Kelly C. Morgan (WV Bar #9519)
Kristen V. Hammond (WV Bar #9727)
Michael W. Taylor (WV Bar #11715)
Bailey & Wyant, PLLC
500 Virginia Street, East, Suite 600
P.O. Box 3710
Charleston, WV 25337-3710
Telephone: 304.345.4222
Facsimile: 304.343.3133
kmorgan@baileywyant.com
khammond@baileywyant.com
mtaylor@baileywyant.com

Exhibit 9

**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

LAINIEY ARMISTEAD,

Defendant-Intervenor.

**DEFENDANT STATE SUPERINTENDENT W. CLAYTON BURCH'S RESPONSES
TO PLAINTIFF'S SECOND SET OF REQUESTS FOR ADMISSION**

NOW COMES Defendant Superintendent W. Clayton Burch (hereinafter "Defendant"), by and through his counsel, Kelly C. Morgan, Kristen V. Hammond, Michael W. Taylor, and the law firm of Bailey & Wyant, P.L.L.C., and, pursuant to Rule 33 of the *Federal Rules of Civil Procedure*, hereby responds and objects to "*Plaintiff's Second Set of Requests for Admissions to Defendant W. Clayton Burch*" as follows:

GENERAL OBJECTIONS AND PRELIMINARY STATEMENT

A. This Defendant objects to the definitions as stated in Plaintiff's Second Set of

Requests for Admission, including specifically the following definitions:

“STATE BOARD means the West Virginia State Board of Education, as well as its officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents.”

“STATE SUPERINTENDENT means W. Clayton Burch in his official capacity as Superintendent of the STATE BOARD, as includes each of the officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents that report to him in his official capacity. It also means any PERSON who assumes any of Mr. Burch’s official positions or responsibilities in part, whether temporarily or permanently.”

These definitions are overly broad and outside the permissible scope of discovery under the *Federal Rules of Civil Procedure* as these definitions improperly broaden the identity of parties in this case.

These responses are made by this Defendant only.

B. These responses are based upon information and documentation presently available to this Defendant and which he believes to be complete and accurate. Said responses are made without prejudice to this Defendant’s right to rely upon subsequently discovered facts or evidence.

C. No incidental or implied admission of fact by this Defendant is made as to the responses provided herein. The fact that this Defendant has responded to the discovery requests of Plaintiff, may not properly be taken as an admission that this Defendant accepts or admits the existence of any facts set forth or assumed by such response or that such response constitutes admissible evidence.

D. Responses to Plaintiff’s discovery requests may be supplemented by this Defendant upon further investigation and acquisition of information or documentation which he does not possess or have knowledge of at this time. However, any such further supplementation shall be made only in accordance with *Federal Rules of Civil Procedure*.

E. This Defendant objects to each and every request insofar as it seeks information which is protected by the attorney-client privilege, or which falls within the scope of the work-

product doctrine. This Defendant also objects to Plaintiff's discovery requests to the extent that the information and/or documentation sought has or could have been obtained from other sources that were more convenient, less burdensome, or less expensive.

F. This Defendant objects to any definitions and instructions set forth in Plaintiff's discovery requests to the extent that such definitions and instructions are inconsistent and confusing, and to the extent that they attempt to impose requirements which are more burdensome or in addition to those set forth in the *Federal Rules of Civil Procedure*.

G. This Defendant objects to Plaintiff's discovery requests to the extent that they seek to discover confidential information or documentation. This Defendant will produce such information and/or documentation, if essential to the litigation, only upon the entry of an appropriate Protective Order and upon permission of any third parties with whom Superintendent Burch may have obligations concerning confidential information.

H. This Defendant objects to Plaintiff's discovery requests based on insufficient information, knowledge, or belief to admit or deny any assertions set forth in such requests.

I. This Defendant states that the word usage and sentence structure may be that of the attorney assisting in the preparation of the following responses and, thus, does not necessarily purport to be the precise language of the executing party.

J. This Defendant is answering and responding to these discovery requests in conformity with the requirements set forth in *Federal Rules of Civil Procedure* and not necessarily in compliance with the instructions and definitions set forth in "*Plaintiff's Second Set of Requests for Admission to State Superintendent W. Clayton Burch.*"

K. This Defendant objects to the discovery requests to the extent that the information and/or documents sought are not in his possession.

REQUESTS FOR ADMISSION

REQUEST NO. 5:

Admit that Plaintiff B.P.J. has been diagnosed with gender dysphoria.

RESPONSE: This Defendant has made a reasonable inquiry and admits that Plaintiff B.P.J. has produced documentation that attests Plaintiff B.P.J. has been diagnosed with gender dysphoria and that Plaintiff B.P.J.'s witnesses have testified to the same. However, this Defendant lacks sufficient independent knowledge to admit or deny the assertions set forth in this Request.

REQUEST NO. 6:

Admit that in 2021 Plaintiff B.P.J. was a member of Bridgeport Middle School's girls' cross-country team.

RESPONSE: This Defendant has made a reasonable inquiry and admits that Plaintiff B.P.J. has produced documentation that attests Plaintiff B.P.J. was a member of Bridgeport Middle School's girls' cross-country team in 2021 and that Plaintiff B.P.J.'s witnesses and Defendant Dora Stutler have testified to the same. However, this Defendant lacks sufficient independent knowledge to admit or deny the assertions in this Request.

REQUEST NO. 7:

Admit that Plaintiff B.P.J. placed 51 out of 66 competitors in the girls' middle school cross country Mountain Hollar MS Invitational meet in 2021.

RESPONSE: RESPONSE: This Defendant has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 8:

Admit that Plaintiff B.P.J. placed 123 out of 150 competitors in the girls' middle school cross country Doddridge Invitational meet in 2021.

RESPONSE: This Defendant has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 9:

Admit that you have not received any complaints associated with Plaintiff B.P.J.'s membership on Bridgeport Middle School's girls' cross country team.

RESPONSE: This Defendant admits this Request.

REQUEST NO. 10:

Admit that no middle school girl was harmed as a result of B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021.

RESPONSE: This Defendant has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 11:

Admit that no middle school girl was injured as a result of Plaintiff B.P.J.'s participation on Bridgeport Middle School's girls' cross country team in 2021.

RESPONSE: This Defendant has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 12:

Admit that no Bridgeport Middle School girl student was prohibited from joining Bridgeport Middle School's girls' cross-country team in 2021.

RESPONSE: This Defendant has made a reasonable inquiry and admits that Plaintiff B.P.J. and Defendant Dora Stutler have testified that all Bridgeport Middle School girl students who tried out for Bridgeport Middle School's girls' cross-country team in 2021 made the team. However, this Defendant lacks sufficient independent knowledge to admit or deny the assertions in this Request.

REQUEST NO. 13:

Admit that Bridgeport Middle School's girls' cross-country team did not turn anyone away from participating due to lack of space on the roster in 2021.

RESPONSE: This Defendant has made a reasonable inquiry and admits that Plaintiff B.P.J. and Defendant Dora Stutler have testified that all Bridgeport Middle School girl students who tried out for Bridgeport Middle School's girls' cross-country team in 2021 made the team. However, this Defendant lacks sufficient independent knowledge to admit or deny the assertions in this Request.

REQUEST NO. 14:

Admit that Plaintiff B.P.J. does not have an unfair athletic advantage over other girls participating on the Bridgeport Middle School girls' cross-country team.

RESPONSE: Objection. The phrase "unfair athletic advantage" is vague, undefined, and subject to multiple interpretation. Without waiving this objection, this Defendant has made a

reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 15:

Admit that Plaintiff B.P.J. does not have an unfair athletic advantage over girls competing against the Bridgeport Middle School girls' cross-country team.

RESPONSE: Objection. The phrase “unfair athletic advantage” is vague, undefined, and subject to multiple interpretation. Without waiving this objection, this Defendant has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 16:

Admit that cross country is a sport that requires “competitive skill” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: This Defendant denies as “competitive skill” is not defined in H.B. 3293 or *West Virginia Code* § 18-2-25d and said provision has not yet been defined by a Court having jurisdiction over this Defendant or through regulations.

REQUEST NO. 17:

Admit that cross country is a sport that requires “competitive skill” as that phrase is used in 34 C.F.R. § 106.41(b).

RESPONSE: This Defendant denies as “competitive skill” is not defined in 34 C.F.R. § 106.41(b) and said provision has not yet been defined by a Court having jurisdiction over this

Defendant or through regulations.

REQUEST NO. 18:

Admit that cross country is not a “contact sport” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: This Defendant denies as “contact sport” is not defined in H.B. 3293 or *West Virginia Code* § 18-2-25d and said provision has not yet been defined by a Court having jurisdiction over this Defendant or through regulations.

REQUEST NO. 19:

Admit that cross country is not a “contact sport” as that phrase is used in 34 C.F.R. § 106.41(b).

RESPONSE: This Defendant denies as “contact sport” is not fully defined in 34 C.F.R. § 106.41(b) and this Defendant is not aware of any exhaustive definition by a Court having jurisdiction over this Defendant or through regulations.

REQUEST NO. 20:

Admit that, but for the injunction issued in this case (Dkt. 67), Plaintiff B.P.J. would not have been permitted to be a member of Bridgeport Middle School’s girls’ cross-country team in 2021 because of H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: This Defendant admits that the plain language of H.B. 3293 (codified at *West Virginia Code* § 18-2-25d(c)(2)) would not have been permitted Plaintiff B.P.J. to be a member of Bridgeport Middle School’s girls’ cross-country team after July 8, 2021 and that the

injunction issued in this case permitted Plaintiff B.P.J. to be a member of the same.

REQUEST NO. 21:

Admit that, but for the injunction issued in this case (Dkt. 67), Plaintiff B.P.J. would not be permitted to be a member of any girls' athletic team offered at Bridgeport Middle School because of H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE: This Defendant admits that the plain language of H.B. 3293 (codified at *West Virginia Code* § 18-2-25d(c)(2)) would not have been permitted Plaintiff B.P.J. to be a member of any girls' athletic team offered at Bridgeport Middle School after July 8, 2021 and that the injunction issued in this case would have permitted Plaintiff B.P.J. to be a member of the same.

REQUEST NO. 22:

Admit that H.B. 3293 prohibits Plaintiff B.P.J. from participating on girls' athletic teams at all public secondary schools located in West Virginia.

RESPONSE: This Defendant admits that the plain language of H.B. 3293 (codified at *West Virginia Code* § 18-2-25d) prohibits Plaintiff B.P.J. from participating on girls' athletic teams at all public secondary schools located in West Virginia.

REQUEST NO. 23:

Admit that the State Board of Education and the State Superintendent must comply with H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: This Defendant admits as all persons and entities must comply with the law,

unless enjoined from doing so by a court.

REQUEST NO. 24:

Admit that H.B. 3293 prohibits the State Board of Education and the State Superintendent from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School.

RESPONSE: This Defendant admits that all persons and entities must comply with the law but denies the remaining request as it misstates the law. H.B. 3293 only requires WVBOE to promulgate rules to “implement” *West Virginia Code* § 18-2-25d, not to enforce it.

REQUEST NO. 25:

Admit that the Harrison County Board of Education and the Harrison County School Superintendent must comply with H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: This Defendant admits that all persons and entities must comply with the law, unless enjoined from doing so by a court.

REQUEST NO. 26:

Admit that H.B. 3293 prohibits the Harrison County Board of Education and the Harrison County Superintendent from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School.

RESPONSE: This Defendant admits as all persons and entities must comply with the law, unless enjoined from doing so by a court.

REQUEST NO. 27:

Admit that the West Virginia Secondary School Athletic Commission must comply with H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: This Defendant admits as all persons and entities must comply with the law, unless enjoined from doing so by a court.

REQUEST NO. 28:

Admit that H.B. 3293 prohibits the West Virginia Secondary School Athletic Commission from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School.

RESPONSE: This Defendant admits as all persons and entities must comply with the law, unless enjoined from doing so by a court.

REQUEST NO. 29:

Admit that there are no athletic teams designated as "coed or mixed," as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), offered at Bridgeport Middle School.

RESPONSE: This Defendant has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 30:

Admit that there are no athletic teams designated as "coed or mixed," as that phrase is used

in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that compete interscholastically offered at any public secondary school located in West Virginia.

RESPONSE: This Defendant has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 31:

Admit that there are no cross-country teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that compete interscholastically offered by any member school of the West Virginia Secondary School Activities Commission.

RESPONSE: This Defendant has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 32:

Admit that there are no athletic leagues designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that comprise teams from more than one school supervised by the West Virginia Secondary School Activities Commission.

RESPONSE: This Defendant has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 33:

Admit that there are no athletic teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)),” that compete

interscholastically offered by any public secondary school under the supervision of the West Virginia State Board of Education.

RESPONSE: This Defendant has made a reasonable inquiry and lacks sufficient knowledge or information to admit or deny the assertions in this Request.

REQUEST NO. 34:

Admit that H.B. 3293 does not prohibit a cisgender girl student at Bridgeport Middle School from joining a girls' athletic team offered at Bridgeport Middle School.

RESPONSE: This Defendant admits that the plain language of H.B. 3293 (codified at *West Virginia Code* § 18-2-25d) does not prohibit a cisgender girl student at Bridgeport Middle School from joining a girls' athletic team offered at Bridgeport Middle School.

REQUEST NO. 35:

Admit that H.B. 3293 does not prohibit a cisgender girl student at any public secondary school in West Virginia from joining a girls' athletic team offered by her public secondary school.

RESPONSE: This Defendant admits that the plain language of H.B. 3293 (codified at *West Virginia Code* § 18-2-25d) does not prohibit a cisgender girl student at any public secondary school in West Virginia from joining a girls' athletic team offered by her public secondary school.

REQUEST NO. 36:

Admit that H.B. 3293 prohibits a Bridgeport Middle School transgender girl student from joining a girls' athletic team offered at Bridgeport Middle School.

RESPONSE: This Defendant admits that the plain language of H.B. 3293 (codified at *West Virginia Code* § 18-2-25d) prohibits a Bridgeport Middle School transgender girl student from joining a girls' athletic team offered at Bridgeport Middle School.

REQUEST NO. 37:

Admit that H.B. 3293 prohibits any transgender girl secondary school student located in West Virginia from joining a girls' athletic team offered by her public secondary school.

RESPONSE: This Defendant admits that the plain language of H.B. 3293 (codified at *West Virginia Code* § 18-2-25d) prohibits any transgender girl secondary school student located in West Virginia from joining a girls' athletic team offered by her public secondary school.

REQUEST NO. 38:

Admit that prior to the enactment of H.B. 3293, cisgender boy students at Bridgeport Middle School were prohibited from joining girls' athletic teams offered at Bridgeport Middle School.

RESPONSE: This Defendant admits to the extent that Section 3.8 of 127 C.S.R. 2 is applicable.

REQUEST NO. 39:

Admit that prior to the enactment of H.B. 3293, a cisgender boy student at any public secondary school in West Virginia was prohibited from joining girls' athletic teams offered at his public secondary school.

RESPONSE: This Defendant admits to the extent that Section 3.8 of 127 C.S.R. 2 is applicable.

REQUEST NO. 40:

Admit that prior to the enactment of H.B. 3293, you are not aware of any transgender student athlete participating on an athletic team offered by Bridgeport Middle School.

RESPONSE: This Defendant admits this Request.

REQUEST NO. 41:

Admit that prior to the enactment of H.B. 3293, you are not aware of any transgender student athlete participating on an athletic team offered by a public secondary school in West Virginia.

RESPONSE: This Defendant admits this Request.

REQUEST NO. 42:

Admit that other than Plaintiff B.P.J., you are not aware of a transgender student athlete participating on an athletic team offered by Bridgeport Middle School.

RESPONSE: This Defendant admits this Request.

REQUEST NO. 43:

Admit that other than Plaintiff B.P.J., you are not aware of a transgender student athlete participating on an athletic team offered by a public secondary school in West Virginia.

RESPONSE: This Defendant admits this Request.

REQUEST NO. 44:

Admit that students derive social benefits from participation on athletic teams offered by

public secondary schools in West Virginia.

RESPONSE: Objection. The phrase “derive social benefits” is vague, undefined, and subject to multiple interpretations. Without waiving this objection, this Defendant admits that there are certain benefits to students from participation on athletic teams offered by public secondary schools in West Virginia.

REQUEST NO. 45:

Admit that students derive psychological benefits from participation on athletic teams offered by public secondary schools in West Virginia.

RESPONSE: Objection. The phrase “derive psychological benefits” is vague, undefined, and subject to multiple interpretations. Without waiving this objection, this Defendant admits that there are certain benefits to students from participation on athletic teams offered by public secondary schools in West Virginia.

REQUEST NO. 46:

Admit that interscholastic athletic competition benefits middle school students.

RESPONSE: Objection. The phrase “benefits” is vague, undefined, and subject to multiple interpretations. Without waiving this objection, this Defendant admits that there are certain benefits to middle school students who participate in interscholastic sports.

REQUEST NO. 47:

Admit that middle school students who participate in interscholastic athletics receive benefits regardless whether they win or lose.

RESPONSE: Objection. The phrase “benefits” is vague, undefined, and subject to multiple interpretations. Without waiving this objection, this Defendant admits that there are certain benefits to middle school students who participate in interscholastic sports.

REQUEST NO. 48:

Admit that when you perform your official duties as State Superintendent you are acting on behalf of the State Board of Education.

RESPONSE: This Defendant admits this Request.

REQUEST NO. 49:

Admit that when you perform your official duties as State Superintendent you are acting on behalf of the State of West Virginia.

RESPONSE: This Defendant admits this Request.

REQUEST NO. 50:

Admit that you are a State Actor for purposes of 42 U.S.C. § 1983 when fulfilling duties in your official capacity as the State Superintendent.

RESPONSE: This Defendant admits this Request as he must comply with the law.

REQUEST NO. 51:

Admit that as a member of the State Board of Education, you are required to promulgate rules implementing H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: This Defendant admits this Request as all persons and entities must comply with

the law, unless enjoined from doing so by a court.

REQUEST NO. 52:

Admit that any rules you promulgate pursuant to H.B. 3293 cannot conflict with the plain language of H.B. 3293.

RESPONSE: This Defendant admits this Request all persons and entities must comply with the law, unless enjoined from doing so by a court.

REQUEST NO. 53:

Admit that under any rules you promulgate pursuant to H.B. 3293, students defined as “male” under H.B. 3293 would not be allowed to participate on girls’ athletic teams offered by public secondary schools in West Virginia.

RESPONSE: This Defendant admits this Request as all persons and entities must comply with the law.

REQUEST NO. 54:

Admit that under any rules you promulgate pursuant to H.B. 3293 Plaintiff B.P.J. would not be allowed to participate on girls’ athletic teams offered by public secondary schools in West Virginia.

RESPONSE: This Defendant admits this Request as all persons and entities must comply with the law.

REQUEST NO. 55:

Admit that the West Virginia Secondary School Activities Commission must comply with any rule you promulgate pursuant to H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: This Defendant admits this Request as all persons and entities must comply with the law.

REQUEST NO. 56:

Admit that the Harrison County Board of Education and Harrison County School Superintendent must comply with any rule you promulgate pursuant to H.B. 3293 unless enjoined from doing so by a court.

RESPONSE: This Defendant admits this Request as all persons and entities must comply with the law, unless enjoined from doing so by a court.

REQUEST NO. 57:

Admit that you selected Heather Hutchens to be the person responsible for promulgating rules implementing H.B. 3293.

RESPONSE: This Defendant denies this request as stated; however, this Defendant admits that Heather Hutchens and/or other counsel on behalf of the West Virginia Department of Education are generally tasked with drafting rules.

REQUEST NO. 58:

Admit that you must comply with Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*

RESPONSE: This Defendant admits this Request as he must comply with the law, unless

enjoined from doing so by a court.

REQUEST NO. 59:

Admit that you must comply with the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.

RESPONSE: This Defendant admits this Request as he must comply with the law, unless enjoined from doing so by a court.

REQUEST NO. 60:

Admit that you are required to enforce H.B. 3293 assuming the Court has not enjoined you from doing so.

RESPONSE: This Defendant denies this Request as *West Virginia Code* § 18-2-25d only requires WVBOE to promulgate rules, including emergency rules, pursuant to *West Virginia Code* § 29A-3B-1 et. seq., to implement the provisions of this section.

**STATE SUPERINTENDENT
W. CLAYTON BURCH,**

By Counsel,

/s/ Kelly C. Morgan
Kelly C. Morgan (WV Bar #9519)
Kristen V. Hammond (WV Bar #9727)
Michael W. Taylor (WV Bar #11715)
Bailey & Wyant, PLLC
500 Virginia Street, East, Suite 600
P.O. Box 3710
Charleston, WV 25337-3710
Telephone: 304.345.4222
Facsimile: 304.343.3133
kmorgan@baileywyant.com

khammond@baileywyant.com
mtaylor@baileywyant.com

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

LAINIEY ARMISTEAD,

Defendant-Intervenor.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing “**Defendant State Superintendent W. Clayton Burch’s Responses to Plaintiff’s Second Set of Requests for Admission**” was served upon the following parties through the Court’s Electronic Case Filing (ECF) system and via electronic mail on this day, Thursday, March 10, 2022:

Loree Beth Stark
Nicholas Ward
American Civil Liberties Union of West Virginia Foundation
P.O. Box 3952
Charleston, WV 25339-3952
lstark@acluwv.org
nward@acluwv.org
Counsel for Plaintiff

Avatara Smith-Carrington

Lambda Legal
3500 Oak Lawn Avenue, Suite 500
Dallas, TX 75219
asmithcarrington@lambdalegal.org
Counsel for Plaintiff

Carl Charles
Lambda Legal
730 Peachtree Street NE, Suite 640
Atlanta, GA 30308-1210
ccharles@lambdalegal.org
Counsel for Plaintiff

Sruti Swaminathan
Lambda Legal
120 Wall Street, 19th Floor
New York, NY 10005
sswaminathan@lambdalegal.org
Counsel for Plaintiff

Joshua A. Block
American Civil Liberties Union Foundation
125 Broad Street
New York, NY 10004
jblock@aclu.org
Counsel for Plaintiff

Kathleen Hartnett
Julie Veroff
Cooley LLP
101 California Street 5th Floor
San Francisco, CA 94111-5800
khartnett@cooley.com
jveroff@cooley.com
Counsel for Plaintiff

Elizabeth Reinhardt
Cooley LLP
500 Boylston Street, 14th Floor
Boston, MA 02116-3736
ereinhardt@cooley.com
Counsel for Plaintiff

Andrew D. Barr
Cooley LLP
1144 15th St., Suite 2300
Denver, CO 80202-5686
abarr@cooley.com
Counsel for Plaintiff

Katelyn Kang
Cooley LLP
55 Hudson Yards
New York, NY 10001-2157
kkang@cooley.com
Counsel for Plaintiff

Meredith Taylor Brown
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004
tbrown@aclu.org
Counsel for Plaintiff

Tara L. Borelli
Lamda Legal Defense and Education Fund
1 West Court Square, Suite 105
Decatur, GA 30030
tborelli@lambdalegal.org
Counsel for Plaintiff

Roberta F. Green
Kimberly M. Bandy
Shuman McCuskey & Slicer PLLC
P.O. Box 3953
Charleston, WV 25339-3953
rgreen@Shumanlaw.com
Counsel for Defendant West Virginia Secondary School Activities Commission

Susan L. Deniker
Jeffrey M. Cropp
Steptoe & Johnson PLLC
400 White Oaks Boulevard
Bridgeport, WV 26330
susan.deniker@steptoe-johnson.com
Counsel for Defendants Harrison County Board of Education and Dora Stutler

Douglas P. Buffington, II

Curtis R. A. Capehart
David C. Tryon
Jessica A. Lee
West Virginia Attorney General's Office
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305-0220
Curtis.R.A.Capehart@wvago.gov
Counsel for Intervenor State of West Virginia

Aria S. Vaughan
United States Department of Justice
Civil Rights Division
Educational Opportunities Section
950 Pennsylvania Ave., NW
4CON, 10th Floor
Washington, DC 20530
Aria.Vaughan@usdoj.gov
Interested Party United States of America

Fred B. Westfall, Jr.
Jennifer M. Mankins
United States Attorney's Office
300 Virginia Street East, Room 4000
Charleston, WV 25301
Fred.Westfall@usdoj.gov
Interested Party United States of America

Brandon S. Steele
Joshua D. Brown
The Law Office of Brandon S. Steele
3049 Robert C. Byrd Drive, Suite 100
Beckley, WV 25801
bstelelawoffice@gmail.com
joshua_brown05@hotmail.com
Counsel for Movant Lainey Armistead

Christiana M. Holcomb
Alliance Defending Freedom
440 First Street, NW
Washington, DC 2001
cholcomb@adflegal.org
Counsel for Movant Lainey Armistead

Jonathan Scruggs

Alliance Defending Freedom
15100 North 90th Street
Scottsdale, AZ 85260
jscruggs@alliancedefendingfreedom.org
Counsel for Movant Lainey Armistead

Timothy D. Ducar
Law Office of Timothy D. Ducar
7430 East Butherus Drive, Suite E
Scottsdale, AZ 85260
orders@azlawyers.com
Counsel for Movant Lainey Armistead

/s/ Kelly C. Morgan

Kelly C. Morgan (WV Bar #9519)
Kristen V. Hammond (WV Bar #9727)
Michael W. Taylor (WV Bar #11715)
Bailey & Wyant, PLLC
500 Virginia Street, East, Suite 600
P.O. Box 3710
Charleston, WV 25337-3710
Telephone: 304.345.4222
Facsimile: 304.343.3133
kmorgan@baileywyant.com
khammond@baileywyant.com
mtaylor@baileywyant.com

Exhibit 10

**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, Judge**

**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, and
DORA STUTLER in her official capacity as
Harrison County Superintendent,
Defendants.**

CERTIFICATE OF SERVICE

I hereby certify that I, Roberta F. Green, have this day, the 9th day of March, 2022, filed a true and exact copy of the Certificate of Service for “**WVSSAC’S RESPONSES TO SECOND SET OF REQUESTS FOR ADMISSION**” with the Clerk of Court using the CM/ECF System, and have served by electronic transmission the pleading upon the following counsel of record:

Loree Beth Stark
Nicholas Ward
ACLU of WV FOUNDATION
P.O. Box 3952
Charleston, WV 25339-3952
lstark@acluwv.org
nward@acluwv.org

Kathleen R. Hartnett
Julie Veroff
COOLEY LLP
101 California St. – 5th Floor
San Francisco, CA 94111-5800
khartnett@cooley.com
jveroff@cooley.com

Katelyn Kang
COOLEY LLP
55 Hudson Yards
New York, NY 10001-2157
kkang@cooley.com

Elizabeth Reinhardt
COOLEY LLP
500 Boylston St., 14th Floor
Boston, MA 02116-3736
ereinhardt@cooley.com

Andrew Barr
COOLEY LLP
1144 15th St., Suite 2300
Denver, CO 80202-5686
abarr@cooley.com

Joshua Block
Chase Strangio
ACLU FOUNDATION
125 Broad Street
New York, NY 10004
jblock@aclu.org

Sruti Swaminathan
LAMBDA LEGAL
120 Wall St., 19th Floor
New York, NY 10005
sswaminathan@lambdalegal.org

Kelly C. Morgan
Michael W. Taylor
Kristen Vickers Hammond
BAILEY & WYANT, PLLC
500 Virginia St., East, Suite 600
Charleston, WV 25301
kmorgan@baileywyant.com
mtaylor@baileywyant.com
khammond@baileywyant.com

Douglas P. Buffington, II
Curtis R.A. Capehart
Jessica A. Lee
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305-0220
Curtis.R.A.Capehart@wvago.gov

Taylor Brown
American Civil Liberties Union
125 Broad St., 18th Floor
New York, NY 10004
tbrown@aclu.org

Avatara Smith-Carrington
LAMBDA LEGAL
3500 Oak Lawn Ave., Suite 500
Dallas, TX 75219
asmithcarrington@lambdalegal.org

Carl Charles
LAMBDA LEGAL
1 West Court Square, Suite 105
Decatur, GA 30030
ccharles@lambdalegal.org

Susan Llewellyn Deniker
Jeffrey M. Cropp
STEPTOE and JOHNSON, LLC
400 White Oaks Boulevard
Bridgeport, WV 26330
susan.deniker@steptoe-johnson.com
jeffrey.cropp@steptoe-johnson.com

Tara Borelli
LAMBDA LEGAL
1 West Court Square, Suite 105
Decatur, GA 30030
tborelli@lambdalegal.org

David C. Tryon
West Virginia Atty. General's Office
1900 Kanawha Blvd., E.
Bldg. 1, Rm 26E
Charleston, WV 25305
David.C.Tryon@wvago.gov

Brandon S. Steele
Joshua D. Brown
Law Offices of Brandon S. Steele
3049 Robert C. Byrd Drive, Ste 100
Beckley, WV 25801
bstelelawoffice@gmail.com
joshua_brown05@hotmail.com

Jonathan Scruggs
Roger Greenwood Brooks
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, AZ 85260
jscruggs@adflegal.org
rbrooks@adflegal.org

Timothy D. Ducar
Law Offices of Timothy D. Ducar, PLC
7430 E. Butherus Drive, Suite E
Scottsdale, AZ 85260
tducar@azlawyers.com

Anthony E. Nortz
Kesner & Kesner
112 Capitol Street
Charleston, WV 25301
anortz@kesnerlaw.com

Aria S. Vaughan
U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section
950 Pennsylvania Ave., NW
4CON, 10th Floor
Washington, DC 20530
aria.vaughan@usdoj.gov

Christiana Holcomb
Rachel Csutoros
Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001
cholcomb@adflegal.org
rcsutoros@adflegal.org

Meredith Taylor Brown
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004
tbrown@aclu.org

Michael W. Taylor
BAILEY & WYANT PLLC
500 Virginia St., E. – Suite 600
Charleston, WV 25301
mtaylor@baileywyant.com

Fred B. Westfall, Jr.
Jennifer M. Mankins
United States Attorney's Office
300 Virginia Street, East
Room 400
Charleston, WV 25301
fred.westfall@usdoj.gov
Jennifer.mankins@usdoj.gov

/s/ Roberta F. Green

Roberta F. Green, Esquire (WVSB #6598)
SHUMAN MCCUSKEY SLICER PLLC
Post Office Box 3953 (25339)
1411 Virginia Street E., Suite 200 (25301)
Charleston, West Virginia
Phone: (304) 345-1400
Facsimile: (304) 343-1826
Counsel for Defendant WVSSAC
rgreen@shumanlaw.com

**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, Judge**

**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,
Intervenor Defendant.**

**WVSSAC'S RESPONSES TO SECOND SET
OF REQUESTS FOR ADMISSION**

Now comes West Virginia Secondary School Activities Commission (WVSSAC), by counsel, and responds to Plaintiff's Second Set of Requests for Admission, as follows. Defendant West Virginia Secondary School Activities Commission has not completed discovery in this civil action and has not completed its preparation for trial. For these reasons, the Defendant's responses are based upon only such information and documents as are presently available and known to WVSSAC. Further discovery and independent investigation may lead to other responsive information and/or documents. The following responses are given in good faith but without prejudice to the Defendant's right to produce evidence of subsequently discovered facts or documents.

The Defendant avails itself of all rights under the Federal Rules of Civil Procedure and such other applicable rules and law, and objects to the instructions contained in Plaintiff's discovery requests to the extent such instructions attempt to impose burdens on the Defendant that are outside the scope of the Rules or the law generally. The Defendant is not bound to follow any instructions which may be contrary to the Rules and other law. Further, WVSSAC objects to Plaintiff's Definitions as subjective, without appellation to an authoritative or objective source, and outside this Defendant's knowledge, such that Defendant has insufficient information, knowledge or belief to admit or deny any assertions based upon them. *See Lynn v. Monarch Recovery Mgmt.*, 28 F.R.D. 350, 368 (2012).

With these objections in place, WVSSAC responds as follows.

REQUESTS FOR ADMISSION

REQUEST NO. 5: Admit that Plaintiff B.P.J. has been diagnosed with gender dysphoria.

RESPONSE:

WVSSAC admits that Plaintiff has produced medical records that reflect a diagnosis of 'gender dysphoria' and admits that Plaintiff and her prior treater Dr. Montano both testified to that diagnosis under oath. However, beyond that, WVSSAC has no independent knowledge of this assertion that would allow it to admit or deny this statement, and therefore denies same.

REQUEST NO. 6: Admit that in 2021 Plaintiff B.P.J. was a member of Bridgeport Middle School's girls' cross-country team.

RESPONSE:

Admitted on information and belief. WVSSAC is aware that Bridgeport Middle School has posted a roster that includes B.P.J. Beyond that, Plaintiff and Plaintiff's witnesses testified to B.P.J.'s participation on that team. While WVSSAC has no independent knowledge of the participation, it has notice of the roster, which is an official document in its course of business. In reliance thereon, WVSSAC admits this assertion on information and belief.

REQUEST NO. 7: Admit that Plaintiff B.P.J. placed 51 out of 66 competitors in the girls' middle school cross country Mountain Hollar MS Invitational meet in 2021.

RESPONSE:

WVSSAC has no independent knowledge of this assertion that would allow it to admit or deny same. Therefore, based upon that lack of knowledge, WVSSAC denies the assertion.

REQUEST NO. 8: Admit that Plaintiff B.P.J. placed 123 out of 150 competitors in the girls' middle school cross country Doddridge Invitational meet in 2021.

RESPONSE:

WVSSAC has no independent knowledge of this assertion that would allow it to admit or deny same. Therefore, based upon that lack of knowledge, WVSSAC denies the assertion.

REQUEST NO. 9: Admit that you have not received any complaints associated with Plaintiff B.P.J.'s membership on Bridgeport Middle School's girls' cross-country team.

RESPONSE:

On information and belief, admitted.

REQUEST NO. 10: Admit that no middle school girl was harmed as a result of B.P.J.'s participation on Bridgeport Middle School's girls' cross-country team in 2021.

RESPONSE:

Objection; unclear, undefined term 'harmed.' Beyond that, WVSSAC has no independent knowledge of this assertion that would allow it to admit or deny same. Therefore, based upon that lack of knowledge, WVSSAC denies the assertion.

REQUEST NO. 11: Admit that no middle school girl was injured as a result of Plaintiff B.P.J.'s participation on Bridgeport Middle School's girls' cross-country team in 2021.

RESPONSE:

Objection; unclear, undefined term 'injured.' WVSSAC has no independent knowledge of this assertion that would allow it to admit or deny same. Therefore, based upon that lack of knowledge, WVSSAC denies the assertion.

REQUEST NO. 12: Admit that no Bridgeport Middle School girl student was prohibited from joining Bridgeport Middle School's girls' cross-country team in 2021.

RESPONSE:

WVSSAC has no independent knowledge of this assertion that would allow it to admit or deny same. Therefore, based upon that lack of knowledge, WVSSAC denies the assertion.

REQUEST NO. 13: Admit that Bridgeport Middle School's girls' cross-country team did not turn anyone away from participating due to lack of space on the roster in 2021.

RESPONSE:

WVSSAC has no independent knowledge of this assertion that would allow it to admit or deny same. Therefore, based upon that lack of knowledge, WVSSAC denies the assertion.

REQUEST NO. 14: Admit that Plaintiff B.P.J. does not have an unfair athletic advantage over other girls participating on the Bridgeport Middle School girls' cross-country team.

RESPONSE:

WVSSAC has no independent knowledge of this assertion that would allow it to admit or deny same. Therefore, based upon that lack of knowledge, WVSSAC denies the assertion.

REQUEST NO. 15: Admit that Plaintiff B.P.J. does not have an unfair athletic advantage over girls competing against the Bridgeport Middle School girls' cross-country team.

RESPONSE:

WVSSAC has no independent knowledge of this assertion that would allow it to admit or deny same. Therefore, based upon that lack of knowledge, WVSSAC denies the assertion.

REQUEST NO. 16: Admit that cross country is a sport that requires “competitive skill” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE:

WVSSAC has insufficient knowledge of this assertion in this context, in particular, of the term ‘competitive skill’ relative to middle school cross country, so as to allow it to admit or deny same. Therefore, based upon that lack of knowledge, WVSSAC denies the assertion.

REQUEST NO. 17: Admit that cross country is a sport that requires “competitive skill” as that phrase is used in 34 C.F.R. § 106.41(b).

RESPONSE:

On information and belief, admitted that in some instances cross country can be seen as requiring competitive skill, although (also on information and belief) persons may participate in some instances with varying skill levels with or without ‘competitive’ skill involved.

REQUEST NO. 18: Admit that cross country is not a “contact sport” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)). 7

RESPONSE:

Admitted.

REQUEST NO. 19: Admit that cross country is not a “contact sport” as that phrase is used in 34 C.F.R. § 106.41(b).

RESPONSE:

Admitted.

REQUEST NO. 20: Admit that, but for the injunction issued in this case (Dkt. 67), Plaintiff B.P.J. would not have been permitted to be a member of Bridgeport Middle School’s girls’ cross-country team in 2021 because of H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE:

Objection; calls for a legal conclusion; incomplete hypothetical. For these reasons and based upon the fact that WVSSAC has insufficient first-hand information on these issues and the underlying variables, WVSSAC denies same.

REQUEST NO. 21: Admit that, but for the injunction issued in this case (Dkt. 67), Plaintiff B.P.J. would not be permitted to be a member of any girls' athletic team offered at Bridgeport Middle School because of H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

RESPONSE:

Objection; calls for a legal conclusion; incomplete hypothetical. For these reasons and based upon the fact that WVSSAC has insufficient first-hand information on these issues and the underlying variables, WVSSAC denies same.

REQUEST NO. 22: Admit that H.B. 3293 prohibits Plaintiff B.P.J. from participating on girls' athletic teams at all public secondary schools located in West Virginia.

RESPONSE:

Objection; calls for a legal conclusion; incomplete hypothetical. For these reasons and based upon the fact that WVSSAC has insufficient first-hand information on these issues and the underlying variables, WVSSAC denies same. However, WVSSAC admits that H.B. 3293 as codified at West Virginia Code Section 18-2-25d provides that "Athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport."

REQUEST NO. 23: Admit that the State Board of Education and the State Superintendent must comply with H.B. 3293 unless enjoined from doing so by a court.

RESPONSE:

Objection; calls for a legal conclusion; incomplete hypothetical. For these reasons and based upon the fact that WVSSAC has insufficient first-hand information on these issues and the underlying variables, WVSSAC denies same while admitting the general principle that all individuals, entities must comply with any and all State laws that apply to them.

REQUEST NO. 24: Admit that H.B. 3293 prohibits the State Board of Education and the State Superintendent from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School.

RESPONSE:

Objection; calls for a legal conclusion; incomplete hypothetical. For these reasons and based upon the fact that WVSSAC has insufficient first-hand information on these issues and the underlying variables, WVSSAC denies same while admitting the general principle that all individuals, entities must comply with any and all State laws that apply to them.

REQUEST NO. 25: Admit that the Harrison County Board of Education and the Harrison County School Superintendent must comply with H.B. 3293 unless enjoined from doing so by a court.

RESPONSE:

Objection; calls for a legal conclusion; incomplete hypothetical. For these reasons and based upon the fact that WVSSAC has insufficient first-hand information on these issues and the underlying variables, WVSSAC denies same while admitting the general principle that all individuals, entities must comply with any and all State laws that apply to them.

REQUEST NO. 26: Admit that H.B. 3293 prohibits the Harrison County Board of Education and the Harrison County Superintendent from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School.

RESPONSE:

Objection; calls for a legal conclusion; incomplete hypothetical. For these reasons and based upon the fact that WVSSAC has insufficient first-hand information on these issues and the underlying variables, WVSSAC denies same while admitting the general principle that all individuals, entities must comply with any and all State laws that apply to them.

REQUEST NO. 27: Admit that the West Virginia Secondary School Athletic Commission must comply with H.B. 3293 unless enjoined from doing so by a court.

RESPONSE:

Admitted and denied. WVSSAC denies that H.B. 3293 includes express provisions, prescriptions, duties or other relative to WVSSAC. However, WVSSAC admits that it must follow all laws that include a duty for it.

REQUEST NO. 28: Admit that H.B. 3293 prohibits the West Virginia Secondary School Athletic Commission from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School.

RESPONSE:

Objection; calls for a legal conclusion; incomplete hypothetical. Further, WVSSAC denies that H.B. 3293 includes express provisions, prescriptions, duties or other relative to WVSSAC, including, by example only, adopting or enforcing related policies. For these reasons and based upon the fact that WVSSAC has insufficient first-hand information on these issues and the underlying variables as relates to this student, WVSSAC admits only that it cannot adopt or enforce any policy that conflicts with state law.

REQUEST NO. 29: Admit that there are no athletic teams designated as "coed or mixed," as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), offered at Bridgeport Middle School.

RESPONSE:

Denied. On information and belief as to the use of the phrase in HB 3293, football, cheer, wrestling, baseball.

REQUEST NO. 30: Admit that there are no athletic teams designated as "coed or mixed," as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that compete interscholastically offered at any public secondary school located in West Virginia.

RESPONSE:

Denied. On information and belief as to the use of the phrase in HB 3293, football, cheer, wrestling, baseball.

REQUEST NO. 31: Admit that there are no cross-country teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that compete interscholastically offered by any member school of the West Virginia Secondary School Activities Commission.

RESPONSE:

Admitted.

REQUEST NO. 32: Admit that there are no athletic leagues designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that comprise teams from more than one school supervised by the West Virginia Secondary School Activities Commission.

RESPONSE:

Objection; form of the question (which WVSSAC does not understand). In a good faith effort to respond and reserving all rights to amend, revise, retract or other upon clarification, WVSSAC asserts that the coed or mixed sports of football, cheer, wrestling, baseball allow for competition between schools.

REQUEST NO. 33: Admit that there are no athletic teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)),” that compete interscholastically offered by any public secondary school under the supervision of the West Virginia State Board of Education.

RESPONSE:

Denied. On information and belief as to the use of the phrase in HB 3293, football, cheer, wrestling, baseball.

REQUEST NO. 34: Admit that H.B. 3293 does not prohibit a cisgender girl student at Bridgeport Middle School from joining a girls’ athletic team offered at Bridgeport Middle School.

RESPONSE:

Objection; calls for a legal conclusion. Without waiving that objection, on information and belief, admitted.

REQUEST NO. 35: Admit that H.B. 3293 does not prohibit a cisgender girl student at any public secondary school in West Virginia from joining a girls' athletic team offered by her public secondary school.

RESPONSE:

Objection; calls for a legal conclusion. Beyond that, on information and belief, admitted.

REQUEST NO. 36: Admit that H.B. 3293 prohibits a Bridgeport Middle School transgender girl student from joining a girls' athletic team offered at Bridgeport Middle School.

RESPONSE:

Objection; calls for a legal conclusion. Beyond that, on information and belief, admitted.

REQUEST NO. 37: Admit that H.B. 3293 prohibits any transgender girl secondary school student located in West Virginia from joining a girls' athletic team offered by her public secondary school.

RESPONSE:

Objection; calls for a legal conclusion. Beyond that, on information and belief, admitted.

REQUEST NO. 38: Admit that prior to the enactment of H.B. 3293, cisgender boy students at Bridgeport Middle School were prohibited from joining girls' athletic teams offered at Bridgeport Middle School.

RESPONSE:

Admitted, both before and after H.B. 3293.

REQUEST NO. 39: Admit that prior to the enactment of H.B. 3293, a cisgender boy student at any public secondary school in West Virginia was prohibited from joining girls' athletic teams offered at his public secondary school.

RESPONSE:

Admitted, both before and after H.B. 3293.

REQUEST NO. 40: Admit that prior to the enactment of H.B. 3293, you are not aware of any transgender student athlete participating on an athletic team offered by Bridgeport Middle School.

RESPONSE:

Admitted and denied. While WVSSAC admits that it is not aware of any transgender student athlete who participated on an athletic team offered by Bridgeport Middle School prior to the enactment of H.B. 3293, WVSSAC denies that it would have any reason to know of same, as the only information WVSSAC has about students is what is recorded on the rosters, i.e., boys, girls.

REQUEST NO. 41: Admit that prior to the enactment of H.B. 3293, you are not aware of any transgender student athlete participating on an athletic team offered by a public secondary school in West Virginia.

RESPONSE:

Admitted and denied. While WVSSAC admits that it is not aware of any transgender student athlete who participated on an athletic team offered by a public secondary school prior to the enactment of H.B. 3293, WVSSAC denies that it would have any reason to know of same, as the only information WVSSAC has about students is what is recorded on the rosters, i.e., boys, girls.

REQUEST NO. 42: Admit that other than Plaintiff B.P.J., you are not aware of a transgender student athlete participating on an athletic team offered by Bridgeport Middle School.

RESPONSE:

Admitted and denied. While WVSSAC admits that it is not aware of any other transgender student athlete participating on an athletic team offered by Bridgeport Middle School, WVSSAC denies that it would have any reason to know of same, as the only information WVSSAC has about students is what is recorded on the rosters, i.e., boys, girls.

REQUEST NO. 43: Admit that other than Plaintiff B.P.J., you are not aware of a transgender student athlete participating on an athletic team offered by a public secondary school in West Virginia.

RESPONSE:

Admitted and denied. While WVSSAC admits that it is not aware of any other transgender student athlete participating on an athletic team offered by a public secondary school in West Virginia, WVSSAC denies that it would have any reason to know of same, as the only information WVSSAC has about students is what is recorded on the rosters, i.e., boys, girls.

REQUEST NO. 44: Admit that students derive social benefits from participation on athletic teams offered by public secondary schools in West Virginia.

RESPONSE:

Objection; form of the question – undefined term (‘social benefits’). Beyond that, however, on information and belief only, WVSSAC admits that, in general, participation in athletics and activities provides an opportunity for leadership, personal health, camaraderie and cooperation.

REQUEST NO. 45: Admit that students derive psychological benefits from participation on athletic teams offered by public secondary schools in West Virginia.

RESPONSE:

Objection; form of the question – undefined term (‘psychological benefits’) and beyond the specialization of WVSSAC. However, on information and belief only, WVSSAC admits that, in general, participation in athletics and activities provides an opportunity for leadership, personal health, camaraderie and cooperation.

REQUEST NO. 46: Admit that interscholastic athletic competition benefits middle school students.

RESPONSE:

Objection; form of the question – overly broad, vague (‘benefits’). However, on information and belief only, WVSSAC admits that, in general, participation in interscholastic athletic competition ‘benefits’ middle school students by providing provides an opportunity for leadership, personal health, camaraderie and cooperation.

REQUEST NO. 47: Admit that middle school students who participate in interscholastic athletics receive benefits regardless whether they win or lose.

RESPONSE:

Objection; form of the question – overly broad, vague (‘benefits’). However, on information and belief only, WVSSAC admits that, in general, participation in interscholastic athletics ‘benefits’ middle school students, win or lose, by providing provides an opportunity for leadership, personal health, camaraderie and cooperation.

REQUEST NO. 48: Admit that after H.B. 3293 was signed into law you decided that, for athletic eligibility purposes, a student athlete’s gender would be determined by referring to the gender identified in West Virginia Education Information System (“WVEIS”).

RESPONSE:

Denied. The extent to which WVSSAC relied upon WVEIS was not changed by H.B. 3293. However, of note, WVSSAC has no access to and therefore no direct reliance upon WVEIS.

REQUEST NO. 49: Admit that Plaintiff B.P.J.’s gender is identified in WVEIS as “male.”

RESPONSE:

WVSSAC has no independent knowledge of this assertion that would allow it to admit or deny same. Therefore, based upon that lack of knowledge, WVSSAC denies the assertion.

REQUEST NO. 50: Admit that, as long as H.B. 3293 is in effect, you will not permit a student designated as “male” in WVEIS to participate on Bridgeport Middle School’s girls’ cross-country team unless ordered to permit that student to participate by a court.

RESPONSE:

WVSSAC denies that H.B. 3293 includes express provisions, prescriptions, duties or other relative to WVSSAC, including, by example only, adopting or enforcing related policies. For these reasons and based upon the fact that WVSSAC has insufficient first-hand information on these issues and the underlying variables in WVEIS as relates to the referenced student, WVSSAC admits that it cannot adopt or enforce any policy that conflicts with state law.

REQUEST NO. 51: Admit that, under your Rules and Regulations, the WVSSAC is composed of secondary schools which have certified in writing to the State Superintendent of Schools of West Virginia that they have elected to delegate the control, supervision, and regulation of their interscholastic athletic and band activities to you. See WVSSAC0000134.

RESPONSE:

Admitted, although WVSSAC's area of control is limited by the same Rules and Regulations, and state law.

REQUEST NO. 52: Admit that, under your Rules and Regulations, the WVSSAC shall supervise and control interscholastic athletics and band activities among member schools. See WVSSAC0000133.

RESPONSE:

Admitted, although WVSSAC's area of control is limited by the same Rules and Regulations, and state law.

REQUEST NO. 53: Admit that Bridgeport Middle School has delegated control, supervision, and regulation of its interscholastic athletics to you.

RESPONSE:

Admitted, although WVSSAC's area of control is limited by the same Rules and Regulations, and state law.

REQUEST NO. 54: Admit that you cannot promulgate any rule that conflicts with H.B. 3293 unless a court enjoins enforcement of H.B. 3293.

RESPONSE:

Objection; calls for a legal conclusion. Beyond that, admitted and denied. WVSSAC denies that H.B. 3293 includes express provisions, prescriptions, duties or other relative to WVSSAC, including, by example only, promulgating rules. On information and belief, any rule relative to H.B. 3293 would be adopted by the State Board and placed in the rule book directly, similarly to the 2.0 Rule. However, WVSSAC admits that it must follow state law.

REQUEST NO. 55: Admit that you cannot promulgate any rule that conflicts with rules promulgated by the State Board of Education to implement H.B. 3293 unless a court enjoins enforcement of H.B. 3293.

RESPONSE:

Admitted and denied. WVSSAC denies that H.B. 3293 includes express provisions, prescriptions, duties or other relative to WVSSAC, including, by example only, promulgating rules. On information and belief, any rule relative to H.B. 3293 would be adopted by the State Board and placed in the rule book directly, similarly to the 2.0 Rule. However, WVSSAC admits that it must follow state law.

REQUEST NO. 56: Admit that you promulgate rules governing student eligibility to participate in interscholastic athletics at secondary schools in West Virginia.

RESPONSE:

Admitted and denied. WVSSAC admits that it promulgates most rules governing student eligibility in interscholastic athletics at secondary schools. However, State Board rules, such as the 2.0 rule and, on information and belief, any rule promulgated pursuant to H.B. 3293, are promulgated by the State Board and placed as promulgated into the rule book.

REQUEST NO. 57: Admit that your Executive Director is designated as the person who shall receive complaints and make investigations concerning violations of your rules regarding student eligibility.

RESPONSE:

Admitted and denied. Admitted that the Executive Director is one of the persons designated to receive complaints and make investigations. Denied that it is only the Executive Director who receives complaints and makes investigations, as the three Assistant Executive Directors also participate in these processes.

REQUEST NO. 58: Admit that your Executive Director is designated as the person who shall render decisions and impose penalties in athletic eligibility disputes related to interscholastic athletics at secondary schools in West Virginia.

RESPONSE:

Admitted.

REQUEST NO. 59: Admit that your Board of Directors can overturn eligibility determinations made by your Executive Director.

RESPONSE:

Admitted.

REQUEST NO. 60: Admit that in exercising his duties to receive complaints and make investigations concerning violations of your rules regarding student eligibility, your Executive Director must comply with H.B. 3293 unless enjoined from doing so by a court.

RESPONSE:

Admitted and denied. WVSSAC denies that H.B. 3293 includes express provisions, prescriptions, duties or other relative to WVSSAC, including, by example only, provisions with which WVSSAC would or must comply. However, WVSSAC admits on information and belief that it could be called upon by a State Board rule to determine eligibility that could draw on the tenets of H.B. 3293.

REQUEST NO. 61: Admit that in exercising his duties to render decisions and impose penalties in athletic eligibility disputes, your Executive Director must comply with H.B. 3293 unless enjoined from doing so by a court.

RESPONSE:

Admitted and denied. WVSSAC denies that H.B. 3293 includes express provisions, prescriptions, duties or other relative to WVSSAC, including, by example only, provisions with which WVSSAC would or must comply. However, WVSSAC admits on information and belief that it could be called upon by a State Board rule to determine eligibility that could draw on the tenets of H.B. 3293.

REQUEST NO. 62: Admit that when reviewing eligibility determinations made by your Executive Director, your Board of Directors must comply with H.B. 3293 unless enjoined from doing so by a court.

RESPONSE:

Admitted and denied. WVSSAC denies that H.B. 3293 includes express provisions, prescriptions, duties or other relative to WVSSAC's Executive Director or Board of Directors, including, by example only, provisions with which WVSSAC by and/or through either its Executive Director or Board would or must comply. However, WVSSAC admits on information and belief that its Executive Director and/or its Board of Directors could be called upon by a State Board rule to determine eligibility and/or review an eligibility determination that could draw on the tenets of H.B. 3293.

**WEST VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION,
By Counsel.**

/S/ Roberta F. Green

Roberta F. Green (WVSB #6598)
Shannon M. Rogers (WVSB #13920)
SHUMAN MCCUSKEY SLICER PLLC
Post Office Box 3953 (25339)
1411 Virginia Street East, Suite 200 (25301)
Charleston, WV 25339
(304) 345-1400
(304) 343-1826 FAX
rgreen@shumanlaw.com
srogers@shumanlaw.com

Exhibit 11

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.

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.

Case No. 2:21-cv-00316

Hon. Joseph R. Goodwin

**DEFENDANT-INTERVENOR
LAINY ARMISTEAD'S
RESPONSES AND OBJECTIONS TO
PLAINTIFF'S SECOND SET OF
REQUESTS FOR ADMISSION**

Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure and the applicable Local Rules of the District West Virginia and this Court, Defendant-Intervenor Lainey Armistead provides the following answers to Plaintiff's Second Set of Requests for Admission to Defendant-Intervenor.

GENERAL OBJECTIONS

1. Ms. Armistead objects to the following Definitions presented in Plaintiff's First Set of Requests for Admission to Defendant-Intervenor:

CISGENDER means a person whose gender identity aligns with the sex they were assigned at birth.

Objection: Ms. Armistead objects to the definition of the term “cisgender.” There is no definitive, legally recognized definition of “cisgender,” Plaintiff’s definition relies on the term “gender identity” which, as noted below, is not defined, and finally, Ms. Armistead denies that sex is “assigned at birth.”

GENDER IDENTITY is synonymous with the meaning used in Plaintiff’s

First Amended Complaint, paragraphs 19-23.

Objection: Ms. Armistead objects to the meaning of the term “gender identity” as provided in Plaintiff’s First Amended Complaint paragraphs 19-23. First, gender identity was not defined in Plaintiff’s First Amended Complaint. Second, there is no definitive, legally recognized definition of “gender identity.” Moreover, Ms. Armistead denies that “there is a medical consensus that there is a significant biologic component underlying gender identity” (First Am. Compl. ¶ 20) and further denies that a person’s gender identity is “durable and deeply rooted” and “cannot be changed by social or medical intervention” (*Id.* ¶ 21).

TRANSGENDER is synonymous with the meaning used in Plaintiff’s First

Amended Complaint, paragraph 23.

Objection: Ms. Armistead objects to the definition of “transgender” as provided in Plaintiff’s First Amended Complaint paragraph 23: “A transgender person is someone who has a gender identity that does not align with their sex assigned at birth.” There is no definitive, legally recognized definition of “transgender,” Plaintiff’s definition relies on the term “gender identity” which, as noted above, is not defined, and finally, Ms. Armistead denies that sex is “assigned at birth.”

TRANSGENDER GIRL means a PERSON who has a female GENDER

IDENTITY, and had a male sex assigned at birth.

Objection: Ms. Armistead objects to the definition of “transgender girl.” There is no definitive, legally recognized definition of “transgender girl,” Plaintiff’s definition relies on the term “gender identity” which, as noted above, is not defined, and finally, Ms. Armistead denies that sex is “assigned at birth.”

YOU, YOUR, or YOURS means Lainey Armistead as includes your agents, representatives, affiliates, attorneys, and consultants.

Objection: Ms. Armistead objects to the definition of “you, your, or yours” to the extent it purports to require Ms. Armistead to answer on behalf of any other person or based on knowledge not in her possession. Ms. Armistead has no duty to and will not identify documents or information that are not in her possession, custody, or control (as Plaintiff’s counsel similarly noted in Plaintiff’s Supplemental and Amended Responses and Objections to Defendant the State of West Virginia’s First Set of Interrogatories and Requests for Production, pg. 2). The responses to these Requests for Admission are made by Lainey Armistead only.

Moreover, Ms. Armistead objects to the extent this definition presumes to seek the identification of documents or communications protected by the attorney-client or the work product privilege—including those communications which include the mental impressions, conclusions, or opinions of counsel—which are not discoverable under the Federal Rules of Civil Procedure. All of Ms. Armistead’s communications with her counsel of record and their agents have been in the course and scope of representing her in this litigation, and Ms. Armistead objects to any request to identify documents or communications between or among Ms. Armistead, her agents, her counsel of record, and/or their agents from June 30, 2021, to present. Ms. Armistead notes that that Plaintiff’s counsel clarified in a letter to counsel for the State that Plaintiff “is not seeking the Attorney General’s litigation files, but rather is seeking non-

privileged responsive documents.” *See, e.g.*, Letter from Kathleen Hartnett to Curtis Capehart et al., 1 (Dec. 30, 2021). Ms. Armistead assumes the same is true for her counsel of record.

2. Ms. Armistead objects to the following Instruction presented in Plaintiff’s Second Set of Requests for Admission to Defendant-Intervenor:

The response to each request shall include such information as is within YOUR custody, possession, or control, or that of YOUR attorneys, investigators, agents, employees, experts retained by YOU or YOUR attorneys, or other representatives.

Objection: Ms. Armistead objects to this Instruction to the extent it purports to require Ms. Armistead to answer on behalf of any other person or based on knowledge not in her possession. Ms. Armistead has no duty to and will not identify documents or information that are not in her possession, custody, or control (as Plaintiff’s counsel similarly noted in Plaintiff’s Supplemental and Amended Responses and Objections to Defendant the State of West Virginia’s First Set of Interrogatories and Requests for Production, pg. 2), nor will she admit or deny Requests for admissions on anyone’s behalf but her own or based on anyone’s knowledge but her own. The responses to these Requests for Admission are made by Lainey Armistead only.

Moreover, Ms. Armistead objects to the extent this definition presumes to seek the identification of documents or communications protected by the attorney-client or the work product privilege—including those communications which include the mental impressions, conclusions, or opinions of counsel—which are not discoverable under the Federal Rules of Civil Procedure. All of Ms. Armistead’s communications with her counsel of record and their agents have been in the course and scope of representing her in this litigation, and Ms. Armistead

objects to any request to identify documents or communications between or among Ms. Armistead, her agents, her counsel of record, and/or their agents from June 30, 2021, to present. Ms. Armistead notes that that Plaintiff’s counsel clarified in a letter to counsel for the State that Plaintiff “is not seeking the Attorney General’s litigation files, but rather is seeking non-privileged responsive documents.” *See, e.g.*, Letter from Kathleen Hartnett to Curtis Capehart et al., 1 (Dec. 30, 2021). Ms. Armistead assumes the same is true for her counsel of record.

Ms. Armistead objects to the extent this Instruction seeks information in the custody or control of experts retained by counsel, which has already been disclosed in accordance with the scheduling order provided in this case.

3. Finally, Ms. Armistead objects to any other instruction or definition that imposes a burden beyond the scope of the Federal Rules of Civil Procedure, local rules, or other law.

REQUESTS FOR ADMISSION

REQUEST NO. 5:

Admit that Plaintiff B.P.J. has been diagnosed with gender dysphoria.

ANSWER: Ms. Armistead objects to this Request because there is no definitive, legally accepted definition of “gender dysphoria” and discovery on this issue is ongoing. Moreover, she objects to this Request because this topic is the subject of expert discovery and facts about the subjective state of the mind of the opposing party are an improper basis for a Request for Admission.

Subject to these objections, Ms. Armistead states that she has no independent knowledge of B.P.J.’s gender identity, nor any means of conducting examinations or tests to determine B.P.J.’s subjective state of mind or mental distress. Ms. Armistead has made a reasonable inquiry into the information known or readily attainable by her and admits that Plaintiff and B.P.J.’s medical providers have testified that B.P.J. has been diagnosed with gender dysphoria as B.P.J.

defines that term (which, again, is objectionable as set forth above). But Ms. Armistead has no personal or independent knowledge of B.P.J.'s inner sense of self and therefore denies this Request.

REQUEST NO. 6:

Admit that in 2021 Plaintiff B.P.J. was a member of Bridgeport Middle School's girls' cross-country team.

ANSWER: Subject to Ms. Armistead's general objections, Ms. Armistead states that she has no independent knowledge of B.P.J.'s participation on Bridgeport Middle Schools' girls' cross-country team in 2021, but she made a reasonable inquiry into the information readily attainable by her and admits that Plaintiff B.P.J. has testified that B.P.J. was a member of Bridgeport Middle School's girls' cross-country team, and that Defendant Harrison County has produced documentation of the same. Ms. Armistead therefore admits this Request.

REQUEST NO. 7:

Admit that Plaintiff B.P.J. placed 51 out of 66 competitors in the girls' middle school cross country Mountain Hollar MS Invitational meet in 2021.

ANSWER: Subject to Ms. Armistead's general objections, Ms. Armistead states that she has no independent knowledge of B.P.J.'s placements in 2021 cross-country meets, but she made a reasonable inquiry into the information readily attainable by her and admits that according to Athletic.Net, the results of the Mountain Hollar MS Invitational MS Women's 3,200 Meters Junior Varsity 2021 meet show that Plaintiff B.P.J. placed 51 out of 66 competitors. However, Ms. Armistead does not know the competitors' ages, the requirements for entry, or the rules of the race.

REQUEST NO. 8:

Admit that Plaintiff B.P.J. placed 123 out of 150 competitors in the girls' middle school cross country Doddridge Invitational meet in 2021.

ANSWER: Subject to Ms. Armistead's general objections, Ms. Armistead states that she has no independent knowledge of B.P.J.'s placements in 2021 cross-country meets, but she made a reasonable inquiry into the information readily attainable by her and admits that according to Athletic.Net, the results of the Doddridge Invitational MS, Women's 3,000 Meters Middle School 2021 meet show that Plaintiff B.P.J. placed 123 out of 150 competitors. However, Ms. Armistead does not know the competitors' ages, the requirements for entry, or the rules of the race.

REQUEST NO. 9:

Admit that you are not aware of any complaints associated with Plaintiff B.P.J.'s membership on Bridgeport Middle School's girls' cross-country team.

ANSWER: Ms. Armistead objects to the term "complaints associated with" as overbroad, vague, and ambiguous because "complaints" could include the inner thoughts, off-handed comments, private conversations of anyone, or official complaints submitted through Bridgeport Middle School or another entity. "Complaints associated with" could also refer to any subject "associated" with B.P.J.'s membership on the team, including Plaintiff's language, conduct, rule-compliance, etc. Finally, it is unclear whether the complaint needs to be specifically about B.P.J.'s participation on the team, or in girls' sports generally.

Subject to these objections, Ms. Armistead states that she has no independent knowledge of any complaints concerning B.P.J.'s membership on Bridgeport Middle School's girls' cross-country team, nor can she obtain any through a reasonable inquiry into the information readily

obtainable by her. Ms. Armistead is not in direct contact with any student, family member of any student, or employee of Bridgeport Middle School, so she has no reason to be aware of any complaints associated with Plaintiff's membership. But Ms. Armistead is aware of general critiques and complaints by members of the public about B.P.J.'s participation on girls' teams impacting fairness and equality in women's sports. These statements can be found in the Twitter replies at these links: <https://mobile.twitter.com/ACLU/status/1397622893832556549>; <https://mobile.twitter.com/WSAZnews/status/1397704112448364545>. She therefore denies this Request.

REQUEST NO. 10:

Admit that no middle school girl was harmed as a result of B.P.J.'s participation on Bridgeport Middle School's girls' cross-country team in 2021.

ANSWER: Ms. Armistead objects to this Request because "harm" is ambiguous, overbroad, and vague, and Plaintiffs do not specify whether "harm" is physical, emotional, mental, or otherwise for purposes of this Request. Ms. Armistead also objects to the term "middle school girl" because it is ambiguous, overbroad, and vague as to whether Plaintiff refers to middle school girls at Bridgeport Middle School, middle school girls at Bridgeport Middle School on the girls' cross-country team, middle school girls at any or all public secondary education schools in West Virginia, or every middle school girl in the United States.

Subject to these objections, Ms. Armistead denies this Request. Middle school girls who were members of the Bridgeport Middle School girls' cross-country team and middle school girls who were members of the girls' cross-country teams at other public secondary schools in West Virginia who competed against Bridgeport Middle School in girls' cross-country were harmed when (1) they were forced to compete with/against B.P.J., a biological male; (2) they

were subjected to an unfair advantage because B.P.J., as a biological male, has inherent athletic advantages over biological females, including advantages in strength and speed against comparably fit, trained, and aged females; and (3) Plaintiff B.P.J. placed higher and ran faster than at least 42 middle school girls in the Mountain Hollar and Doddridge Invitationals in 2021, and regularly finished higher at meets than girls on BMS team, sometimes resulting in their scores not being counted toward the team total. Moreover, other girls may have been deterred from participating in women's sports and suffered the stigma and emotional harm of watching a male compete against and win against biological females. Finally, B.P.J.'s participation in a race pursuant to the Court's order interpreting Title IX and the Equal Protection Clause to ban the government from uniformly separating sports competitions by biological sex hurts every female athlete competing at a secondary school in West Virginia.

REQUEST NO. 11:

Admit that no middle school girl was injured as a result of Plaintiff B.P.J.'s participation on Bridgeport Middle School's girls' cross-country team in 2021.

ANSWER: Ms. Armistead objects to this Request because "injured" is ambiguous, overbroad, and vague and Plaintiffs do not specify whether "injured" refers to physical, emotional, mental, or another form of injury for purposes of this Request. Ms. Armistead also objects to the term "middle school girl" because it is ambiguous, overbroad, and vague as to whether Plaintiff refers to middle school girls at Bridgeport Middle School, middle school girls at Bridgeport Middle School on the girls' cross-country team, middle school girls at public secondary education schools in West Virginia, or every middle school girl in the United States.

Subject to these objections, Ms. Armistead denies this Request. Middle school girls who were members of the Bridgeport Middle School girls' cross-country team and middle school

girls who were members of the girls' cross-country teams at other public secondary schools in West Virginia who competed against Bridgeport Middle School were injured when (1) they were forced to compete with/against B.P.J., a biological male; (2) they were subjected to an unfair advantage because B.P.J., as a biological male, has inherent athletic advantages over biological females, including advantages in strength and speed against comparably fit, trained, and aged females; and (3) Plaintiff B.P.J. placed higher and ran faster than at least 42 middle school biological girls in the Mountain Hollar and Doddridge Invitationals in 2021, and regularly finished higher at meets than girls on the BMS team, sometimes resulting in their scores not being counted toward the team total.

REQUEST NO. 12:

Admit that no Bridgeport Middle School girl student was prohibited from joining Bridgeport Middle School's girls' cross-country team in 2021.

ANSWER: Ms. Armistead objects to this Request because it is ambiguous, vague, and overbroad. Defendants' production and testimony demonstrate that Bridgeport Middle school girl students could have been prohibited from joining the Bridgeport Middle School's girl's cross-country team in 2021 for a myriad of reasons relating to, but not limited to, eligibility, grades, and residency. Moreover, the Request does not specify who prohibited the participation—parents, guardians, coaches, school administrators—or whether the prohibition was legal or factual.

Subject to this objection, Ms. Armistead states that she has no independent knowledge of Bridgeport Middle School's girls' cross country team's selection process or criteria for membership in 2021, or Bridgeport Middle School's reasoning or decision-making for membership requirements on the girls' cross-country team in 2021, or the reasons why students

did or did not join the team, even after making a reasonable inquiry into the information readily attainable by her. Ms. Armistead admits only that B.P.J. has testified that every person who tried out for the Bridgeport Middle School's girls' cross-country team in 2021 made the team. She denies the rest of this Request.

REQUEST NO. 13:

Admit that Bridgeport Middle School's girls' cross-country team did not turn anyone away from participating due to lack of space on the roster in 2021.

ANSWER: Ms. Armistead objects to this Request because it is ambiguous and vague. It is not clear who constitutes the "team" referenced in this Request—the Bridgeport Middle School cross-country coaches, school officials, or student athletes.

Subject to Ms. Armistead's general objections, Ms. Armistead states that she has no independent knowledge of Bridgeport Middle School's girls' cross country team's selection in 2021, even after making a reasonable inquiry into the information readily attainable by her. Ms. Armistead admits only that B.P.J. has testified that every person who tried out for the Bridgeport Middle School's girls' cross-country team in 2021 made the team. She denies the rest of this Request.

REQUEST NO. 14:

Admit that Plaintiff B.P.J. does not have an unfair athletic advantage over other girls participating on the Bridgeport Middle School girls' cross-country team.

ANSWER: Ms. Armistead objects to this Request because "unfair athletic advantage" is overbroad, vague, and ambiguous as it is unclear what kinds of unfair athletic advantages that Plaintiff might be referring to. It is also unclear whether "other girls" refers to each and every girl on Bridgeport Middle School's cross-country team, a similarly aged girl, or those girls in the

same grade as B.P.J. Moreover, she objects to this Request because this topic is the subject of expert discovery.

Subject to these objections, Ms. Armistead states that she has no independent knowledge of B.P.J.'s day-to-day performances in cross-country but has made a reasonable inquiry into the information readily attainable by her. Ms. Armistead denies this Request because B.P.J., as a biological male, has inherent athletic advantages over comparably fit, trained, and aged biological females, including in strength and speed. Ms. Armistead also notes that, according to documents produced by Defendant Harrison County Board of Education, Plaintiff B.P.J. placed higher than other members of the Bridgeport Middle School girls' cross-country team, and regularly finished higher at meets than girls on the BMS girls' cross-country team, sometimes resulting in those girls' scores not being counted toward the team total.

REQUEST NO. 15:

Admit that Plaintiff B.P.J. does not have an unfair athletic advantage over girls competing against the Bridgeport Middle School girls' cross-country team.

ANSWER: Ms. Armistead objects to this Request because "unfair athletic advantage" is overbroad, vague, and ambiguous as it is unclear what kinds of unfair athletic advantages that Plaintiffs might be referring to. Moreover, she objects to this Request because this topic is the subject of expert discovery and facts about the subjective state of the mind of the opposing party are an improper basis for a Request for Admission.

Subject to these objections, Ms. Armistead states that she has no independent knowledge of B.P.J.'s day-to-day performances in cross-country but has made a reasonable inquiry into the information readily attainable by her. Ms. Armistead denies this Request because B.P.J., as a biological male, has inherent athletic advantages over comparably fit, trained, and aged

biological females, including in strength and speed. Ms. Armistead also notes that, according to documents produced by Defendant Harrison County Board of Education, Plaintiff B.P.J. placed higher than other members of the Bridgeport Middle School girls' cross-country team, and regularly finished higher at meets than girls on the BMS girls' cross-country team, sometimes resulting in those girls' scores not being counted toward the team total.

REQUEST NO. 16:

Admit that cross-country is a sport that requires "competitive skill" as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

ANSWER: Ms. Armistead admits that cross-country is a sport that requires "competitive skill" as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

REQUEST NO. 17:

Admit that cross-country is a sport that requires "competitive skill" as that phrase is used in 34 C.F.R. § 106.41(b).

ANSWER: Ms. Armistead admits that cross-country is a sport that requires "competitive skill" as that phrase is used in 34 C.F.R. § 106.41(b).

REQUEST NO. 18:

Admit that cross-country is not a "contact sport" as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

ANSWER: Ms. Armistead admits that cross-country is not a "contact sport" as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

REQUEST NO. 19:

Admit that cross-country is not a "contact sport" as that phrase is used in 34 C.F.R. § 106.41(b).

ANSWER: Ms. Armistead admits that cross-country is not a “contact sport” as that phrase is used in 34 C.F.R. § 106.41(b).

REQUEST NO. 20:

Admit that, but for the injunction issued in this case (Dkt. 67), Plaintiff B.P.J. would not have been permitted to be a member of Bridgeport Middle School’s girls’ cross-country team in 2021 because of H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

ANSWER: Ms. Armistead objects to the extent this Request asks her to provide a legal conclusion about H.B. 3293. Ms. Armistead further objects to the extent this Request asks her to speculate how the Bridgeport Middle School’s girls’ cross-country team coach or Bridgeport Middle School administrators and athletics authorities, or other state officials, would interpret or apply H.B. 3293 to Plaintiff B.P.J.

Subject to these objections, Ms. Armistead admits that based on her personal reading and understanding of H.B. 3293, and the fact the Plaintiff has admitted that B.P.J. is biologically male, the law would not permit Plaintiff B.P.J. to be a member of Bridgeport Middle School’s girls’ cross-country team in 2021. But Ms. Armistead lacks personal knowledge of how the coaches, school administrators, or athletic authorities at Bridgeport Middle School, or other state officials, would interpret or apply H.B. 3293 to B.P.J. absent the preliminary injunction issued in this case, and thus denies this Request.

REQUEST NO. 21:

Admit that, but for the injunction issued in this case (Dkt. 67), Plaintiff B.P.J. would not be permitted to be a member of any girls’ athletic team offered at Bridgeport Middle School because of H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(2)).

ANSWER: Ms. Armistead objects to the extent this Request asks her to provide a legal conclusion about H.B. 3293. Ms. Armistead further objects to the extent this Request asks her to speculate how the Bridgeport Middle School's girls' athletic teams' coaches, school administrators, or athletics authorities would interpret or apply H.B. 3293 to Plaintiff B.P.J. absent the preliminary injunction issued in this case.

Subject to these objections, Ms. Armistead admits that based on her personal reading and understanding of H.B. 3293, and the fact the Plaintiff has admitted that B.P.J. is biologically male, the law would not permit Plaintiff B.P.J. to be a member of any Bridgeport Middle School's girls' athletic teams in 2021 because of H.B. 3293. But Ms. Armistead lacks personal knowledge of how the coaches, school administrators, or athletic authorities at Bridgeport Middle School would interpret or apply H.B. 3293 to B.P.J. absent the preliminary injunction issued in this case, and thus denies this Request.

REQUEST NO. 22:

Admit that H.B. 3293 prohibits Plaintiff B.P.J. from participating on girls' athletic teams at all public secondary schools located in West Virginia.

ANSWER: Ms. Armistead objects to the extent this Request asks her to provide a legal conclusion about H.B. 3293. Ms. Armistead further objects to the extent this Request asks her to speculate how coaches, school administrators, or athletic authorities at all public secondary schools located in West Virginia would interpret or apply H.B. 3293 to Plaintiff B.P.J. regarding participation on girls' sports teams, absent the preliminary injunction issued in this case.

Subject to these objections, Ms. Armistead admits that based on her personal understanding of H.B. 3293, the law would not permit Plaintiff B.P.J. to compete on an athletic team designated for girls at a public secondary school in West Virginia. But Ms. Armistead lacks

personal knowledge and independent knowledge of how the coaches or school administrators at any/all public secondary schools in West Virginia, or other state officials, would interpret or apply H.B. 3293 to B.P.J. absent the preliminary injunction issued in this case, and thus denies this Request.

REQUEST NO. 23:

Admit that the State Board of Education and the State Superintendent must comply with H.B. 3293 unless enjoined from doing so by a court.

ANSWER: Ms. Armistead objects to this Request because “must comply with” is vague and does not indicate what type of legal obligation or necessity is imposed. Ms. Armistead will interpret this Request to mean the State Board and Superintendent have a legal obligation to follow H.B. 3293. Ms. Armistead further objects to the extent this Request asks her to provide a legal conclusion about H.B. 3293. Ms. Armistead also objects to the extent this Request asks her to speculate how the State Board of Education and the State Superintendent would comply with H.B. 3293 absent the preliminary injunction issued in this case.

Subject to these objections, Ms. Armistead admits that state officials generally have a legal duty to comply with state laws that apply to them, including HB 3293, but she lacks personal knowledge of all the specific legal duties and obligations on State Board of Education and the State Superintendent and how these particular entities interpret the laws and regulations imposing these duties, and thus denies this Request.

REQUEST NO. 24:

Admit that H.B. 3293 prohibits the State Board of Education and the State Superintendent from adopting or enforcing a policy that would allow B.P.J. to participate on girls’ athletic teams at Bridgeport Middle School.

ANSWER: Ms. Armistead objects to the extent this Request asks her to provide a legal conclusion about H.B. 3293. Ms. Armistead further objects to the extent this Request asks her to speculate how the State Board of Education and the State Superintendent would adopt or enforce a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School in accordance with H.B. 3293.

Subject to these objections, Ms. Armistead admits that H.B. 3293 prohibits males, including B.P.J., from competing on girls' teams at secondary schools in West Virginia, but lacks personal knowledge of how the law is enforced or the specific legal duties imposed on the State Board of Education and the State Superintendent and therefore denies this Request.

REQUEST NO. 25:

Admit that the Harrison County Board of Education and the Harrison County School Superintendent must comply with H.B. 3293 unless enjoined from doing so by a court.

ANSWER: Ms. Armistead objects to this Request because "must comply with" is vague and does not indicate what type of legal obligation is or necessity is imposed. Ms. Armistead will interpret this Request to mean the Harrison County Board of Education and School Superintendent have a legal obligation to follow H.B. 3293. Ms. Armistead objects to the extent this Request asks her to provide a legal conclusion about H.B. 3293. Ms. Armistead further objects to the extent this Request asks her to speculate how the Harrison County Board of Education and the Harrison County School Superintendent would comply with H.B. 3293 absent the preliminary injunction issued in this case.

Subject to these objections, Ms. Armistead admits that county officials generally have a legal duty to comply with state laws that apply to them, including HB 3293, but she lacks personal knowledge of all the specific legal duties and obligations on Harrison County Board of

Education and School Superintendent and how these particular entities interpret the laws and regulations imposing these duties, and thus denies this Request.

REQUEST NO. 26:

Admit that H.B. 3293 prohibits the Harrison County Board of Education and the Harrison County Superintendent from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School.

ANSWER: Ms. Armistead objects to the extent this Request asks her to provide a legal conclusion about H.B. 3293. Ms. Armistead further objects to the extent this Request asks her to speculate how the Harrison County Board of Education and the Harrison County Superintendent would adopt or enforce a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School in accordance with H.B. 3293.

Subject to these objections, Ms. Armistead admits that H.B. 3293 prohibits males, including B.P.J., from competing on girls' teams at secondary schools in West Virginia, but lacks personal knowledge of how the law is enforced or the specific legal duties imposed on the Harrison County Board of Education and School Superintendent and therefore denies this Request.

REQUEST NO. 27:

Admit that the West Virginia Secondary School Athletic Commission must comply with H.B. 3293 unless enjoined from doing so by a court.

ANSWER: Ms. Armistead objects to the extent this Request asks her to provide a legal conclusion about H.B. 3293. Ms. Armistead further objects to the extent this Request asks her to speculate how the West Virginia Secondary School Athletic Commission would comply with H.B. 3293 absent the preliminary injunction issued in this case.

Subject to these objections, Ms. Armistead Ms. Armistead admits that H.B. 3293 prohibits males, including B.P.J., from competing on girls' teams at secondary schools in West Virginia, but lacks personal knowledge of how the law is enforced or the specific legal duties imposed on the West Virginia Secondary School Athletic Commission and therefore denies this Request.

REQUEST NO. 28:

Admit that H.B. 3293 prohibits the West Virginia Secondary School Athletic Commission from adopting or enforcing a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School.

ANSWER: Ms. Armistead objects to the extent this Request asks her to provide a legal conclusion about H.B. 3293. Ms. Armistead further objects to the extent this Request asks her to speculate how the West Virginia Secondary School Athletic Commission would adopt or enforce a policy that would allow B.P.J. to participate on girls' athletic teams at Bridgeport Middle School in accordance with H.B. 3293.

Subject to these objections, Ms. Armistead admits that H.B. 3293 prohibits males, including B.P.J., from competing on girls' teams at secondary schools in West Virginia, but lacks personal knowledge of how the law is enforced or the specific legal duties imposed on the West Virginia Secondary School Athletic Commission and therefore denies this Request.

REQUEST NO. 29:

Admit that there are no athletic teams designated as "coed or mixed," as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), offered at Bridgeport Middle School.

ANSWER: Ms. Armistead lacks personal and independent knowledge of whether Bridgeport Middle School offers any coed or mixed athletic teams. Even after conducting a reasonable

investigation, Ms. Armistead cannot find sufficient information to determine whether there are any athletic teams designated as coed or mixed at Bridgeport Middle School and notes there is conflicting evidence in the record on this point, and thus denies this Request.

REQUEST NO. 30:

Admit that there are no athletic teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that compete interscholastically offered at any public secondary school located in West Virginia.

ANSWER: Ms. Armistead objects to this Request because it is unduly burdensome to research and determine whether every public secondary school located in West Virginia offers coed or mixed athletic teams. Ms. Armistead points to West Virginia Secondary School Activities Commission’s Responses to Plaintiff’s First Set of Interrogatories, Response to Interrogatory No. 11, showing there are at least 277 public secondary schools who are members of the West Virginia Secondary School Activities Commission, notwithstanding any additional non-member public schools in West Virginia.

Subject to these objections, Ms. Armistead lacks personal and independent knowledge of whether any public secondary school in West Virginia offers any coed or mixed athletic teams. Even after conducting a reasonable investigation, Ms. Armistead cannot find sufficient information to determine whether there are any athletic teams designated as coed or mixed that compete interscholastically at any public secondary schools located in West Virginia, and thus denies this Request.

REQUEST NO. 31:

Admit that there are no cross-country teams designated as “coed or mixed,” as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that

compete interscholastically offered by any member school of the West Virginia Secondary School Activities Commission.

ANSWER: Ms. Armistead objects to this Request because it is unduly burdensome and overbroad to research and determine whether every member public secondary school of the West Virginia Secondary School Activities Commission offers coed or mixed athletic teams. Ms. Armistead points to West Virginia Secondary School Activities Commission's Responses to Plaintiff's First Set of Interrogatories, Response to Interrogatory No. 11, showing there are at least 277 public secondary schools who are members of the West Virginia Secondary School Activities Commission.

Subject to these objections, Ms. Armistead lacks personal and independent knowledge of whether any West Virginia Secondary public secondary school in West Virginia offers any coed or mixed cross-country teams. Even after conducting a reasonable investigation, Ms. Armistead cannot find sufficient information to determine whether there are any cross-country teams designated as coed or mixed at any West Virginia Secondary School Activities Commission member public secondary schools located in West Virginia that compete interscholastically, and thus denies this Request.

REQUEST NO. 32:

Admit that there are no athletic leagues designated as "coed or mixed," as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), that comprise teams from more than one school supervised by the West Virginia Secondary School Activities Commission.

ANSWER: Ms. Armistead objects to this Request because it is unduly burdensome to research and determine whether every public secondary school located in West Virginia offers coed or mixed athletic teams. Ms. Armistead points to WVSSAC's Responses to Plaintiff's First Set of

Interrogatories, Response to Interrogatory No. 11, showing there are at least 277 public secondary schools who are members of WVSSAC, notwithstanding any additional non-member public schools in West Virginia.

Subject to these objections, Ms. Armistead lacks personal and independent knowledge of whether there are any athletic leagues comprised of West Virginia Secondary public secondary schools' athletic teams that are supervised by the West Virginia Secondary School Activities Commission. Even after conducting a reasonable investigation, Ms. Armistead cannot find sufficient information to determine whether there are any athletic leagues comprised of West Virginia Secondary public secondary schools' athletic teams that are supervised by the West Virginia Secondary School Activities Commission, and thus denies this Request.

REQUEST NO. 33:

Admit that there are no athletic teams designated as "coed or mixed," as that phrase is used in H.B. 3293 (codified at Code of West Virginia §18-2-25d(c)(1)(C)), "that compete interscholastically offered by any public secondary school under the supervision of the West Virginia State Board of Education.

ANSWER: Ms. Armistead objects to this Request because it is unduly burdensome to research and determine whether every public secondary school located in West Virginia offers coed or mixed athletic teams. Ms. Armistead points to WVSSAC's Responses to Plaintiff's First Set of Interrogatories, Response to Interrogatory No. 11, showing there are at least 277 public secondary schools who are members of WVSSAC, notwithstanding any additional non-member public schools in West Virginia.

Subject to these objections, Ms. Armistead lacks personal and independent knowledge of whether any West Virginia Secondary public secondary school in West Virginia offers any coed or mixed athletic teams that compete interscholastically under the supervision of the West

Virginia State Board of Education. Even after conducting a reasonable investigation, Ms. Armistead cannot find sufficient information to determine whether any West Virginia Secondary public secondary school in West Virginia offers any coed or mixed athletic teams that compete interscholastically under the supervision of the West Virginia State Board of Education, and thus denies this Request.

REQUEST NO. 34:

Admit that H.B. 3293 does not prohibit a cisgender girl student at Bridgeport Middle School from joining a girls' athletic team offered at Bridgeport Middle School.

ANSWER: Ms. Armistead objects to the meaning of the term "cisgender". There is no definitive, legally recognized definition of "cisgender", Plaintiff's definition relies on the term "gender identity" which, as noted above, is not defined, and finally, Ms. Armistead denies that sex is "assigned at birth." Ms. Armistead further objects to the extent this Request asks her to provide a legal conclusion about H.B. 3293 and objects to the extent this Request asks her to speculate how Bridgeport Middle School would enforce H.B. 3293 regarding its girls' athletic teams.

Subject to these objections, Ms. Armistead admits only that, based on her personal understanding and reading of H.B. 3293, the law does not prohibit biological girls of appropriate age, academic standing, and eligibility, from trying out for or joining a girls' athletic team offered at Bridgeport Middle School.

REQUEST NO. 35:

Admit that H.B. 3293 does not prohibit a cisgender girl student at any public secondary school in West Virginia from joining a girls' athletic team offered by her public secondary school.

ANSWER: Ms. Armistead objects to the meaning of the term “cisgender”. There is no definitive, legally recognized definition of “cisgender”, Plaintiff’s definition relies on the term “gender identity” which, as noted above, is not defined, and finally, Ms. Armistead denies that sex is “assigned at birth.” Ms. Armistead further objects to the extent this Request asks her to provide a legal conclusion about H.B. 3293 and objects to the extent this Request asks her to speculate how any and all public secondary school in West Virginia would enforce H.B. 3293 regarding its girls’ athletic teams.

Subject to these objections, Ms. Armistead only admits that based on her personal understanding and reading of H.B. 3293, the law does not prohibit biological girls of appropriate age, academic standing, and eligibility from trying out for or otherwise joining a girls’ athletic team offered at any public secondary school in West Virginia.

REQUEST NO. 36:

Admit that H.B. 3293 prohibits a Bridgeport Middle School transgender girl student from joining a girls’ athletic team offered at Bridgeport Middle School.

ANSWER: Ms. Armistead objects to the definition of “transgender” as provided in Plaintiff’s First Amended Complaint paragraph 23: “A transgender person is someone who has a gender identity that does not align with their sex assigned at birth.” There is no definitive, legally recognized definition of “transgender”, Plaintiff’s definition relies on the term “gender identity” which, as noted above, is not defined, and finally, Ms. Armistead denies that sex is “assigned at birth.” Ms. Armistead further objects to the extent this Request asks her to provide a legal conclusion about H.B. 3293 and objects to the extent this Request asks her to speculate how Bridgeport Middle School would enforce H.B. 3293 regarding the inner sense of self of biological males seeking to join its girls’ athletic teams.

Subject to these objections, Ms. Armistead admits that H.B. 3293 prohibits biological males, regardless of how they identify, from competing on a team designated for women or girls at Bridgeport Middle School. But Ms. Armistead lacks personal knowledge of how the coaches, school administrators or athletic authorities at Bridgeport Middle School, or other state officials, intend to or would interpret or apply H.B. 3293.

REQUEST NO. 37:

Admit that H.B. 3293 prohibits any transgender girl secondary school student located in West Virginia from joining a girls' athletic team offered by her public secondary school.

ANSWER: Ms. Armistead objects to the definition of "transgender" as provided in Plaintiff's First Amended Complaint paragraph 23: "A transgender person is someone who has a gender identity that does not align with their sex assigned at birth." There is no definitive, legally recognized definition of "transgender", Plaintiff's definition relies on the term "gender identity" which, as noted above, is not defined, and finally, Ms. Armistead denies that sex is "assigned at birth." Ms. Armistead further objects to the extent this Request asks her to provide a legal conclusion about H.B. 3293 and objects to the extent this Request asks her to speculate how any public secondary school in West Virginia, or other state officials, would enforce H.B. 3293 regarding the inner sense of self of biological males seeking to join girls' athletic teams.

Subject to these objections, Ms. Armistead admits that H.B. 3293 prohibits biological males, regardless of how they identify, from competing on an athletic team designated for women or girls at a public secondary school in West Virginia. But Ms. Armistead lacks personal knowledge of how the coaches, school administrators, or athletic authorities at every public secondary school in West Virginia, or state officials, intend to or would interpret or apply H.B. 3293 to biological males.

REQUEST NO. 38:

Admit that prior to the enactment of H.B. 3293, cisgender boy students at Bridgeport Middle School were prohibited from joining girls' athletic teams offered at Bridgeport Middle School.

ANSWER: Ms. Armistead objects to the phrase "prohibited from joining" because it is unclear whether the Request asks for whether the law forbade this or whether any male athletes wanted to join and were barred from doing so. Additionally, the term "cisgender" is vague as it has no definitive, legally recognized definition, Plaintiff's definition relies on the term "gender identity" which, as noted above, is not defined, and finally, Ms. Armistead denies that sex is "assigned at birth." Ms. Armistead further objects to the extent this Request asks her to provide a legal conclusion about H.B. 3293 and objects to the extent this Request asks her to speculate whether biological male students at Bridgeport Middle School were prohibited from joining girls' athletic teams offered at Bridgeport Middle School. Finally, this Request has no time limit and is therefore vastly overbroad. It is impossible for Ms. Armistead to know all the rules and regulations at all times prior to the passage of H.B. 3293, how officials interpreted and applied those rules, and all the reasons why and if males attempted to join a girls' team and were in fact prohibited from doing so.

Subject to these objections, Ms. Armistead admits that Title IX has, for nearly 50 years in our country, prohibited males from competing in federally funded girls' sports where competitive skill or physical contact is involved, but she has no personal knowledge about how West Virginia officials have interpreted or intend to interpret Title IX. But more recently, some courts, administrative agencies, athletic bodies, and government officials have adopted a different understanding of Title IX, adopted a different understanding of what it means to be male and female, and therefore created confusion about who can compete in girls' sports and on what conditions they could do so. Finally, Ms. Armistead has no personal or independent

knowledge as to how officials interpreted state and federal law prior to passing H.B. 3293, and therefore denies the same.

REQUEST NO. 39:

Admit that prior to the enactment of H.B. 3293, a cisgender boy student at any public secondary school in West Virginia was prohibited from joining girls' athletic teams offered at his public secondary school.

ANSWER: Ms. Armistead objects to the phrase "prohibited from joining" because it is unclear whether the Request asks for whether the law forbade this or whether any male athletes attempted to join and were barred from doing so. Ms. Armistead also objects to the meaning of the term "cisgender". There is no definitive, legally recognized definition of "cisgender", Plaintiff's definition relies on the term "gender identity" which is not defined, and finally, Ms. Armistead denies that sex is "assigned at birth." Ms. Armistead further objects to the extent this Request asks her to provide a legal conclusion about H.B. 3293 and objects to the extent this Request asks her to speculate whether biological male students were prohibited from joining girls' athletic teams offered at any public secondary school in West Virginia. Finally, this Request has no time limit and is therefore vastly overbroad. It is impossible for Ms. Armistead to know all the rules and regulations at all times prior to the passage of H.B. 3293, how officials interpreted and applied those rules, and all the reasons why and if males attempted to join a girls' team and were in fact prohibited from doing so.

Subject to these objections, Ms. Armistead admits that Title IX has, for nearly 50 years in our country, prohibited males from competing in federally funded girls' sports where competitive skill or physical contact is involved, but she has no personal knowledge about how West Virginia officials have interpreted or intend to interpret Title IX. But more recently, some courts, administrative agencies, athletic bodies, and government officials have adopted a

different understanding of Title IX, adopted a different understanding of what it means to be male and female, and therefore created confusion about who can compete in girls' sports and on what conditions they could do so. Finally, Ms. Armistead has no personal or independent knowledge as to how officials interpreted state and federal law prior to passing H.B. 3293, and therefore denies the same.

REQUEST NO. 40:

Admit that prior to the enactment of H.B. 3293, you are not aware of any transgender student athlete participating on an athletic team offered by Bridgeport Middle School.

ANSWER: Ms. Armistead objects to the definition of "transgender" as provided in Plaintiff's First Amended Complaint paragraph 23: "A transgender person is someone who has a gender identity that does not align with their sex assigned at birth." There is no definitive, legally recognized definition of "transgender", Plaintiff's definition relies on the term "gender identity" which, as noted above, is not defined, and finally, Ms. Armistead denies that sex is "assigned at birth."

Subject to these objections, Ms. Armistead admits that prior to the enactment of H.B. 3293, she had no personal or independent knowledge of the internal sense of self of members of the athletic teams at Bridgeport Middle School and whether that internal sense has changed, nor would she have any reason to know or possess that information. After a reasonable inquiry into the knowledge and information available to her, she states that she is aware of testimony from the WVSSAC indicating that at least one other male who identified as female tried to compete in girls' sports, but she does not know where the student attended school. This could have been at Bridgeport Middle School, so Ms. Armistead denies this Request.

REQUEST NO. 41:

Admit that prior to the enactment of H.B. 3293, you are not aware of any transgender student athlete participating on an athletic team offered by a public secondary school in West Virginia.

ANSWER: Ms. Armistead objects to the definition of “transgender” as provided in Plaintiff’s First Amended Complaint paragraph 23: “A transgender person is someone who has a gender identity that does not align with their sex assigned at birth.” There is no definitive, legally recognized definition of “transgender”, Plaintiff’s definition relies on the term “gender identity” which, as noted above, is not defined, and finally, Ms. Armistead denies that sex is “assigned at birth.”

Subject to these objections, Ms. Armistead admits that prior to the enactment of H.B. 3293, she had no personal or independent knowledge of the internal sense of self of members of the athletic teams at a public secondary school in West Virginia, nor would she have any reason to know or possess that information. After a reasonable inquiry into the knowledge and information available to her, Ms. Armistead states that she is aware of testimony from the WVSSAC indicating that at least one other male who identified as female tried to compete in girls’ sports at a secondary school in West Virginia, but she does not know where the student attended school.

REQUEST NO. 42:

Admit that other than Plaintiff B.P.J., you are not aware of a transgender student athlete participating on an athletic team offered by Bridgeport Middle School.

ANSWER: Ms. Armistead objects to the definition of “transgender” as provided in Plaintiff’s First Amended Complaint paragraph 23: “A transgender person is someone who has a gender identity that does not align with their sex assigned at birth.” There is no definitive, legally recognized definition of “transgender”, Plaintiff’s definition relies on the term “gender identity”

which, as noted above, is not defined, and finally, Ms. Armistead denies that sex is “assigned at birth.”

Subject to these objections, Ms. Armistead admits that other than Plaintiff B.P.J., she is currently not aware of and has no personal or independent knowledge of the current internal sense of self of members of the athletic teams at Bridgeport Middle School, nor does she have any reason to know or possess that information.

REQUEST NO. 43:

Admit that other than Plaintiff B.P.J., you are not aware of a transgender student athlete participating on an athletic team offered by a public secondary school in West Virginia.

ANSWER: Ms. Armistead objects to the definition of “transgender” as provided in Plaintiff’s First Amended Complaint paragraph 23: “A transgender person is someone who has a gender identity that does not align with their sex assigned at birth.” There is no definitive, legally recognized definition of “transgender”, Plaintiff’s definition relies on the term “gender identity” which, as noted above, is not defined, and finally, Ms. Armistead denies that sex is “assigned at birth.”

Subject to these objections, Ms. Armistead admits that she is currently not aware of, and she has no personal or independent knowledge of the internal sense of self of members of the athletic team offered by a public secondary school in West Virginia, nor would she have any reason to know or possess that information.

REQUEST NO. 44:

Admit that students derive social benefits from participation on athletic teams offered by public secondary schools in West Virginia.

ANSWER: Ms. Armistead objects to the term “social benefits” as overbroad, vague, and ambiguous because it is not clear how, why, or what kind of social benefits different individuals

experience and Ms. Armistead has no personal or independent knowledge of the social benefits that students other than herself may or may not derive from participating on athletic teams. Moreover, she objects to this Request because this topic is the subject of expert discovery and facts about the subjective state of the mind of the opposing party are an improper basis for a Request for Admission.

Subject to these objections, Ms. Armistead admits that she has personally derived social benefits as a student from playing soccer when the competition was safe and fair such as mental and physical toughness, perseverance, good sportsmanship, the value of hard work and discipline, the importance of teamwork, and leadership. Ms. Armistead further admits that she has observed other fellow athletes similarly benefiting from participation on athletic teams and believes that students generally benefit from participation when the competition is safe and fair. But Ms. Armistead never participated in sports in secondary schools in West Virginia and therefore cannot speak to the personal experience of every student.

REQUEST NO. 45:

Admit that students derive psychological benefits from participation on athletic teams offered by public secondary schools in West Virginia.

ANSWER: Ms. Armistead objects to the term “psychological benefits” as overbroad, vague, and ambiguous because it is not clear how, why, or what kind of psychological benefits different students may or may not experience from participating on athletic teams offered by public secondary schools in West Virginia. And Ms. Armistead has no personal or independent knowledge of the psychological benefits that students other than herself may or may not derive from participating on athletic teams. Moreover, she objects to this Request because this topic is the subject of expert discovery and facts about the subjective state of the mind of the opposing party are an improper basis for a Request for Admission.

Subject to these objections, Ms. Armistead admits that she has personally derived psychological benefits from playing soccer when the competition was safe and fair such as mental and physical toughness, perseverance, good sportsmanship, the value of hard work and discipline, the importance of teamwork, and leadership. Ms. Armistead further admits that she has observed fellow athletes similarly benefitting from participation on athletic teams when the competition is safe and fair. But Ms. Armistead never participated in sports in secondary schools in West Virginia and therefore cannot speak to the personal experience of every student.

REQUEST NO. 46:

Admit that interscholastic athletic competition benefits middle school students.

ANSWER: Ms. Armistead objects to the term “benefits” as overbroad, vague, and ambiguous because it is not clear how, why, or what kind of benefits different students may or may not experience from interscholastic athletic competition. And Ms. Armistead has no personal or independent knowledge of the all the benefits that middle school students may or may not derive from interscholastic athletic competition. Ms. Armistead also objects to the term “middle school students” as overbroad, vague, and ambiguous. It is not clear whether Plaintiff refers to middle school students in West Virginia, the United States of America, or the entire world. Moreover, she objects to this Request because this topic is the subject of expert discovery and facts about the subjective state of the mind of the opposing party are an improper basis for a Request for Admission.

Subject to these objections, Ms. Armistead lacks personal and independent knowledge of how and if interscholastic competition benefits each and every middle school student, but she admits that interscholastic competition—when fair and safe—generally benefits students and she has personally benefitted from such fair and safe competition.

REQUEST NO. 47:

Admit that middle school students who participate in interscholastic athletics receive benefits regardless whether they win or lose.

ANSWER: Ms. Armistead objects to the term “benefits” as overbroad, vague, and ambiguous because it is not clear how, why, or what kind of benefits different students may or may not receive from participating in interscholastic athletics regardless whether they win or lose, or whether the benefit is monetary, emotional, or psychological. And Ms. Armistead has no personal or independent knowledge of all the benefits that middle school students may or may not receive from participating in interscholastic athletics regardless whether they win or lose. Ms. Armistead also objects to the term “middle school students” as overbroad, vague, and ambiguous because it is not clear whether Plaintiff refers to middle school students in West Virginia, the United States of America, or the entire world. Moreover, she objects to this Request because this topic is the subject of expert discovery and facts about the subjective state of the mind of the opposing party are an improper basis for a Request for Admission.

Subject to these objections, Ms. Armistead admits that she personally benefited when she competed in safe and fair sports in middle school regardless of whether she won or lost. And based on her personal experience, she believes that competing in safe and fair sports generally benefits middle schoolers, but she cannot speak to the personal experience of every middle school interscholastic athlete.

REQUEST NO. 48:

Admit that student athletes who participate in interscholastic athletics receive benefits regardless whether they win or lose.

ANSWER: Ms. Armistead objects to the term “benefits” as overbroad, vague, and ambiguous because it is not clear how, why, or what kind of benefits different student athletes may or may not receive from participating in interscholastic athletics regardless whether they win or lose, or

whether the benefit is monetary, emotional, or psychological. And Ms. Armistead has no personal or independent knowledge of all the benefits that student athletes may or may not receive from participating in interscholastic athletics regardless whether they win or lose. Ms. Armistead also objects to the term “student athletes” as overbroad, vague, and ambiguous because it is not clear whether Plaintiff refers to all student athletes in West Virginia, the United States of America, or the entire world, or the age range/grade level of student athletes. “Student athletes” could include any student of any age who plays sports or considers themselves an athlete. Moreover, she objects to this Request because this topic is the subject of expert discovery and facts about the subjective state of the mind of the opposing party are an improper basis for a Request for Admission.

Subject to these objections, Ms. Armistead Ms. Armistead admits that she personally benefited when she competed in safe and fair sports as an interscholastic athlete regardless of whether she won or lost. And based on her personal experience, she believes that competing in safe and fair sports generally benefits interscholastic athletes, but she cannot speak to the personal experience of every interscholastic athlete.

Respectfully submitted this 10th day of March, 2022.

/s/ Christiana Holcomb

Christiana Holcomb, DC Bar No. 176922*
Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001
(202) 393-8690
(202) 347-3622 Fax
cholcomb@adflegal.org

Travis Barham, GA Bar No. 753251*
Alliance Defending Freedom
1000 Hurricane Shoals Road NE
Suite D-1100
Lawrenceville, GA 30043
(770) 339-0774
(770) 339-6744 Fax
tbarham@adflegal.org

Jonathan Scruggs, AZ Bar No. 030505*
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, AZ 85260
(480) 444-0020
(480) 444-0028 Fax
jscruggs@adflegal.org

Timothy D. Ducar, AZ Bar No. 015307*
Law Offices of Timothy D. Ducar, PLC
7430 E. Butherus Drive, Suite E
Scottsdale, AZ 85260
(480) 502-2119
(480) 452-0900 Fax
tducar@azlawyers.com

Rachel Csutoros, MA Bar No. 706225*
Tyson Langhofer, VA Bar No. 95204*
Alliance Defending Freedom
44180 Riverside Parkway
Lansdowne, VA 20176
(571) 707-4655
(202) 347-3622 Fax
rcsutoros@adflegal.org
tlanghofer@adflegal.org

Brandon Steele, WV Bar No. 12423
Joshua Brown, WV Bar No. 12652
The Law Offices of Brandon S. Steele
3049 Robert C. Byrd Drive, Suite 100
Beckley, WV 25801
(304) 253-1230
(304) 255-1520 Fax
bstelelawoffice@gmail.com

**Visiting Attorneys*

Attorneys for Intervenor

Exhibit 12

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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 * Case 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, * VIDEOTAPED
DORA STUTLER in her official * VIDEOCONFERENCE
Capacity as Harrison County * DEPOSITION
Superintendent, PATRICK MORRISEY * OF
In his official capacity as * BPJ
Attorney General, and THE STATE * January 21, 2022
OF WEST VIRGINIA, *
Defendants *

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VIDEOTAPED VIDEOCONFERENCE DEPOSITION
OF
BPJ, taken on behalf of the Defendant, State of West
Virginia herein, pursuant to the Rules of Civil
Procedure, taken before me, the undersigned, Nicole
Montagano, a Court Reporter and Notary Public in and for
the State of West Virginia, on Friday, January 21, 2022,
beginning at 10:09 a.m.

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A P P E A R A N C E S

JOSHUA BLOCK, ESQUIRE
American Civil Liberties Union Foundation
125 Broad Street
New York, NY 10004

COUNSEL FOR PLAINTIFF

LOREE STARK, ESQUIRE
ACLU of West Virginia
P.O. Box 3952
Charleston, WV 25339

COUNSEL FOR PLAINTIFF

KATHLEEN R. HARTNETT, ESQUIRE
ANDREW BARR, ESQUIRE
JULIE VEROFF, ESQUIRE
ZOE HELSTROM, ESQUIRE
Cooley, LLP
3 Embarcadero Center
20th Floor
San Francisco, CA 94111-4004

COUNSELS FOR PLAINTIFF

1
2
3
4
5
6
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A P P E A R A N C E S (cont'd)

SRUTI SWAMINATHAN, ESQUIRE

Lambda Legal

120 Wall Street

19th Floor

New York, NY 10005-3919

COUNSEL FOR PLAINTIFF

DAVID TRYON, ESQUIRE

CURTIS R.A. CAPEHART, ESQUIRE

State Capitol Complex

Building 1, Room E-26

Charleston, WV 25305

COUNSEL FOR STATE OF WEST VIRGINIA

ROBERTA F. GREEN, ESQUIRE

KIMBERLY M. BANDY, ESQUIRE

SHANNON ROGERS, ESQUIRE

Shuman McCuskey Slicer, PLLC

1411 Virginia Street East, Suite 200

Charleston, WV 25301

COUNSEL FOR WEST VIRGINIA SECONDARY SCHOOL

ACTIVITIES COMMISSION

1
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A P P E A R A N C E S (cont'd)

SUSAN DENIKER, ESQUIRE

Steptoe & Johnson

400 White Oaks Boulevard

Bridgeport, WV 26330

COUNSEL FOR HARRISON COUNTY BOARD OF EDUCATION and

HARRISON COUNTY SUPERINTENDENT DORA STUTLER

KELLY C. MORGAN, ESQUIRE

KRISTEN V. HAMMOND, ESQUIRE

Bailey Wyant

500 Virginia Street East

Suite 600

Charleston, WV 25301

COUNSEL FOR WEST VIRGINIA BOARD OF EDUCATION and

SUPERINTENDANT W. CLAYTON BURCH

TIMOTHY D. DUCAR, ESQUIRE

Law Office of Timothy D. Ducar

7430 East Butherus Drive

Suite E

Scottsdale, AZ 85260

COUNSEL FOR INTERVENOR, LAINEY ARMISTEAD

1	I N D E X	
2		
3	DISCUSSION AMONG PARTIES	11 - 15
4	<u>WITNESS</u> : BPJ	
5	EXAMINATION	
6	By Attorney Capehart	15 - 122
7	EXAMINATION	
8	By Attorney Rogers	122 - 123
9	EXAMINATION	
10	By Attorney Deniker	123 - 142
11	EXAMINATION	
12	By Attorney Hammond	143 - 144
13	EXAMINATION	
14	By Attorney Ducar	144 - 155
15	DISCUSSION AMONG PARTIES	155 - 157
16	CERTIFICATE	158
17		
18		
19		
20		
21		
22		
23		
24		

1	<u>EXHIBIT PAGE</u>		
2			
3			PAGE
4	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>
5	Exhibit 1	Davis Medical Records	-- *
6	Exhibit 1R	Davis Medical Records	-- *
7	Exhibit 2	Davis Medical Records	-- *
8	Exhibit 3	WVU Medical Records	-- *
9	Exhibit 4	UPMC Children's Medical	
10		Records	-- *
11	Exhibit 5	UPMC Children's Medical	
12		Records	-- *
13	Exhibit 6	UPMC Children's Medical	
14		Records	-- *
15	Exhibit 7	UPMC Children's Medical	
16		Records	
17	Exhibit 8	UPMC Children's Medical	
18		Records	-- *
19	Exhibit 9	UPMC Children's Medical	
20		Records	-- *
21	Exhibit 11A	Progress Notes	-- *
22	Exhibit 11B	Progress Notes	-- *
23	Exhibit 11C	Progress Notes	-- *
24	Exhibit 11D	Progress Notes	-- *

1	EXHIBIT PAGE		
2			
3			PAGE
4	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>
5	Exhibit 12	UPMC Children's Medical	
6		Records	-- *
7	Exhibit 13	UMPC Children's Medical	
8		Records	-- *
9	Exhibit 14	WVU Medical Records	-- *
10	Exhibit 15	WVU Medical Records	-- *
11	Exhibit 16	WVU Medical Records	-- *
12	Exhibit 17	Gender Support Plan	-- *
13	Exhibit 18	Preferred Name Request Form	-- *
14	Exhibit 19	Gender Support Plan	-- *
15	Exhibit 20	Student Information	-- *
16	Exhibit 20R	Student Information	-- *
17	Exhibit 21	Screening Results	-- *
18	Exhibit 21R	Screening Results	-- *
19	Exhibit 22	Birth Certificate	-- *
20	Exhibit 22R	Birth Certificate	-- *
21	Exhibit 23	Heart Walk Article	--
22	Exhibit 23R	Heart Walk Article	--
23	Exhibit 24	Photo	--
24	Exhibit 24R	Photo	--

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EXHIBIT PAGE

PAGE

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE IDENTIFIED</u>
Exhibit 25	WV Record	--
Exhibit 26	Photo of Mom and BPJ	--
Exhibit 27	Article	--
Exhibit 28	Article	--
Exhibit 29	Lambda Legal Article	--
Exhibit 30	Declaration of Heather Jackson	--
Exhibit 31	Declaration of BJP	--
Exhibit 32	First Amended Complaint	--
Exhibit 33	Standards of Care	--
Exhibit 34	House Bill 3293	--

* CONFIDENTIAL EXHIBITS

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OBJECTION PAGE

ATTORNEY

PAGE

Hartnett 19, 23, 24, 26, 26, 27, 27, 29, 29, 30, 30,
30, 31, 31, 31, 32, 32, 33, 33, 34, 34, 34, 35, 35, 36,
36, 37, 37, 38, 38, 39, 41, 41, 42, 43, 43, 44, 44, 45,
46, 48, 49, 50, 51, 52, 52, 53, 54, 54, 55, 57, 59, 60,
61, 62, 62, 63, 63, 66, 67, 68, 68, 69, 70, 70, 70, 71,
72, 72, 73, 74, 74, 75, 76, 76, 78, 79, 80, 81, 81, 82,
84, 85, 85, 85, 86, 87, 87, 88, 88, 89, 89, 90, 90, 94,
94, 95, 96, 97, 97, 98, 99, 100, 100, 101, 101, 102,
103, 104, 104, 107, 108, 108, 109, 109, 110, 110, 111,
112, 113, 113, 114, 116, 117, 118, 118, 119, 120, 120,
121, 121, 128, 133, 135, 137, 139, 140, 142, 144, 146,
146, 147, 148, 150, 150, 150, 151, 151, 151, 153, 153,
154, 155, 155, 156

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S T I P U L A T I O N

(It is hereby stipulated and agreed by and between counsel for the respective parties that reading, signing, sealing, certification and filing are not waived.)

VIDEOGRAPHER: We're now on the record.

My name is Jacob Stock. I'm a Certified Legal Video Specialist employed by Sargent's Court Reporting Services, which is located at 210 Main Street, Johnstown, PA 15901. The date today is January 21st, 2022. The current time reads 10:09 a.m., Eastern Standard Time. This deposition is being taken remotely by Zoom conference. The caption of the case is in the United States District Court for the Southern District of West Virginia, Charleston Division, BPJ, by her Next Friend and Mother, Heather Jackson versus West Virginia State Board of Education, et al. Civil Action Number 2:21-CV-00316. The name of the witness is BPJ.

Will the attorneys present state their names and the parties they represent?

ATTORNEY CAPEHART: This is Curtis

Capehart for the State of West Virginia. And with me is

1 my colleague, David Tryon.

2 ATTORNEY HARTNETT: Good morning. This
3 is Kathleen Hartnett from Cooley, LLP, for Plaintiff
4 BPJ, who is the witness today. And the other
5 Plaintiff's Counsel could introduce themselves, first
6 with the others from Cooley and then we could go to
7 ACLU, ACLU of West Virginia and Lambda.

8 ATTORNEY BARR: Good morning. This is
9 Andrew Barr from Cooley, LLP, on behalf of the
10 Plaintiff.

11 ATTORNEY VEROFF: Good morning. This is
12 Julie Veroff from Cooley, LLP, on behalf of the
13 Plaintiff.

14 ATTORNEY HELSTROM: Good morning. This
15 is Zoe Helstrom from Cooley, LLP, on behalf of the
16 Plaintiff.

17 ATTORNEY BLOCK: Good morning. This is
18 Josh Block from ACLU on behalf of Plaintiff.

19 ATTORNEY STARK: Good morning. This is
20 Loree Stark with the ACLU of West Virginia on behalf of
21 the Plaintiff.

22 ATTORNEY SWAMINATHAN: Good morning.
23 This is Sruti Swaminathan from Lambda Legal on behalf of
24 Plaintiff.

1 ATTORNEY DENIKER: Good morning. I'm
2 Susan Deniker with Steptoe and Johnson, counsel for
3 Defendants Harrison County Board of Education and
4 Harrison County Superintendant Dora Stutler.

5 ATTORNEY GREEN: Good morning. This is
6 Roberta Green on behalf of West Virginia Secondary
7 School Activities Commission, and I will let me
8 colleagues introduce.

9 ATTORNEY BANDY: Hello. This is Kimberly
10 Bandy also on behalf of West Virginia Secondary School
11 Activities Commission.

12 ATTORNEY HAMMOND: Good morning. This is
13 Kristen Hammond. And Kelly Morgan is also on here with
14 Bailey and Wyant and we represent the West Virginia
15 State Board of Education and Superintendant Burch.

16 ATTORNEY DUCAR: Good morning. Timothy
17 Ducar here on behalf of the Intervenor, Lainey
18 Armistead.

19 ATTORNEY HOLCOMB: Good morning.
20 Christiana Holcomb with Alliance Defending Freedom on
21 behalf of the Intervenor.

22 ATTORNEY CSUTOROS: Good morning. This
23 Rachel Csutoros on behalf of Alliance Defending Freedom
24 on behalf of the Intervenor.

1 mischaracterization of the evidence. Those same
2 stipulations would hold today. And so for the record,
3 the Plaintiff agrees to that. And it would be helpful I
4 think if the other Defendants could just assent to those
5 stipulations for today on the record.

6 ATTORNEY DENIKER: This is Susan Deniker.
7 I stipulate to that.

8 ATTORNEY GREEN: This is Roberta Green on
9 behalf of WVSSAC. We stipulate to that.

10 ATTORNEY HAMMOND: This is Kristen
11 Hammond, and we also stipulate to that.

12 ATTORNEY DUCAR: This is Tim Ducar. We
13 also stipulate to that.

14 ATTORNEY CAPEHART: And the State does as
15 well.

16 ATTORNEY CAPEHART: Anything else,
17 Kathleen, or should I go ahead?

18 ATTORNEY HARTNETT: Nothing here.

19 ATTORNEY CAPEHART: All right. Thanks
20 very much.

21 ---

22 EXAMINATION

23 ---

24 BY ATTORNEY CAPEHART:

1 Q. Well, good morning. Nice to finally get to meet
2 you. My name is Curtis Capehart, as I said just a
3 minute ago. I represent the State of West Virginia in
4 this. Now up to this point we've been referring to you
5 by the initials as BPJ because that is the way you have
6 been identified in the Complaint that started this
7 lawsuit. Now, is that okay or would you prefer that I
8 call you something else while we're talking here today?
9 Because initials can be a little awkward. So if you
10 feel more comfortable with me calling you something
11 else, that's perfectly fine. You just let me know what
12 that could be.

13 A. You can call me B [REDACTED].

14 Q. Okay.

15 ATTORNEY HARTNETT: If I could just say
16 for the record, not to interrupt, that we filed with the
17 BPJ initials in light of the Rules of Court, but the
18 Plaintiff Counsel has no objection to you referring to
19 her as B [REDACTED] in this deposition.

20 ATTORNEY CAPEHART: Okay.

21 BY ATTORNEY CAPEHART:

22 Q. You are represented by counsel here today and is
23 that Kathleen, Ms. Hartnett, that was speaking just now?

24 A. Yes.

1 Q. Have you ever been involved in a lawsuit before?

2 A. No.

3 Q. So you've probably never been deposed before,
4 have you?

5 A. Can you repeat the question?

6 Q. Sure. You haven't been deposed before then,
7 have you?

8 A. No.

9 Q. Okay.

10 Also if there is a time where you have trouble
11 understanding me or hearing me, just do what you just
12 did there, let me know and I'll try and speak up a
13 little bit. We don't have the best microphone
14 placements in here, so that might be a thing as we go
15 through today.

16 So as I go through and answer --- I'm sorry, if
17 I go through and ask you questions today, I just need
18 you to try to remember to answer verbally, not just nod
19 your head or shake your head because there is a video,
20 but we need to have those verbal responses so we can
21 truly understand what your answer is. And if you do not
22 understand a question, that's fine. You just need to
23 say so so that I can try and put together a better
24 question or try to explain more of what I'm trying to

1 learn. Okay?

2 Now, if you answer one of questions that I ask
3 you today, we are going to assume that you understand
4 it. So if there is any kind of confusion, we don't want
5 to deal with any of that. It's better you just ask me
6 and I'll try and improve my question for you.

7 Does that all make sense?

8 A. Yes.

9 Q. Okay.

10 Also, I want to kind of touch on a couple of
11 other things here before I get started with some
12 questioning. Just understand that we are not here to
13 judge you. We're just trying to learn some of the facts
14 here, things we don't know. This lawsuit was filed
15 trying to have a West Virginia State Law declared
16 invalid under the U.S. Constitution and another Federal
17 Law referred to as Title 9. And that's --- that's
18 pretty serious. So we, as the lawyers for the State,
19 have an obligation to defend that law. That means I
20 have to ask you some questions that might make all of us
21 uncomfortable a little bit, but I have an obligation to
22 try and get through these. That's not my goal. I'm
23 just trying to find out information. Okay?

24 Now, also if I ask you a question that makes

1 you very uncomfortable, tell me, and I can try, if I
2 can, to rephrase it in a way to make you not
3 uncomfortable. I can't say that I won't ask those kinds
4 of questions because there's some things that we have to
5 ask questions about, some things that we need to get
6 your testimony on, but I'm not trying to make you feel
7 bad or upset you in any way.

8 Okay?

9 A. Okay.

10 ATTORNEY HARTNETT: I would just object
11 to the extent you're seeking the witness to agree with
12 your description of your role. But on the other hand, I
13 appreciate you letting her know that she can let you
14 know if she has an upsetting question.

15 BY ATTORNEY CAPEHART:

16 Q. Also, I'm just going to --- a word about
17 objections. Sometimes when we go through these, your
18 lawyer might make an objection. I may ask a question,
19 Kathleen may same objection, something else. Now, if
20 that happens, the lawyers may have to have a
21 conversation. It's unlikely, but the lawyers may have
22 to talk about something, at which point you wouldn't be
23 able to hear us or see us. We don't think that's going
24 to happen, but we at least want to let you know.

1 Also, generally, if your lawyer says objection,
2 you can go ahead and answer the question unless your
3 lawyer directs you not to.

4 A. Okay.

5 Q. Oh, and one last thing. If you need to take a
6 break for any reason, go to the bathroom, get more
7 water, something of that nature, just let me know and we
8 will take a break as soon as we can. We just can't take
9 a break if I've asked a question and we are waiting for
10 you to finish your answer.

11 Does that make sense?

12 A. Yes.

13 Q. Okay. Great.

14 We will try and get through this as quickly as
15 we can. I'm sure you have a lot of other things that
16 you would rather do on a Friday. So with that, let me
17 ask you, if you can, to please state your name for the
18 record.

19 A. First and last?

20 Q. Yes, please.

21 A. B [REDACTED] P [REDACTED] J [REDACTED].

22 Q. Great. What is your address?

23 A. Could you repeat the question?

24 Q. Sure. What is your home address?

1 A. I'm not sure.

2 Q. Okay.

3 And where do you go to school?

4 A. Bridgeport Middle School.

5 Q. Do you remember signing a document called a
6 Declaration back when this lawsuit was first getting
7 started?

8 A. I can't remember.

9 Q. Okay.

10 If you could look at --- it's marked Exhibit
11 31.

12 ATTORNEY CAPEHART: Court Reporter, if
13 you could pull up that exhibit also.

14 BY ATTORNEY CAPEHART:

15 Q. So do you have Exhibit 31 in front of you?

16 A. Yes.

17 Q. It's also up on the screen, just to make sure
18 that we're all looking at this document here?

19 MS. JACKSON: This is this.

20 BY ATTORNEY CAPEHART:

21 Q. There's on the screen electronic version of it,
22 too.

23 ATTORNEY HARTNETT: For the record, we
24 have copies of the exhibits face down in the room with

1 the witness, and the witness may feel free to pick up
2 the exhibit once it's referred to by the questioning
3 counsel and look at the hard copy.

4 BY ATTORNEY CAPEHART:

5 Q. Okay.

6 Looking at this, now if you look at the last
7 page, I believe it is number page four, it has the
8 initials BPJ there and then some handwritten
9 signature-like initials of BPJ. Looking at those, do
10 you recognize those?

11 A. Yes.

12 Q. And that's your handwriting, I guess?

13 A. Yes.

14 Q. Okay. Thanks very much.

15 Looking at this, does it jog your memory a
16 little bit that this is something you had to deal with
17 back when the lawsuit was started?

18 A. Not really.

19 Q. Okay.

20 And do you remember signing it?

21 A. A little bit.

22 Q. I know it's been a while, so I thought you might
23 want to go and look at a couple of these things to
24 remember what was in here.

1 MS. JACKSON: Do you want to read through
2 it?

3 THE WITNESS: No.

4 BY ATTORNEY CAPEHART:

5 Q. If you want to take a minute, you can kind of
6 read all through it. You just go ahead and let us know
7 when you've had a chance to do that.

8 MS. JACKSON: You need to tell them when
9 you're done.

10 THE WITNESS: Oh, I'm done.

11 BY ATTORNEY CAPEHART:

12 Q. Thank you.

13 Now, since you signed this back in May of last
14 year, obviously it's been quite a while since May. And
15 is anything --- well, let me rephrase. Back at that
16 time, if you look on page two, this was --- in
17 paragraph 11 you were talking about trying out for
18 cross-country and track. And obviously, with the
19 passage of time, you tried out for the track team,
20 right, cross-country track team.

21 ATTORNEY HARTNETT: Objection, form.

22 THE WITNESS: I tried out cross-country.
23 Track is not a sport that was available at that time.

24 BY ATTORNEY CAPEHART:

1 Q. Is track a spring sport?

2 A. Yes.

3 Q. Okay.

4 So you tried out for cross-country. Did you
5 make the cross-country team?

6 A. Yes.

7 Q. Back on the bottom of the first page, under the
8 paragraph number four, it describes that you when you
9 were younger would play with your mom's clothes, liked
10 paint and girly items. Whenever you said girly items
11 there with the quotations around it, what kind of items
12 are those?

13 A. Items that had maybe unicorns on it, sparkles,
14 anything that would stick out in general that was maybe
15 a mystical creature that was like a unicorn maybe. I
16 had some stuff that was pandas because I really like
17 pandas, and they were always multi-colored. And that's
18 about it.

19 Q. Okay.

20 I'm going to set that off to the side for a
21 minute and just ask you a few other questions. Your
22 mother told us that you are comfortable explaining your
23 gender identity. Are you?

24 ATTORNEY HARTNETT: Objection to form.

1 THE WITNESS: Yes.

2 BY ATTORNEY CAPEHART:

3 Q. Can you explain to me what is your gender
4 identity?

5 A. I am female and I go by the pronoun she or her.

6 Q. Do you also refer to yourself as a transgender
7 girl?

8 A. No. I refer myself as a girl because I am a
9 girl, and that's it.

10 Q. Okay.

11 Does it bother you if someone does refer to you
12 as a transgender girl?

13 A. No, because that's still calling me a girl, but
14 I prefer to be called as just a girl.

15 Q. Okay.

16 Did you have a problem with --- looking back at
17 your Declaration, at Exhibit 31, in paragraph 12 it
18 says, the second line, I am a transgender girl. Is that
19 okay with you that that's written that way?

20 A. Yes, that is fine because that is --- that's
21 still showing that I am a girl and that is on a ---
22 that's on my Declaration.

23 Q. And transgender female or transgender girl, are
24 both of those terms accurate?

1 ATTORNEY HARTNETT: Objection to form.

2 THE WITNESS: Yes, because I am a
3 transgender female and a transgender girl.

4 BY ATTORNEY CAPEHART:

5 Q. Okay.

6 I just want to make sure I got the terminology
7 down. Do you remember the first time you heard the term
8 transgender?

9 A. I can't remember.

10 Q. Okay.

11 As long as you remember, you just --- have you
12 always had an understanding of what transgender means?

13 A. I don't know, I don't think so.

14 Q. So --- and I'm not trying to put words in your
15 mouth. I'm just trying to understand. So do you think
16 there was a time that you didn't, but at some point you
17 learned it, you just don't remember when that was?

18 A. Yes.

19 Q. All right.

20 Do you have any recollection of a time when you
21 were not a transgender girl?

22 ATTORNEY HARTNETT: Objection to form.

23 THE WITNESS: A little bit of a memory,
24 but not much.

1 BY ATTORNEY CAPEHART:

2 Q. What kind of a memory do you have --- let me
3 back up. How old is that memory?

4 A. Four or five years.

5 Q. Okay.

6 Was that memory --- what were you doing that
7 you can remember, I guess, maybe not being a transgender
8 girl at that time?

9 ATTORNEY HARTNETT: Objection to form.

10 THE WITNESS: I think I was learning
11 something in school and I found it really interesting.

12 BY ATTORNEY CAPEHART:

13 Q. Okay.

14 You don't remember what that was that you were
15 learning, do you?

16 A. No.

17 Q. Your mother also told us that at some point when
18 you were younger you told her that you were a girl. Do
19 you remember the first time you told your mother that?

20 A. I can't remember.

21 Q. Okay.

22 Do you remember the first time you told someone
23 other than your mother that you were a transgender girl?

24 ATTORNEY HARTNETT: Objection to form.

1 THE WITNESS: I --- can you say it again?

2 BY ATTORNEY CAPEHART:

3 Q. Sure. I will try to make it a little bit
4 better, too. Do you remember the time that you first
5 told someone other than your mother that you were a
6 girl?

7 A. Yes.

8 Q. Okay.

9 Can you tell me about that?

10 A. It was in school. It was new, whenever I just
11 came out, and it was the year of 4th grade.

12 Q. Okay.

13 Do you remember who you were talking to?

14 A. I don't remember.

15 Q. Now, you said that was 4th grade, that that was
16 the year that you came out. Do you use terminology like
17 socially transition when you talk about that time?

18 A. Could you repeat the question?

19 Q. Sure. Let me ask a different one. Are you
20 familiar with the term social transition or to socially
21 transition?

22 A. No.

23 Q. Okay.

24 When you --- and I'm going to use your term,

1 okay. When you said you came out in 4th grade and that
2 was the time when you maybe started talking to other
3 people about being a girl, you don't really remember who
4 that was, but generally how was that time for you?

5 ATTORNEY HARTNETT: Objection to form.

6 THE WITNESS: It was good because I made
7 a lot of new friends. A lot of people were really nice
8 to me.

9 BY ATTORNEY CAPEHART:

10 Q. Were your old friends nice to you, too?

11 A. Yes.

12 Q. How was everybody at your school, teachers and
13 other folks that worked there?

14 ATTORNEY HARTNETT: Objection to form.

15 THE WITNESS: They were very good about
16 it.

17 BY ATTORNEY CAPEHART:

18 Q. Did you have any bad experiences that year?

19 A. No.

20 Q. Okay.

21 B [REDACTED], for you what does it mean to be female
22 or to be a girl?

23 A. Could you repeat the question?

24 Q. Sure. I'm trying to understand your perspective

1 on things, and so that's why I'm just asking, to you,
2 what does it mean to be a girl or to be female?

3 ATTORNEY HARTNETT: Objection to form.

4 THE WITNESS: It means --- it means
5 everything. I've always wanted to be a girl.

6 BY ATTORNEY CAPEHART:

7 Q. Okay.

8 And what is it about a girl or female that
9 makes them different from boys or males?

10 ATTORNEY HARTNETT: Objection to form.

11 THE WITNESS: How they act and how they
12 dress their selves.

13 BY ATTORNEY CAPEHART:

14 Q. Okay.

15 Anything else other than how they act or how
16 they dress?

17 A. Not that I can think of right now.

18 Q. Okay.

19 How do girls or females dress differently than
20 boys or males?

21 ATTORNEY HARTNETT: Objection to form.

22 THE WITNESS: Females would wear ---
23 normally wear dresses and males would normally wear
24 tuxedos and suits. And their casual clothes are most of

1 the time different but sometimes can be the same.

2 BY ATTORNEY CAPEHART:

3 Q. Okay.

4 So do I look like I'm dressed like a male
5 because I'm wearing a suit jacket and tie?

6 ATTORNEY HARTNETT: Objection to form.

7 THE WITNESS: Yes.

8 BY ATTORNEY CAPEHART:

9 Q. Okay.

10 A. Because that is also how you present yourself.

11 Q. Okay.

12 Is presenting one's self, when you say that, is
13 that different than how one dresses and how one acts or
14 is it both of those together?

15 ATTORNEY HARTNETT: Objection to form.

16 Sorry.

17 THE WITNESS: It's kind of a mix of all
18 of it.

19 BY ATTORNEY CAPEHART:

20 Q. Now, when you say that how someone acts is
21 different regarding girls to boys, what do you mean by
22 that?

23 A. Normally ---.

24 ATTORNEY HARTNETT: Objection to form.

1 THE WITNESS: Most of the time males will
2 look very big and buff and females most of the time do
3 not like that look, but some can.

4 BY ATTORNEY CAPEHART:

5 Q. Okay.

6 What else about how a person acts puts them in
7 a more of a female category than a male category?

8 ATTORNEY HARTNETT: Objection to form.

9 THE WITNESS: They would maybe --- they
10 wouldn't want to look like a guy. A guy wouldn't want
11 to look like a girl and a girl wouldn't want to look
12 like a guy unless --- unless you do, which sometimes
13 people do do that.

14 BY ATTORNEY CAPEHART:

15 Q. Okay.

16 So if someone is trying to look like a guy,
17 then they are going to wear more what I'll call
18 traditional attire, like you said, maybe like a tuxedo
19 or a suit with a coat and a tie and they may want to
20 look bigger and buff and in an overall way present
21 themselves as male.

22 Is that right?

23 ATTORNEY HARTNETT: Objection to form.

24 THE WITNESS: Most of the time but not

1 all the time.

2 BY ATTORNEY CAPEHART:

3 Q. Okay.

4 Are there actions or things that people do that
5 make you think this person is acting more like a male or
6 someone is acting more like a female?

7 ATTORNEY HARTNETT: Objection to form.

8 THE WITNESS: Sometimes.

9 BY ATTORNEY CAPEHART:

10 Q. Okay.

11 When you say sometimes what are you thinking
12 about?

13 A. Maybe people are walking around because
14 sometimes it's how they walk that you can tell and their
15 hair sometimes.

16 Q. What kind of hair is more male as compared with
17 hair that is more female to you?

18 ATTORNEY HARTNETT: Objection to form.

19 THE WITNESS: I think longer hair is more
20 ladylike and short hair is more manly, but sometimes
21 people do like an option of that where people --- where
22 guys will like long hair and girls will like short hair.

23 BY ATTORNEY CAPEHART:

24 Q. I think my father would agree with you on what

1 you said there. Are there other kind of behaviors that
2 people exhibit that are more male or more female besides
3 walking and maybe kind of their physical posture?

4 ATTORNEY HARTNETT: Objection to form.

5 THE WITNESS: Not really, no.

6 BY ATTORNEY CAPEHART:

7 Q. Okay.

8 Besides, as you said, males would be more big
9 and buff and females not really liking that look as
10 much, although some of them do, are there other physical
11 attributes that makes you think someone is more male or
12 more female?

13 ATTORNEY HARTNETT: Objection to form.

14 THE WITNESS: Not really.

15 BY ATTORNEY CAPEHART:

16 Q. Does height have anything to do with it?

17 ATTORNEY HARTNETT: Objection to form.

18 THE WITNESS: No, because that can go
19 either way. That's genetics if you're tall or not.

20 BY ATTORNEY CAPEHART:

21 Q. As you have been growing up, from what I
22 understand, you talk with your mom a lot.

23 Right?

24 A. Yes.

1 Q. Have you ever talked with your mother about what
2 it means to be female?

3 A. Yes.

4 Q. Okay.

5 What did your mother --- strike that.

6 Did your mother try to help you as you were
7 going through this process to kind of understand this a
8 little bit more what is male and female?

9 ATTORNEY HARTNETT: Objection to form.

10 THE WITNESS: Could you repeat the
11 question?

12 BY ATTORNEY CAPEHART:

13 Q. Sure. As you've been growing up and as you've
14 been talking with your mother over the years as you
15 realized, as you said, you're a girl and as we were just
16 talking about, that there are certain things in your
17 mind that go more with being female rather than being
18 male, did you and your mom have conversations about that
19 same kind of thing we were just discussing?

20 ATTORNEY HARTNETT: Objection to form.

21 THE WITNESS: Yes.

22 BY ATTORNEY CAPEHART:

23 Q. Okay.

24 What did you all talk about?

1 A. We talked about looks and --- mainly looks and
2 that was about it.

3 Q. Okay.

4 Did you talk about makeup?

5 A. Yes.

6 Q. Okay.

7 Is that something to you that is more female or
8 more male?

9 A. More female, but some males do wear them ---
10 wear it.

11 Q. Did you and your mom talk about jewelry?

12 A. Ish, not really because jewelry can be worn by
13 males and females.

14 Q. That's fair. I'm wearing some myself right now.
15 Did you all talk about anything else other than those
16 few things that you just provided to me and also the
17 makeup?

18 ATTORNEY HARTNETT: Objection to form.

19 THE WITNESS: Not really.

20 BY ATTORNEY CAPEHART:

21 Q. Okay.

22 Have you ever had any of those kinds of
23 conversations with your father?

24 ATTORNEY HARTNETT: Objection to form.

1 THE WITNESS: Not really because I don't
2 think he would understand it because he is a guy that is
3 --- he really --- he likes doing manly stuff and I don't
4 think he'd understand makeup.

5 BY ATTORNEY CAPEHART:

6 Q. So with all that in mind, I'm just trying to
7 understand how you think about some of these things.
8 How do you define girls and boys?

9 ATTORNEY HARTNETT: Objection to form.

10 THE WITNESS: Males try to look muscular
11 and they do --- they lift weights and have short hair,
12 but girls can also do that, but it's most commonly found
13 with guys. With girls, they usually have long hair, but
14 guys can have that, too. They wear makeup and have
15 different clothing than males.

16 BY ATTORNEY CAPEHART:

17 Q. Okay.

18 Are there activities that girls or females like
19 to do that men don't like to do or that males don't like
20 to do?

21 ATTORNEY HARTNETT: Objection to form.

22 THE WITNESS: Not really because sports
23 are for everyone and they should --- and every --- and
24 any person should be able to play.

1 BY ATTORNEY CAPEHART:

2 Q. I thank you for that. I was making it a little
3 bit more broad than that even though. Are there other
4 things outside of sports that may be girls and females
5 like to do that typically, from your experience, boys
6 and males don't like to do?

7 ATTORNEY HARTNETT: Objection to form.

8 THE WITNESS: Not really because anything
9 that a female could do a male could do, and anything a
10 male could do a female could do.

11 BY ATTORNEY CAPEHART:

12 Q. And among all of your friends, are they mostly
13 girls, mostly boys or all across both boys and girls?

14 A. They are mostly girls, but I do have some guy
15 friends.

16 Q. What do you like to do with your friends that
17 are girls?

18 A. We hang out, sometimes we play video games.

19 Q. Do you go --- do you like going to the mall or
20 shopping? I know that has been harder recently since
21 COVID?

22 ATTORNEY HARTNETT: Objection to form.

23 THE WITNESS: Sometimes, but not really
24 because of COVID.

1 BY ATTORNEY CAPEHART:

2 Q. Do you do the same kind of things with your
3 friends that are boys?

4 A. We also hang out. We talk about video games, we
5 play video games, so, yes, about the same.

6 Q. Okay.

7 At some point you decided to change your name.
8 Do you remember when you decided to do that?

9 A. When I came out.

10 Q. So in 4th grade, as you mentioned earlier?

11 A. I came out in the third --- the summer of third
12 grade. But when I was like actually talking to people
13 and stuff about it, it was 4th grade. So yes, when I
14 came out.

15 Q. Okay.

16 And so when did you start going by B [REDACTED] ?

17 A. The summer of third grade.

18 Q. Did you go by B [REDACTED] at school at that time, too,
19 or did you wait until fourth grade for that?

20 ATTORNEY HARTNETT: Objection to form.

21 THE WITNESS: It was the summer of third
22 grade and I was kind of presenting through third grade,
23 but I didn't go by B [REDACTED], just --- at that point I
24 waited until fourth grade.

1 BY ATTORNEY CAPEHART:

2 Q. Okay.

3 How did you select your new name?

4 A. I've always liked the name, so that's what I
5 liked.

6 Q. Okay.

7 And why did you decide at that time that you
8 needed a new name?

9 A. Because I didn't think my name fit for me.

10 Q. Okay.

11 And you're familiar with the term dead name.
12 Right?

13 A. Yes.

14 Q. Okay.

15 Do you remember the first time that you
16 encountered that word --- or I'm sorry, that term?

17 A. That term? When I came out, I was told that I
18 could be dead named and they told me what that was. And
19 then later I looked it up and figured out what it was
20 more in depth.

21 Q. Okay.

22 Do you remember who it was that had told you
23 that you could be dead named?

24 A. I can't remember.

1 Q. Was it your mom?

2 A. It may have been, but I can't remember.

3 Q. From what your mother and your father told us,
4 it sounds like your mother has been the parent that has
5 taken you to all but maybe one of your appointments to
6 talk to people about being a transgender girl. Is that
7 about right from your recollection?

8 ATTORNEY HARTNETT: Objection to form.

9 THE WITNESS: Yes, that is about right.

10 BY ATTORNEY CAPEHART:

11 Q. Have you had a lot of appointments to talk with
12 doctors or other healthcare providers about being a
13 transgender girl?

14 ATTORNEY HARTNETT: Objection to form.

15 THE WITNESS: I wouldn't say it was a
16 lot, but I also wouldn't say it was like a little. It
17 was a good amount of appointments.

18 BY ATTORNEY CAPEHART:

19 Q. Okay.

20 After one of those appointments you received a
21 diagnosis of gender dysphoria. Have you been told that
22 before?

23 A. Yes.

24 Q. Okay.

1 When was the first time you remember
2 encountering that term gender dysphoria?

3 A. I don't know the date, but I think my mom told
4 me that I had it.

5 Q. Okay.

6 Do you remember generally when that was?

7 A. I can't remember. It may have been 2021 or
8 2022.

9 Q. Also, when you're remembering something, if you
10 remember it by year, I know that is how I remember a lot
11 of things growing up, if something happened at a
12 particular year of school rather than a calendar year.
13 You know, if that's a frame of remembering for you, too,
14 that is fine also. Calendar years aren't as important.

15 Do you know what gender dysphoria is?

16 A. A little bit about it, but I don't know the
17 actual definition.

18 Q. Okay.

19 Did you look it up and research it like you did
20 dead name after you heard it?

21 ATTORNEY HARTNETT: Objection to form.

22 THE WITNESS: I don't think so because if
23 I did I'd probably know more about it.

24 BY ATTORNEY CAPEHART:

1 Q. And you said --- do you remember the doctor
2 visit where you first heard one of your doctors use that
3 term?

4 A. I can't remember.

5 Q. Do you remember an appointment with Dr. Montano?

6 A. Yes, I remember some of the appointments with
7 him.

8 Q. Okay.

9 There is some medical records that show that
10 you had an appointment with Dr. Montano where he did a
11 full assessment of you in the summer of 2019. Do you
12 remember that by any chance?

13 ATTORNEY HARTNETT: Objection to form.

14 THE WITNESS: Not really because that was
15 a long time ago.

16 BY ATTORNEY CAPEHART:

17 Q. Do you remember any appointment with Dr. Montano
18 that was a longer appointment where you talked about a
19 lot of things?

20 ATTORNEY HARTNETT: Objection to form.

21 THE WITNESS: Not really because they all
22 felt like they went by so fast because during the things
23 I usually had to miss a day of school, and I was always
24 thinking about what I missed.

1 BY ATTORNEY CAPEHART:

2 Q. I did the same thing at your age.

3 Whenever you had those appointments with Dr.
4 Montano or at Dr. Montano's office, I know oftentimes at
5 those appointments it's not just the doctor, that there
6 are sometimes other people that work there that will
7 come in and see a patient during the appointment time.
8 What do you recall about those appointments and who you
9 met with?

10 ATTORNEY HARTNETT: Objection to form.

11 THE WITNESS: I can't remember, but I ---
12 I don't remember their name, but I remember a time where
13 someone else went in there.

14 BY ATTORNEY CAPEHART:

15 Q. Do you remember the kinds of things that you
16 would talk about with Dr. Montano or any of the other
17 people at those appointments?

18 A. Maybe --- I don't know. I can't remember.

19 Q. When you were at appointments at Dr. Montano's
20 office, do you recall him or any of his staff running
21 tests on you?

22 ATTORNEY HARTNETT: Objection to form.

23 THE WITNESS: I can't recall.

24 BY ATTORNEY CAPEHART:

1 Q. Okay.

2 At those appointments do you remember hearing
3 people talking about how to treat gender dysphoria?

4 A. I can't remember.

5 Q. Has your mother discussed with you how your
6 gender dysphoria is being treated now?

7 A. Maybe back whenever I --- whenever I was
8 diagnosed with it, but I can't remember.

9 Q. Whenever there's any decisions that have to get
10 made about your treatment for your gender dysphoria,
11 does your mother talk with you about that and explain
12 everything that's happening?

13 A. Yes.

14 Q. Okay.

15 When you all are having those conversations and
16 a decision has to be made, does your mother let you make
17 those decisions?

18 ATTORNEY HARTNETT: Objection to form.

19 THE WITNESS: Yes, I am part of the
20 making of the decisions what happens to me.

21 BY ATTORNEY CAPEHART:

22 Q. Okay.

23 Do you and your mother ever disagree about what
24 should be done?

1 ON VIDEOTAPE

2 VIDEOGRAPHER: We are back on the record.
3 The current time reads 11:13 a.m.

4 BY ATTORNEY CAPEHART:

5 Q. Okay.

6 Well, during the break I was going back over
7 some notes and just have a couple of questions that kind
8 of relate to some things we already talked about and
9 then I'm going to move on.

10 Okay?

11 A. That Declaration that we had looked at earlier,
12 I recall that you had mentioned when you first looked at
13 it you didn't recall seeing it, you didn't recall
14 signing it, you then looked at your initial signatures
15 and then you had read the rest of the document. After
16 we went through all of that, did that jog your memory
17 any. Do you remember signing it?

18 A. I do remember signing it, but I kind of have a
19 little bit of memory seeing it, but I do have a memory
20 signing it.

21 Q. Okay.

22 Also, when you recalled learning and hearing
23 the term about dead name and that someone might do that
24 to you at school, did anyone actually do that to you at

1 school?

2 A. Not that I can remember.

3 Q. Okay.

4 I think you had also said you kind of did some
5 research. What kind of research did you do looking into
6 that term?

7 A. Just looking what it meant, looking up what it
8 meant.

9 Q. Did you look it up in a book or on the internet?

10 A. The internet.

11 Q. Okay.

12 Do you recall where on the internet you found
13 it?

14 A. I think I looked it up on Google and I did
15 another one, but I can't remember what it was. It was
16 one of the unpopular ones.

17 Q. Okay.

18 Also, when you were --- or when we were talking
19 about the characteristics or things that make a person
20 more female or more male you had said that height really
21 didn't make a difference, that that was really more
22 genetic. Do genetics have something more to do with
23 being a girl or a boy?

24 ATTORNEY HARTNETT: Objection to form.

1 THE WITNESS: I wouldn't know.

2 BY ATTORNEY CAPEHART:

3 Q. Also, is there anything that definitively makes
4 a person a girl or a female versus a boy or a male?

5 ATTORNEY HARTNETT: Objection to form.

6 THE WITNESS: Could you repeat the
7 question?

8 BY ATTORNEY CAPEHART:

9 Q. Sure. And I will preface it with kind of what
10 we were kind of talking about before. You were
11 describing how there were a lot of things that are
12 typically --- and I don't think you used that word but
13 I'm going to use it, more typically associated with
14 males like tuxedos or suits, short hair, being buff,
15 working out, that sort of thing, and other things that
16 were more typically associated with being female,
17 wearing dresses, longer hair, not preferring to have
18 that maybe over muscled physique, wearing makeup, that
19 sort of thing, and that there were even some other
20 things you said are maybe more associated with males,
21 but that doesn't mean that females don't do it or vice
22 versa. I think that's what you said.

23 So I'm wondering is there anything in your mind
24 that if you see a person doing that or wearing that or

1 whatever that thing might be, is there something that
2 you, if you see it associated with a person, you think
3 only boys do that or only girls do that?

4 ATTORNEY HARTNETT: Objection to form.

5 THE WITNESS: No, because if I see
6 someone like that and I don't --- I don't immediately
7 go, oh, that's a guy, oh, that's a girl. I ask them,
8 oh, what are your pronouns, what is your gender
9 identity. And that's --- that's the better way to
10 figure out what they --- what they are and if they're
11 male or female or what --- if they're nonbinary or
12 whatever they are.

13 BY ATTORNEY CAPEHART:

14 Q. You mentioned a term nonbinary. Can you explain
15 what nonbinary means?

16 A. It is a person that doesn't identify as a male
17 or female and they go by they/them pronouns.

18 Q. Do you know anyone that is nonbinary?

19 A. One of my lawyers is.

20 Q. Do you know anybody at your school or your
21 hometown that is nonbinary?

22 A. I don't think so.

23 Q. Okay.

24 ATTORNEY HARTNETT: Heather, do you want

1 a minute for a break?

2 MS. JACKSON: Just to get a sip of water.

3 ATTORNEY HARTNETT: Can you give her a
4 mute to, the court reporter, just to let her work
5 through that? It's happened to all of us. No worries.

6 MS. JACKSON: It went down the wrong
7 pipe.

8 ATTORNEY CAPEHART: And again, if you
9 need to take another break, that's fine, too. All okay
10 on your end?

11 MS. JACKSON: We're good.

12 ATTORNEY CAPEHART: Okay.

13 BY ATTORNEY CAPEHART:

14 Q. I don't want to upset you, but I need to ask a
15 couple of questions about some comments that, according
16 to what we learned, your father had made in the past.

17 ATTORNEY HARTNETT: Objection to form.

18 ATTORNEY CAPEHART: That wasn't a
19 question, but okay.

20 BY ATTORNEY CAPEHART:

21 Q. We understand that ---.

22 ATTORNEY HARTNETT: Sorry. Just to make
23 clear my objection was that you were stating that
24 certain statements had been made, and I'm objecting to

1 the foundation.

2 ATTORNEY CAPEHART: Okay.

3 ATTORNEY HARTNETT: Go ahead.

4 BY ATTORNEY CAPEHART:

5 Q. I've looked at some records and there are some
6 notations and [REDACTED]

7 [REDACTED] When we were talking with
8 your mother she had said she did not know what had
9 happened there. Can you tell me what had happened when
10 that occurred?

11 ATTORNEY HARTNETT: Objection to form.

12 THE WITNESS: Could you repeat the
13 question?

14 BY ATTORNEY CAPEHART:

15 Q. Sure. We've seen in some records a notation
16 [REDACTED]

17 [REDACTED] Your mother did not
18 know what had happened on that occasion. She recalled
19 that when this happened, but she didn't know what had
20 actually occurred [REDACTED]

21 Do you remember that?

22 ATTORNEY HARTNETT: Objection to form.

23 Go ahead.

24 THE WITNESS: I can't remember, but I'm

1 pretty sure it was --- I was scared of something that
2 was --- honestly I shouldn't have been scared of. It
3 was nowhere near me. It was probably a spider or
4 something. But just the phrase [REDACTED]
5 [REDACTED] it is like don't be
6 scared of that, there's no reason to. It's just another
7 use of don't be scared of that.

8 BY ATTORNEY CAPEHART:

9 Q. Okay.

10 We were --- we were just wondering what had
11 happened there because, as I recall, when this was being
12 discussed yesterday, that your mother indicated you were
13 very upset when you had [REDACTED]

14 [REDACTED]

15 [REDACTED] Does that help you
16 remember anything more?

17 ATTORNEY HARTNETT: Objection, form.

18 THE WITNESS: Not really.

19 BY ATTORNEY CAPEHART:

20 Q. Also, we seen a note in one of the medical
21 records that was, again, discussed yesterday and your
22 mother said we would need to ask you about it. [REDACTED]

23 [REDACTED]

24 [REDACTED]

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[REDACTED]

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: Could you restate the question?

BY ATTORNEY CAPEHART:

Q. Sure. We were looking at some records and there was some notation [REDACTED]
[REDACTED] Your mother wasn't familiar with that and said we should ask you about it. So I'm asking you if you recall ever discussing that with one of your treaters?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: I don't remember discussing that with anyone besides my mom really. But it was a long time ago, so I --- I can't remember if I did or not.

BY ATTORNEY CAPEHART:

Q. Okay.
Do you know what that would relate to, that reference [REDACTED]

A. He probably got mad at me, like really mad in the situation, and he was probably threatening [REDACTED]

[REDACTED]

Q. Has that happened sometimes?

1 A. A long time ago. It doesn't happen anymore now.

2 Q. Did it happen on multiple occasions or just
3 once?

4 A. It was --- well, it was a couple of times maybe
5 in like the same three days or something like that, but
6 after those three days it stopped.

7 Q. Did you talk with your mom about it when that
8 happened?

9 A. Yes.

10 Q. Okay.

11 Did she tell you that she was going to talk to
12 your father for you?

13 ATTORNEY HARTNETT: Objection. Go ahead.

14 THE WITNESS: She --- I think she did.
15 She talked to him, and that's why he stopped doing it.

16 BY ATTORNEY CAPEHART:

17 Q. [REDACTED] ?

18 A. Could you restate it?

19 Q. Sure. Do you have appointments from time to
20 time to [REDACTED]

21 [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED]

1 Thanks .

2 ATTORNEY CAPEHART: Okay.

3 Now that we are through our building
4 emergency, if I could ask the court reporter to go back
5 to the last line of actual testimony. I don't recall
6 what point during that event we broke off the record,
7 but if you could go back and tell us where we were
8 whenever loud noises started happening.

9 COURT REPORTER: The question, sure. Do
10 you have any appointments from time to [REDACTED]

11 [REDACTED]
12 [REDACTED] Answer, yes. Question, okay. Who do
13 you meet with? And then that's when the fire drill
14 happened.

15 ATTORNEY CAPEHART: Thank you.

16 BY ATTORNEY CAPEHART:

17 Q. Becky, let's just pick up there. Who do you
18 meet with?

19 A. I meet with [REDACTED] His name is [REDACTED]

20 Q. Okay.

21 Do you know what office or group [REDACTED] is
22 with?

23 ATTORNEY HARTNETT: Objection to form.

24 THE WITNESS: Could you repeat the

1 question?

2 BY ATTORNEY CAPEHART:

3 Q. Sure. Is [REDACTED] or is
4 [REDACTED] part of a [REDACTED] ?

5 A. I don't know.

6 Q. Do you know the name --- I'm sorry. I cut you
7 off. Go ahead.

8 A. I just go to him for [REDACTED] That's ---.

9 Q. Okay.

10 How often do you meet with [REDACTED]

11 A. It just depends because sometimes maybe it's
12 once a month, but it can be anytime. If we call him and
13 we need to go, he usually has a spot open.

14 Q. Okay.

15 And just generally speaking, what kind of
16 things do you discuss with [REDACTED]

17 A. [REDACTED]

18 [REDACTED]

19 Q. Okay.

20 Whenever you meet with [REDACTED] do you go in
21 alone or does your mother go in with you?

22 A. It depends. It usually starts with me and my
23 mom in there, then she waits out in the lobby and we
24 talk. And sometimes I go out and my mother talks to him

1 and then we get back --- we both go in the room at the
2 end and then we say bye and then we leave.

3 Q. Okay.

4 And how do you like that process, going to talk
5 to [REDACTED]

6 A. I love it because I can talk about [REDACTED]

7 [REDACTED]

8 Q. Does that help you to feel better?

9 A. Uh-huh (yes).

10 Q. Do you know --- excuse me, do you know whether
11 you have had any [REDACTED]?

12 ATTORNEY HARTNETT: Objection to form.

13 THE WITNESS: Could you rephrase that?

14 BY ATTORNEY CAPEHART:

15 Q. Yes. And let me back up and ask another
16 question I had forgotten to ask earlier. Do you know
17 what [REDACTED] profession is?

18 A. I don't know.

19 Q. Okay.

20 A. All I know is that he is a [REDACTED] That's
21 what I know.

22 Q. Okay.

23 And do you know whether [REDACTED] is a [REDACTED] of
24 some sort or just a [REDACTED]

1 ATTORNEY HARTNETT: Objection to form.

2 THE WITNESS: I do not know.

3 BY ATTORNEY CAPEHART:

4 Q. Okay. Okay.

5 Now, if you could look at Exhibit 34. Do you
6 have the document marked as Exhibit 34 in front of you?
7 It says West Virginia Legislature at the top and then in
8 the middle of the page there's a line that says House
9 Bill 3293.

10 A. Yes, we have that.

11 Q. Okay. Great.

12 Have you ever seen this before?

13 A. I don't think so.

14 Q. Okay.

15 So if you --- this is just of kind of a cover
16 page for what was House Bill 3293 that passed the
17 legislature and was signed the Governor last year. This
18 is the --- this is the bill, the law that your lawsuit
19 is challenging.

20 Now, if you look --- start looking at page two
21 you'll see there is a lot of text here. Have you seen
22 any of this before? You don't have to read it all, just
23 kind of glance over it. And if you think you may have
24 seen parts before, you can say so, but ---.

1 A. I don't think I've seen this before.

2 Q. Okay. Okay. All right.

3 Well, I'm not going to ask you to read the
4 whole thing right now. I'm just going to ask you about
5 a couple of parts of it.

6 Okay?

7 A. Uh-huh (yes).

8 Q. Because there's a lot to read here.

9 ATTORNEY HARTNETT: I'll just refer to
10 our standing objection. Thank you.

11 ATTORNEY CAPEHART: Sure. Sure.

12 BY ATTORNEY CAPEHART:

13 Q. On what's marked at the bottom of the page as
14 page two you'll see that there are kind of a column of
15 numbers that run down the left-hand side of the page
16 there. The top number on page two should be a ten?

17 A. Uh-huh (yes).

18 Q. Okay.

19 And I'll just refer to those lines to direct
20 you to a couple of spots. Okay. And just so you know,
21 that's a standard part of what a bill looks like so that
22 whenever they're looking at legislation people can refer
23 to a procedure or line. That way they can follow it
24 more easy.

1 So the lines I'm going to direct you to are 25
2 and 26. This is a definition that is set forth in this
3 bill and it is down in West Virginia Code. So just read
4 that and let me know when you've read that definition in
5 this bill.

6 A. I've read it.

7 Q. Okay.

8 Do you think that's a proper definition of
9 biological sex?

10 ATTORNEY HARTNETT: Objection to
11 terminology. Make that a standing objection.

12 THE WITNESS: I would not know that if I
13 --- if that would be ---.

14 BY ATTORNEY CAPEHART:

15 Q. Okay.

16 Have you ever heard people use language like
17 biological sex or biological female?

18 ATTORNEY HARTNETT: Objection to form.

19 THE WITNESS: Yes, I've heard people use
20 that.

21 BY ATTORNEY CAPEHART:

22 Q. Okay.

23 Has anyone ever explained what they mean when
24 they have used that terminology around you?

1 A. I don't think so or I just can't remember.

2 Q. Okay.

3 This definition, at lines 25 and 26, does this,
4 based on the way that you have heard people use the term
5 in the past, is this about what you think they meant?

6 ATTORNEY HARTNETT: Objection to form.

7 THE WITNESS: Yes.

8 BY ATTORNEY CAPEHART:

9 Q. Okay.

10 So now that you've read that in this bill
11 that's what that term means, look up at lines 21 and 22
12 and let me know when you've read those two lines.

13 A. Okay.

14 Q. Do you agree with that statement at lines 21 and
15 22?

16 ATTORNEY HARTNETT: Objection to form.

17 THE WITNESS: I don't because I think if
18 someone wants to play on the girls team, like me, they
19 should be able to even though they are --- they're not
20 following that requirement.

21 BY ATTORNEY CAPEHART:

22 Q. Okay.

23 Before I move on to ask some questions about
24 cheerleading and track, I just want to talk about a

1 couple of other words that we were just touching on.
2 But I just want to make sure that we understand each
3 other or at least you understand me. You have heard
4 people use the term biological female or the term
5 biological male before.

6 Is that correct?

7 A. Yes.

8 Q. Okay.

9 And just so we're clear, if I use the term
10 biological female or biological girl, I'm describing
11 people who were determined to be female at the time of
12 birth. Okay? I'm not looking at the statute. I'm just
13 saying like if I use that term, that's what I'm talking
14 about. Just so that if I use a word and you're not sure
15 what I mean, I'm trying to explain in advance so there's
16 no confusion. Does that make sense?

17 A. Yes.

18 Q. Okay.

19 And also, if I say biological male or
20 biological boy I mean someone who was determined to be
21 male at the time of birth.

22 A. Yes.

23 Q. So if I use that --- if I use that kind of
24 terminology that is what I'm talking about, people who

1 were determined to be that at the time of birth. Okay?

2 When did you first get interested in sports?

3 A. I've always liked running. And I think
4 running's a sport, so since I could walk and run.

5 Q. What kind of sports, in addition to running,
6 have you been interested in?

7 A. Cheering was one. I was a little bit interested
8 in volleyball, but not anymore.

9 Q. Why not?

10 A. I just never --- I just didn't --- I just lost
11 liking of it.

12 Q. Whenever I say interested in --- let me
13 rephrase. Whenever you say that you are interested in
14 running, you were interested in cheer and been part of a
15 team and for a short time you are interested in
16 volleyball but aren't really interested anymore, do you
17 mean interested in participating and playing those
18 sports?

19 A. Yes.

20 Q. Okay.

21 Are there other sports that you have been
22 interested in from the perspective of being a viewer but
23 maybe not a participant?

24 A. Could you repeat the question?

1 Q. Sure. Besides the three that you just talked
2 about, running, cheer, volleyball, are there other
3 sports that you have an interest in as a viewer, as a
4 person that's in the stand watching it, or watching it
5 on television, but you don't have an interest in playing
6 or taking part?

7 A. I like watching football.

8 Q. Okay.

9 Anything else?

10 A. That's about it.

11 Q. Does your mom watch football?

12 A. Yeah. We like the same team.

13 Q. What team?

14 A. The Cleveland Browns.

15 Q. Do you like any other football teams?

16 A. Not really, no.

17 Q. Do you just watch professional football or do
18 you watch college, too?

19 A. Just professional.

20 Q. Now, have your parents encouraged you to be
21 involved in sports?

22 ATTORNEY HARTNETT: Objection to form.

23 THE WITNESS: I'd say so that they

24 encouraged me.

1 BY ATTORNEY CAPEHART:

2 Q. Okay.

3 Now that you've been on a couple of different
4 kind of teams, girls cross-country and also cheer when
5 you were younger, do you enjoy getting to compete as
6 part of a team?

7 A. Yes, I do.

8 Q. If you were in a sport where you weren't on a
9 team, that you were just an individual on a team, would
10 you enjoy that also?

11 A. No, because that's not --- that's not on ---
12 you're not on a team, you're not doing teamwork, that's
13 just by yourself.

14 Q. So is the bigger appeal to you in sports being
15 part of a team, being part of a group, working towards a
16 common goal?

17 ATTORNEY HARTNETT: Objection to form.

18 THE WITNESS: Could you repeat the
19 question?

20 BY ATTORNEY CAPEHART:

21 Q. Sure. You said you wouldn't really like being
22 in an individual sport, maybe something like, I don't
23 know, figure skating maybe, because you wouldn't be part
24 of a team, you would be --- that you like being part of

1 a team?

2 A. Yes.

3 Q. So is that what draws you to some of the sports
4 that you are interested in, the team aspect?

5 A. Yeah, the team aspect and I can make new
6 friends.

7 Q. Do you consider yourself competitive whenever
8 you're playing sports or when you're playing games with
9 your friends?

10 ATTORNEY HARTNETT: Objection to form.

11 THE WITNESS: I want to call myself
12 competitive. I'm just a person that likes playing
13 games. I'm not like, oh, I got to win. I just like
14 playing them, doing sports.

15 BY ATTORNEY CAPEHART:

16 Q. Okay.

17 Do you have some friends that are like that?

18 A. Yeah, I have a couple of friends.

19 Q. I think we all have a couple of friends that are
20 like that.

21 So in those sports that you're interested in,
22 including football, do you think rules are really
23 important in sports?

24 ATTORNEY HARTNETT: Objection to form.

1 THE WITNESS: Yes, I think rules are
2 important because you wouldn't want someone having an
3 unfair advantage, like cheating.

4 BY ATTORNEY CAPEHART:

5 Q. Right.

6 A. And like ---.

7 Q. Sorry. Go ahead.

8 A. Like in baseball, I don't know what it's called,
9 but getting a better grip on the ball, that's cheating.
10 That's not fair.

11 Q. So do you think rules are a big part of or an
12 important part of making sure that sports are fair?

13 A. Yes.

14 ATTORNEY HARTNETT: Objection to form.
15 Sorry, B [REDACTED] Just make sure you give me a chance to
16 object, but you should then give your answer. So let's
17 try that one again.

18 ATTORNEY CAPEHART: Court Reporter, can
19 you repeat the last question?

20 THE WITNESS: Could you repeat the last
21 question?

22 COURT REPORTER: Question, so do you
23 think rules are a big part of or an important part of
24 making sure that sports are fair?

1 ATTORNEY HARTNETT: Objection to form.

2 THE WITNESS: I think they are a big part
3 of making sports fair.

4 BY ATTORNEY CAPEHART:

5 Q. What does it mean for sports, for competition to
6 be fair?

7 ATTORNEY HARTNETT: Objection to form.

8 THE WITNESS: Well, sometimes it can mean
9 losing --- maybe winning unfair and winning things
10 because if people are cheating then they could get --- I
11 don't know if there's a cash prize. So if they cheat,
12 they're going to get that. That's not fair because they
13 get something out of cheating.

14 BY ATTORNEY CAPEHART:

15 Q. So it sounds like that you're saying that if
16 somebody breaks a rule like the one that you were
17 talking about in baseball, and by breaking that rule
18 that helps them to win or beat someone else, that that
19 wouldn't be fair. Is that what you're ---?

20 ATTORNEY HARTNETT: Objection.

21 THE WITNESS: Yes.

22 BY ATTORNEY CAPEHART:

23 Q. I'm sorry. I think I lost part of your answer
24 there.

1 A. Yes, that's what I'm saying.

2 Q. Who do you think should make up the rules for
3 sports?

4 ATTORNEY HARTNETT: Objection to form.

5 THE WITNESS: I don't know.

6 BY ATTORNEY CAPEHART:

7 Q. I'm going to ask you a couple of questions about
8 your time on cheerleading. How many years were you on
9 the cheer team?

10 A. I was on the cheer team for two years.

11 Q. Okay.

12 And if I recall from what your mother had told
13 us, it was part of the Bridgeport Youth --- is it
14 Bridgeport Youth Football League? Is that what it was?

15 MS. JACKSON: Yes.

16 COURT REPORTER: I'm sorry. Ms. Jackson,
17 did you say yes or was it the witness. I'm sorry.

18 MS. JACKSON: I said yes.

19 BY ATTORNEY CAPEHART:

20 Q. My understanding is that that's not affiliated
21 with the schools in any way, that's an independent, what
22 a lot of people would maybe call midget football league
23 and that that league has cheerleading teams also.

24 Is that right?

1 ATTORNEY HARTNETT: Objection to form.

2 THE WITNESS: Yes. Sorry.

3 BY ATTORNEY CAPEHART:

4 Q. Okay.

5 I just want to make sure I understood that.
6 That's how things were when my daughter did midget cheer
7 --- midget league cheer, also.

8 What team were you on like B, C D? Do you
9 recall?

10 ATTORNEY HARTNETT: Objection to form.

11 THE WITNESS: I was on Bridgeport Pee Wee
12 Red.

13 BY ATTORNEY CAPEHART:

14 Q. Okay.

15 And were the members of that team all within
16 --- all the same age or within a year of each other?

17 A. They were within a year of each other.

18 Q. So was that third and fourth or fourth and
19 fifth?

20 A. I think it was fourth and fifth.

21 Q. Did you enjoy being on the cheerleading team?

22 A. Yeah, it was really fun.

23 Q. Did you like cheering at sidelines at games more
24 than competition cheer?

1 ATTORNEY HARTNETT: Objection to form.

2 THE WITNESS: I did like cheering on
3 sidelines better because I had stage fright and I feel
4 whenever I was cheering on the sidelines most of the
5 people were paying attention to the game, so I didn't
6 have as much stage fright. But at competition, that was
7 the main thing that everyone was focusing on.

8 BY ATTORNEY CAPEHART:

9 Q. When you would be part of the team and working
10 on your competition cheer, you all did stunts.

11 Is that correct?

12 A. Yes, that is correct.

13 Q. Did you get to be a flyer or were you a base?

14 A. I was a base.

15 Q. Did you enjoy that more than going up in the
16 air?

17 A. Definitely, because I have a fear of heights.

18 Q. Understandable. So now that you're in Middle
19 School you were on the cross-country track team this
20 fall and you're also interested in running track.

21 Is that correct?

22 A. Yes.

23 Q. Okay.

24 I know I've seen in some reports and maybe in

1 your Declaration, too, you mentioned that there were
2 other people in your family that had run. Is that the
3 basis for your interest in being on cross-country and
4 also doing track this spring?

5 A. Yes.

6 Q. Bridgeport Middle doesn't have coed teams, does
7 it?

8 ATTORNEY HARTNETT: Objection to form.

9 THE WITNESS: Could you repeat the
10 question?

11 BY ATTORNEY CAPEHART:

12 Q. Sure. Do you know what a coed team is? Have
13 you heard that term before?

14 A. No.

15 Q. Okay.

16 I realize I'm probably dating myself a little
17 bit there. That term is not really used all that
18 frequently maybe nowadays, but that just essentially
19 means that coed would be, you know, boys and girls all
20 on the same team together. And I guess you don't. You
21 just have a boys team and a girl teams.

22 Right?

23 A. Yes.

24 ATTORNEY HARTNETT: Objection to form.

1 THE WITNESS: Sorry.

2 BY ATTORNEY CAPEHART:

3 Q. Now, in this --- for spring track you're going
4 to try out for the girls team.

5 Correct?

6 A. Yes.

7 Q. Now, that tryout and also the one for
8 cross-country track, are those competitive tryouts where
9 everybody has to run and be timed?

10 ATTORNEY HARTNETT: Objection to form.

11 THE WITNESS: Kind of because when we did
12 cross-country, all of us made it. But I was told that
13 the year before, when I was in 5th grade, that they had
14 to cut people because there was too many. So I think
15 that they only cut people if there's not --- if there is
16 too many.

17 BY ATTORNEY CAPEHART:

18 Q. Do you know how many there were on cross-country
19 this fall?

20 A. I don't know.

21 Q. Okay.

22 If there is some upper limit, though, your team
23 didn't reach that limit in terms of participants?

24 A. I think it may have been exactly the limit or

1 less, but I don't know.

2 Q. You don't remember anyone that tried out not
3 making the team, though?

4 A. Nope. Everyone made it if they didn't quit.

5 Q. Okay.

6 Do you remember how many meets or events you
7 went to this past fall?

8 A. I don't know for a fact, but it was around seven
9 to eight.

10 Q. And were all of those competitive team events
11 where they were tracking everyone's times with a team
12 placing at the end?

13 ATTORNEY HARTNETT: Objection to form.

14 THE WITNESS: Yes, there was.

15 BY ATTORNEY CAPEHART:

16 Q. Okay.

17 How did you all do this fall?

18 A. We did very good.

19 Q. Great. Did you place at most of the events that
20 the team went to?

21 ATTORNEY HARTNETT: Objection to form.

22 BY ATTORNEY CAPEHART:

23 Q. And by team I mean did the team place at the
24 event that your team participated in?

1 A. Most of the time, yes. Some of them weren't,
2 but we always got close.

3 Q. Did your team get first place at any of the
4 events?

5 A. Yes.

6 Q. How did that feel to be part of a team that got
7 first place at one of these events?

8 A. It felt awesome. It felt great.

9 Q. Okay.

10 So just because I don't know a tremendous
11 amount about cross-country or track and field, for
12 cross-country do you understand how the scoring works or
13 how the timing ends up with a team being first place or
14 second place or last place?

15 A. I do not know.

16 Q. But you would like to win, right? You would
17 like your team to win.

18 Right?

19 A. Yes.

20 Q. What track sports do you want to run in this
21 spring, track events I should say?

22 A. I'm thinking about doing long distance.

23 Q. And by long distance what does that mean in
24 terms of the actual distance?

1 A. There is a mile, two miles, and I think there
2 may be a three-mile one.

3 Q. So are you training to build up your stamina to
4 those right now?

5 A. Not currently just because it is really cold
6 out.

7 Q. That's fair. Just like I was asking you to help
8 me understand a little bit about how cross-country does
9 its scoring and placing, I think I know a little bit
10 more about track and field. In events like the distance
11 runs, the one, two or even --- one mile, two mile or
12 even longer distances, there are individual places in
13 each of those events.

14 Correct?

15 A. Uh-huh (yes).

16 Q. So do the first, second, third place finishers
17 get metals in those?

18 ATTORNEY HARTNETT: Objection to form.

19 THE WITNESS: I'm not sure because this
20 would be my first year doing track.

21 BY ATTORNEY CAPEHART:

22 Q. And do you know whether the outcome of those
23 individual races are then factored into some overall
24 team standing?

1 A. I do not know.

2 Q. Okay.

3 Now, at all of these events that you have
4 participated in this past fall with the girls track team
5 and then the ones that you would like to be part of this
6 spring for track and field, those are just girls teams
7 against girls teams.

8 Is that correct?

9 ATTORNEY HARTNETT: Objection to form.

10 THE WITNESS: I do not know because,
11 again, this is my first year.

12 BY ATTORNEY CAPEHART:

13 Q. Okay.

14 Now, at the cross-country events you went to
15 this past fall, when your team got first place, that was
16 just competing against a girls team.

17 Correct?

18 A. Yes.

19 Q. Okay.

20 At those same events or meets are there also
21 boys teams present?

22 A. Yes.

23 Q. Okay.

24 But your team only competed against the girls

1 teams.

2 Correct?

3 A. Yes.

4 Q. Would you have liked for your teams to have
5 competed against boys teams and girls teams?

6 A. At a couple of meets they did. But when they
7 do, they only tallied the girls points and the guys
8 teams differently and then they did the teams' totals.

9 Q. Okay.

10 Did anyone explain to you why they did that
11 that way?

12 A. I don't know.

13 Q. Okay.

14 Do you think that they may have done those
15 tallies differently because someone thought that boys
16 could run faster than girls?

17 ATTORNEY HARTNETT: Objection to form.

18 THE WITNESS: I don't know. I don't know
19 that.

20 BY ATTORNEY CAPEHART:

21 Q. Okay.

22 A. But whenever we started the --- a different ---
23 like the guys would go five minutes before and then five
24 minutes later the girls would go, so it was easier to

1 tally up all the points.

2 Q. Okay.

3 Do you think that the boys can run faster than
4 the girls?

5 ATTORNEY HARTNETT: Objection to form.

6 THE WITNESS: I do not believe so because
7 I also think that is a genetic thing, if you are fast or
8 not.

9 BY ATTORNEY CAPEHART:

10 Q. Okay.

11 From what I remember reading somewhere you're
12 pretty good with math.

13 Is that fair to say?

14 A. Yes.

15 ATTORNEY HARTNETT: Objection to form.

16 THE WITNESS: Sorry.

17 ATTORNEY HARTNETT: That is okay.

18 BY ATTORNEY CAPEHART:

19 Q. Do you know what statistics are?

20 A. I am familiar with the word, but I don't know
21 what it means.

22 Q. Okay.

23 Would you and your teammates sometimes compare
24 times after meets?

1 A. Sometimes.

2 Q. Okay.

3 And at the cross-country events, was the course
4 that you would run a different length every time?

5 A. It was always around 2 miles to 2.3, so --- so
6 not really.

7 Q. Okay.

8 I was just curious because I have a number of
9 friends that are athletes and they really seem to enjoy
10 talking about statistics, you know, how fast they run or
11 in baseball a batting average or in football a
12 quarterback's completion percentage or something, that
13 those are, it seems for folks in and around sports, ways
14 that you can try to evaluate or to get a sense of
15 something about a person or group of people. Have you
16 heard and seen statistics talked about when you watch
17 those football broadcasts with your mom?

18 ATTORNEY HARTNETT: Objection to the
19 narrative and to the question form.

20 THE WITNESS: Could you repeat the
21 question?

22 ATTORNEY CAPEHART: Sure.

23 BY ATTORNEY CAPEHART:

24 Q. Have you seen or heard statistics talked about

1 on those football broadcasts that you watch with your
2 mom?

3 A. Sometimes, but I don't really pay attention to
4 those because I mainly like watching the game.

5 Q. That's fair.

6 MS. JACKSON: Excuse me. She needs to
7 use the restroom.

8 ATTORNEY CAPEHART: Absolutely. Take a
9 break.

10 MS. JACKSON: Can you get through?

11 VIDEOGRAPHER: Going off the record.

12 The current time reads 12:18 p.m.

13 OFF VIDEOTAPE

14 ---

15 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

16 ---

17 ON VIDEOTAPE

18 VIDEOGRAPHER: We are back on the record.

19 The current time reads 12:25 p.m.

20 BY ATTORNEY CAPEHART:

21 Q. All right.

22 Well, let's see. When we left off I was just
23 asking you about things about statistics. Have you ever
24 looked up any statistical data about cross-country for

1 people your age?

2 A. No, I have not looked up the statistics for
3 people my age.

4 Q. And I think I framed that question as for
5 cross-country. Have you ever done that with track and
6 field, for example, the one mile or the two mile?

7 A. No, I have not.

8 Q. If you were to see statistics that show that, on
9 average, 11-year-old biological boys were 20 percent
10 faster than 11-year-old biological females in the mile
11 run, would that surprise you?

12 ATTORNEY HARTNETT: Objection to form.

13 THE WITNESS: Yes, because I think
14 biological --- it's all about genetics, if you're fast
15 or not.

16 BY ATTORNEY CAPEHART:

17 Q. So if you're fast or not is about genetics?

18 A. I think it is, but it could be not.

19 Q. Okay.

20 If that were true, that there is a statistic
21 somewhere that shows that 11-year-old biological boys
22 are 20 percent faster than biological girls of the same
23 age, would it be fair to have the biological boys
24 running in the mile race with biological girls?

1 ATTORNEY HARTNETT: Objection to form.

2 THE WITNESS: Can you say the question
3 again?

4 BY ATTORNEY CAPEHART:

5 Q. Sure. If there were statistics that did show
6 that difference of 20 percent between biological boys at
7 a certain age and biological girls at that same age,
8 would it be fair to allow biological boys to run that
9 same race as the biological girls?

10 ATTORNEY HARTNETT: Objection to form.

11 THE WITNESS: If they identify as a
12 female, then I think, yes. But if not, then I don't
13 think that it should.

14 BY ATTORNEY CAPEHART:

15 Q. Okay.

16 So you said if they identify as a female, then
17 they should be able to run with the biological girls?

18 A. Yes.

19 Q. Did I hear you right?

20 A. Yes.

21 Q. Okay.

22 So then could any biological boy be on the
23 girls team so long as they identify as female?

24 ATTORNEY HARTNETT: Objection to form.

1 THE WITNESS: I think so. Sorry.

2 ATTORNEY HARTNETT: Sorry.

3 BY ATTORNEY CAPEHART:

4 Q. And when you say they identify as female, just
5 explain that to me so I make sure I understand it.

6 A. When people are transgender from male to female,
7 like me, that's what I think is identifying as a female.

8 Q. Okay.

9 Is it enough for someone in your mind to
10 identify as female for them to just say that they
11 believe they're female or do they need to do something
12 more than that?

13 ATTORNEY HARTNETT: Objection to form.

14 THE WITNESS: I think they need to have
15 an appearance and there has to be a reason. Like ---
16 well, not a reason, but they have to --- they have to
17 not just say, oh, I identify as female, I should run.
18 They should have already been transitioned. It can't
19 just be out of nowhere. Like, oh, all of the sudden,
20 now that I started, I just realize that I can do this,
21 oh, I'm transgender. That's --- I don't think that ---
22 I think maybe --- I don't know, a year into the
23 transition that you should be able to.

24 BY ATTORNEY CAPEHART:

1 Q. Okay.

2 So when you say a year into their transition
3 do, you mean like just their social transition, the way
4 they are presenting themselves?

5 A. Yes.

6 Q. Okay.

7 For that kind of hypothetical person that you
8 were describing there, if they had gone a year into
9 their transition, as I think you've described it, then
10 in your mind that's what they need to do so that they
11 could be on the girls team?

12 ATTORNEY HARTNETT: Objection to form.

13 THE WITNESS: Yes.

14 BY ATTORNEY CAPEHART:

15 Q. Okay.

16 Do they --- do they need to be doing something
17 else like taking puberty blockers or something of that
18 nature?

19 ATTORNEY HARTNETT: Objection to form.

20 THE WITNESS: I think they should be on
21 puberty blockers to do it because if they have hit
22 puberty, then that's a different story because they hit
23 puberty and that's not changeable.

24 BY ATTORNEY CAPEHART:

1 Q. Okay.

2 When they hit puberty and that's not
3 changeable, explain that to me a little if you can.

4 ATTORNEY HARTNETT: Objection to form.
5 Go ahead.

6 THE WITNESS: If they've hit puberty,
7 then they are maturing and they are going to get a
8 deeper voice. A girl would get a bigger Adam's apple
9 and then that's really it. And I think that gives them
10 more of an unfair advantage. I could be wrong, but I
11 think after they hit puberty, I don't know, I think
12 something happens, but I'm not sure.

13 BY ATTORNEY CAPEHART:

14 Q. Do you think there is something else that
15 happens besides the depth of voice and the Adam's apple?

16 A. I think they may get faster because their
17 testosterone levels will rise.

18 Q. Okay.

19 And do you think that's not an issue for
20 someone that hasn't gone through puberty yet?

21 ATTORNEY HARTNETT: Objection to form.

22 THE WITNESS: Sorry. Yes, because their
23 testosterone levels, if they are on puberty blockers,
24 won't be as high and they won't be --- it won't be high

1 and it won't give them any advantage.

2 BY ATTORNEY CAPEHART:

3 Q. If there was someone in that situation that
4 wasn't on puberty blockers, do you think that would be
5 unfair for that person to be on a girls team?

6 ATTORNEY HARTNETT: Objection to form.

7 THE WITNESS: As long as they haven't hit
8 puberty, then I think it's fine. But if they have hit
9 puberty, then I think they should maybe go on hormone
10 blockers and then maybe then, because I --- I could be
11 wrong, but I think their testosterone levels will drop
12 if they go on hormone blockers after puberty.

13 BY ATTORNEY CAPEHART:

14 Q. Okay.

15 Do you think that they also need to be getting
16 treated for gender dysphoria?

17 ATTORNEY HARTNETT: Objection to form.

18 THE WITNESS: I don't think that matters
19 because if they don't have gender dysphoria, why should
20 they be getting treated for it.

21 BY ATTORNEY CAPEHART:

22 Q. So if there was a person that went through that,
23 a biological boy who had done all the things that you
24 say needed to be done and they could be on the girls

1 team, but at some point in the future that person
2 decided they wanted to, I don't know, revert back to
3 being on the boys team for sports, should that be
4 allowed?

5 ATTORNEY HARTNETT: Objection to form.

6 THE WITNESS: If they want to, then yes,
7 go ahead, because they will --- if they are --- if they
8 still have the requirements to be on the girls team,
9 then they will be on puberty blockers and then the
10 testosterone levels will still be low. So --- but if
11 they get off, then they'll just raise back, and they
12 could still run on the boys team, but they can't run on
13 the girls.

14 BY ATTORNEY CAPEHART:

15 Q. Okay.

16 You've been talking about puberty blockers like
17 a person that knows about them, which I think you do.
18 What do you know about puberty blockers?

19 ATTORNEY HARTNETT: Objection to the
20 preamble and to the form.

21 THE WITNESS: Okay.

22 Could you repeat the question?

23 BY ATTORNEY CAPEHART:

24 Q. Sure. What do you know about puberty blockers?

1 A. They stop hormone levels from rising and they
2 have --- they have a chance for --- they have side
3 effects, but if you are transgender they can help ---
4 they can help with the process of a transition because
5 it will stop you from hitting puberty and you won't grow
6 an Adam's apple, you won't grow facial hair and your
7 voice won't get deeper.

8 Q. Okay.

9 You're receiving puberty blocking medications
10 now.

11 Is that correct?

12 A. Yes, that's correct.

13 Q. Okay.

14 Did you want to start that medication to delay
15 or prevent puberty?

16 A. Yes, that is correct.

17 Q. Okay.

18 We had talked some about your doctors'
19 appointments before. You had some appointments before
20 receiving the puberty blockers.

21 Correct?

22 A. Yes, that is correct.

23 Q. Okay.

24 Do you remember an appointment where you talked

1 with a doctor about getting puberty blocking meds?

2 A. Yes.

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

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[REDACTED]

ATTORNEY CAPEHART: I think this is a good spot to take a break. The next part that I'm going to get into I think is going to take a little more time than we have. I see it's 12:41, so if it's all right with everyone, I suggest we go off the record and talk about when we come back.

ATTORNEY HARTNETT: That's fine with us.

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[REDACTED]

BY ATTORNEY CAPEHART:

Q. Okay.

You had mentioned before in relation to a biological boy running on a girls team and that they would need to, I think you had said --- I'm not trying to put words in your mouth, but I think you had said something along the lines that they would need to be taking some kind of medication relative to the testosterone if they were either going through puberty or had gone through puberty.

ATTORNEY HARTNETT: Objection to form.

BY ATTORNEY CAPEHART:

Q. Do you remember that when we were talking earlier?

A. Yes.

1 Q. Okay.

2 Why did you mention testosterone relative to
3 how a biological boy might be performing in running?

4 A. Because I think that --- that after --- whenever
5 you half an increase of testosterone, that --- I think
6 that increases your athletic ability, but I could be
7 wrong there.

8 Q. Okay. Fair enough.

9 Do you know that because of what the doctors
10 had talked to you about?

11 ATTORNEY HARTNETT: Objection to form.

12 THE WITNESS: I am pretty sure, yeah.

13 BY ATTORNEY CAPEHART:

14 Q. Okay.

15 Have you had done any independent research
16 yourself to learn more about testosterone?

17 A. I don't recall. I may have, but I don't
18 remember.

19 Q. Okay.

20 Do you recall reading the Complaint in this
21 lawsuit?

22 A. I do not.

23 Q. Okay.

24 If you could look at Exhibit 32 for just a

1 minute. Okay. It says Exhibit WV-32 at the bottom
2 right corner and has a lot of other words, but in
3 boldface in the upper right center are the words First
4 Amended Complaint. Okay. This is as it says is the
5 First Amended Complaint, means there was an original
6 Complaint that had been amended once in its first
7 Amended Complaint. Do you recall ever having seen this
8 before now that you are getting a chance to look at it?

9 A. Yes, I think so.

10 Q. Okay.

11 Do you remember reading over it yourself?

12 A. I don't think so.

13 Q. Okay.

14 Do you remember anyone discussing with you what
15 was in the Complaint?

16 A. I think I discussed it with my mom.

17 Q. But you don't know everything that's in here
18 because you haven't read it yourself.

19 Is that correct?

20 A. I don't.

21 ATTORNEY HARTNETT: Objection.

22 THE WITNESS: I don't remember if I have
23 or haven't.

24 BY ATTORNEY CAPEHART:

1 Q. Okay.

2 You don't remember if you have or have not.
3 Okay.

4 Now, I think we had talked before about the
5 fact that your lawsuit is challenging the HB 3293. You
6 may have remembered we had looked at that very briefly
7 and I had directed you to a couple of parts of it and
8 you had said you hadn't read the whole thing. And I
9 will also represent to you that it also had some other
10 definitions in there for biological male and female. Do
11 you believe there is a difference between biological
12 males and biological females?

13 ATTORNEY HARTNETT: Objection to form and
14 the preamble.

15 THE WITNESS: I don't know.

16 BY ATTORNEY CAPEHART:

17 Q. Okay.

18 You don't know if there is any difference
19 between a biological boy and a biological girl?

20 ATTORNEY HARTNETT: Objection to form.

21 THE WITNESS: I don't know. I don't know
22 if there is a difference.

23 BY ATTORNEY CAPEHART:

24 Q. Okay.

1 Do you think there are physical differences
2 between a biological boy and a biological girl?

3 ATTORNEY HARTNETT: Objection.

4 THE WITNESS: Could you repeat the
5 question?

6 BY ATTORNEY CAPEHART:

7 Q. Sure. Do you think there are physical
8 differences between a biological boy and a biological
9 girl?

10 A. Yes.

11 Q. Okay.

12 ATTORNEY HARTNETT: And I just have a
13 standing objection in terminology, but I will not
14 continue to make that objection.

15 ATTORNEY CAPEHART: Noted. Thank you.

16 BY ATTORNEY CAPEHART:

17 Q. What do you understand the physical differences
18 are between a biological boy and a biological girl?

19 A. A biological boy has a penis and a biological
20 girl has a vagina.

21 Q. Okay.

22 Do you believe there are any other physical
23 differences between a biological boy and a biological
24 girl?

1 A. There --- yes, but that part could be with
2 either one, because long hair could also be with a guy
3 or like that's --- like if a girl, a biological girl,
4 would probably have long hair, but a guy could also have
5 long hair. And then a guy could have --- a guy could
6 have short hair and a girl could also have that. And a
7 biological guy would probably want to look muscular, but
8 a biological girl would probably --- could probably want
9 to look like that.

10 Q. So apart from a superficial difference like hair
11 length or how much someone works out and also the
12 difference in genitalia, are you aware of any other
13 differences?

14 ATTORNEY HARTNETT: Objection to form.

15 THE WITNESS: Not that I can think of
16 right now.

17 BY ATTORNEY CAPEHART:

18 Q. Okay. Okay.

19 Can you all look at Exhibit 26? Do you have
20 Exhibit 26?

21 A. Yes.

22 Q. This looks like it is an article from the
23 Gazette Mail. If you flip to the second page of the
24 exhibit, the fourth block of text up from the bottom it

1 reads, quote, I just want to run, I come from a family
2 of runners, close quoted, P [REDACTED] J [REDACTED] said in a news
3 release. Quote, I know how hurtful a law like this is
4 to all kids like me who just want to play sports with
5 their classmates, and I'm doing this for them. Trans
6 kids deserve better, closed quote. B [REDACTED], do you
7 remember talking to a reporter before this article got
8 written?

9 A. Yes.

10 Q. Okay.

11 And the quoted language that I was just reading
12 there that's also in the exhibit, do you remember saying
13 that?

14 A. Yes.

15 Q. Okay.

16 So those are your words, no one was
17 paraphrasing something you were trying to tell them
18 then?

19 A. No.

20 Q. Okay.

21 Is a trans kid an appropriate term to use?

22 ATTORNEY HARTNETT: Objection, form.

23 THE WITNESS: Could you repeat the

24 question?

1 BY ATTORNEY CAPEHART:

2 Q. Sure. In the quote it says trans kids deserve
3 better. I'm just curious, is trans kids a normal term
4 that is used and is acceptable to use?

5 ATTORNEY HARTNETT: Objection, form.

6 THE WITNESS: Could you repeat the
7 question one more time?

8 BY ATTORNEY CAPEHART:

9 Q. Sure. And I'm not trying to trick you. I'm
10 just trying to understand because you used the term
11 trans kids, and I think I've seen it in maybe another
12 article, too, and I just thought I encountered it
13 another experience. So I'm asking the question is that
14 an acceptable term to use to refer to transgender boys
15 or transgender girls?

16 ATTORNEY HARTNETT: Same objection.

17 THE WITNESS: Yes.

18 BY ATTORNEY CAPEHART:

19 Q. Is it okay to call you a trans kid?

20 A. If you don't know that I don't know my name and
21 you know I'm trans, then yes, that's acceptable. But if
22 you know my name and you're purposely calling me that,
23 then not really, but it's still fine.

24 Q. Yeah. And I don't intend to. I was just

1 curious ---

2 A. Yes.

3 Q. --- from the nuances and the acceptable use of
4 the term. So thank you. Excuse me. If you can look
5 at Exhibit 27.

6 ATTORNEY HARTNETT: And just for the
7 record and the witness's knowledge, B [REDACTED], you should
8 feel free to review the full exhibit before you answer
9 questions if you want to.

10 THE WITNESS: Okay.

11 MS. JACKSON: So that's the first page.

12 ATTORNEY CAPEHART: You all just let me
13 know whenever you're ready to proceed.

14 Okay?

15 ATTORNEY HARTNETT: I'm sorry. I think
16 B [REDACTED] is ready.

17 THE WITNESS: Yeah.

18 ATTORNEY CAPEHART: Okay. Thank you.

19 BY ATTORNEY CAPEHART:

20 Q. I'm going to try to make sure I direct you to
21 the proper page. It looks like it's the last page of
22 the text, which looks like it's about the fourth to the
23 last page of the exhibit. At the top of the page the
24 text begins with the word when Justice. Right there.

1 Have you all found that on your hard copy?

2 A. Yes.

3 Q. Okay. All right.

4 So let's see, this first block here that reads
5 when Justice signed the Bill banning transgender girls
6 from sports teams, B [REDACTED] was devastated she said. Then
7 another quote, I felt horrible because I knew then I
8 couldn't run with the other girls. Do you remember
9 talking to the author of this piece before it came out?

10 A. Yes.

11 Q. Okay.

12 And does that quote seem right? Do you
13 remember saying that?

14 A. Yes.

15 Q. Okay.

16 Now, I recall earlier you mentioned that you
17 hadn't read the bill, the new law yourself, but here you
18 said you couldn't run with the other girls after the
19 Governor signed it. How did you know that since you
20 hadn't read through the bill?

21 A. I was told by my mom.

22 Q. Okay.

23 Do you remember when you and your mother had
24 that discussion?

1 A. I don't remember.

2 Q. All right.

3 Were you aware of this bill before your mom
4 told you that it was now a law?

5 A. I was aware of it, but I didn't know that it was
6 going to get signed.

7 Q. Okay.

8 What did you know about it before your mom told
9 you it was signed and was now a law?

10 A. That I wouldn't be able to run with the girls
11 once it got signed.

12 Q. Okay. All right.

13 If you move down to and look at the fourth
14 block of text there on the page it says as hard as it is
15 to be a trans kid and a mother of a trans kid, suddenly
16 thrust into the public eye in a conservative state,
17 B [REDACTED] and Jackson agree that the potential payoff makes
18 it all worth it. You don't have a problem with the
19 author using trans kid there, do you?

20 A. No.

21 Q. Okay.

22 How hard has it been in Bridgeport and Lost
23 Creek to be a trans kid, as the author says?

24 ATTORNEY HARTNETT: Objection to form.

1 THE WITNESS: Could you --- could you
2 repeat the question?

3 BY ATTORNEY CAPEHART:

4 Q. Sure. This little bit of language here is
5 talking about it being hard to be a trans kid and the
6 mother of a trans kid, so my question is how hard has
7 that been on you in Bridgeport and Lost Creek?

8 ATTORNEY HARTNETT: Objection to form.

9 THE WITNESS: Well, a lot of the people
10 don't support it and don't agree with it, so that's what
11 makes it hard.

12 BY ATTORNEY CAPEHART:

13 Q. Okay.

14 You had said that school had gone really well
15 with your transition.

16 Correct?

17 A. Uh-huh (yes).

18 Q. Okay.

19 So are these people you're describing now, are
20 these all people outside of school?

21 ATTORNEY HARTNETT: Objection to form.

22 THE WITNESS: Yes.

23 BY ATTORNEY CAPEHART:

24 Q. Okay.

1 What kind of people are these?

2 ATTORNEY HARTNETT: Objection to form.

3 THE WITNESS: Usually adults.

4 BY ATTORNEY CAPEHART:

5 Q. Okay.

6 Are these people you know or strangers?

7 A. Strangers.

8 Q. Well, what have they done?

9 A. Just not --- just be mean in general.

10 Q. Well, how are they being mean?

11 A. They don't support it. Sometimes people call me
12 names, just be mean.

13 Q. Okay.

14 Does this happen often?

15 A. Not as much now, but it used to happen a lot.

16 Q. When you say used to happen a lot, do you mean
17 back at the time that you transitioned or before that or
18 after that?

19 A. Well ---.

20 ATTORNEY HARTNETT: Objection to form.

21 THE WITNESS: Well, at the time and a
22 little bit after because I was so --- I was new to it
23 and I didn't know how to handle people like being
24 meaning about it.

1 BY ATTORNEY CAPEHART:

2 Q. Okay.

3 Would people be mean to you when your parents
4 were around?

5 A. They wouldn't do it like directly to my face
6 usually. They would say it to my mom or my dad and then
7 my parents would tell me. So it wasn't usually directly
8 to me.

9 Q. So when they would say these things, you weren't
10 in the presence of these people when they were saying
11 them?

12 A. Most of the time, yes.

13 Q. Oh, okay.

14 But then your mom and your dad would have
15 people say things to them and then your mom and dad
16 would tell you about what other people had said?

17 ATTORNEY HARTNETT: Objection to form.

18 BY ATTORNEY CAPEHART:

19 Q. Is that correct?

20 A. Yes, but sometimes they wouldn't tell me just
21 I'm assuming to try not to make me sad.

22 Q. Have any other kids ever said the kind of things
23 to you that your parents said adults had told them?

24 ATTORNEY HARTNETT: Objection to form.

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THE WITNESS: No.

BY ATTORNEY CAPEHART:

Q. No? Do you and your family attend a church?

A. Not anymore.

Q. Okay.

Did you before?

A. For a short period of time, yes.

Q. Okay.

Did you ever have any issues or problems there?

A. No.

Q. So there weren't any adults at that church that were mean to you or that said mean things to your parents that you know of?

A. At that time I was not transitioned yet, so there was no comments like that.

Q. Okay.

Do you remember when you had said your mom had explained to you because the bill was now signed you wouldn't be able to run, did she explain what part of the new law would stop you from running?

ATTORNEY HARTNETT: Objection to form.

THE WITNESS: No, she just told me that because of this I couldn't run.

BY ATTORNEY CAPEHART:

1 Q. Okay.

2 And because you haven't read the bill yourself,
3 you don't have any knowledge of what part of the bill
4 prevents you from running.

5 Is that correct?

6 A. Yes.

7 ATTORNEY HARTNETT: Objection to form.

8 BY ATTORNEY CAPEHART:

9 Q. Thank you. All right. Let's see Exhibit 28.
10 I just was going to interject that you are free to read
11 the entirety if you would like to, the 20 pages. It's a
12 lot, but I have no problem telling you the only thing
13 I'm going to ask you about is the portion on the last
14 page, the part under the subtitle B [REDACTED]'s trials.

15 MS. JACKSON: Thank you.

16 ATTORNEY CAPEHART: You're welcome.

17 THE WITNESS: I'm ready.

18 BY ATTORNEY CAPEHART:

19 Q. Okay. Great.

20 Do you remember talking to this author from
21 ESPN?

22 A. I can't remember.

23 Q. It sounds like your tryouts were pretty
24 challenging.

1 Is that true?

2 A. Yes.

3 Q. Okay.

4 Do you recall expressing anything to this
5 reporter that's quoted here or otherwise described?

6 ATTORNEY HARTNETT: Objection to the
7 form.

8 THE WITNESS: Could you repeat the
9 question?

10 BY ATTORNEY CAPEHART:

11 Q. Sure. Do you recall saying this part that's
12 quoted here about your friends or discussing any of the
13 rest of it with the reporter?

14 A. I don't remember, but I think I remember saying
15 maybe some of this, but I can't remember. I can't
16 remember.

17 Q. Okay. Okay.

18 And it seems like you were understandably
19 excited to have made the team.

20 Is that right?

21 A. Yes.

22 Q. Okay.

23 How many girls were on the team this past fall?

24 ATTORNEY HARTNETT: Objection. I'm

1 sorry.

2 THE WITNESS: I don't know.

3 BY ATTORNEY CAPEHART:

4 Q. Okay.

5 And you were the only transgender girl on the
6 team.

7 Is that correct?

8 ATTORNEY HARTNETT: Objection to form.

9 THE WITNESS: As I knew of, there may
10 have been people that haven't come yet, but of what I
11 knew I was the only one.

12 BY ATTORNEY CAPEHART:

13 Q. So far as you know, you're the only transgender
14 girl on the team.

15 Is that correct?

16 A. Yes.

17 Q. Okay. Okay.

18 Exhibit 29, which is much shorter. Okay. Take
19 a look at that, however much you would like to, and then
20 let me know whenever you'd like to proceed.

21 A. I'm done reading.

22 Q. Okay.

23 Let's see. Just below kind of the mid point of
24 the page, about the third block of real text it starts

1 off with a quote there and it says, quote, I just want
2 to run and the State wants to stop me from running as
3 part of a team at my school, end quote, said B [REDACTED], an
4 11-year-old Middle School student. Quote, I love
5 running and being part of the team and the State of West
6 Virginia should explain in court why they won't let me,
7 end quote. Do you remember saying or writing that?

8 A. I remember saying that.

9 Q. Okay.

10 Who did you say that to?

11 A. I can't remember.

12 Q. Okay.

13 But those are all your words.

14 Correct?

15 A. Uh-huh (yes).

16 Q. Okay.

17 A. Yes.

18 Q. In what ways --- strike that.

19 When you say that the State of West Virginia
20 should explain in court why they won't let you be part
21 of the team, are you referring to HB-3293?

22 A. Yes.

23 Q. But as you said earlier, you're not sure what
24 part of that prevents you from running, you just know

1 that it does because you have been told that.

2 Correct?

3 ATTORNEY HARTNETT: Objection to form.

4 THE WITNESS: Yes.

5 BY ATTORNEY CAPEHART:

6 Q. Okay.

7 Sorry for that. B [REDACTED], are you aware of or
8 have you read anything that the State has filed with the
9 Court in this case?

10 A. I think I've skimmed through a couple of things,
11 but not really read them.

12 Q. Okay.

13 Those couple of things that you think you have
14 skimmed through, do you recall what those were?

15 A. One of them was the one thing we just read ---
16 the thing that we went through just a little bit, I
17 skimmed through that. And there was another one, but I
18 don't remember which one it was.

19 Q. Okay.

20 The thing that we went just went through, I
21 apologize, we have gone through a few things.

22 A. Just now, the one just now I skimmed through,
23 couple of paragraphs. I'm pretty sure at least.

24 Q. Do you mean Exhibit 29?

1 MS. JACKSON: This?

2 THE WITNESS: Yes.

3 BY ATTORNEY CAPEHART:

4 Q. Exhibit 29 is not anything that the State has
5 written. I'm just explaining what this is. And my
6 understanding is that this is a news release from Lambda
7 Legal. So you think there may have been something else,
8 though, that you looked at, you're just not really sure?

9 A. Yeah.

10 Q. Okay. Okay.

11 Give me just a second to check a couple of
12 things. Okay. There's a couple of things to just run
13 through real quick and then I think I might be done.
14 One, just following back up on the thought of why the
15 State won't let you run, why do you think, to use your
16 words from this press release, that the State won't let
17 you run?

18 A. Could you repeat the question?

19 Q. Sure. In the release here there is, as you
20 said, your language saying that you want the State to
21 explain in court why they won't let you, referring back
22 to being part of a team and running. Why do you --- why
23 do you think that is?

24 ATTORNEY HARTNETT: Objection. Form.

1 THE WITNESS: Because I don't think there
2 is a good enough reason for me to not be able to run.

3 BY ATTORNEY CAPEHART:

4 Q. Okay.

5 When you say there's not a good enough reason,
6 has someone spoken to you or explained some reason why
7 they think that the State wouldn't let you run?

8 ATTORNEY HARTNETT: Objection to form.

9 THE WITNESS: Could you repeat the
10 question?

11 ATTORNEY CAPEHART: Court Reporter, can
12 read that question back for us?

13 COURT REPORTER: When you say there is
14 not a good enough reason, has someone --- has someone
15 --- I'm sorry. When you say there's not a good enough
16 reason, has someone spoken to you or explained some
17 reason why they think that the State wouldn't let you
18 run?

19 ATTORNEY HARTNETT: Objection.

20 THE WITNESS: No one has explained the
21 reason, but that's why I think there's not a good enough
22 reason for me to not run.

23 BY ATTORNEY CAPEHART:

24 Q. So you have not had any conversations with

1 anyone who could explain what reasons the State may have
2 presented as to why they passed this bill?

3 ATTORNEY HARTNETT: I would just object
4 to the extent this would entail any conversations with
5 your lawyers, B [REDACTED], and you should not testify about
6 those conversations. If there are conversations other
7 than ones with your lawyer, you can testify about that.

8 THE WITNESS: What was --- can you repeat
9 the question?

10 BY ATTORNEY CAPEHART:

11 Q. Sure. And to pick up on Kathleen's comment, I'm
12 not trying to get you to divulge any confidential
13 communications that you had with your lawyers, but I'm
14 just trying to understand your comment where you said
15 that there is not a good enough reason and that no one
16 has explained a reason why the State passed this bill.
17 So I'm asking you what kind of conversations have you
18 had, if any, with anyone other than your lawyers about
19 the reason why this bill may have been passed?

20 A. I haven't had any conversations with any of my
21 lawyers.

22 Q. Okay.

23 Have you talked with your mom about why this
24 law may have been passed?

1 A. I don't think I have, no.

2 Q. And you already said you have not looked at any
3 of the State's filings or documents that it has put in
4 before the Court in this case?

5 ATTORNEY HARTNETT: Objection, MT.

6 THE WITNESS: I don't think so.

7 BY ATTORNEY CAPEHART:

8 Q. Okay.

9 You don't recall whether you have seen those,
10 but you don't believe so, is that what you said
11 previously?

12 ATTORNEY HARTNETT: Objection, MT.

13 THE WITNESS: Yes.

14 BY ATTORNEY CAPEHART:

15 Q. Okay.

16 Real briefly, look back at Exhibit 31, which is
17 the Declaration that you looked at when we started.
18 Just let me know when you have it.

19 A. We have the Declaration.

20 Q. Okay.

21 Look at page three, if you would. Got it?

22 A. Uh-huh (yes), yes.

23 Q. Okay.

24 There at paragraph number 13 it says, I do not

1 want to run with the boys and I should not have to run
2 with the boys. What's wrong with running with the boys?

3 A. I'm not a boy. I'm a girl. I should be able to
4 run with the girls.

5 Q. Okay.

6 Are there any competitive concerns if you did
7 run with the boys?

8 ATTORNEY HARTNETT: Objection. Form.

9 THE WITNESS: No. I just think I'm a
10 girl and I shouldn't have to run with the boys. I
11 should be able to run with the girls because I am a
12 girl.

13 BY ATTORNEY CAPEHART:

14 Q. Okay.

15 One other --- one other quick question for you.
16 Do you know that under the law you could run with the
17 boys if you wanted to.

18 Right?

19 ATTORNEY HARTNETT: Objection to form.

20 THE WITNESS: That I could if I wanted
21 to, but that's not --- I'm not running with the boys
22 because I am a girl.

23 BY ATTORNEY CAPEHART:

24 Q. Okay.

1 I just wanted to make sure that someone had
2 apprised you that the law does not prevent that, that
3 new law. Fair enough. And I believe that's everything
4 I have for you right now. Thank you very much for your
5 patience.

6 ATTORNEY CAPEHART: And whoever the next
7 person in line wants to take over the questioning, go
8 right ahead.

9 ATTORNEY HARNETT: And I know we haven't
10 gone for an hour yet, but I just wanted to check to see,
11 B [REDACTED], do you need a bathroom break before we do more
12 questions?

13 THE WITNESS: I'm good.

14 ATTORNEY ROGERS: I think I'm next if I'm
15 understanding the order that was established earlier
16 this week.

17 Is that right?

18 ATTORNEY HARTNETT: I believe Roberta
19 went next.

20 ATTORNEY ROGERS: All right.

21 ---

22 EXAMINATION

23 ---

24 BY ATTORNEY ROGERS:

1 Q. Hi, B [REDACTED]. My name is Shannon Rogers. I am one
2 of the attorneys that represents the West Virginia
3 Secondary School Activities Commission, which is
4 sometimes referred to as the WVSSAC. And so when I'm
5 saying WVSSAC that's what I'm referring to.

6 Does that make sense?

7 A. Yes.

8 Q. Okay.

9 Had you ever had heard of the WVSSAC before?

10 A. I don't think so.

11 Q. Okay.

12 Do you know if you have ever spoken to anybody
13 who is with the WVSSAC?

14 A. I don't know.

15 Q. You don't know? Okay.

16 Do you know if anybody --- well, strike that.

17 So you don't think you've ever communicated or
18 you just don't remember?

19 A. I don't think I've ever communicated.

20 ATTORNEY ROGERS: Okay.

21 I don't have any other questions. Thank
22 you, B [REDACTED].

23 ---

24 EXAMINATION

1

2 BY ATTORNEY DENIKER:

3 Q. Hi, B [REDACTED]. My name is Susan Deniker. I'm an
4 attorney who works at a law firm called Steptoe and
5 Johnson, and I represent the Harrison Board of Education
6 and the Superintendant Dora Stutler. Thank you for your
7 time today. I know it has been a long day and I know
8 it's hard to sit in front of a computer screen, so thank
9 you. You've done a really great job.

10 I'm going to ask you a few questions about your
11 experience in school and in cross-country. If I ask you
12 anything that doesn't make sense or that you don't
13 understand, please let me know. You've done a really
14 great job with that today, but will you let me know if I
15 ask you something that you don't understand?

16 A. Yes.

17 Q. Very good.

18 And then also, if you need to take a break at
19 any time, just let me know and we'll be glad to take a
20 break.

21 Okay?

22 A. Okay.

23 Q. So yesterday I got to ask some questions of your
24 mom and she told me that you went to elementary school

1 at Norwood Elementary.

2 Is that correct?

3 A. Yes.

4 Q. And did you go to Norwood Elementary School from
5 kindergarten through the fifth grade?

6 A. Yes.

7 Q. How did you like Norwood?

8 A. It was a nice school. I really enjoyed it.

9 Q. Did you have a good experience there?

10 A. Yeah.

11 Q. Was Mrs. Stutler your principal for a period of
12 the time that you were at Norwood Elementary School?

13 A. Yes.

14 Q. Did you know her then?

15 A. Like know her --- could you repeat the question?

16 Q. Sure. No. It probably wasn't a very good
17 question. Did you sometimes have interactions with Mrs.
18 Stutler when she was your principal?

19 A. Yes.

20 Q. And how was that? Was she nice with you when
21 you dealt with her?

22 A. Yes.

23 Q. Did you think she was a good principal?

24 A. Yes.

1 Q. Who was the principal after Mrs. Stutler?

2 A. Mrs. Shields.

3 Q. And did you like Mrs. Shields?

4 A. Yeah.

5 Q. Was she nice to you when you were at school?

6 A. Yes.

7 Q. Now, I know you said earlier that you came out
8 in the fourth grade.

9 Is that right?

10 A. I came out in the summer of third grade, but in
11 school it was in the fourth grade.

12 Q. Okay.

13 And something else I should have said to you at
14 the beginning is that I want to use terms that you're
15 comfortable with. And so if I don't use the right
16 terms, you correct me.

17 Okay?

18 A. Okay.

19 Q. So when you started school in the fourth grade
20 it is my understanding then you came to school
21 presenting as a girl, as a female.

22 Is that correct?

23 A. Yes.

24 Q. And did you have any discussions with your

1 teachers or the principal or anyone else at Norwood
2 about making that change?

3 A. Yes.

4 Q. Tell me about those communications that you
5 would have had.

6 A. I think it was the day before school started we
7 went to the school to establish where --- everything
8 about what the teacher should be calling me, where my
9 bathroom would be and everything like that.

10 Q. Were you part of that meeting, B [REDACTED] ?

11 A. Yes.

12 Q. Do you recall who else was in that meeting?

13 A. There was Mrs. Louder, it was the principal. I
14 don't know if it at the time it was Mrs. Stutler or Mrs.
15 Shields and someone else. I can't remember their name.

16 Q. Was the school counselor maybe part of that
17 meeting?

18 A. I think so.

19 Q. Was Mrs. Louder your teacher that year?

20 A. Yes.

21 Q. And was your mom also in that meeting?

22 A. Yes.

23 Q. Anyone else that you remember?

24 A. Not really, no.

1 Q. Were you happy with what came out of that
2 meeting?

3 A. Yes.

4 Q. You were comfortable with the agreements that
5 was reached with regard to the name that would be used
6 and the bathroom facilities and any other accommodations
7 that would be made for you?

8 ATTORNEY HARTNETT: Objection.

9 THE WITNESS: Yes.

10 BY ATTORNEY DENIKER:

11 Q. And then how did fourth grade go? Was it a good
12 --- was it a good year for you?

13 A. Yeah.

14 Q. Did you feel that the teachers and the principal
15 and the other employees of the school were supportive of
16 you?

17 A. Yes, very.

18 Q. Good. And did you feel that they treated you
19 kindly and fairly?

20 A. Yes.

21 Q. And it sounds like from your earlier testimony
22 that you also had a good experience with the students in
23 the school.

24 Is that correct?

1 A. Yes.

2 Q. Tell me about your fifth grade year at Norwood
3 Elementary School. Did you have a good experience that
4 year?

5 A. Yes. There was brand new teachers and my
6 teacher was Ms. Watson. She was a very nice teacher.

7 Q. And do you feel that everyone at the school was
8 supportive of you?

9 A. Yes.

10 Q. Did you feel that everybody treated you in a
11 fair and kind manner?

12 A. Yes.

13 Q. And so you had a good school year in fifth grade
14 as well?

15 A. Yes.

16 Q. Do you recall having any other meetings in
17 fourth or fifth grade to discuss your transitioning to
18 being --- to presenting as a girl at school?

19 A. Not that I can remember. Beginning of fourth
20 grade was the only one I think.

21 Q. And then it's my understanding that this year
22 you started at Bridgeport Middle School.

23 Is that right?

24 A. Yes.

1 Q. And are you in the sixth grade this year, B [REDACTED] ?

2 A. Yes.

3 Q. Do you remember when you were in Norwood
4 Elementary School having a meeting and filling out a
5 document that was called a Gender Support Plan?

6 A. Yes, I remember that.

7 Q. And did you participate in the meeting where
8 that plan was discussed?

9 A. Yes.

10 Q. And did you think that that was a good meeting?

11 A. Yes.

12 Q. Were you happy with the outcome of what was
13 agreed upon at that meeting?

14 A. Yes.

15 Q. And then you had another one of those meetings
16 with school officials before you started at the Middle
17 School.

18 Is that right?

19 A. Yes.

20 Q. And I think that that meeting happened in May of
21 2021, which would have been the end of your fifth grade
22 year.

23 Is that --- does that sound right?

24 A. Yes.

1 Q. And were you a part of that meeting?

2 A. Yes.

3 Q. Do you remember who else was a part of that
4 meeting?

5 A. We had my new principal, Mr. Mazza, the
6 counselor there, Mrs. Shields and my mom.

7 Q. And were you comfortable with what was discussed
8 and agreed upon at that meeting?

9 A. Yes.

10 Q. And how has sixth grade been so far?

11 A. It's been good.

12 Q. Do you like Mr. Mazza?

13 A. Yes.

14 Q. He is your principal this year.
15 Is that right?

16 A. Yes.

17 Q. Do you feel like Mr. Mazza is supportive of you?

18 A. Yes, very.

19 Q. Good. And do you think that he treats you in a
20 kind and fair manner?

21 A. Yes.

22 Q. How are your classes this year? Do you like
23 them?

24 A. Yeah, I like my classes. I have really nice

1 teachers.

2 Q. I think I saw that you are a straight A student.
3 Maybe I saw that in something that your mom wrote.

4 Is that right?

5 A. Yes.

6 Q. Congratulations. Good for you. Do you feel
7 that your teachers are fair and supportive of you?

8 A. Yes.

9 Q. And are you comfortable with the arrangements
10 that the school has made for you this year in terms of
11 addressing how you want to present at school as being a
12 girl?

13 A. Yes.

14 Q. I know that we have discussed today sports and
15 your participation in sports, and I heard you say that
16 you love running.

17 Is that right?

18 A. Yes.

19 Q. And I understand that you tried out for the
20 girls cross-country team.

21 Is that correct?

22 A. Yes.

23 Q. So I want to talk to you a little bit about that
24 process. The cross-country team, did they do some

1 training and conditioning over the summer before the
2 year started?

3 A. Yes. There was a week of conditioning before
4 the season started.

5 Q. And did that happen over the summer?

6 A. Yes.

7 Q. Did you participate in that conditioning?

8 A. Yes.

9 Q. And how was that experience? Was that a
10 positive experience for you?

11 A. Yes.

12 Q. And then tryouts I think were in August for
13 cross-country.

14 Is that right?

15 A. Yes.

16 Q. And were you permitted to try out for the girls
17 cross-country team?

18 A. Could you ---?

19 Q. Let me rephrase that. Were you allowed to try
20 out for the girls cross-country team?

21 ATTORNEY HARTNETT: Objection to form.

22 THE WITNESS: Yes.

23 BY ATTORNEY DENIKER:

24 Q. And was that the team you wanted to try out for?

1 A. Yes.

2 Q. And did you make the team?

3 A. Yes.

4 Q. And I think you said this year they didn't have
5 any cuts.

6 Is that right?

7 A. Yes.

8 Q. Who were your coaches for cross-country this
9 year?

10 A. I had Ms. Schoonmaker, Ms. --- Coach Flesher and
11 Coach McBrayer.

12 Q. And did they coach both the girls and the boys
13 cross-country teams?

14 A. Yes.

15 Q. How was your season?

16 A. It was good.

17 Q. Did you like cross-country?

18 A. Yes.

19 Q. Did you believe that your coaches treated your
20 fairly and kindly this season?

21 A. Yes.

22 Q. Did you feel that they were supportive of you?

23 A. Yes.

24 Q. So you think it's fun to run up hills and

1 through water and mud, B [REDACTED] ?

2 A. Yes.

3 Q. Because that's what cross-country is about,
4 isn't it?

5 A. Yes.

6 Q. It's a hard sport I think. Do you think it's
7 hard?

8 A. It depends if you've done it before and how much
9 you run normally.

10 Q. Do you think you would like to do it again?

11 A. Yes.

12 Q. And I heard you talk a little bit about track.
13 Are there other --- is track something that you're
14 interested in doing?

15 A. Yes.

16 Q. And I heard you said you might want to be --- do
17 the distance running in track.

18 Is that right?

19 A. Yes.

20 Q. You're a tough girl. Cross-country and distance
21 running and track, those are the hard once, aren't they?

22 ATTORNEY HARTNETT: Objection to form.

23 THE WITNESS: It just depends if you've
24 ran before or whatever you've done.

1 BY ATTORNEY DENIKER:

2 Q. I think that you're right. I think it depends
3 how good of shape you're in. Are you planning to
4 condition in the off season?

5 A. If it's not freezing, then yes.

6 Q. I understand. We were talking about what a cold
7 day it is here in West Virginia, isn't it?

8 A. Yes.

9 Q. B [REDACTED], has anybody in the school system ever
10 told you that Harrison County Schools wouldn't let you
11 participate on a girls sports team for any reason?

12 ATTORNEY HARTNETT: Objection to form.

13 THE WITNESS: After a bill was passed,
14 not --- I don't think there was because when the bill
15 was passed, I already went trying out and then we ---
16 then the whatever it was called where I could do ---
17 where I could play in the sports team from the Judge
18 came out.

19 BY ATTORNEY DENIKER:

20 Q. And I just want to make clear, did any of your
21 coaches ever tell you that you couldn't run on the girls
22 team?

23 A. No.

24 Q. Did Mr. Mazza ever tell you that you couldn't

1 run on the girls team?

2 A. No.

3 Q. Did any of your teachers tell you that you
4 couldn't run on the girls team?

5 A. No.

6 Q. And did Mrs. Stutler ever tell you that you
7 couldn't run on the girls team?

8 A. There was not a cross-country back then, so I
9 couldn't run whenever she was my principal, so ---.

10 Q. And that was when you were in elementary school.
11 Is that right?

12 A. Yes.

13 Q. And that's a good point that you brought up,
14 B [REDACTED]. There aren't any school sports in elementary
15 school in Harrison County, are there?

16 ATTORNEY HARTNETT: Objection to form.

17 THE WITNESS: No, you're very limited to
18 them and most of them aren't even in the school. You
19 have to do them outside of school.

20 BY ATTORNEY DENIKER:

21 Q. Did you have any school-sponsored sports at
22 Norwood Elementary School?

23 A. I don't know. I don't --- yeah, I don't know.

24 Q. Okay.

1 Did you try out or participate in any sports
2 that were run by the school while you were at Norwood?

3 A. I --- no.

4 Q. And so let me go back and ask you about Mrs.
5 Stutler. So it's kind of funny. You had Mrs. Stutler
6 as your principal at Norwood for a little bit.

7 Is that right?

8 A. Yes.

9 Q. And do you know where she went after she left
10 Norwood?

11 A. The Board of Education.

12 Q. She did. She went to the Central Board Office.
13 And did you know that she's now the Superintendant of
14 Schools?

15 A. I did not know that. I just knew she went to
16 the Board of Education.

17 Q. Well, she's actually your school superintendant
18 now. And have you had any communications with her since
19 she became superintendant?

20 A. No.

21 Q. Well, now you know who your superintendant is.
22 So if you see her at school you can call her
23 Superintendant Stutler now.

24 B [REDACTED], let me check my notes and see if I have

1 any other questions. I think I'm just about done.

2 B [REDACTED], did you have any conversations with
3 anybody that works for the Harrison County Board of
4 Education, teachers, principals, anybody like that,
5 coaches, regarding this House Bill 3293?

6 ATTORNEY HARTNETT: Objection to form.

7 THE WITNESS: Could you repeat the
8 question?

9 BY ATTORNEY DENIKER:

10 Q. Sure. Did you talk with anybody who works for
11 the Harrison County Board of Education or is somehow
12 connected with the Board of Education about House Bill
13 3293?

14 A. I think I did. I think I may have. I'm not
15 sure. I can't remember her name. It started with an S,
16 I know that.

17 Q. Do you know what that --- what the woman you're
18 referring to, do you know what her job was?

19 A. I do not know.

20 Q. Was it a teacher or a principal?

21 A. I don't know that. I just --- she was at one of
22 our meetings, and I think we may have talked a little
23 bit about that.

24 Q. And was that one of your Gender Support Plan

1 meetings?

2 A. Yes.

3 Q. Okay.

4 And was that the one before you were going into
5 Middle School?

6 A. I think. I can't remember. I just --- I can't
7 remember, but I think she either talked about that or
8 the Gender Support Plan.

9 Q. Okay.

10 Do you remember what she said about House Bill
11 3293?

12 A. I do not. Because she may have not talked about
13 it. She --- because she was there at one of our
14 meetings, so she could have not, but I think she did.

15 Q. But you don't remember what was said?

16 A. I don't.

17 Q. Okay.

18 Do you remember any conversations with anybody
19 at school or anybody affiliated with the school about
20 House Bill 3293?

21 ATTORNEY HARTNETT: Objection, form.

22 THE WITNESS: Not that I can think of off
23 the top of my head.

24 BY ATTORNEY DENIKER:

1 Q. And B [REDACTED], I should have clarified. Do you know
2 what I'm talking about when I say House Bill 3293?

3 A. Yeah, HB-3293. Yes.

4 Q. Okay.

5 I just wanted to make sure that you knew what I
6 was talking about. I thought that you did.

7 B [REDACTED], if you had any concerns about how you
8 were being treated at school, would you feel comfortable
9 going to talk to Mr. Mazza about that?

10 A. Yes. If I was being treated bad, then I would
11 talk to Mr. Mazza.

12 Q. Would you also feel comfortable going to some of
13 your teachers about that?

14 A. Yes.

15 Q. But do you feel that overall all of the teachers
16 and administrators, including your principals at
17 Bridgeport Middle School, have been supportive of your
18 status as a transgender student?

19 A. Could you repeat the question?

20 Q. Sure. And I apologize, it was a long one. Do
21 you believe that the teachers and administrators, and
22 that would include the principals and the other
23 employees at Bridgeport Middle School, have been
24 supportive of your transgender status?

1 A. Yes, I think they have been supportive.

2 Q. When you were on the cross-country team did you
3 believe your teammates were supportive of you?

4 A. Yes.

5 Q. And how about in school, have you had any issues
6 with other students or problems with students related to
7 your transgender status?

8 ATTORNEY HARTNETT: Objection to form.

9 THE WITNESS: No. No.

10 ATTORNEY DENIKER: B [REDACTED], those are all
11 the questions I have for you now. Thanks so much for
12 your time today.

13 ATTORNEY HARTNETT: We can take a break.
14 I think this might be a good time to take a break and
15 then we can come back for questions.

16 VIDEOGRAPHER: Okay. Going off the
17 record. The current time reads 2:28 p.m.

18 OFF VIDEOTAPE

19 ---

20 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

21 ---

22 ON VIDEOTAPE

23 VIDEOGRAPHER: We are back on the record.

24 The current time reads 2:42 p.m.

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EXAMINATION

BY ATTORNEY HAMMOND:

Q. Hi, B[REDACTED]. My name is Kristen Hammond. And I'm an attorney with the law firm of Bailey and Wyant. And I represent the West Virginia State Board of Education and the State Superintendant Clayton Burch. And I just have I think a few questions for you today. Do you know what the State Board of Education is?

A. I don't know.

Q. Okay.

And do you know or have you ever heard of the West Virginia State Superintendant Clayton Burch?

A. No.

Q. Okay.

So I guess since you do not know them, do you have any memory or any recall of maybe talking to anybody at the State level or at the Board of Education level regarding this lawsuit or regarding the House Bill or your sports? How about we limit it to that?

A. I don't remember if I have or not.

Q. Okay.

So you just don't recall. Could you possibly

1 have talked to somebody?

2 ATTORNEY HARTNETT: Objection to form.

3 THE WITNESS: Could you repeat the
4 question?

5 BY ATTORNEY HAMMOND:

6 Q. Yes. I just want to see --- you say you don't
7 recall talking to anybody. Do you think that it's a
8 possibility that you did talk to somebody or you don't
9 believe that you've talked to anybody?

10 A. I don't believe I've talked to anybody.

11 ATTORNEY HAMMOND: Okay. Thank you for
12 your time. I just had a couple of questions, and that's
13 all I have for you today. Thank you.

14 ---

15 EXAMINATION

16 ---

17 BY ATTORNEY DUCAR:

18 Q. Good afternoon, B[REDACTED]. I'm Timothy Ducar. I
19 represent the Intervenor in this case. I wanted to ask
20 you a question about Exhibit 29. Do you have that
21 available?

22 MS. JACKSON: Give me a second to find
23 it.

24 ATTORNEY DUCAR: Yes, that's it. Can you

1 scroll down just four paragraphs? Thank you.

2 BY ATTORNEY DUCAR:

3 Q. B [REDACTED], you had testified earlier that paragraph
4 that starts with I just want to run, that you had ---
5 that's a quote from you.

6 Correct?

7 A. Yes.

8 Q. I just wanted to know, is that a quote that you
9 wrote on paper and provided to somebody or wrote on a
10 computer and provided to somebody or did you actually
11 say that with your --- verbally?

12 A. I said that.

13 Q. Verbally?

14 A. Yeah, I said that verbally.

15 Q. Thank you. When did you decide you liked
16 running?

17 A. I've always liked running. It's from when I
18 could walk, I liked running.

19 ATTORNEY DUCAR: We're done with this
20 exhibit, Mr. Court Reporter. Thank you.

21 BY ATTORNEY DUCAR:

22 Q. When did you decide you wanted to try out for
23 the girls cross-country team?

24 A. I've always wanted to do cross-country, so when

1 I had the chance I decided I wanted to.

2 Q. And did you know about it because your brothers
3 ran?

4 A. Yes.

5 Q. Did your mom encourage you to try out for the
6 girls team?

7 ATTORNEY HARTNETT: Objection to form.

8 THE WITNESS: Yes. Yes, she encouraged
9 me.

10 BY ATTORNEY DUCAR:

11 Q. And these try-outs were last summer.

12 Correct?

13 A. Yes.

14 Q. Going into sixth grade?

15 A. Yes.

16 Q. Did your dad encourage you to try out for the
17 girls team?

18 A. Yes.

19 Q. Earlier you testified that you did well in
20 cross-country. Did you have any rankings?

21 ATTORNEY HARTNETT: Object to the form.

22 THE WITNESS: I --- could you rephrase
23 the question?

24 BY ATTORNEY DUCAR:

1 Q. Do you have any idea how well you did on your
2 team as an individual?

3 A. I don't know.

4 Q. Do they keep track of individual times and ---?

5 A. I think they put it on a website.

6 Q. Is that something you have ever seen?

7 A. My mom looks at it, but I don't.

8 Q. Do you have any indication whether or not you
9 were one of the better runners or not one of the better
10 runners on the team?

11 ATTORNEY HARTNETT: Objection to form.

12 THE WITNESS: I don't know. I think I
13 was good.

14 BY ATTORNEY DUCAR:

15 Q. Do you want to run cross-country again next
16 year?

17 A. Yes.

18 Q. Track tryouts are coming up in the spring.

19 Correct?

20 A. Yes.

21 Q. And you intend to try out for track?

22 A. Yes.

23 Q. Do you want to compete in any other sports
24 besides track and cross-country?

1 A. Not really.

2 Q. Why not?

3 A. I don't find any other sport really interesting
4 besides running.

5 Q. You said trusting?

6 A. Interesting.

7 Q. What does that mean?

8 A. What is interesting?

9 Q. Oh, interesting. I misheard you. Thank you.
10 And I think I misheard you on something else, so I'm
11 going to re-ask the question. Do you like to compete?

12 ATTORNEY HARTNETT: Objection to the
13 form.

14 THE WITNESS: I'm not a really
15 competitive person. I just play a sport because I think
16 it's fun.

17 BY ATTORNEY DUCAR:

18 Q. Do you consider yourself a good athlete?

19 A. Yes.

20 Q. What makes you a good athlete?

21 A. I'm good at running, good at the sports I do.

22 Q. Do you try hard to win?

23 A. Yes. Well --- yes.

24 Q. Have you talked to anybody else about playing

1 other sports other than cross-country and track?

2 A. I've talked to my mom about playing other
3 sports.

4 Q. What sports have you talked to her about?

5 A. Volleyball and maybe basketball.

6 Q. And describe for me what you guys talked about
7 as far as volleyball and basketball?

8 A. We talked about trying new sports.

9 Q. When did you two talk about those subjects?

10 A. I can't remember.

11 Q. Was it in the last six months or ---?

12 A. I don't --- I can't remember.

13 Q. Did you bring up the idea of playing volleyball
14 to her?

15 A. Yes.

16 Q. And what did she say?

17 A. That's a good idea.

18 Q. Did she say that about basketball as well?

19 A. I think she may have brought up basketball, but
20 I can't remember. It may have been me or her.

21 Q. Did you feel like she was encouraging you to
22 play volleyball?

23 A. She liked the idea. So I wouldn't say
24 encouraged, but she thought it was a good idea.

1 Q. Did she think playing basketball was a good
2 idea?

3 ATTORNEY HARTNETT: Objection to form.

4 THE WITNESS: I think so, yes.

5 BY ATTORNEY DUCAR:

6 Q. And as you sit here right now, you don't have
7 any plans to go out for a volleyball or a basketball
8 team.

9 Correct?

10 A. No, not right now. No.

11 Q. Do you foresee yourself running on the
12 cross-country team or on the track team later in high
13 school?

14 ATTORNEY HARTNETT: Objection to form.

15 THE WITNESS: Yes, yes.

16 BY ATTORNEY DUCAR:

17 Q. Do you see yourself running on the cross-country
18 team or track team if you ever go to college on a
19 college team?

20 ATTORNEY HARTNETT: Same objection.

21 Objection to form.

22 THE WITNESS: Maybe, but I haven't
23 thought that far ahead.

24 BY ATTORNEY DUCAR:

1 Q. Sure. When was the first time you remember
2 thinking that you wanted to be a girl?

3 ATTORNEY HARTNETT: Objection to form.

4 THE WITNESS: I can't remember.

5 BY ATTORNEY DUCAR:

6 Q. Do you remember the first time you talked to
7 somebody about the fact that you wanted to become a
8 girl?

9 ATTORNEY HARTNETT: Objection.

10 THE WITNESS: I also can't --- I don't
11 remember.

12 BY ATTORNEY DUCAR:

13 Q. There's a statement in the record that indicates
14 you feel like a girl. What does feeling like a girl
15 mean?

16 ATTORNEY HARTNETT: Objection to form.

17 THE WITNESS: I just know that I want to
18 be a girl and I feel like a girl inside.

19 BY ATTORNEY DUCAR:

20 Q. You picked out the name B [REDACTED] for yourself.

21 Correct?

22 A. Yes.

23 Q. When did you do that?

24 A. Whenever I transitioned.

1 Q. Going into fourth grade?

2 A. Yes.

3 Q. How did you pick that name?

4 A. I've always liked it.

5 Q. Me, too. I have a daughter named B [REDACTED]

6 Did anyone else help you pick that name?

7 A. I think my friends liked that name, too.

8 Q. When did you start wearing girl's clothing at
9 home?

10 A. I mean, I've always wanted my mom's clothes, so
11 I really started dressing like that maybe at home, third
12 grade, the year of third grade.

13 Q. Did you ask your parents if you could do it or
14 did you just do it?

15 A. I just did it.

16 Q. What was their reaction?

17 A. Positive.

18 Q. When did you first ask your parents to refer to
19 you as she or her?

20 A. When I transitioned.

21 Q. Going into fourth grade?

22 A. Yes.

23 Q. When did you start presenting as a girl in other
24 ways at home? I guess that would be makeup, other ways

1 besides clothing.

2 ATTORNEY HARTNETT: Objection to form.

3 THE WITNESS: Could you restate the
4 question, please?

5 BY ATTORNEY DUCAR:

6 Q. Yeah. I'll withdraw that question.

7 When did you start presenting as a girl at
8 home?

9 A. It started when I was really young.

10 ATTORNEY HARTNETT: Objection.

11 THE WITNESS: But I fully started wearing
12 clothes on my own, not wearing my mother's, around the
13 third-grade year.

14 BY ATTORNEY DUCAR:

15 Q. Do you wear jewelry?

16 A. Not a lot. I used to wear earrings but not
17 anymore.

18 Q. Do you wear makeup?

19 A. No.

20 Q. Are there other ways you presented at home as a
21 girl besides dressing as a girl?

22 A. Well, I always wanted girly --- a girly room and
23 girly items.

24 Q. And you started wearing girls clothing in fourth

1 grade.

2 Correct?

3 A. Yes.

4 Q. Do you recall the first time you saw a doctor or
5 a therapist about your desire to be a girl?

6 A. I can't remember.

7 Q. How did you first learn about puberty blocking
8 treatment?

9 A. Could you repeat the question, please?

10 Q. How did you first learn about puberty blocking
11 treatment?

12 A. My mom. My mom told me about it whenever I
13 transitioned.

14 Q. And is that something that you wanted to do?

15 A. Yes.

16 Q. At some point you wanted to start hormone
17 therapy?

18 A. Yes.

19 Q. Do you know what that means?

20 A. Getting female hormones.

21 Q. B [REDACTED], do you ever feel anxious?

22 ATTORNEY HARTNETT: Objection to form.

23 ATTORNEY DUCAR: Let me restate that.

24 That's fair.

1 BY ATTORNEY DUCAR:

2 Q. Does the fact that you are transitioning make
3 you feel anxious?

4 A. No.

5 Q. Does the fact that you're part of this lawsuit
6 make you feel anxious?

7 ATTORNEY HARTNETT: Objection to form.

8 THE WITNESS: No.

9 BY ATTORNEY DUCAR:

10 Q. Do you know what the word anxious means?

11 A. Nervous.

12 Q. Do you know what gender dysphoria is?

13 A. Yes.

14 [REDACTED]

15 [REDACTED]

16 [REDACTED] [REDACTED]

17 [REDACTED] [REDACTED]

18 [REDACTED]

19 ATTORNEY DUCAR: Thank you, B [REDACTED]. I
20 have no further questions for you today.

21 ATTORNEY CAPEHART: We have no further
22 questions at this time. We're just going to note as we
23 have in the last two depositions the possibility of
24 having to revisit something. If for some reason some

1 medical records would could to light, although I
2 understand that's unlikely, we're still noting that, but
3 you would object to that?

4 ATTORNEY HARTNETT: Yes, we object, but
5 we appreciate you making the record you want to make.

6 ATTORNEY CAPEHART: Thank you.

7 ATTORNEY HARTNETT: I'm sorry. Just on
8 that point, though, I mean, is there any specific item
9 that you lack today that you need to make a record?

10 ATTORNEY CAPEHART: I think our concern
11 has been the possibility of new records that might be
12 produced following the depositions.

13 ATTORNEY HARTNETT: Okay. Thank you.

14 ATTORNEY CAPEHART: Thank you.

15 ATTORNEY HARTNETT: I mean, is anyone
16 else going to have any further questioning? Sorry.
17 Just for the witness's awareness, we're confirming
18 whether or not there will be additional questioning from
19 any Defendant.

20 ATTORNEY ROGERS: I don't have any
21 further questions.

22 ATTORNEY DENIKER: I have no further
23 questions. Thank you again for your time today, B [REDACTED].

24 ATTORNEY HAMMOND: I have no further

1 questions. Thank you.

2 ATTORNEY DUCAR: I have nothing further.
3 Thank you.

4 ATTORNEY HARTNETT: And we also have no
5 questions for the witness today.

6 VIDEOGRAPHER: Okay. If there are no
7 further questions, that concludes today's deposition.
8 And the current time reads 3:01 p.m.

9 COURT REPORTER: Is it reading and
10 signing for your client?

11 ATTORNEY HARTNETT: Yes. I'm sorry. I
12 meant to say that on the record.

13 * * * * *

14 VIDEOTAPED VIDEOCONFERENCE DEPOSITION

15 CONCLUDED AT 3:01 P.M.

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1 STATE OF WEST VIRGINIA)

2 CERTIFICATE

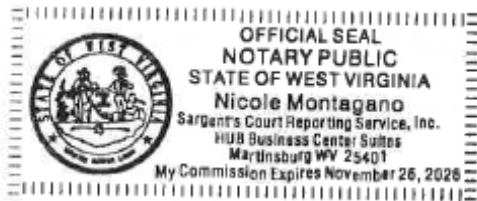
3 I, Nicole Montagano, a Notary Public in
4 and for the State of West Virginia, do hereby
5 certify:

6 That the witness whose testimony appears
7 in the foregoing deposition, was duly sworn by me
8 on said date, and that the transcribed deposition
9 of said witness is a true record of the testimony
10 given by said witness;

11 That the proceeding is herein recorded
12 fully and accurately;

13 That I am neither attorney nor counsel
14 for, nor related to any of the parties to the
15 action in which these depositions were taken, and
16 further that I am not a relative of any attorney
17 or counsel employed by the parties hereto, or
18 financially interested in this action.

19 I certify that the attached transcript
20 meets the requirements set forth within article
21 twenty-seven, chapter forty-seven of the West
22 Virginia.



Nicole Montagano
Nicole Montagano,
Court Reporter

Exhibit 13

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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 * Case 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, * VIDEOTAPED
DORA STUTLER in her official * VIDEOCONFERENCE
Capacity as Harrison County * DEPOSITION
Superintendent, PATRICK MORRISEY * OF
In his official capacity as * HEATHER JACKSON
Attorney General, and THE STATE * January 19, 2022
OF WEST VIRGINIA, *
Defendants *

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VIDEOTAPED VIDEOCONFERENCE DEPOSITION
OF
HEATHER JACKSON, taken on behalf of the Defendant, State
of West Virginia herein, pursuant to the Rules of Civil
Procedure, taken before me, the undersigned, Nicole
Montagano, a Court Reporter and Notary Public in and for
the State of West Virginia, on Wednesday, January 19,
2022, beginning at 4:02 p.m.

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A P P E A R A N C E S

JOSHUA BLOCK, ESQUIRE
American Civil Liberties Union Foundation
125 Broad Street
New York, NY 10004

COUNSEL FOR PLAINTIFF

LOREE STARK, ESQUIRE
ACLU of West Virginia
P.O. Box 3952
Charleston, WV 25339

COUNSEL FOR PLAINTIFF

KATHLEEN R. HARTNETT, ESQUIRE
ANDREW BARR, ESQUIRE
JULIE VEROFF, ESQUIRE
ZOE HELSTROM, ESQUIRE

Cooley, LLP
3 Embarcadero Center
20th Floor
San Francisco, CA 94111-4004

COUNSELS FOR PLAINTIFF

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A P P E A R A N C E S (cont'd)

SRUTI SWAMINATHAN, ESQUIRE

Lambda Legal

120 Wall Street

19th Floor

New York, NY 10005-3919

COUNSEL FOR PLAINTIFF

DAVID TRYON, ESQUIRE

CURTIS R.A. CAPEHART, ESQUIRE

State Capitol Complex

Building 1, Room E-26

Charleston, WV 25305

COUNSEL FOR STATE OF WEST VIRGINIA

ROBERTA F. GREEN, ESQUIRE

Shuman McCuskey Slicer, PLLC

1411 Virginia Street East

Suite 200

Charleston, WV 25301

COUNSEL FOR WEST VIRGINIA SECONDARY SCHOOL

ACTIVITIES COMMISSION

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A P P E A R A N C E S (cont'd)

SUSAN DENIKER, ESQUIRE

Steptoe & Johnson

400 White Oaks Boulevard

Bridgeport, WV 26330

COUNSEL FOR HARRISON COUNTY BOARD OF EDUCATION and

HARRISON COUNTY SUPERINTENDENT DORA STUTLER

KELLY C. MORGAN, ESQUIRE

KRISTEN V. HAMMOND, ESQUIRE

Bailey Wyant

500 Virginia Street East

Suite 600

Charleston, WV 25301

COUNSEL FOR WEST VIRGINIA BOARD OF EDUCATION and

SUPERINTENDANT W. CLAYTON BURCH

TIMOTHY D. DUCAR, ESQUIRE

Law Office of Timothy D. Ducar

7430 East Butherus Drive

Suite E

Scottsdale, AZ 85260

COUNSEL FOR INTERVENOR, LAINEY ARMISTEAD

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I N D E X

DISCUSSION AMONG PARTIES	11 - 14
<u>WITNESS</u> : HEATHER JACKSON	
EXAMINATION	
By Attorney Tryon	15 - 75
DISCUSSION AMONG PARTIES	75 - 76
CERTIFICATE	77

1	<u>EXHIBIT PAGE</u>		
2			
3			PAGE
4	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>
5	Exhibit 1	Davis Medical Records	-- *
6	Exhibit 1R	Davis Medical Records	-- *
7	Exhibit 2	Davis Medical Records	-- *
8	Exhibit 3	WVU Medical Records	-- *
9	Exhibit 4	UPMC Children's Medical	
10		Records	-- *
11	Exhibit 5	UPMC Children's Medical	
12		Records	-- *
13	Exhibit 6	UPMC Children's Medical	
14		Records	-- *
15	Exhibit 7	UPMC Children's Medical	
16		Records	
17	Exhibit 8	UPMC Children's Medical	
18		Records	-- *
19	Exhibit 9	UPMC Children's Medical	
20		Records	-- *
21	Exhibit 11A	Progress Notes	-- *
22	Exhibit 11B	Progress Notes	-- *
23	Exhibit 11C	Progress Notes	-- *
24	Exhibit 11D	Progress Notes	-- *

1	EXHIBIT PAGE		
2			
3			PAGE
4	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>
5	Exhibit 12	UPMC Children's Medical	
6		Records	--*
7	Exhibit 13	UMPC Children's Medical	
8		Records	--*
9	Exhibit 14	WVU Medical Records	--*
10	Exhibit 15	WVU Medical Records	--*
11	Exhibit 16	WVU Medical Records	--*
12	Exhibit 17	Gender Support Plan	--*
13	Exhibit 18	Preferred Name Request Form	--*
14	Exhibit 19	Gender Support Plan	--*
15	Exhibit 20	Student Information	--*
16	Exhibit 20R	Student Information	--*
17	Exhibit 21	Screening Results	--*
18	Exhibit 21R	Screening Results	--*
19	Exhibit 22	Birth Certificate	--*
20	Exhibit 22R	Birth Certificate	--*
21	Exhibit 23	Heart Walk Article	--
22	Exhibit 23R	Heart Walk Article	--
23	Exhibit 24	Photo	--
24	Exhibit 24R	Photo	--

	EXHIBIT PAGE		
			PAGE
	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>
1			
2			
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5	Exhibit 25	WV Record	--
6	Exhibit 26	Photo of Mom and BPJ	--
7	Exhibit 27	Article	--
8	Exhibit 28	Article	--
9	Exhibit 29	Lambda Legal Article	--
10	Exhibit 30	Declaration of Heather	
11		Jackson	--
12	Exhibit 31	Declaration of BJP	--
13	Exhibit 32	First Amended Complaint	--
14	Exhibit 33	Standards of Care	--
15	Exhibit 34	House Bill 3293	--
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23	* CONFIDENTIAL EXHIBITS		
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OBJECTION PAGE

ATTORNEY

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S T I P U L A T I O N

(It is hereby stipulated and agreed by and between counsel for the respective parties that reading, signing, sealing, certification and filing are not waived.)

P R O C E E D I N G S

VIDEOGRAPHER: We are now on the record.

My name is Jacob Stock. I'm a Certified Legal Video Specialist employed by Sargent's Court Reporting Services. The date today is January 19th, 2022. The time on the video monitor currently reads 4:02 p.m. This deposition is being taken remotely by Zoom conference. The caption of this case is in the United States District Court for the Southern District of West Virginia, Charleston Division, BPJ by her Next Friend and Mother, Heather Jackson, versus West Virginia State Board of Education, et al. Civil Action Number 2:21-CV-00316. The name of the witness is Heather Denise Jackson. Will the attorneys present state their names and the parties they represent.

ATTORNEY TRYON: This is David Tryon,

1 representing the State of West Virginia. And with me
2 is ---.

3 ATTORNEY CAPEHART: Curtis Capehart also
4 representing the State of West Virginia.

5 ATTORNEY BLOCK: This is Josh Block. I'm
6 representing Plaintiff BPJ and the witness. And with
7 folks' indulgence, I will have my co-counsel from Cooley
8 announce themselves followed by my co-counsel's from
9 Lambda Legal.

10 ATTORNEY HARTNETT: Hi. This is Kathleen
11 Hartnett from Cooley for BPJ and the witness.

12 ATTORNEY BARR: This is Andrew Barr from
13 Cooley for BPJ and the witness.

14 ATTORNEY VEROFF: This is Julie Veroff
15 from Cooley for BPJ and the witness.

16 ATTORNEY HELSTROM: This is Zoe Helstrom
17 from Cooley, LLP, for BPJ and the witness.

18 ATTORNEY SWAMINATHAN: This is Scruti
19 Swaminathan for BPJ and the witness from Lambda Legal.

20 ATTORNEY GREEN: Roberta Green, Schuman
21 McCuskey, Slicer here on behalf of West Virginia
22 Secondary School.

23 ATTORNEY DENIKER: Good afternoon. I'm
24 Susan Deniker from Steptoe and Johnson, PLLC,

1 representing Defendants Harrison County Board of
2 Education and Harrison County Superintendant Dora
3 Stutler.

4 ATTORNEY MORGAN: This is Kelly Morgan
5 with Bailey and Wyant as well as Kristen Hammond on
6 behalf of the West Virginia Board of Education and
7 Superintendant Burch.

8 ATTORNEY DUCAR: Good afternoon. Timothy
9 Ducar on behalf of Intervenor, Lainey Armistead.

10 ATTORNEY TRYON: Go ahead.

11 VIDEOGRAPHER: I was just going to say,
12 if that's everybody, the court reporter can swear in the
13 witness and we can begin.

14 ATTORNEY TRYON: Before you do that, the
15 communications are very garbled on our end. Is anyone
16 else experiencing that?

17 ATTORNEY GREEN: Very what? I'm sorry.

18 ATTORNEY TRYON: My point. I couldn't
19 understand anything that you just said. I think we're
20 going to log off and log back in. Get somebody to help
21 me do that. So I will be back in just a couple of
22 minutes here okay.

23 VIDEOGRAPHER: Other counsel, I'm
24 assuming we want to go off the record until he is back.

1 COURT REPORTER: Thank you.

2 ---

3 EXAMINATION

4 ---

5 BY ATTORNEY TRYON:

6 Q. Hello, Ms. Jackson, my name is David Tryon. I'm
7 an attorney from the State of West Virginia. Thank you
8 for taking your time to --- for this deposition today.

9 Can you please state your name for the record?

10 A. Heather Jackson.

11 Q. And do you prefer that I call you Mrs. Jackson
12 or Ms. Jackson or something else?

13 A. Ms. Jackson is fine.

14 Q. Okay.

15 So first of all, can you tell me if you are
16 represented by counsel today?

17 A. I'm represented by counsel, yes.

18 Q. And can you tell me who your attorneys are?

19 A. The names or their groups?

20 Q. Either one.

21 A. Well, ACLU and the Cooley law, Lambda Legal.

22 Q. Okay.

23 And do you have any formal engagement letter or
24 retainer letter with any of those attorneys?

1 A. I don't understand the question.

2 Q. Sure. At the time that you retained those
3 attorneys or they became your attorneys, did you have a
4 written document that you signed with them saying you
5 are my attorneys?

6 A. Yes.

7 Q. Okay.

8 And how long ago was that signed?

9 A. I don't know the date.

10 Q. Was it before or after this lawsuit was filed?

11 A. Before.

12 Q. Was it before or after the Law House Bill 3293
13 was passed?

14 A. After.

15 Q. And who else is on that besides you? Is your
16 child BPJ on that?

17 A. BPJ.

18 Q. And is your husband Wesley on that?

19 A. I believe so.

20 Q. Okay.

21 Have you ever been deposed before?

22 A. No.

23 Q. Have you ever been sued before?

24 A. No.

1 Q. Have you received some guidance on how a
2 deposition works?

3 A. I've been told how it works.

4 Q. Okay. Great.

5 Well, I'm just going to go through some of the
6 rules. And you may have heard them before, but we'll go
7 through anyways. So first of all, the Federal Rules of
8 Civil Procedure apply here. And just so you know how
9 this works with objections, the specific rule involved,
10 which is Rule 30(c)(2) says an objection at the time of
11 the examination, whether to evidence, to a party's
12 conduct, to the officer's qualifications, to the manner
13 of taking the deposition or to any other aspect of the
14 deposition must be noted on the record but the
15 examination still proceeds. The testimony is taken
16 subject to any objection. An objection must be stated
17 concisely in a non-argumentative and non-suggestive
18 manner. That's the rule.

19 So in other words, if your counsel objects to
20 any of my questions or any of the other lawyers'
21 questions, they can object, they can state the reason
22 why, but they can't --- but you still need to answer the
23 question unless they specifically instruct you to not
24 answer it.

1 Do you understand that?

2 A. Yes.

3 Q. Okay.

4 And so in the context of this deposition, the
5 deposition is a little odd, which is where we ask you
6 questions about information that you might have about
7 this lawsuit that you filed on behalf of BPJ, and so you
8 will just answer those questions as far as to the best
9 of your ability.

10 Okay?

11 A. Okay.

12 Q. And if you don't understand my question and
13 would like me to clarify it, please ask me to clarify it
14 and I will do my best to do so.

15 Okay?

16 A. Okay.

17 Q. Also, I would like you to answer orally as you
18 have been doing rather than nodding or shaking your
19 head.

20 Okay?

21 A. Okay.

22 Q. And also, if you need a break during this
23 deposition, let me know. This is not designed to be an
24 endurance contest, so let us know if you need to take a

1 break.

2 I want to ask you first, during your husband's
3 --- your understanding is that your husband --- his
4 deposition was just taken.

5 Right?

6 A. Correct.

7 Q. Were you able to listen into it or watch it in
8 any fashion?

9 A. No.

10 Q. After his deposition, did he tell you about it?

11 A. No.

12 Q. And during the course of his deposition or
13 after, did anybody send you texts or emails telling you
14 about it?

15 A. No.

16 Q. So before we get actually started with any
17 questions, I just want to let you know that we, as
18 counsel, are not here to try and cause you any heartburn
19 or to judge you or anyone in your family. These are
20 situations which are, you know, obviously a little
21 different than some of us have experienced and they're
22 sometimes challenging, but in this situation your ---
23 BPJ has followed this lawsuit through you to challenge
24 the State's law, and so we have an obligation on behalf

1 of the State to defend that law. And so, as a result,
2 we have an obligation to then ask you questions about
3 your rationale, about the facts that are involved with
4 this. And so that's the background for this. I just
5 want to tell you that's why we're asking these questions
6 of you. Does that sound fair so far?

7 ATTORNEY BLOCK: Objection to the extent
8 that you're asking her to agree with your legal
9 interpretation of what the law requires you to do. You
10 can answer it.

11 THE WITNESS: Yes.

12 BY ATTORNEY TRYON:

13 Q. In preparation for your deposition today did you
14 look at any documents?

15 A. I have documents, yes.

16 Q. Have you looked at those as you prepared for
17 this deposition today?

18 A. A while back.

19 Q. Okay.

20 In the past week have you looked at any in
21 anticipation of this deposition?

22 A. No.

23 Q. Have you had ample time to discuss this --- to
24 prepare for this deposition in consultation with your

1 attorneys?

2 A. Yes.

3 Q. In connection with preparing for this
4 deposition, did you have any discussions with either BPJ
5 or with your husband?

6 A. Can you repeat that, please?

7 Q. Yes. In preparation for this deposition, did
8 you talk to either your husband or BPJ?

9 A. No.

10 Q. And just so you know, the reason I'm using the
11 initials BPJ is twofold. First of all, because it is
12 the name of the Plaintiff in the deposition --- excuse
13 me, in the Complaint that was filed. And also, because
14 whenever there's a minor involved, we typically in court
15 documents and court proceedings use the initials of the
16 minor. And so I'm not suggesting that you need to use
17 those initials. You can refer to BPJ in any manner that
18 you feel comfortable, but I want you to understand why
19 I'm using those initials.

20 Okay?

21 A. Yes.

22 Q. First of all, let me ask you about the law
23 itself. HB 3293, are you familiar with that law?

24 A. Yes.

1 Q. Have you read it?

2 A. Full on, no.

3 Q. Okay.

4 But certain parts you've read?

5 A. Just to get the extent of the knowledge that it
6 would not allow my daughter to participate in girls
7 sports.

8 Q. Okay.

9 And what's your basis for that understanding?

10 A. The law, as I've read it, from what I've read.

11 Q. And from what you can remember, what about the
12 law would prevent your --- prevent BPJ from
13 participating in girls sports?

14 A. Because she is a transgender female, she
15 wouldn't be permitted to play with the female sports
16 teams.

17 Q. Okay.

18 You've read part of the law you said but not
19 all.

20 Is that right?

21 A. Correct.

22 Q. Are you aware of any place in that law where it
23 uses the terms transgender?

24 ATTORNEY BLOCK: Objection to the extent

1 that you're asking her about the text of the document
2 that she doesn't have in front of her. I would like ---
3 I request you provide her the document unless you're
4 testing her memory.

5 ATTORNEY TRYON: My question stands.
6 Can the court reporter please read back
7 my question?

8 COURT REPORTER: Are you aware of any
9 place in that law where it --- where it uses the term
10 transgender?

11 THE WITNESS: I don't know.

12 BY ATTORNEY TYRON:

13 Q. Well, let's take a look at that.

14 ATTORNEY TRYON: I'll have the court
15 reporter pull up Exhibit 34, please.

16 BY ATTORNEY TRYON:

17 Q. So I would like to briefly go through this so
18 you can see the extent of it. So this is the first page
19 of House Bill 3293. And this is the second page. And I
20 will just go through it quickly. And if you want me to
21 go back and show you any particular page, I'm happy to
22 do that.

23 Okay.

24 This is the next page. That's the final page

1 of the text and then there's a blank page for some
2 reason and then there is the last page, which has
3 signatures --- signature lines for various parties. So
4 let me go back up to the beginning. And what I'd like
5 to ask you is can you tell me what parts of it you have
6 read prior to today, starting at page one?

7 ATTORNEY BLOCK: Objection. Can you give
8 the witness a chance to read the entire document before
9 answering your question as to parts of it?

10 BY ATTORNEY TRYON:

11 Q. Sure. You can tell me when you're ready to move
12 to the next page.

13 A. Okay. Next page.

14 Q. Okay.

15 Going down on this page. That is the remainder
16 of that page. Go ahead.

17 A. Okay.

18 Q. This is the top of the second page of the text?

19 A. Okay.

20 Q. All right.

21 That is the bottom half of the first page of
22 the text?

23 A. Okay.

24 Q. And this is the top of the next page of the

1 text?

2 A. Okay.

3 Q. And scrolling down to the last half of the full
4 text of the --- on that page of the text.

5 A. Okay.

6 Q. Would you agree with me that the term or the
7 word transgender does not appear anywhere in this bill?

8 A. It does not.

9 Q. And can you tell me what portions of this bill
10 that you believe prevents BPJ from participating in girl
11 sports?

12 A. The references to biological sex being male at
13 birth.

14 Q. So you are referring to line 25 and 26 on the
15 --- what is marked as page two of the bill?

16 A. Can you go up to the first page?

17 Q. Well, the first page --- yes, this is the first
18 page.

19 A. Okay.

20 There where it is talking about defining
21 biological sex as female and male.

22 Q. Okay.

23 You're looking at line four on the first page?

24 A. Yeah.

1 Q. On the left side there's lines?

2 A. I see --- I see the line numbers, okay. Yes.

3 Q. Okay.

4 Anything else in here that you saw? Tell me if
5 you want me to scroll down or anything.

6 A. Just the references to the biological sex of
7 female and male.

8 Q. Okay.

9 So you're saying the reference to biological
10 sex of female and male as referenced throughout the
11 bill?

12 A. Correct.

13 Q. So under the terminology of this bill would you
14 agree that BPJ has the biological sex of male?

15 A. Biological sex as male, correct.

16 Q. Just to be clear we are communicating, so the
17 biological sex of BPJ is male.

18 Right?

19 ATTORNEY BLOCK: Objection to the extent
20 --- I'm sorry.

21 THE WITNESS: She was born a male.

22 BY ATTORNEY TYRON:

23 Q. Okay.

24 And specific to this bill, under this bill BPJ

1 is defined --- would be defined as a biological male.

2 Right?

3 A. Correct.

4 Q. These are not trick questions. I'm just trying
5 to establish a baseline for us to communicate. But if
6 you think they are trick questions, you just tell me and
7 we'll try to clarify the questions.

8 So let me scroll down and --- so what parts of
9 this had you, in fact, read?

10 A. Parts of the first page and then the parts where
11 it says that if the --- it's like down on the third
12 page, I believe.

13 Q. I'll scroll down and you tell me when to stop.

14 A. Maybe it's not on the third page. Where it
15 talks about if there's ---.

16 Q. Well, this is page two right here of the bill.

17 A. Okay. Line 48.

18 Q. Line 48. So line 48 says any student aggrieved
19 by a violation of this section may bring an action
20 against a County Board of Education or state institution
21 of higher education alleged to be responsible for the
22 alleged violation. Is that what you're referring to?

23 A. Yes.

24 Q. Do you believe that's the provision under which

1 your lawsuit has been filed?

2 ATTORNEY BLOCK: Objection, misstates her
3 testimony.

4 ATTORNEY TRYON: I'm asking the question.

5 THE WITNESS: I believe that my child is
6 harmed by this bill, which is why we are filing this.

7 BY ATTORNEY TYRON:

8 Q. Okay.

9 In what way is your child harmed by this bill?

10 A. She cannot participate on female sports.

11 Q. And how is that harmful? To use your words, how
12 is that a harm to BPJ?

13 A. She is being denied the opportunity to
14 participate.

15 Q. The opportunity to participate in what?

16 A. In female sports.

17 Q. Under this bill would BPJ be permitted to
18 participate in male sports?

19 A. She wouldn't participate in male sports.

20 Q. Okay.

21 But that's not my question. My question is
22 under this bill would BPJ be permitted to participate in
23 male sports?

24 ATTORNEY BLOCK: Objection. Calls for a

1 legal conclusion.

2 BY ATTORNEY TYRON:

3 Q. Go ahead.

4 A. She could participate in male sports.

5 Q. And --- okay.

6 I'm now looking at page one as marked at the
7 bottom of the bill. In line one it says the legislature
8 hereby finds and then it lists a number of findings by
9 the legislature. Prior to today have you read those
10 findings?

11 A. No.

12 Q. Starting on line two, on page one it says there
13 are inherent differences between biological males and
14 biological females and that these differences are cause
15 for celebration as determined by the Supreme Court of
16 the United States in the United States versus Virginia,
17 1996. Do you agree with that statement?

18 ATTORNEY BLOCK: Objection to vagueness
19 of the terms.

20 THE WITNESS: I don't understand a lot of
21 the lawyer --- the legalese.

22 BY ATTORNEY TRYON:

23 Q. What part of that sentence do you not
24 understand?

1 A. The inherent differences. I mean, there's are
2 differences yes, but it's not telling me what the
3 inherent difference are.

4 Q. Very good. So do you agree that there are
5 inherent differences between biological males and
6 biological females?

7 ATTORNEY BLOCK: Objection again to the
8 vagueness of the terms biological males and biological
9 females.

10 ATTORNEY TRYON: Counsel, I would just
11 appreciate if you just state objection, vagueness,
12 something along those lines, rather than your extended
13 objection.

14 BY ATTORNEY TYRON:

15 Q. So ma'am, I'll ask you one more time. Do you
16 agree with the statement there are inherent differences
17 between biological males and biological females?

18 A. Do you mean physical differences?

19 Q. I'm reading the bill. I don't mean anything.
20 I'm asking if you agree with that statement that there
21 are inherent differences between biological males and
22 biological females?

23 A. I don't know what it means by inherent
24 differences, if it's talking about physical differences.

1 Q. Do you know what the word inherent means?

2 A. Apparently not.

3 Q. Do you know what the word differences mean?

4 A. Yes.

5 Q. Okay.

6 Do you believe that there are differences
7 between biological males and biological females?

8 A. There are physical differences, correct.

9 Q. Do you believe there are other differences
10 between biological males and biological females other
11 than physical differences?

12 ATTORNEY BLOCK: Objection, vagueness.

13 THE WITNESS: I'm not a physician here.
14 I'm just --- I mean, there's differences between males
15 and females.

16 BY ATTORNEY TRYON:

17 Q. Correct. And you are suing to have this law
18 overturned, so I'm asking --- I want to understand
19 specifically what parts of the law you agree with and
20 what parts you disagree with because that's very
21 important in a lawsuit where you're challenging the
22 constitutionality of a law. And that's why I'm asking
23 what you understand the differences are between
24 biological males and biological females?

1 ATTORNEY BLOCK: Objection.

2 Argumentative, vague.

3 THE WITNESS: There are differences
4 between biological males and biological females.

5 BY ATTORNEY TRYON:

6 Q. What's your understanding of what those
7 differences are?

8 A. Well, males have penises and females have
9 vaginas and ovaries.

10 Q. Are there any other differences?

11 A. Those are what I would consider biological
12 markers or what my child was judged at at birth. She
13 was born with a penis, so therefore she was judged as
14 male.

15 Q. Are there any other differences between
16 biological males and biological females that you are
17 aware of?

18 A. No.

19 ATTORNEY BLOCK: Objection. Objection,
20 vagueness.

21 BY ATTORNEY TRYON:

22 Q. The next part of that statement says and these
23 --- that these differences are cause for celebration.

24 Do you agree that the differences between biological

1 males and biological females are cause for celebration?

2 ATTORNEY BLOCK: Objection, vagueness.

3 THE WITNESS: Yes.

4 BY ATTORNEY TRYON:

5 Q. The next statement at line five says these
6 inherent differences are not a valid justification for
7 sex-based classifications that make overbroad
8 generalizations or perpetuate the legal, social and
9 economic inferiority of either sex.

10 Do you agree with that sentence?

11 ATTORNEY BLOCK: Objection, legal
12 conclusion.

13 THE WITNESS: There's a lot of legal
14 jargon in that sentence.

15 BY ATTORNEY TRYON:

16 Q. Do you want me to read it again?

17 A. No, I can read it. I just don't necessarily
18 understand the whole sentence.

19 Q. Well, let's break it down. It says these
20 inherent differences are not valid justification for
21 sex-based classification that makes overbroad
22 generalizations.

23 Do you agree with that much?

24 ATTORNEY BLOCK: Objection, legal

1 conclusion.

2 THE WITNESS: Yes.

3 BY ATTORNEY TRYON:

4 Q. The next part says or perpetuates the legal,
5 social and economic inferiority of either sex.

6 Do you agree with that?

7 ATTORNEY BLOCK: Objection, legal
8 conclusion.

9 THE WITNESS: Perpetuate or perpetuate
10 the legal, social? Can you explain that to me?

11 BY ATTORNEY TRYON:

12 Q. My understanding of the term perpetuate is that
13 a --- to promote or conclude or to move forward the
14 legal, social and economic inferiority of either sex.
15 In other words, this statement, as I read it, is saying
16 that these inherent differences are not valid
17 participation for legal, social and economic inferiority
18 of either sex.

19 A. Okay.

20 Q. Do you agree with that?

21 A. Okay. Yeah.

22 ATTORNEY BLOCK: Objection, legal
23 conclusion.

24 BY ATTORNEY TRYON:

1 Q. You can answer, but take your time.

2 A. From what I understand that sentence to mean,
3 yes, but I don't know that I fully understand all the
4 legal jargon in that sentence.

5 Q. Okay. Fair enough.

6 The next sentence at line seven says, rather
7 these inherent differences are a valid justification for
8 sex-based classifications when they realistically
9 reflect the fact that the sexes are not similarly
10 situated in certain circumstances as recognized by the
11 Supreme Court. But forgetting about whether or not the
12 Supreme Court recognized it, do you agree with that
13 statement?

14 ATTORNEY BLOCK: Objection, objection.
15 That doesn't read the complete sentence. It calls for a
16 legal conclusion.

17 THE WITNESS: I don't feel that it's a
18 valid justification for sex-based classifications, no.

19 BY ATTORNEY TRYON:

20 Q. Under any circumstances whatsoever?

21 ATTORNEY BLOCK: Objection, calls for a
22 legal conclusion.

23 THE WITNESS: There are valid
24 justifications for sex-based classifications? I'm

1 unable to imagine all possible situations.

2 BY ATTORNEY TRYON:

3 Q. Can you imagine any situation where a sex-based
4 classification is a valid justification?

5 A. No.

6 ATTORNEY BLOCK: Objection, calls for a
7 legal conclusion.

8 BY ATTORNEY TRYON:

9 Q. So for example, you think that men should always
10 be allowed to use women's bathrooms at any time, no
11 matter what?

12 ATTORNEY BLOCK: Objection.
13 Argumentative.

14 THE WITNESS: Can you repeat the
15 question?

16 BY ATTORNEY TRYON:

17 Q. Do you believe that any man should be allowed to
18 use any female bathroom at any time for any reason?

19 ATTORNEY BLOCK: Same objection.

20 THE WITNESS: I have no problem with
21 people using the restrooms that they want to use.

22 BY ATTORNEY TRYON:

23 Q. Okay.

24 Do you believe that it's appropriate to

1 require ---?

2 A. Can you repeat that?

3 Q. Yes. I'm thinking. I'm sorry.

4 A. Okay.

5 I didn't know if it cut out or ---.

6 Q. No. Your last answer surprised me a little bit,
7 so --- and do you believe that in your child's school
8 that any boy should be allowed to enter a girls' locker
9 room or shower at any time for any reason?

10 ATTORNEY BLOCK: Objection. Calls for
11 speculation.

12 THE WITNESS: If there is a bathroom
13 emergency and there's a --- somebody needs to use the
14 restroom, they should be able to use the restroom.

15 BY ATTORNEY TRYON:

16 Q. So if there's a bathroom --- bathroom emergency,
17 as you classified it, then a boy should be allowed to go
18 into a girl's bathroom, if necessary.

19 Is that your testimony?

20 A. No, I wouldn't say that's accurate. I have no
21 problem with people using whichever restroom they want
22 to use.

23 Q. How about locker rooms? You have no problems
24 with a boy in high school going in naked into a girls'

1 shower with naked girls?

2 ATTORNEY BLOCK: Objection, that calls
3 for speculation.

4 THE WITNESS: That is a bit extreme.

5 BY ATTORNEY TRYON:

6 Q. That is my question, though. Do you have --- do
7 you think that's --- there's a justification to prohibit
8 that?

9 A. I would think that that should be prohibited,
10 yes, if they're walking in there naked.

11 Q. Okay.

12 So at least in one situation there's a valid
13 justification for sex-based classifications.

14 Right?

15 ATTORNEY BLOCK: Objection, calls for a
16 legal conclusion.

17 BY ATTORNEY TRYON:

18 Q. I'm not asking you, by the way, on any of these
19 questions for a legal conclusion. I'm asking for your
20 viewpoint as a Plaintiff or representing as the parent
21 of the Plaintiff on whose behalf you filed this lawsuit.
22 I'm asking for your opinion on this law on all these
23 questions.

24 ATTORNEY TRYON: So you don't need to

1 keep saying calls for a legal conclusion. I'm not
2 asking for a legal conclusion.

3 ATTORNEY BLOCK: You're citing case law
4 that's quoted in the bill.

5 BY ATTORNEY TRYON:

6 Q. So I will ask you again ---.

7 ATTORNEY TRYON: Well, could the court
8 reporter please read back my question?

9 COURT REPORTER: Okay. So you at least
10 in one situation there is a valid justification for
11 sex-based classification. Right?

12 THE WITNESS: I also don't think that
13 they should walk around naked in the hallway either.

14 ATTORNEY TRYON: Court Reporter?

15 THE WITNESS: So I don't understand.

16 ATTORNEY TRYON: Court Reporter, could
17 you please read my question one more time, please?

18 COURT REPORTER: Okay. So you're --- at
19 least in one situation there is a valid justification
20 for a sex-based classification. Right?

21 ATTORNEY BLOCK: Objection, asked and
22 answered.

23 BY ATTORNEY TRYON:

24 Q. It's a simple yes or no.

1 ATTORNEY BLOCK: Objection, asked and
2 answered.

3 THE WITNESS: I don't know how to answer
4 this because I'm picturing the kid walking around naked
5 in the school at this point.

6 BY ATTORNEY TRYON:

7 Q. Forget --- don't --- don't picture that. You
8 had said that you believe it's --- as I understand your
9 testimony, is that there is valid justifications for
10 sex-based classification to prohibit a male to --- in
11 from walking into a girls' shower naked when there's
12 other naked girls in there?

13 ATTORNEY BLOCK: Objection. Are you
14 finished with the question? I didn't mean to cut you
15 off.

16 THE WITNESS: Yes, I don't think that a
17 male should walk around naked in a female locker room.

18 BY ATTORNEY TRYON:

19 Q. So a law or rule saying that would be
20 reasonable.

21 Right?

22 A. The school ---?

23 ATTORNEY BLOCK: Objection, calls for a
24 legal conclusion.

1 THE WITNESS: Schools have rules for
2 that, yes.

3 BY ATTORNEY TRYON:

4 Q. And that would be a validly justified rule.
5 Right?

6 ATTORNEY BLOCK: Objection, legal
7 conclusion.

8 THE WITNESS: Yes.

9 BY ATTORNEY TRYON:

10 Q. Okay.
11 Do you think there might be other valid
12 justifications for sex-based classifications ---

13 A. I don't know.

14 Q. --- to reflect the fact that the sexes are not
15 similarly situated in certain circumstances? Is that a
16 possibility?

17 ATTORNEY BLOCK: Objection. Calls for
18 legal conclusion, misstates prior testimony.

19 THE WITNESS: I don't know. I don't know
20 of all possible situations.

21 BY ATTORNEY TRYON:

22 Q. Neither do I but I'm asking if you think there
23 might be other situations?

24 ATTORNEY BLOCK: Objection asked and

1 answered.

2 THE WITNESS: I don't know. You probably
3 have to be on a case by case basis. I'm not sure of all
4 possible situations.

5 BY ATTORNEY TRYON:

6 Q. Okay, let's move on, line 12 says in the context
7 of sports involving competitive skill or contact
8 biological males and biological females are not in fact
9 similarly situated. Do you agree with that statement?

10 ATTORNEY BLOCK: Objection, vague, calls
11 for a legal conclusion.

12 THE WITNESS: I don't agree with that.

13 BY ATTORNEY TRYON:

14 Q. Do you believe that in the context biological
15 males and biological females are always similarly
16 situated?

17 ATTORNEY BLOCK: Objection, vague, calls
18 for legal conclusion?

19 THE WITNESS: I believe they are
20 similarly situated.

21 BY ATTORNEY TRYON:

22 Q. Under all circumstances?

23 A. As far as my knowledge goes, yes.

24 Q. Okay.

1 So if we are talking about a biological male
2 who is 18 as compared to a biological female who is 18
3 you believe that they are both similarly situated?

4 ATTORNEY BLOCK: Objection,
5 mischaracterizes testimony. Vague. Calls for legal
6 conclusions.

7 THE WITNESS: In regard to competitive
8 skill?

9 BY ATTORNEY TRYON:

10 Q. Correct.

11 A. Then they are similarly situated.

12 Q. So do you --- is it your position that there was
13 no difference between boys and girls playing high school
14 sports?

15 ATTORNEY BLOCK: Objection.
16 Mischaracterizes the previous testimony.

17 ATTORNEY TRYON: I'm not
18 mischaracterizing her testimony I'm asking her a new
19 question, counsel.

20 THE WITNESS: I believe ---.

21 ATTORNEY BLOCK: Same objection.

22 THE WITNESS: I believe a girl can run as
23 fast as a boy can run.

24 BY ATTORNEY TRYON:

1 Q. So you believe that a --- in a mile run you
2 believe that an 18-year-old girl would be able to run
3 just as fast as a boy?

4 ATTORNEY BLOCK: Objection calls for
5 speculation.

6 THE WITNESS: Yes, I do.

7 BY ATTORNEY TRYON:

8 Q. Do you have any statistics to back that up?

9 A. No, I do not.

10 Q. Have you ever looked at any statistics?

11 A. No, I do not.

12 Q. What is the basis for your belief of what you
13 just expressed?

14 A. With proper training they both have adequate
15 training they can both run.

16 Q. So do you believe that in high school sports the
17 differentiation between --- strike that.

18 Do you believe that in both middle school and
19 high school that there is no difference between males
20 and females in sports?

21 ATTORNEY BLOCK: Objection
22 mischaracterizes testimony. Argumentative?

23 THE WITNESS: I believe the girls are as
24 capable as the boys.

1 BY ATTORNEY TRYON:

2 Q. So there is no difference between them in either
3 middle school or high school in sports?

4 A. Agreed.

5 Q. Is that your testimony?

6 ATTORNEY BLOCK: Objection vague.

7 THE WITNESS: I think the males and the
8 females can do just as well.

9 BY ATTORNEY TRYON:

10 Q. So do you believe that there should be no
11 difference --- there should be no male teams and female
12 teams but they should all be together in elementary,
13 middle school and high school?

14 ATTORNEY BLOCK: Objection, vague.

15 THE WITNESS: I believe that she should
16 be able to participate on the team that they identify
17 with.

18 BY ATTORNEY TRYON:

19 Q. Well right now, there are different teams.
20 There is a boys team and a girls team in many sports, do
21 you believe that there is any reason at all that there
22 should be a differentiation between boys and girls
23 designation of sports?

24 A. No, I think ---.

1 ATTORNEY BLOCK: Objection.

2 THE WITNESS: I think if a girl wants to
3 wrestle, the girl should be allowed to wrestle.

4 BY ATTORNEY TRYON:

5 Q. And if a boy wants to run on a girls team ---
6 well let me back up.

7 So do you think there is any reason at all that
8 there should be a boys teams and a girls team in any
9 sports?

10 ATTORNEY BLOCK: Objection, vague.

11 THE WITNESS: I think that they should be
12 able to participate on the team that they identify with.

13 BY ATTORNEY TRYON:

14 Q. Okay.

15 But that is not my question that is a totally
16 different question. The question is are you saying that
17 there should not be a differentiation at all in the
18 middle school or high school sports between men ---
19 between boys and girls?

20 ATTORNEY BLOCK: Objection. Vague.

21 THE WITNESS: I don't know the answer to
22 that.

23 BY ATTORNEY TRYON:

24 Q. Well you said there is no justification for any

1 differentiation between biological males and biological
2 females and I'm trying to understand how that applies to
3 the context of sports?

4 ATTORNEY BLOCK: Objection, misstates
5 prior testimony, argumentative.

6 ATTORNEY TRYON: You're right I did make
7 a mistake there, I apologize.

8 BY ATTORNEY TRYON:

9 Q. In the context ever sports involving competitive
10 sports or contact you told me that biological males and
11 biological females are similarly situated and there is
12 no reason for them to have different designations of
13 sports. Is that consistent with your testimony?

14 A. I believe they are similarly situated.

15 Q. And so there is no reason to have a boys team,
16 right?

17 ATTORNEY BLOCK: Objection, vague,
18 argumentative.

19 THE WITNESS: I don't know what the
20 reason would be to have a boys team.

21 BY ATTORNEY TRYON:

22 Q. So all teams should just be coed, right?

23 ATTORNEY BLOCK: Objection, vague,
24 argumentative?

1 THE WITNESS: I don't know the answer to
2 that.

3 BY ATTORNEY TRYON:

4 Q. Okay.

5 So since there is no difference between
6 biological males and females on sports teams than why is
7 it that BPJ can't or won't run on what's designated as
8 the boys cross-country team?

9 ATTORNEY BLOCK: Objection misstates
10 prior testimony, vague, compound question,
11 argumentative?

12 THE WITNESS: Because she is a girl.

13 BY ATTORNEY TRYON:

14 Q. Okay.

15 But you just told me there is no difference
16 between boys and girls. So why shouldn't BPJ run on the
17 boys teams if there is no difference between boys and
18 girls?

19 ATTORNEY BLOCK: Objection, misstates
20 prior testimony, argumentative?

21 THE WITNESS: The fact is that there are
22 boys and girls teams and she should be able to run on
23 the girls team because she is a girl.

24 BY ATTORNEY TRYON:

1 Q. So in this lawsuit are you asking that the Court
2 abolish boys teams because there is no difference?

3 ATTORNEY BLOCK: Objection. Calls for a
4 legal conclusion, vague, misstates prior testimony.

5 THE WITNESS: Can you repeat the
6 question?

7 ATTORNEY TRYON: The court reporter
8 please repeat the question?

9 COURT REPORTER: So in this lawsuit are
10 you asking that the court abolish boys' teams because
11 there is no difference?

12 THE WITNESS: No, that is not what.

13 ATTORNEY BLOCK: My objection stands.

14 THE WITNESS: No, that is not what I'm
15 saying.

16 BY ATTORNEY TRYON:

17 Q. So I will ask a new question so I'm not
18 misstating your prior testimony. Do you believe there
19 is a justification to have a boys cross-country team?

20 ATTORNEY BLOCK: Objection, legal
21 conclusion.

22 THE WITNESS: I don't know if there is a
23 justification to that.

24 BY ATTORNEY TRYON:

1 Q. Okay.

2 So help me out here because you told me there
3 is no difference between males and females. What would
4 be the justification for having a different boys teams
5 and girls team in track?

6 ATTORNEY BLOCK: Objection, misstates her
7 prior testimony. Vague, argumentative.

8 THE WITNESS: I just know that there are
9 girls teams and boys teams in track.

10 BY ATTORNEY TRYON:

11 Q. But you don't agree there's justification for
12 it.

13 Is that correct?

14 ATTORNEY BLOCK: Objection misstates
15 prior testimony?

16 THE WITNESS: I don't know what the
17 justification is.

18 BY ATTORNEY TRYON:

19 Q. You don't believe there's a justification, do
20 you?

21 ATTORNEY BLOCK: Objection, asked and
22 answered misstates prior testimony?

23 THE WITNESS: I just know that there is
24 male teams and there is female teams in school and in

1 professional sports.

2 BY ATTORNEY TRYON:

3 Q. You mean professional sports, do you believe
4 there is a justification for that?

5 ATTORNEY BLOCK: Objection, vague.

6 THE WITNESS: I think a girl should be
7 allowed to play football.

8 BY ATTORNEY TRYON:

9 Q. How do you think a girl would fare in
10 professional football?

11 A. I don't know.

12 Q. Do you watch professional football?

13 A. I do.

14 Q. And have you ever seen --- are you aware of any
15 females that compete with males in the professional
16 football?

17 A. Not in the NFL.

18 Q. Any other football league?

19 A. I don't watch any other football league.

20 Q. Let's go back to line 12 on the second page of
21 the exhibit. It says in the context of sports involving
22 competitive skill or contact biological place and
23 biological females are not in fact similarly situated.

24 Do you agree with that --- I'm sorry we already asked

1 that my apologies. The next sentence is biological
2 males would displace females to a substantial extent if
3 permitted to be on teams designated for biological
4 females as recognized in the court case. Do you believe
5 that is a correct statement?

6 A. I don't.

7 ATTORNEY BLOCK: Objection, calls for a
8 legal conclusion, vague.

9 THE WITNESS: I don't agree with that
10 statement.

11 BY ATTORNEY TRYON:

12 Q. If the boys track team were to suddenly be
13 consolidated with the girls track team do you think that
14 the biological boys would displace the female, the
15 biological females or not?

16 A. I don't know.

17 ATTORNEY BLOCK: Objection. Vague, calls
18 for speculation.

19 BY ATTORNEY TRYON:

20 Q. You don't know?

21 A. I wouldn't know it would be completely a guess
22 on my point.

23 Q. So it is possible that there is a difference
24 then?

1 ATTORNEY BLOCK: Same objections.

2 THE WITNESS: There is possible there is
3 not a difference is what I'm saying.

4 BY ATTORNEY TRYON:

5 Q. And it's possible that there is a difference?

6 A. Not a difference.

7 Q. I'm sorry?

8 A. I'm saying that they would not displace females.

9 Q. You are absolutely certain they would not, is
10 that what you are saying?

11 ATTORNEY BLOCK: Objection, misstates
12 prior testimony, vague, calls for speculation.

13 THE WITNESS: It's just my opinion.

14 BY ATTORNEY TRYON:

15 Q. Okay.

16 And your opinion --- is your opinion based on
17 any facts?

18 A. No, it is my opinion.

19 Q. Is your opinion based on any facts?

20 ATTORNEY BLOCK: Objection, asked and
21 answered.

22 THE WITNESS: I don't know of a case
23 where a biological male has displaced females.

24 ATTORNEY TRYON: Could you read my

1 question again please, Court Reporter?

2 COURT REPORTER: Is your opinion based on
3 any facts? Do you want the question before that?

4 ATTORNEY TRYON: Yes. I might be
5 helpful. Maybe the answer before that and the question.

6 COURT REPORTER: Okay. And is your
7 opinion based on any facts. And, no, sir, it it my
8 opinion. Question, is your opinion based on any facts?

9 ATTORNEY BLOCK: Same objections, asked
10 and answered.

11 THE WITNESS: It's my opinion.

12 BY ATTORNEY TRYON:

13 Q. So you're not aware of any --- have you read any
14 books, articles, analysis that would support your
15 opinion?

16 A. No.

17 Q. There is a statement on line 17 that says,
18 gender identity is separate and distinct from biological
19 sex to the extent that an individual's biological sex is
20 not determinative or indicative of the individual's
21 gender identity. Do you agree with that statement?

22 A. I don't understand.

23 ATTORNEY BLOCK: Objection, calls for a
24 medical opinion.

1 THE WITNESS: I don't understand that
2 statement.

3 BY ATTORNEY TRYON:

4 Q. Great. Let's break it down. Gender identity is
5 separate and distinct from biological sex. Do you agree
6 with that?

7 ATTORNEY BLOCK: Objection, vague, calls
8 for medical opinion.

9 BY ATTORNEY TRYON:

10 Q. I'm not asking for your medical opinion, ma'am,
11 I'm just asking if you agree with that statement, gender
12 identity is separate and distinct from biological sex?

13 A. Yes.

14 ATTORNEY BLOCK: Objection, vague.

15 THE WITNESS: Yes, it's separate.

16 BY ATTORNEY TRYON:

17 Q. And on line 19 in the bill it says,
18 classification is based on gender identity, serve no
19 legitimate relationship to the State of West Virginia's
20 interest in promoting equal athletic opportunities for
21 female sex. Do you agree with that statement?

22 A. I don't ---.

23 ATTORNEY BLOCK: Objection, calls for a
24 legal conclusion, vague.

1 THE WITNESS: I don't understand that
2 sentence.

3 BY ATTORNEY TRYON:

4 Q. Okay.

5 Well and I'm not asking for a legal conclusion
6 I'm just asking if you agree with the statement because
7 we're not asking --- because you're not a lawyer and you
8 can't make a legal conclusion so let's break it down.
9 Classifications based on gender identity serve no
10 legitimate relation slip to the State of West Virginia's
11 interest in promoting equal athletic opportunities for
12 the female sex. What about that do you not understand?

13 ATTORNEY BLOCK: Same objections.

14 THE WITNESS: I don't than stand the
15 whole sentence. I don't understand the sentence.

16 BY ATTORNEY TRYON:

17 Q. On line 25 it says biological sex means that the
18 individuals physical form as a male or female based
19 solely on the individual's reproductive biology and
20 genetics at birth. Is that a reasonable definition of
21 biological sex in your mind?

22 ATTORNEY BLOCK: Objection, vague, calls
23 for a medical opinion.

24 THE WITNESS: Biological sex means that

1 they were born with a penis or a vagina, yes.

2 BY ATTORNEY TRYON:

3 Q. Okay.

4 And number two says, biological sex means an
5 individual's physical form as a male or female based
6 solely on the individual's reproductive biology and
7 genetics at birth. I'm not are asking for a medical
8 opinion, I'm asking if that is a reasonable biological
9 definition of sex?

10 ATTORNEY BLOCK: Objection, vague.

11 THE WITNESS: Biological sex means an
12 individual's physical form is male or female based
13 solely on individual's reproductive biology. So it's
14 saying that the biological sex is based on whether they
15 have a penis or a vagina, then yes.

16 BY ATTORNEY TRYON:

17 Q. Okay.

18 And the rest of that sentence says and
19 genetics. Do you understand what genetics are?

20 A. To a certain extent genetics are your DNA.

21 Q. Okay.

22 Do you understand what the different genetic
23 differences between males and --- biological males and
24 biological females?

1 A. Chromosomes.

2 ATTORNEY BLOCK: Objection vague calls
3 for medical opinion.

4 BY ATTORNEY TRYON:

5 Q. And do you know what those chromosomes are? And
6 I know you're not a doctor so if you don't know that is
7 okay?

8 ATTORNEY BLOCK: Same objections.

9 THE WITNESS: The X and Y chromosomes.

10 BY ATTORNEY TRYON:

11 Q. Do you know which pertains to which?

12 A. No.

13 Q. That's okay.

14 And the next one of course says, female means
15 an individual whose biological sex is --- sex determined
16 at birth is female as used in this section, women or
17 girls are first biological females. Is that a
18 reasonable definition in your mind?

19 ATTORNEY BLOCK: Objection, vague, calls
20 for legal conclusion, calls for medical conclusion?

21 THE WITNESS: In regards to this document
22 females means individual whose biological sex determined
23 at birth is female and in regards to this document?

24 BY ATTORNEY TRYON:

1 Q. Yes.

2 A. If that is what they are referring to in this
3 document?

4 Q. Yes.

5 A. Because my daughter is a female but her
6 biological sex determined at birth was not female.

7 Q. Okay.

8 And how do you define female so it would
9 include BPJ as a female?

10 ATTORNEY BLOCK: Objection, calls for a
11 medical opinion.

12 BY ATTORNEY TRYON:

13 Q. I'm not asking for medical opinion I'm asking
14 what you would use as a definition?

15 A. She identifies as female.

16 Q. Okay.

17 So the definition you would use for female is
18 and I'm just going to write this down because I want to
19 make sure that I understand this, female means anyone
20 who identifies --- who self identifies as female?

21 ATTORNEY BLOCK: Objection.

22 Mischaracterizes her testimony.

23 ATTORNEY TRYON: I didn't ask the
24 question yet.

1 BY ATTORNEY TRYON:

2 Q. Is that how you would define female?

3 ATTORNEY BLOCK: Objection,
4 mischaracterizes her testimony, vague, calls for medical
5 opinion.

6 THE WITNESS: Female means as individual
7 whose biological sex determined as birth as female or
8 someone who identifies as female.

9 BY ATTORNEY TRYON:

10 Q. Okay.

11 So anyone --- under your definition anyone at
12 all that identifies as female would be a female. Is
13 that right?

14 ATTORNEY BLOCK: Objection,
15 mischaracterizes her testimony, calls for medical
16 opinion, vague.

17 BY ATTORNEY TRYON:

18 Q. Okay.

19 Let me explain it all over again because I'm
20 not asking you for a medical opinion, a legal opinion
21 and I'm not mischaracterizing your testimony. I'm
22 asking you if you believe that the term female means
23 anyone who self identifies as female?

24 ATTORNEY BLOCK: Vague.

1 THE WITNESS: If there is an individual
2 that identifies as female then they are a female.

3 BY ATTORNEY TRYON:

4 Q. Okay.

5 And for someone to identify as a female do they
6 just need to say I identify as a female?

7 ATTORNEY BLOCK: Objection, vague, calls
8 for medical opinion.

9 THE WITNESS: If a person identifies as
10 female they're female.

11 BY ATTORNEY TRYON:

12 Q. And they simply need to say I identify as a
13 female, no other prerequisites, no other --- nothing
14 they have to do, just say I identify as a female and in
15 your mind that would make them --- under your definition
16 that would be a female person?

17 ATTORNEY BLOCK: Objection,
18 mischaracterizes her testimony, vague.

19 THE WITNESS: What prerequisites?

20 BY ATTORNEY TRYON:

21 Q. Are there any other requirements in your mind
22 under your definition? Your definition as I understand
23 it is female means anyone who identifies as a female?

24 A. Or someone who is born as a female and

1 identifies as female.

2 Q. Or born as a female?

3 A. And identifies as female.

4 Q. And by the same token how would you define male?

5 ATTORNEY BLOCK: Objection, vague, calls
6 for a medical opinion.

7 BY ATTORNEY TRYON:

8 Q. Are you a doctor?

9 A. No.

10 Q. So I'm obviously not asking for medical opinion,
11 I'm just asking you for your opinion as the ---
12 representing the Plaintiff in this case as a parent of
13 the Plaintiff. So how would you define male?

14 ATTORNEY BLOCK: Objection.

15 THE WITNESS: A male who biological sex
16 determined at birth is a male and they identify as a
17 male.

18 BY ATTORNEY TRYON:

19 Q. It has to be both or either one?

20 ATTORNEY BLOCK: Objection, compound
21 vague?

22 THE WITNESS: They can be born a male and
23 identify as a male. They have to identify as a male.

24 BY ATTORNEY TRYON:

1 Q. Okay.

2 So if you just identify as a male whatever you
3 are born at under your definition would you be a male?

4 ATTORNEY BLOCK: Objection,
5 mischaracterizes testimony, vague?

6 THE WITNESS: You could be born with
7 female genitalia and identify as a male.

8 BY ATTORNEY TRYON:

9 Q. Okay.

10 So tell me if you agree within this definition,
11 male means anyone who identifies as a male or who is
12 born with male genitalia and identifies as a male?

13 ATTORNEY BLOCK: Objection, vague, calls
14 for a medical opinion.

15 THE WITNESS: In my opinion that would be
16 a male.

17 BY ATTORNEY TRYON:

18 Q. Very good. Great. I just wanted to make sure
19 we had our definitional information.

20 Let me then ask you if someone identifies as a
21 male today and therefore as a male would they --- that
22 person then be able to identify as a female tomorrow and
23 thereby be a female tomorrow?

24 ATTORNEY BLOCK: Objection, vague, calls

1 for a medical opinion, calls for speculation.

2 THE WITNESS: If they truly --- if they
3 identify as a female is that what you are saying?

4 BY ATTORNEY TRYON:

5 Q. If they start out today identifying as a male
6 and tomorrow they change and identify as a female, would
7 they then be a female tomorrow?

8 ATTORNEY BLOCK: Objection, vague, calls
9 for medical opinion, calls for speculation.

10 THE WITNESS: Then they would be
11 transgender and female. Is that what you are saying?

12 BY ATTORNEY TRYON:

13 Q. I'm not saying anything about transgender. I
14 don't --- we haven't discussed that term. I just want
15 to know if someone says today I am male and then
16 tomorrow says I identify as female, under your
17 definition that person would then be female.

18 Correct, tomorrow?

19 ATTORNEY BLOCK: Objection, vague,
20 mischaracterizes testimony, calls for speculation, calls
21 for medical opinion.

22 THE WITNESS: If they identify as female
23 then they are female.

24 BY ATTORNEY TRYON:

1 Q. Okay.

2 So today they identify as a male, tomorrow they
3 identify as female, then on the third day could they
4 then turn around and identify as a male and then be a
5 male?

6 ATTORNEY BLOCK: Objection, vague, calls
7 for medical opinion, calls for speculation.

8 ATTORNEY TRYON: Okay.

9 Josh, this is ridiculous. I'm not
10 calling for medical opinion and you keep on saying that.
11 It 's ridiculous, it's not an appropriate objection
12 here. And it is very obvious I'm not asking for medical
13 opinion. So I would appreciate that you stop doing that
14 because I think you are interfering with this
15 deposition.

16 ATTORNEY BLOCK: It's a totally valid ---
17 it's a totally valid objection. You're asking medical
18 terms of, it's a completely valid objection.

19 ATTORNEY TRYON: And I will give you a
20 standing ongoing objection as to all of those objections
21 as to my questions.

22 ATTORNEY BLOCK: If you want to preface
23 your question saying you're not calling for a medical
24 opinion, that's fine. But as long as --- I'm entitled

1 to object.

2 ATTORNEY TRYON: I'm never asking you for
3 a medical opinion and if I do I will be very clear that
4 I'm asking for medical opinion.

5 BY ATTORNEY TRYON:

6 Q. Now if I can go back to my question please. So
7 Ms. Jackson, again, I want to ask you if a person
8 identifies as male today, female tomorrow and then male
9 the following day does that person's identity --- is
10 that person shifting from male to female to male and
11 then on the third day as male again?

12 A. They're ---.

13 ATTORNEY BLOCK: Objection, calls for
14 speculation. Vague. Calls for medical opinion.

15 BY ATTORNEY TRYON:

16 Q. Okay.

17 Did you answer my question, ma'am?

18 A. They are --- they identify --- they are the sex
19 they identify with.

20 Q. On any given day; is that your testimony?

21 A. Yes.

22 Q. Thank you. So in the context of sports do you
23 believe that a person should be able to switch back and
24 forth between boys and girls teams on a daily or weekly

1 basis?

2 ATTORNEY BLOCK: Objection,
3 mischaracterizes testimony, vague.

4 THE WITNESS: I believe they should be
5 able to participate on the team that they identify with.

6 BY ATTORNEY TRYON:

7 Q. On any given day; is that right?

8 ATTORNEY BLOCK: Objection,
9 mischaracterizes testimony, vague.

10 THE WITNESS: Yes, if they identify as
11 female then they need to run on the female team. If
12 they identify as male then they need to run on the male
13 team.

14 BY ATTORNEY TRYON:

15 Q. And they can go back and forth on a weekly
16 basis, right?

17 A. Whatever they identify as.

18 Q. On any given --- in any given week, right?

19 ATTORNEY BLOCK: Objection, asked and
20 answered.

21 THE WITNESS: Yep.

22 BY ATTORNEY TRYON:

23 Q. You have already stated your full name, can you
24 give us your current address and phone number. And

1 before you give me your phone number I just want it to
2 be clear that the only time in which we would use your
3 phone number as opposed to going to your counsel to
4 reach you if for some reason your client (sic) could not
5 reach you or you were no longer represented by counsel.
6 So on that basis could you give me your current address
7 and phone number?

8 A. [REDACTED], Lost Creek, West Virginia
9 26385.

10 Q. And your phone number?

11 A. [REDACTED].

12 Q. And is that a landline or is that a cell number?

13 A. That is a landline.

14 Q. Not many people still have landlines. I do.

15 A. Yes, we have to out where we live.

16 Q. I see. And did you get a high school diploma?

17 A. A high school diploma, yes.

18 Q. Where?

19 A. Seneca East High School.

20 Q. Where is that?

21 A. In Ohio.

22 Q. What part of Ohio? What city?

23 A. Attica.

24 Q. Where's Attica?

1 A. Let's see more towards Toledo.

2 Q. Okay.

3 And after high school did you get any further
4 education?

5 A. Yes.

6 Q. Can you please tell me what that was?

7 A. I got an associate of arts degree from the
8 University of Findlay in Findlay, Ohio.

9 Q. And when was that?

10 A. 1996.

11 Q. Anymore education after that?

12 A. I went to the Nuclear Medicine Institute after
13 that, recertified in Nuclear Medicine Technology.

14 Q. Is there a degree or certificate that you get
15 from that?

16 A. It's a certificate.

17 Q. And when was that?

18 A. That would have been in 1996 as well.

19 Q. Any other post-high school education?

20 A. No.

21 Q. When did you graduate from high school?

22 A. 1986.

23 Q. What did you do between 1986 and 1996?

24 A. I worked for a rehabilitation center.

1 Q. Doing what?

2 A. Bookkeeping.

3 Q. Were you there for --- how long were you there?

4 A. I don't remember.

5 Q. What was the next job that you had after that
6 rehabilitation center?

7 A. I went back to school after I got laid off.

8 Q. Is that when you went to University of Findlay?

9 A. Yes, first I went to Community College. It
10 would have been Terra Community College. And then I
11 went to the University of Findlay and received my
12 degree.

13 Q. Great. Where is Terra Community College?

14 A. In Toledo.

15 Q. Okay.

16 Did you get any certificates or anything there?

17 A. No, I just transferred to the University of
18 Findlay.

19 Q. Do you remember when you started at Terra
20 Community College?

21 A. No, I don't.

22 Q. Do you remember when you started at the
23 University of Findlay?

24 A. No, I don't.

1 Q. How long did it take you to get your associate's
2 degree at University of Findlay?

3 A. Two years. And I had to go to the Nuclear
4 Medicine Institute in order to practice nuclear medicine
5 technology.

6 Q. So took you two years to get your associate's
7 degree and you started somewhere around 1994?

8 A. Roughly.

9 Q. Okay.
10 So it looks like you worked as --- what was it
11 called, rehabilitation ---?

12 A. It was the Betty Jane Rehabilitation Center.

13 Q. Okay.

14 So it looks like that you worked there for
15 about eight years, is that fair?

16 A. Sounds right.

17 Q. Okay.

18 Tell me what nuclear medical --- excuse me,
19 nuclear technologist does?

20 A. Injects radioactive material into patients in
21 order to determine a malady.

22 Q. What is an abnormality?

23 A. It can be anything depending on a heart issue,
24 we could be looking for a bone issue, we could be

1 looking for a gallbladder issue, we could be looking for
2 a stomach issue.

3 Q. Okay.

4 So after you got that certification in 1996
5 what did you do then?

6 A. I practiced nuclear medicine technology.

7 Q. Where was the first place you did that?

8 A. That would have been in Florida.

9 Q. Do you remember the name of the place you worked
10 for?

11 A. Let's see, if I heard it I would know it but I
12 don't remember it off the top of my head.

13 Q. Okay. Fair enough.

14 That was starting in 1996 though?

15 A. Yes.

16 Q. And then how long were you there?

17 A. I don't know because I went there to private
18 imaging facility and worked.

19 Q. I'm sorry, can you repeat that I didn't
20 understand?

21 A. I don't know how long I was there. I left there
22 and went to a private imaging facility.

23 Q. What was the name of that?

24 A. RPA.

1 Q. RPA. And what did you do there?

2 A. Nuclear medicine technology.

3 Q. Okay.

4 Do you remember when you started there?

5 A. No, I don't.

6 Q. Do you remember when you left there?

7 A. I left there in 2001.

8 Q. And then what did you do?

9 A. I'm sorry I moved to Georgia.

10 Q. And that was in about 2001?

11 A. Yes.

12 Q. And what did you do in Georgia?

13 A. Nuclear medicine technology at Kennestone
14 Hospital.

15 Q. Can you spell that, please?

16 A. K-E-N-N-E-S-T-O-N-E. It's a well star facility.

17 Q. Excuse me one second. All right. I guess I've
18 been talking too much today I needed a cough drop.

19 Sorry. And how long were you there in Georgia?

20 A. Until 2005.

21 Q. And where did you go from there?

22 A. West Virginia.

23 Q. And what did you do in West Virginia in 2005?

24 A. Positron emission technology.

1 Q. Where was that located?

2 A. First I worked at a mobile unit for Alliance
3 Imaging.

4 Q. Where was that centered?

5 A. They're centered out of Charleston, but I was
6 assigned to North Central West Virginia and the western
7 panhandle and the Eastern panhandle in Maryland.

8 Q. And then you said initially in the mobile unit
9 and then what?

10 A. Then I took a stationary position with the
11 United Hospital Center.

12 Q. And where is that?

13 A. In Bridgeport, West Virginia.

14 Q. And then after that what?

15 A. I'm still there.

16 Q. Okay.

17 And at your house at [REDACTED] who
18 lives there with you?

19 A. My spouse and two of my three children.

20 Q. You're married, right?

21 A. Correct.

22 Q. And when did you get married?

23 A. We got married in --- oh I'm bad at
24 anniversaries, 2000, 2001.

1 Q. If I recall your husband told us that your
2 anniversary is coming up in the next several days?

3 A. It is and I never remember it.

4 Q. Well, I didn't write down the date but it is
5 coming up so you might want to ---.

6 A. I'll have to look at the certificate.

7 ATTORNEY BLOCK: David, we have a 5:30
8 stop and it is 5:24 so I just want to --- I don't want
9 you to start on a line of questioning that you have to
10 stop short in the middle of.

11 ATTORNEY TRYON: Right. And yeah, I'm
12 just going to finish up with this background and then we
13 will suspend this until tomorrow.

14 BY ATTORNEY TRYON:

15 Q. So is this your only marriage?

16 A. Correct.

17 Q. And you have no other children other than the
18 three that you mentioned?

19 A. Correct.

20 ATTORNEY TRYON: Okay.

21 Well now would be a good time to pause
22 until tomorrow and reconvene at 10:00 a.m. if everyone's
23 okay with that.

24 ATTORNEY BLOCK: That is good with

1 Plaintiff's Counsel.

2 THE WITNESS: That's fine.

3 VIDEOGRAPHER: Then if that is it for
4 today we are going off the record at 5:25 p.m.

5 ATTORNEY TRYON: Thank you.

6 * * * * *

7 VIDEOTAPED DEPOSITION CONCLUDED AT 5:25 P.M.

8 * * * * *

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1 STATE OF WEST VIRGINIA)

2 CERTIFICATE

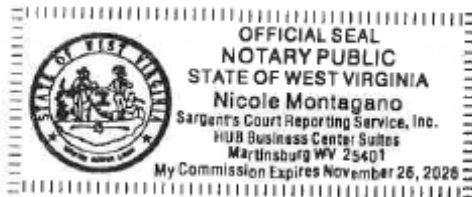
3 I, Nicole Montagano, a Notary Public in
4 and for the State of West Virginia, do hereby
5 certify:

6 That the witness whose testimony appears
7 in the foregoing deposition, was duly sworn by me
8 on said date, and that the transcribed deposition
9 of said witness is a true record of the testimony
10 given by said witness;

11 That the proceeding is herein recorded
12 fully and accurately;

13 That I am neither attorney nor counsel
14 for, nor related to any of the parties to the
15 action in which these depositions were taken, and
16 further that I am not a relative of any attorney
17 or counsel employed by the parties hereto, or
18 financially interested in this action.

19 I certify that the attached transcript
20 meets the requirements set forth within article
21 twenty-seven, chapter forty-seven of the West
22 Virginia.



Nicole Montagano

Nicole Montagano,

Court Reporter

Exhibit 14

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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 * Case 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, * VIDEOTAPED
DORA STUTLER in her official * VIDEOCONFERENCE
Capacity as Harrison County * DEPOSITION
Superintendent, PATRICK MORRISEY * OF
In his official capacity as * HEATHER JACKSON
Attorney General, and THE STATE * January 20, 2022
OF WEST VIRGINIA, *
Defendants *

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by the certifying agency.

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VIDEOTAPED VIDEOCONFERENCE DEPOSITION

OF

HEATHER JACKSON, taken on behalf of the Defendant, State
of West Virginia herein, pursuant to the Rules of Civil
Procedure, taken before me, the undersigned, Nicole
Montagano, a Court Reporter and Notary Public in and for
the State of West Virginia, on Wednesday, January 20,
2022, beginning at 11:13 a.m.

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A P P E A R A N C E S

JOSHUA BLOCK, ESQUIRE
American Civil Liberties Union Foundation
125 Broad Street
New York, NY 10004

COUNSEL FOR PLAINTIFF

LOREE STARK, ESQUIRE
ACLU of West Virginia
P.O. Box 3952
Charleston, WV 25339

COUNSEL FOR PLAINTIFF

KATHLEEN R. HARTNETT, ESQUIRE
ANDREW BARR, ESQUIRE
JULIE VEROFF, ESQUIRE
ZOE HELSTROM, ESQUIRE

Cooley, LLP
3 Embarcadero Center
20th Floor
San Francisco, CA 94111-4004

COUNSELS FOR PLAINTIFF

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A P P E A R A N C E S (cont'd)

SRUTI SWAMINATHAN, ESQUIRE

Lambda Legal

120 Wall Street

19th Floor

New York, NY 10005-3919

COUNSEL FOR PLAINTIFF

DAVID TRYON, ESQUIRE

CURTIS R.A. CAPEHART, ESQUIRE

State Capitol Complex

Building 1, Room E-26

Charleston, WV 25305

COUNSEL FOR STATE OF WEST VIRGINIA

ROBERTA F. GREEN, ESQUIRE

Shuman McCuskey Slicer, PLLC

1411 Virginia Street East

Suite 200

Charleston, WV 25301

COUNSEL FOR WEST VIRGINIA SECONDARY SCHOOL

ACTIVITIES COMMISSION

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A P P E A R A N C E S (cont'd)

SUSAN DENIKER, ESQUIRE

Steptoe & Johnson

400 White Oaks Boulevard

Bridgeport, WV 26330

COUNSEL FOR HARRISON COUNTY BOARD OF EDUCATION and

HARRISON COUNTY SUPERINTENDENT DORA STUTLER

KELLY C. MORGAN, ESQUIRE

KRISTEN V. HAMMOND, ESQUIRE

Bailey Wyant

500 Virginia Street East

Suite 600

Charleston, WV 25301

COUNSEL FOR WEST VIRGINIA BOARD OF EDUCATION and

SUPERINTENDANT W. CLAYTON BURCH

TIMOTHY D. DUCAR, ESQUIRE

Law Office of Timothy D. Ducar

7430 East Butherus Drive

Suite E

Scottsdale, AZ 85260

COUNSEL FOR INTERVENOR, LAINEY ARMISTEAD

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A P P E A R A N C E S (cont'd)

JOSHUA BROWN, ESQUIRE

CHRISTIANA HOLCOMB, ESQUIRE

RACHEL CSUTOROS, ESQUIRE

Alliance Defending Freedom

15100 North 90th Street

Scottsdale, AZ 85260

COUNSEL FOR INTERVENOR, LAINEY ARMISTEAD

1	I N D E X	
2		
3	DISCUSSION AMONG PARTIES	88 - 92
4	<u>WITNESS</u> : HEATHER JACKSON	
5	EXAMINATION	
6	By Attorney Tryon	92 - 226
7	EXAMINATION	
8	By Attorney Green	227 - 229
9	EXAMINATION	
10	By Attorney Deniker	229 - 267
11	EXAMINATION	
12	By Attorney Morgan	267 - 272
13	EXAMINATION	
14	By Attorney Ducar	273 - 285
15	RE-EXAMINATION	
16	By Attorney Tryon	285 - 287
17	DISCUSSION AMONG PARTIES	287 - 288
18	CERTIFICATE	289
19		
20		
21		
22		
23		
24		

1	<u>EXHIBIT PAGE</u>		
2			
3			PAGE
4	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>
5	Exhibit 1	Davis Medical Records	-- *
6	Exhibit 1R	Davis Medical Records	-- *
7	Exhibit 2	Davis Medical Records	-- *
8	Exhibit 3	WVU Medical Records	-- *
9	Exhibit 4	UPMC Children's Medical	
10		Records	-- *
11	Exhibit 5	UPMC Children's Medical	
12		Records	-- *
13	Exhibit 6	UPMC Children's Medical	
14		Records	-- *
15	Exhibit 7	UPMC Children's Medical	
16		Records	
17	Exhibit 8	UPMC Children's Medical	
18		Records	-- *
19	Exhibit 9	UPMC Children's Medical	
20		Records	-- *
21	Exhibit 11A	Progress Notes	-- *
22	Exhibit 11B	Progress Notes	-- *
23	Exhibit 11C	Progress Notes	-- *
24	Exhibit 11D	Progress Notes	-- *

1	EXHIBIT PAGE		
2			
3			PAGE
4	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>
5	Exhibit 12	UPMC Children's Medical	
6		Records	--*
7	Exhibit 13	UMPC Children's Medical	
8		Records	--*
9	Exhibit 14	WVU Medical Records	--*
10	Exhibit 15	WVU Medical Records	--*
11	Exhibit 16	WVU Medical Records	--*
12	Exhibit 17	Gender Support Plan	--*
13	Exhibit 18	Preferred Name Request Form	--*
14	Exhibit 19	Gender Support Plan	--*
15	Exhibit 20	Student Information	--*
16	Exhibit 20R	Student Information	--*
17	Exhibit 21	Screening Results	--*
18	Exhibit 21R	Screening Results	--*
19	Exhibit 22	Birth Certificate	--*
20	Exhibit 22R	Birth Certificate	--*
21	Exhibit 23	Heart Walk Article	--
22	Exhibit 23R	Heart Walk Article	--
23	Exhibit 24	Photo	--
24	Exhibit 24R	Photo	--

	EXHIBIT PAGE		
			PAGE
	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>
1			
2			
3			
4			
5	Exhibit 25	WV Record	--
6	Exhibit 26	Photo of Mom and BPJ	--
7	Exhibit 27	Article	--
8	Exhibit 28	Article	--
9	Exhibit 29	Lambda Legal Article	--
10	Exhibit 30	Declaration of Heather	
11		Jackson	--
12	Exhibit 31	Declaration of BJP	--
13	Exhibit 32	First Amended Complaint	--
14	Exhibit 33	Standards of Care	--
15	Exhibit 34	House Bill 3293	--
16			
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23	* CONFIDENTIAL EXHIBITS		
24			

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OBJECTION PAGE

ATTORNEY

PAGE

Block 98, 98, 101, 106, 106, 107, 112, 113, 113, 114,
115, 117, 119, 122, 122, 122, 128, 129, 131, 132, 139,
143, 145, 146, 148, 149, 155, 156, 160, 177, 181, 181,
182, 187, 188, 193, 195, 196, 200, 200, 202, 202, 204,
213, 213, 214, 214, 215, 217, 217, 219, 219, 219, 220,
220, 222, 224, 237, 239, 255, 255, 258, 258, 270, 271,
276, 277, 278, 279, 279, 280, 283, 287

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S T I P U L A T I O N

(It is hereby stipulated and agreed by and between
counsel for the respective parties that reading,
signing, sealing, certification and filing are not
waived.)

P R O C E E D I N G S

ATTORNEY TRYON: This is David Tryon on
behalf of the State of West Virginia conducting this
deposition on behalf of the State of West Virginia. We
have had off the record some discussions among all the
counsel about some various stipulations about how to go
forward with the deposition and with objections, and I
think the best thing for me to do, since Josh, since you
were the one that is making the objections in this case,
you give your thoughts about how we can handle those
objections and then we can all state how we concur with
them. Is that fair enough or do you want me to state
them?

ATTORNEY BLOCK: No, I can state them.
And I think I'll state each type of objection. The
first is that several objections have come up to

1 questions that in our view seem to call for legal expert
2 or medical opinion. And our understanding from our
3 discussions with Defense Counsel is that they do not
4 intend for any of their questions to seek an answer
5 based on legal/medical or otherwise expert opinion and
6 they will specifically state otherwise if they are
7 seeking a legal/expert or medical opinion. And so based
8 on that understanding, we will just make a standing
9 objection to any question insofar as it calls for a
10 legal expert or medical opinion and won't be making a
11 specific objection to each question as it occurs.

12 ATTORNEY TRYON: Agreed. And that
13 applies to this deposition. And to the extent that we
14 address it at other depositions, we'll address that
15 separately.

16 Right?

17 ATTORNEY BLOCK: Yes. So if each counsel
18 could say that they agree to this way of handling those
19 objections for purposes of this deposition.

20 ATTORNEY DENIKER: I'm in agreement with
21 that.

22 ATTORNEY MORGAN: I am as well.

23 ATTORNEY DUCAR: I am as well.

24 ATTORNEY BLOCK: The second set of

1 objections that came up were objections to terminology
2 regarding gender identity, being transgender, the
3 definition of sex, gender transition, that in our view
4 are vague and that we think can lead to confusion about
5 what the terminology means and whether the terminology
6 is even medically appropriate. And so we object to any
7 questions that could be used to imply that the language
8 used in that question actually is medically appropriate
9 language. But we don't want those to unnecessarily
10 interrupt the deposition, but at the same time we think
11 it could be helpful to clarify some of the language so
12 it doesn't cause problems for any counsel down the road.
13 And so we propose that we can handle that issue by ---
14 if terminology that we think is vague and problematic
15 comes up, we will simply say objection to terminology
16 and say we have a standing objection to that terminology
17 without then reiterating objections each subsequent time
18 the terminology is used. And so is that procedure
19 acceptable to Defense Counsel?

20 ATTORNEY TRYON: Agreed on behalf of the
21 State of West Virginia.

22 ATTORNEY DENIKER: I'm agreeable to that
23 as well.

24 ATTORNEY MORGAN: I'm agreeable as well.

1 ATTORNEY DUCAR: Tim Ducar on behalf of
2 Armistead, yes.

3 ATTORNEY BLOCK: And the Commission had a
4 chance to put their statement on the record. Roberta?

5 ATTORNEY GREEN: Yes, I agree. I'm good
6 with that.

7 ATTORNEY BLOCK: And the final issue is
8 there are several objections on the basis that we
9 thought it mischaracterized the witness's testimony. We
10 of course, you know, do not want the objections to
11 impede the questioning or somehow, you know,
12 unintentionally affect how the witness responds. We
13 discussed that, instead of saying mischaracterizes the
14 testimony, we would say objection MT and that would
15 allow us to preserve the objection without the witness
16 hearing the grounds for it. So is that an acceptable
17 approach for all of Defense Counsel?

18 ATTORNEY TRYON: Yes.

19 ATTORNEY DENIKER: I'm also agreeable to
20 that.

21 ATTORNEY MORGAN: I am as well.

22 ATTORNEY GREEN: And I agree as well.

23 ATTORNEY DUCAR: I agree as well.

24 ATTORNEY BLOCK: Terrific. I think that

1 resolves everything unless I missed something.

2 ATTORNEY TRYON: No, I think that's
3 right. I think we are ready to go with the expectation
4 that we are ready to go. I would like to take a real
5 quick bathroom break, to be honest.

6 ATTORNEY BLOCK: That sounds good.
7 Should we convene at 10:50?

8 ATTORNEY TRYON: 10:55 is fine with me.

9 ATTORNEY HARTNETT: Why don't we do
10 10:55, and that will make sure we get the printed
11 copies?

12 ---

13 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

14 ---

15 VIDEOGRAPHER: We are on the record.
16 The current time reads 11:13 a.m. This is the continued
17 deposition of Heather Denise Jackson.

18 ---

19 HEATHER DENISE JACKSON,
20 CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
21 HAVING BEEN PREVIOUSLY DULY SWORN, TESTIFIED AND SAID AS
22 FOLLOWS:

23 ---

24 CONTINUED EXAMINATION

1

2 BY ATTORNEY TRYON:

3 Q. Ms. Jackson, thank you for joining us again
4 today. And I apologize for the delay here. We were
5 trying to accomplish some things amongst the lawyers to
6 streamline the process today, and sorry to keep you
7 waiting for so long.

8 First of all, I just want to tell you that ---
9 two things. First of all, you're still under oath. So
10 everything you say today, you're still under oath just
11 as yesterday.

12 Okay?

13 A. Yes.

14 Q. And then we also had some discussions off the
15 record about how we're going to handle --- excuse me,
16 certain objections. And some of them we have agreed to
17 standing depositions --- excuse me, standing objections.
18 And we will need to --- I'm sorry. I'm seeing another
19 message. I'm distracted. So we will just explain that
20 to you in a moment, but one of the other counsel
21 suggested that we all ought to identify ourselves for
22 the record since we do have some different people today
23 than yesterday. So just for the record, I'm David
24 Tryon, representing the State of West Virginia.

1 ATTORNEY BLOCK: I'm Joshua Block,
2 representing the Plaintiff and the witness. And after I
3 finish introducing myself, I'll have co-counsel from
4 Cooley followed by co-counsel from Lambda Legal followed
5 by co-counsel from ACLU of Virginia identify themselves.

6 ATTORNEY HARTNETT: Good morning. This
7 is Kathleen Hartnett from Cooley for Plaintiff and the
8 witness.

9 ATTORNEY BARR: Good morning. This is
10 Andrew Barr from Cooley for Plaintiff and the witness.

11 ATTORNEY VEROFF: Good morning. This is
12 Julie Veroff from Cooley for BPJ and the witness.

13 ATTORNEY HELSTROM: Good morning. This
14 is Zoe Helstrom from Cooley for Plaintiff and the
15 witness.

16 ATTORNEY SWAMINATHAN: Good morning.
17 This is Sruti Swaminathan for Plaintiff and the witness
18 from Lambda Legal?

19 ATTORNEY TRYON: Roberta?

20 ATTORNEY GREEN: Yes, Roberta Green, West
21 Virginia Secondary School Activities Commission.

22 ATTORNEY DENIKER: Good morning,
23 everyone. This is Susan Deniker, Counsel for Defendants
24 Harrison County Board of Education and Harrison County

1 Board of Education Superintendant Dora Stutler.

2 ATTORNEY DUCAR: Good morning. Timothy
3 Ducar on behalf of Intervenor, Lainey Armistead.

4 ATTORNEY HOLCOMB: Good morning.
5 Christiana Holcomb on behalf of Intervenor.

6 ATTORNEY CSUTOROS: Good morning. Rachel
7 Csutoros on behalf of Intervenor.

8 ATTORNEY BROWN: Joshua Brown on behalf
9 of the Intervenor.

10 ATTORNEY MORGAN: Kelly Morgan and Kristen
11 Hammond on behalf of the West Virginia Board of
12 Education and Superintendant Burch.

13 ATTORNEY STARK: Hi. I'm Loree Stark.
14 I'm with the American Civil Liberties Union of West
15 Virginia, and I'm here on behalf of Plaintiff.

16 ATTORNEY CAPEHART: Curtis Capehart on
17 behalf of the State of West Virginia.

18 BY ATTORNEY TRYON:

19 Q. Okay.

20 Ms. Jackson, I'll come back to you now. So
21 we've have placed a number --- one of the things that we
22 wanted to do is put some hard copies in your office
23 there to facilitate going through the documents more
24 quickly. So when I refer to a document you will be able

1 to pick it up and look at it in hard copy. I will also
2 probably be putting it up on the screen as well.

3 ATTORNEY TRYON: But before we actually
4 get started with any questions, Josh, do you want to
5 state what --- you're going to use certain
6 abbreviations?

7 ATTORNEY BLOCK: Sure. We put on the
8 record that there will be certain objections where I use
9 an abbreviation for it. So if I make an objection that
10 you don't understand, that's because we stipulated that
11 we will use an abbreviation for that objection.

12 ATTORNEY TRYON: Okay.

13 BY ATTORNEY TRYON:

14 Q. So let's get started. First of all, do you have
15 any questions from yesterday, Ms. Jackson, or anything
16 you need to correct from what your testimony was
17 yesterday?

18 A. Not off the top of my head, no.

19 Q. Okay.

20 After your deposition yesterday, did you talk
21 to your husband or anyone else about your deposition?

22 A. No.

23 Q. Did you talk to your husband about his
24 deposition?

1 A. No.

2 Q. Okay.

3 So I want to start off talking about BPJ and
4 when BPJ was born. These are things that seem obvious
5 to me, but I just want to make sure I understand. When
6 BPJ was born, BPJ had male body parts.

7 Right?

8 A. Correct.

9 Q. And still has those male body parts.

10 Right?

11 A. Correct.

12 Q. And when BPJ was born you considered BPJ as a
13 male.

14 Is that true?

15 A. Yes.

16 Q. And at that time did you refer to BPJ as your
17 son?

18 A. Yes.

19 Q. And did that change at some point?

20 A. Yes.

21 Q. And at some point did --- what changed?

22 A. She started presenting female characteristics
23 around the age of three.

24 Q. And at some point you started to refer to BPJ as

1 your daughter?

2 A. Yes.

3 Q. When was that?

4 A. I don't know of an exact date.

5 Q. Okay.

6 So you said at about three years old BPJ
7 started presenting with --- I'm sorry, how did you say
8 it?

9 A. Female characteristics, mannerisms, those type
10 of things.

11 Q. And at that point did you start referring to BPJ
12 as your daughter or was it later?

13 A. It was probably around the age of four.

14 Q. Does BPJ understand or recognize that BPJ was
15 born as a biological male?

16 ATTORNEY BLOCK: Objection to
17 terminology, and I will make that a standing objection.

18 THE WITNESS: She was born as a male with
19 a penis.

20 BY ATTORNEY TRYON:

21 Q. And my question, though, is does --- sorry, does
22 BPJ currently recognize that BPJ was born as a
23 biological male?

24 ATTORNEY BLOCK: Objection. Calls for

1 speculation.

2 THE WITNESS: Yes, she knows she was born
3 as a male.

4 BY ATTORNEY TRYON:

5 Q. Does it cause BPJ distress for someone to refer
6 to BPJ as a biological male?

7 A. Yes.

8 Q. Can you describe that for me a little bit, that
9 stress?

10 A. She gets upset, she cries, she gets angry.

11 Q. And when did that start?

12 A. That started at an early age, around three or
13 four.

14 Q. So at about three or four you said that BPJ
15 started to present as a female.

16 Did I get that right?

17 A. Yes.

18 Q. Can you tell me what specifically that means to
19 present as a female?

20 A. From an early age she didn't want to wear male
21 clothes. She wanted to wear my clothes as dresses.
22 When she was learning how to go to the bathroom, to
23 urinate, she didn't want to stand to urinate. She
24 wanted to sit down to urinate. She didn't understand

1 why she had a penis and I didn't.

2 Q. Anything else?

3 A. She requested at an early age for, I think it
4 was a birthday present, her own makeup kit.

5 Q. Anything else?

6 A. When she would pose for pictures, she would pose
7 with her leg tucked in more of a feminine stance.

8 Q. I'm afraid I don't understand that.

9 A. Put your hand on your hip, put your hip out a
10 little bit and cock your leg.

11 Q. So when you're standing?

12 A. Yeah, like when she is standing for a photo.

13 Q. Anything else?

14 A. Those are what comes to me off the top of my
15 head.

16 Q. And those were all done at age three or did we
17 condense that timeframe?

18 A. Like three to four.

19 Q. Three to four. And when BPJ asked why BPJ had a
20 penis, what was your explanation?

21 A. Because she was born a boy and boys have
22 penises.

23 Q. And what was BPJ's reaction?

24 A. That that wasn't right.

1 Q. Can you expound on that?

2 A. She didn't, at that point, identify as a male,
3 so she told me I was incorrect.

4 Q. That you were incorrect that --- that what?

5 A. That she was a male because she had a penis.

6 Q. And so I'm just trying to understand. So BPJ
7 was saying that BPJ was a female in spite of having a
8 penis or that BPJ did not have a penis or what? I
9 honestly don't understand?

10 ATTORNEY BLOCK: Objection, compound.

11 THE WITNESS: She's saying that she has a
12 penis, but she's not a male.

13 BY ATTORNEY TRYON:

14 Q. That's what BPJ said at three years old?

15 A. Well, she didn't have quite that language. It
16 was more like I'm a girl.

17 Q. She did know the word penis at the time?

18 A. Yes. We've always used correct terms for
19 genitalia.

20 Q. And forgive me if this is insensitive, but I'm
21 just trying to understand. Why did --- how did she no
22 that you had one and you didn't?

23 A. Because she would follow me into the bathroom.

24 Q. Okay.

1 Did she --- did BPJ recognize that her brothers
2 were males?

3 A. She recognized that we referred to them as
4 males.

5 Q. Did BPJ ever ask what the difference was between
6 BPJ and your other sons?

7 A. No.

8 Q. Let me ask you to look at Exhibit 30.

9 ATTORNEY TRYON: And I will ask the court
10 reporter to pull that up as well. I lost some video
11 feed for her, for the witness. There she is.

12 VIDEOGRAPHER: You have her pinned?

13 ATTORNEY TRYON: No. There we go. Okay.
14 I pinned Josh. How do I unpin Josh?

15 VIDEOGRAPHER: The same way you pinned
16 him.

17 ATTORNEY TRYON: Okay.

18 Now I got it. Sorry for the delay.

19 BY ATTORNEY TRYON:

20 Q. Ms. Jackson, have you seen this document before?

21 A. Yes.

22 Q. Have you reviewed it before today?

23 A. When I originally --- when I originally declared
24 it.

1 Q. And on the last page, that's your signature.

2 Is that right?

3 A. I don't have that page.

4 Q. Okay.

5 I take it back. So page six is the signature
6 page. Do you have that?

7 A. I have to page five.

8 Q. Okay.

9 I just saw you scroll past it. Right there?

10 Q. Yeah. So you see that?

11 A. Yes.

12 Q. Is that your signature?

13 A. It is.

14 Q. And it was signed on 5/25/2021?

15 A. Yes.

16 Q. So who prepared this document?

17 A. Well, the lawyers would have written it up and I
18 reviewed it. They --- I told them what I told them and
19 they typed it.

20 Q. Okay.

21 And is your --- at the time you said this is
22 true and accurate. Do you still believe the entire
23 thing is true and accurate to the best of your knowledge
24 and belief?

1 A. Yes.

2 Q. Great. Let me ask you, first of all, paragraph
3 four is I'm fiercely protective of BPJ. What do you
4 mean by that?

5 A. Just as any parent would be fiercely protective
6 of their child.

7 Q. Then you say, as her mother, I want to see her
8 be able to achieve all her dreams. Can you tell me what
9 her dreams are at this point?

10 A. Well, in regards to this, she wanted to be able
11 to run on the cross-country team, and that is what she
12 had dreamed of.

13 Q. Was that all you were referring to at the time
14 you signed this Declaration?

15 A. Well, I want to see her do well in life. I
16 mean, if she tells me she wants to go to college, I want
17 to see her achieve that. At the age of 11 they don't
18 have a whole lot of dreams.

19 Q. When you signed this, did BPJ express any other
20 dreams that she had --- that he or she had?

21 A. Not that comes to mind.

22 Q. Okay.

23 And then the next --- in paragraph six it says
24 BPJ from a very young age that she didn't want her boy

1 parts. Was there anything else about that statement
2 other than what you've already told me?

3 A. No, that's very accurate.

4 Q. Before that it says BPJ is also transgender.
5 What does that word, transgender, mean to you, as you
6 signed this?

7 A. She was designated at birth as a male, but she
8 is a female.

9 Q. And hopefully I'm not repeating from yesterday,
10 but when you say she is a female that is --- can you
11 tell me why she is a female?

12 A. She identifies as a female.

13 Q. And just so I'm clear, that's why you say that
14 BPJ is transgender?

15 A. Correct, she is a female.

16 Q. Okay.

17 Next you say she never wanted to be naked for
18 bathing because she was deeply uncomfortable with and
19 did not want to see certain parts of her body. So how
20 did she bathe?

21 A. She bathed, but we would keep a wet washcloth
22 over her genitals.

23 Q. What would happen when she saw her genitals?

24 A. She would be deeply upset.

1 Q. Can you explain that to me a little bit? I
2 don't mean to pry, but what did that mean, that BPJ
3 would be upset?

4 A. She wouldn't like seeing it. She would be
5 upset, she would be frustrated, visibly frustrated.

6 Q. Did she yell, cry, scream, say don't look at me?
7 What happened?

8 ATTORNEY BLOCK: Objection. Compound.

9 THE WITNESS: She would be deeply upset
10 in the form of she would say I don't want that.

11 BY ATTORNEY TRYON:

12 Q. Did she just say that or did she yell, raise her
13 voice?

14 A. She would be very stern.

15 Q. When BPJ first was reacting this way, as you
16 described it, did you insist that BPJ was, in fact, a
17 male or did you just accept her statement that she was a
18 female?

19 ATTORNEY BLOCK: Objection to form.

20 THE WITNESS: When she told me she was a
21 female, I accepted her statement as true.

22 BY ATTORNEY TRYON:

23 Q. From the very first time or did it take some
24 time to accept that?

1 A. No, from the first time that she told me she was
2 a girl I believed that she believed she was a girl.

3 Q. And then --- but if I remember your earlier
4 testimony, I think you said that it was a little while
5 before you started referring to BPJ as your daughter.

6 Is that right?

7 ATTORNEY BLOCK: Objection, MT.

8 BY ATTORNEY TRYON:

9 Q. Did you answer?

10 A. Correct.

11 Q. So let me see if I understand it. You initially
12 --- you right away accepted her belief that she was a
13 female, but didn't actually refer to BPJ as your
14 daughter until some time later?

15 A. It took me a while to learn the terminology.

16 Q. How long did it take you to learn the
17 terminology?

18 A. I don't know the answer to that, but for three
19 years --- for three years I'd been calling her my son so
20 it took a while.

21 Q. And what terminology is that?

22 A. To refer to her as a female.

23 Q. And where did you learn the terminology, as
24 you've said it?

1 A. To refer to her as a female?

2 Q. Yes.

3 A. She told me that she is a female.

4 Q. Okay.

5 Well, then I guess I'm misunderstanding,
6 because you said it took you a while to learn the
7 terminology. What do you mean by that?

8 A. For three years I had been calling her my son,
9 so I had to learn to call her my daughter.

10 Q. I get it. You didn't like --- I thought you
11 meant you had to go read some books or something.
12 You're not saying that?

13 A. No. I know what a daughter is.

14 Q. Okay. Understood.

15 And paragraph seven says, as a child BPJ also
16 presented differently from my other children, both of
17 who are boys. Do either one of your other --- let me
18 rephrase that. The boys that you --- you have two other
19 children who are sons.

20 Right?

21 A. Correct.

22 Q. Are either one of them transgender?

23 A. No, they are not.

24 Q. And you --- in paragraph seven you say whenever

1 BPJ was provided with the opportunity to pick out her
2 clothes or toys, she always went straight for the girly
3 items. Can you tell me what those girly items --- what
4 that means?

5 A. She would want to shop in the girls sections of
6 the stores. She wanted dresses and lacy tutus, sparkly
7 clothes. She wanted the girls clothes.

8 Q. Anything else?

9 A. Same thing with shoes. She wanted the girls
10 shoes.

11 Q. What toys are you referring to as girly items?

12 A. Toys would be her dolls that she would have
13 growing up.

14 Q. What kind of dolls?

15 A. Plush.

16 Q. So like girl dolls or animal dolls? I'm not
17 sure I understand.

18 A. Girl dolls that are plush.

19 Q. And paragraph eight is when BPJ told us that she
20 was a girl and wants to be dressed as a girl, I was not
21 surprised because I spend so much time with her, can you
22 expound on that?

23 A. Well, when I'm not at work, I'm with her.

24 Q. So how much time do you spend with her?

1 A. I am with her other than nine hours a day.

2 Q. Paragraph nine ---.

3 ATTORNEY TRYON: Can I ask the court
4 reporter to take control and scroll down? Thank you.

5 BY ATTORNEY TRYON:

6 Q. Because BPJ and I have such an open
7 communicative relationship we have --- would have
8 conversations about how she was feeling. Can you tell
9 me about those conversations?

10 A. Conversations in regards to how she is feeling
11 regarding she didn't want her penis, that she identified
12 as a female.

13 Q. And then the next sentence, the last part says
14 more, she was able to clearly communicate that she knew
15 she was a girl. What do you mean by more clearly
16 indicates?

17 A. As she learned language skills as she grew up.

18 Q. So what language skills --- and what language
19 changed for her to communicate that?

20 A. As her vocabulary increased.

21 Q. So for example, what additional words was she
22 using?

23 A. She would use the word vagina when she learned
24 that term. She would use the term breasts when she

1 learned that term. She learned the term brassiere.

2 Q. When BPJ first informed you that BPJ was a girl,
3 did you --- did this cause you any concern or stress or
4 anxiety?

5 A. I worried about any sort of --- I don't know
6 what the word is I'm looking for --- discrimination she
7 might receive.

8 Q. Did you at that time --- at that time had you
9 heard of the term transgender?

10 A. Yes.

11 Q. And in what context had you already heard the
12 term transgender?

13 A. I'm sorry. Could you repeat that?

14 Q. Sure. In what context had you heard the term
15 transgender?

16 A. Just in referring to people as transgender.

17 Q. Had you known anybody that was transgender
18 before BPJ told you that BPJ was a girl?

19 A. I did not.

20 Q. Were you surprised when BPJ announced that BPJ
21 was a girl?

22 A. No.

23 Q. Why is that?

24 A. She had been presenting as a girl.

1 Q. I see. So you expected BPJ at some point to
2 tell you that BPJ was a girl?

3 A. Yes.

4 ATTORNEY BLOCK: Objection, MT.

5 BY ATTORNEY TRYON:

6 Q. Back in --- at the end you say you knew this was
7 not a phase for her and that there was something
8 different happening. How did you know it was not a
9 phase?

10 A. It never went away. It just became more
11 intense. I had already raised two sons and realized
12 that she was a girl. She was being raised as a
13 daughter. She was telling me that she was a girl.

14 Q. At what point did you conclude that it was not a
15 phase?

16 A. I don't know a date for that.

17 Q. Well, was it before --- I presume it was after
18 BPJ announced that BPJ was a girl.

19 Is that right?

20 A. Yes, but I don't know the date of that either.

21 Q. But you believe it was approximately at age
22 three?

23 A. Three to four.

24 Q. At some point did BPJ say that BPJ wanted

1 breasts?

2 A. Yes.

3 Q. Do you remember when that was?

4 A. I don't remember the date.

5 Q. Was it in the past two years or do you recall at
6 all?

7 A. I don't recall.

8 Q. And why did BPJ want breasts?

9 A. Because girls have breasts.

10 Q. Does BPJ understand at that time --- let me
11 start that over. At that time, when BPJ said that BPJ
12 wanted breasts, did BPJ understand the purpose of
13 breasts?

14 ATTORNEY BLOCK: Objection, calls for
15 speculation.

16 THE WITNESS: I don't know that she knew
17 the purpose of breasts, no.

18 BY ATTORNEY TRYON:

19 Q. Have you ever informed BPJ or had BPJ somehow
20 learned the purpose of breasts?

21 ATTORNEY BLOCK: Objection to form.

22 THE WITNESS: She knows she was breastfed
23 as a child, so she knows that milk comes out of them.

24 BY ATTORNEY TRYON:

1 Q. Had you ever had any discussions with BPJ about
2 the purpose of breasts?

3 A. No.

4 Q. Do you know if BPJ expects that once --- if BPJ
5 has an operation to give --- to put breasts in place,
6 does BPJ expect the ability to lactate?

7 ATTORNEY BLOCK: Objection. Objection to
8 form and calls for speculation.

9 THE WITNESS: Yeah, we've never had that
10 discussion.

11 BY ATTORNEY TRYON:

12 Q. So you don't know?

13 A. I would presume that she knows that it doesn't
14 work that way because she knows she can't have children.
15 She can't give birth.

16 Q. Okay.

17 And how do you know that?

18 A. Because we've talked about that.

19 Q. Tell me about that conversation.

20 A. That she doesn't have a uterus and that's what
21 you carry a baby in, is a uterus.

22 Q. Do you recall when you had that discussion?

23 A. I don't know the date.

24 Q. Was it within the past year?

1 A. I don't know when it was.

2 Q. Was it before or after this lawsuit was filed?

3 A. I don't know the answer to that.

4 Q. Did that cause distress to BPJ to know that BPJ
5 would not be able to have children?

6 A. No.

7 Q. Does BPJ --- let me rephrase that. Has BPJ told
8 you that BPJ wants a vagina?

9 A. Yes.

10 Q. Do you remember when that was?

11 A. I do not know the date.

12 Q. And do you know why BPJ wants to have a vagina?

13 A. Because she's a girl.

14 Q. And for BPJ that's an indicator that BPJ is a
15 girl?

16 A. She wants to be a girl. She is a girl. She
17 wants the genitalia to match.

18 Q. Well, I want to ask this question again. It's
19 important for me to understand the situation. Has BPJ
20 thought about this in the context of sexual relations?

21 A. No.

22 ATTORNEY BLOCK: Objection to form and
23 calls for speculation.

24 BY ATTORNEY TRYON:

1 Q. And how do you know that BPJ has not ---?

2 A. We have not talked about sexual relations.
3 She's 11.

4 Q. Fair enough.

5 ATTORNEY TRYON: Paragraph ten, if the
6 court reporter can put the document back up on the
7 screen.

8 BY ATTORNEY TRYON:

9 Q. By the time BPJ was in the third grade she had
10 chosen her name and was living as herself at home. What
11 name did she choose?

12 A. She chose the name B [REDACTED].

13 Q. Do you know why she chose the name B [REDACTED]?

14 A. She said she liked the name.

15 Q. Did she talk to you about it before choosing the
16 name?

17 A. Nope. She told me that that was the name she
18 was picking.

19 Q. So paragraph ten says third grade. How old was
20 BPJ at that time?

21 A. I don't know how old someone is in the third
22 grade.

23 Q. I'm asking how old BPJ was at the time that BPJ
24 went into the third grade.

1 A. I don't know off the top of my head how old you
2 are when you enter into third grade.

3 Q. Do you know how old BPJ was when BPJ entered
4 kindergarten?

5 A. She was five.

6 Q. So then in the third grade, would that make BPJ
7 eight?

8 A. Roughly.

9 Q. So between third grade and eighth grade in the
10 public she presented outwardly as a male?

11 ATTORNEY BLOCK: Objection.

12 ATTORNEY TRYON: I don't think I said
13 that right. Let me try that again. Apologize.

14 BY ATTORNEY TRYON:

15 Q. Between the age of three and eight do I
16 understand correctly that she presented to the general
17 public as a male?

18 A. At school.

19 Q. Okay.

20 And what about outside school?

21 A. It would depend on the function. If it was
22 around family, she presented as a female and wore female
23 clothes. If it was a function she didn't feel
24 comfortable in, like a funeral, she would present as she

1 would in school.

2 Q. As a boy?

3 A. She would wear male clothes.

4 Q. And thank you for that clarification. So ---
5 and then so she would dress as a boy at school and then
6 would she come home and change?

7 A. Immediately.

8 Q. And did BPJ --- when you say BPJ was around
9 family, do you mean just your immediate family or
10 extended family?

11 A. Extended family.

12 Q. And who would that extended family be just so I
13 understand your term?

14 A. Aunts, uncles, grandparents.

15 Q. Did anyone express a surprise at the beginning
16 that BPJ was now dressing as a boy (sic)?

17 A. Not to me they didn't.

18 Q. So to this day, no one outside your immediate
19 family has --- let me rephrase it. To this day, no one
20 in your extended family has ever said why is BPJ
21 presenting as a --- or dressed as a boy when BPJ is a
22 girl? No, let me start that all over again.

23 Let me see if I understand this. When BPJ was
24 between the ages of three and eight when BPJ was around

1 extended family BPJ would dress as a girl.

2 Is that right?

3 A. Correct.

4 Q. Okay.

5 I got a little confused. And during all that
6 time none of your extended family ever said to you or
7 anyone else that you were able to hear why is BPJ
8 wearing girl's clothing when BPJ is a boy?

9 ATTORNEY BLOCK: Objection to form.

10 THE WITNESS: Are you asking if they
11 expressed it to me?

12 BY ATTORNEY TRYON:

13 Q. Either to you or someone you heard them say it
14 to?

15 A. Well, when she was first introduced in female
16 clothes they asked why, and I said she is a girl.

17 Q. And what was their reaction?

18 A. Oh.

19 Q. That was it?

20 A. That is it.

21 Q. Okay.

22 When BPJ would go to school dressed as a boy
23 prior to the third grade, did that cause BPJ any
24 distress?

1 A. She didn't like dressing as a boy, but she was
2 worried about being made fun of at school if she dressed
3 like a girl.

4 Q. Can you repeat your answer there?

5 A. She didn't like dressing as a boy at school.

6 Q. But she --?

7 A. But she did because she was afraid that she
8 would be made fun of if she dressed as a girl at school.

9 Q. Thank you.

10 When BPJ started wearing a dress at school did
11 BPJ get made fun of?

12 A. No.

13 Q. Now, when you say when BPJ came home BPJ would
14 change into girl's clothing, does that mean always a
15 dress or something else?

16 A. Oh, it could be leggings, it could be her
17 pajamas, not necessarily always a dress.

18 Q. That's what I'm wondering, because girls many
19 times wear pants. So does BPJ now that BPJ is
20 identifying as a girl wear jeans or pants to school?

21 A. She does not wear jeans.

22 Q. Other pants?

23 A. She wears leggings.

24 Q. Why not jeans?

1 A. She doesn't like jeans.

2 Q. I want to shift gears a little bit here. So BPJ
3 had a different birth name than B [REDACTED].

4 Correct?

5 A. Correct.

6 Q. And does it disturb you to see or hear BPJ's
7 birth name?

8 A. Disturb? I don't understand what you mean by
9 disturb.

10 Q. Does it cause you any anxiety to see BPJ's birth
11 name, for example, on the Birth Certificate or other
12 places where it's been written down?

13 A. Oh, it just seems foreign to me because she's
14 been B [REDACTED] for so long.

15 Q. Does it cause distress for BPJ to see BPJ's
16 birth name?

17 A. Yes, it does.

18 Q. Can you describe that? And forgive me if you've
19 already told me this yesterday, and I may have
20 forgotten, but does it --- tell me about what that
21 distress is.

22 A. She gets angry and upset and doesn't understand
23 why her dead name is on there.

24 Q. Where did you learn the term dead name?

1 A. From B [REDACTED].

2 Q. How did B [REDACTED] learn the term dead name?

3 ATTORNEY BLOCK: Speculation.

4 THE WITNESS: I don't know.

5 BY ATTORNEY TRYON:

6 Q. When did B [REDACTED] start using term dead name?

7 ATTORNEY BLOCK: Objection.

8 THE WITNESS: I don't know the name.

9 BY ATTORNEY TRYON:

10 Q. Was it before or after the lawsuit was filed?

11 A. Before.

12 Q. More than a year before that?

13 A. I don't know.

14 Q. Can you give me any kind of approximation at all
15 when BPJ started using the term dead name?

16 A. No, I cannot.

17 Q. Well, do you know if BPJ initially heard that
18 from lawyers?

19 ATTORNEY BLOCK: Objection, calls for
20 speculation.

21 THE WITNESS: I don't know where she
22 heard it from.

23 BY ATTORNEY TRYON:

24 Q. When is the first time you heard it? From B [REDACTED]

1 I think you said, is that right or not?

2 A. B [REDACTED] told me the name --- the term dead name.

3 ATTORNEY TRYON: Let's go off the record
4 for just a moment.

5 VIDEOGRAPHER: Going off the record. The
6 current time reads 12:01 p.m.

7 OFF VIDEOTAPE

8 ATTORNEY TRYON: So I'm about to get into
9 a different line of questioning. I want to be
10 respectful about everybody's thoughts about lunch. I'm
11 happy to keep on going for another half-hour or hour,
12 but I just want to make sure that --- I want to be
13 respectful with other people's feelings on that. Well,
14 hearing no objection, I'm going to keep going unless
15 somebody speaks up, including you, ma'am. If you ---
16 you're the star here. You and the court reporter are
17 the most important people here, so if you feel the need
18 to take a break ---.

19 THE WITNESS: I'm okay.

20 ATTORNEY TRYON: Okay.

21 ATTORNEY DUCAR: Can we take five
22 minutes?

23 ATTORNEY TRYON: Yes.

24 ATTORNEY DUCAR: Thank you.

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(WHEREUPON, A SHORT BREAK WAS TAKEN.)

ON VIDEOTAPE

VIDEOGRAPHER: We are back on the record.

The current time reads 12:09 p.m.

BY ATTORNEY TRYON:

Q. Okay.

Ms. Jackson, I want to talk to you now about some issues about sports. Now, this may overlap a little bit from your testimony from yesterday. It's a problem --- well, not too much. But to the extent that it does, you know, I will try and ask questions that are consistent with our questions and answers from yesterday. But if you feel like I'm somehow misrepresenting your testimony or anything from yesterday, please let me know and I will try and be respectful of your prior testimony.

Okay?

A. Yes, sir.

Q. So when did BPJ first get interested in sports?

A. She was in elementary school.

Q. Do you remember which grade?

A. Fourth.

1 Q. And what was the sport she became interested in?

2 A. Cheerleading.

3 Q. What was her interest?

4 A. She liked to cheer.

5 Q. Since I haven't been a cheerleader, can you tell
6 me what that means that she liked to cheer?

7 A. So she would go to the games, hers would have
8 been football, and you cheer for your team. You learn
9 the routines and you learn the cheers.

10 Q. And I believe you told me at that time she was
11 identifying as a female.

12 Is that right?

13 A. Correct.

14 Q. And the team that she was watching, was that a
15 school team or some other type of team?

16 A. Bridgeport Youth Football League.

17 COURT REPORTER: I'm sorry, what football
18 league did you say, ma'am.

19 THE WITNESS: Bridgeport Youth.

20 BY ATTORNEY TRYON:

21 Q. Is that a school-sponsored team?

22 A. It is not sponsored by the school, it's
23 sponsored by the counties.

24 Q. And is there a sponsor for the cheer team or was

1 there at the time?

2 A. All inclusive with the football team, if that's
3 --- I'm guessing. I think that's what you're asking.

4 Q. Yes. That answers my question.

5 Were there any boys on that cheer team?

6 A. There were not.

7 Q. Did you attend those games with BPJ?

8 A. Yes.

9 Q. How often did you go to those games?

10 A. Every time they had one.

11 Q. Was that just because you were interested in
12 those football games or did one of your other children
13 play in the football game?

14 A. One year I had a son who played on the football
15 team. Another year I did not have a son that played on
16 the football team.

17 Q. And you went anyway?

18 A. Absolutely.

19 Q. Is that because you like football or is it
20 because BPJ liked football? Why was that?

21 A. I like football.

22 Q. And did BPJ express any interest in playing on
23 the football team?

24 A. No.

1 Q. But BPJ was interested in the cheer team, as I
2 recall from some things that I read, at that time just
3 interested but was not part of the team.

4 Is that right?

5 A. Correct.

6 Q. And as I recall from something I read, BPJ then,
7 before getting on the team, learned some of the cheers.

8 Is that right?

9 A. Correct.

10 Q. And was it the very next year when BPJ joined
11 the cheer team or not?

12 A. Yes.

13 Q. So in the fifth grade BPJ was on the cheer team?

14 A. Correct.

15 Q. Were there tryouts for the cheer team?

16 A. There were not tryouts.

17 Q. So just anybody who wanted to be on the cheer
18 team could be on the cheer team?

19 A. Yes. You had to present the proper
20 documentation. You had to fill out the forms and give a
21 Birth Certificate and a physical.

22 Q. Was that cheer team open for both boys and
23 girls?

24 A. I don't know the answer to that.

1 Q. Did they ask you when you presented your
2 documentation or when BPJ applied in some fashion if BPJ
3 was a boy or a girl?

4 A. They did not ask me.

5 Q. Forgive me. I can't find it in my notes. At
6 fourth grade was BPJ already dressing as a female at
7 school?

8 A. Yes.

9 Q. Did your husband go to any of those football
10 games with you and BPJ?

11 A. Yes. Like which year, though?

12 Q. The first year before BPJ was on the cheer team?

13 A. Yes.

14 Q. And what about the year once BPJ was on the
15 cheer team?

16 A. When work permitted he would go.

17 Q. Did you encourage BPJ to sign up for the cheer
18 team?

19 A. She told me she wanted to sign up for the cheer
20 team.

21 Q. And then did you encourage her to do so or just
22 say whatever you want to do or something like that?

23 A. I said if she wants to cheer ---.

24 ATTORNEY BLOCK: Objection to form.

1 THE WITNESS: I said said if she wanted
2 to cheer --- I said if she wanted to cheer, she could
3 cheer.

4 BY ATTORNEY TRYON:

5 Q. It required your parent consent I presume.

6 Is that right?

7 A. Correct.

8 Q. Would that be just either your consent or your
9 husband's or both?

10 A. Either/or.

11 Q. At that time in the third grade did BPJ express
12 any interest in any other sports?

13 A. There are no other sports available to her.

14 Q. Why?

15 A. They didn't offer anything at her school.

16 Q. You mean in that grade?

17 A. Yeah.

18 Q. And then after that did BPJ want to be involved
19 in any other sports?

20 A. After that when?

21 ATTORNEY BLOCK: Objection, vague.

22 ATTORNEY TRYON: Thank you for the
23 clarification.

24 BY ATTORNEY TRYON:

1 Q. After the fourth grade did --- either in or
2 after the fourth grade did BPJ become interested in any
3 other sports?

4 A. She wanted to run, but there was no running
5 sport available to her at her age.

6 Q. Okay.

7 About what grade or age was that when BPJ was
8 interested?

9 A. In the --- let's see, that would have been the
10 fifth grade.

11 Q. The fifth grade?

12 A. The fifth grade, she's interested in running.

13 Q. So going into the fifth grade or while she was
14 in the fifth grade?

15 A. I'm not sure of the date.

16 Q. Okay.

17 But initially there was no track team --- I'm
18 sorry, you said cross-country.

19 Right?

20 A. Right. Correct.

21 Q. So at that point there was no cross-country
22 available for BPJ because of BPJ's age?

23 A. Correct.

24 Q. Were there other track sports that BPJ was

1 interested in?

2 A. Just running.

3 Q. Right. So running encompasses --- and I'm no
4 expert on track, but I thought that track included
5 cross-country and other running events.

6 Is that right or wrong?

7 A. Track can do running and other field events.

8 Q. So was it just cross-country that BPJ was
9 interested in or other running events?

10 A. That's what we were focusing on at the time
11 because that's what she knew.

12 Q. Why did she know --- when you say that you are
13 talking about cross-country?

14 A. Cross-country, yes.

15 Q. And why was that what she knew?

16 A. Because her --- her siblings ran cross-country.

17 Q. So was BPJ interested in any kind of
18 cross-country or specific cross-country events?

19 ATTORNEY BLOCK: Objection, vague.

20 THE WITNESS: Yeah, I don't understand
21 the question. Cross-country is cross-country.

22 BY ATTORNEY TRYON:

23 Q. Okay.

24 So some places have --- I don't know this. I

1 will ask this. As far as I know, there is boys
2 cross-country and girls cross-country. And I presume
3 there may also be coed cross-country teams.

4 Do you know about that?

5 ATTORNEY BLOCK: Objection to form.

6 THE WITNESS: The only one that was
7 available was in the sixth grade, and it was a boys
8 cross-country and a girls cross-country.

9 BY ATTORNEY TRYON:

10 Q. And as I understand it, BPJ prefers to try out
11 for the girls cross-country team.

12 Right?

13 A. Yes, because she's a girl.

14 Q. Okay.

15 I just want to establish first that is what she
16 wanted, she wanted to try out for the girls
17 cross-country team.

18 Right?

19 A. Yes.

20 Q. And did she ever say I don't want to try out for
21 the boys cross-country team?

22 A. Correct.

23 Q. And she said that because I'm a girl, I want to
24 be on the girls cross-country team or words to that

1 effect?

2 A. She said she wanted to run with the girls on the
3 girls cross-country team.

4 Q. Did she have any friends who were girls that
5 were on the team already?

6 A. She knew of some people that were not in her
7 grade that were in cross-country that were friends with
8 her brother.

9 Q. And those were girls or boys?

10 A. Girls.

11 Q. Did she know any boys that were on the boys
12 cross-country team?

13 A. Her siblings.

14 Q. Great. Anybody else of her age group?

15 A. Not that I know of.

16 Q. From what I've read, I gather that the tryouts
17 for the girls cross-country team are competitive.

18 Is that your understanding?

19 A. Correct.

20 Q. And then once you get on the cross-country team,
21 are the races themselves competitive?

22 A. Correct.

23 Q. And did BPJ want to be competitive or just only
24 participate and she didn't care if she won?

1 A. Oh no, she --- she was competitive.

2 Q. So she wanted to win?

3 A. Yeah.

4 Q. And did she work hard at it?

5 A. She trained every day.

6 Q. And how did she do?

7 A. She ran cross-country.

8 Q. Okay.

9 How did she do compared to others?

10 A. She never finished first. She never finished
11 second.

12 Q. She wanted to finish first or second, though, I
13 take it?

14 A. Every kid wants to.

15 Q. I'm sorry?

16 A. Every kid wants to finish first.

17 Q. Including her, right?

18 A. Yes.

19 Q. Do the boys and girls cross-country teams ever
20 compete against each other?

21 A. There are races where they call them one and
22 done, where everybody runs together. And there are
23 races where they are separated out. It just depends on
24 the format of the host school.

1 Q. So the ones --- they call them won and done.

2 Is that right?

3 A. Yes.

4 Q. That means everybody runs together, all the boys
5 and all the girls?

6 A. Correct.

7 Q. Have you ever observed any of those?

8 A. I believe there was one last year.

9 Q. Did you go do that?

10 A. Yeah.

11 Q. And did BPJ participate in that?

12 A. Yes.

13 Q. How did BPJ do?

14 A. She didn't finish last.

15 Q. Okay.

16 Did BPJ finish ahead of any of the boys?

17 A. Yes.

18 Q. And did --- how many boys was she faster than?

19 A. I don't know the answer to that.

20 Q. Do you know how many kids were in that
21 particular race?

22 A. No, I don't.

23 Q. Do you remember what the name of that event was?

24 A. No, I don't.

1 Q. Do you remember where it was or what school it
2 was at?

3 A. No, I don't.

4 Q. Okay.

5 When BPJ --- let me back up. BPJ, she made the
6 team obviously.

7 Right?

8 A. Correct.

9 Q. Were any of the other people who tried out for
10 it, did they not get on the team?

11 A. I don't know the answer to that. I don't know
12 --- I'm not privy to that information, as to who tried
13 out and who made it.

14 Q. Well, I'm going to ask you this question. I
15 think based on our discussions yesterday I think I know
16 the answer, but I'm going to ask it anyway just to make
17 sure I understand, but do you think that boys on the
18 boys cross-country team should be allowed to compete
19 against the girls on the girls cross-country team?

20 A. If they identify as female? Is that what you're
21 asking, if they identify as female?

22 Q. Well, let's start with that. If they identify
23 as female, should they be allowed to compete against the
24 girls on the girls cross-country team?

1 A. Anybody who identifies as female should be able
2 to run on the girls cross-country team.

3 Q. And as to boys who do not identify as girls,
4 should they be allowed to run on the girls
5 cross-country?

6 A. It is not permitted at the school that she's at.

7 Q. And do you have an opinion if they should be
8 allowed to?

9 A. If there's a boys team, that they're running on
10 the boys team if they don't identify as female.

11 Q. So you don't think they should be allowed to run
12 on the girls team unless they identify as a girl.

13 Is that right?

14 A. I believe that anybody who identifies as female
15 should be able to run on the female's cross-country team
16 or track team or ---.

17 Q. Right. But my question is if a boy, not
18 identifying as a girl, just wants to compete against the
19 girls on the cross-country team for girls, do you think
20 that should be allowed or not?

21 A. Is there a boys team available?

22 Q. Yes.

23 A. Then I would think they would run on the boys
24 team.

1 Q. What if they just want --- what if they just
2 wanted to run on the girls team instead without
3 identifying as a girl, do you think that person should
4 be allowed to?

5 A. I don't know that I understand the question.

6 Q. Okay.

7 We'll move on.

8 ATTORNEY TRYON: Let me just take a break
9 here and determine if I can skip some of my questions
10 here to speed things up. Give me just a moment.

11 VIDEOGRAPHER: Do we want to go off the
12 record or just stay on?

13 ATTORNEY BLOCK: Let's go off the record.

14 ATTORNEY TRYON: Just a minute. I will
15 be right back. Just a minute.

16 ATTORNEY BLOCK: So we're off the record.

17 VIDEOGRAPHER: Yeah, we're off the record
18 at 12:29 p.m.

19 OFF VIDEOTAPE

20 ---

21 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

22 ---

23 ON VIDEOTAPE

24 VIDEOGRAPHER: We are back on the record.

1 The current time reads 12:33 p.m.

2 ATTORNEY TRYON: Thank you.

3 BY ATTORNEY TRYON:

4 Q. Just to clarify one thing that we were
5 discussing and you used term identify as a female. Can
6 you tell me what you understand that means, to identify
7 as a female?

8 A. Choose to live your life as a female because you
9 are a female.

10 Q. So we were talking about boys and girls
11 cross-country teams and other running events. And
12 yesterday we talked about if you were aware of any
13 statistics on how fast boys and girls can run. I want
14 to ask you would it surprise you to know that there are
15 statistics that show on average 11-year-old biological
16 boys are about 20 percent faster than 11-yearold
17 biological girls in the one-mile run.

18 ATTORNEY BLOCK: Objection to form and
19 terminology. And I will make the terminology a standing
20 objection.

21 THE WITNESS: I don't know that I'm
22 surprised. I don't know that I'm not surprised.

23 BY ATTORNEY TRYON:

24 Q. In the context of cross-country, does BPJ take

1 showers or change clothing at school?

2 A. She changes into her uniform at school.

3 Q. Does she use the locker room to do that?

4 A. She uses a private bathroom by the counselor's
5 office to do that.

6 Q. Who may use that private bathroom?

7 A. I don't know who beside her uses that bathroom.

8 Q. Is it just a unisex bathroom or what?

9 A. Again, I don't know who all uses it to be boys
10 or girls or both. I don't know.

11 Q. Have you been in it?

12 A. I've seen it.

13 Q. Okay.

14 And so can you describe it for me? Does it
15 just have one toilet in there and a sink or more than
16 that?

17 A. Yes, just one.

18 Q. So one person can go in there, shut the door,
19 lock it and use the facilities.

20 Is that right?

21 A. Correct.

22 Q. And is BPJ satisfied with that arrangement?

23 A. She doesn't mind it. She would rather use the
24 female facilities, but she doesn't mind it. She says it

1 has the good toilet paper.

2 Q. Well, that's a good reason to use it. Is there
3 a reason that BPJ does not use the female facilities?

4 A. She was told at the school that that was the
5 bathroom that she is supposed to use.

6 Q. Have you objected to that arrangement?

7 A. I have not.

8 ATTORNEY TRYON: Okay.

9 It's 12:37. I would propose to change
10 topics and move forward unless you people want to take
11 lunch now. If I keep going forward, I would probably on
12 this next topic go until past 1:00. So we can either go
13 for another half hour or so or we can take a break now.
14 Whatever you prefer. Ma'am, what is your preference?

15 THE WITNESS: I'm fine to go another half
16 hour.

17 ATTORNEY TRYON: And Josh, are you okay
18 with that.

19 ATTORNEY BLOCK: I prefer to keep going,
20 yes.

21 ATTORNEY TRYON: Very good.

22 BY ATTORNEY TRYON:

23 Q. When you first --- let me back up and ask a
24 different question. Are you familiar with the term

1 gender dysphoria?

2 A. Yes.

3 Q. When did you first become aware of that term?

4 A. When my daughter was diagnosed with gender
5 dysphoria.

6 Q. So when BPJ was approximately three or four and
7 said I am a girl, you were not aware of that term.

8 Is that correct?

9 A. No. When she first told me that she was a girl,
10 I was not aware of that.

11 Q. And how did your husband react when BPJ said
12 that BPJ was a girl, not a boy?

13 A. How did he react to me?

14 Q. To the announcement, whether it came from you or
15 from BPJ?

16 A. Concerned.

17 Q. Did he learn about it at approximately the same
18 time that you did?

19 A. Yeah.

20 Q. When you say concerned, can you explain that a
21 little better?

22 A. Concerned about any sort of discrimination that
23 she may have later in life.

24 Q. Was he at all distressed to learn that the child

1 who he believed to be his son was now claiming to be a
2 daughter?

3 ATTORNEY BLOCK: Objection to the form
4 and argumentative.

5 THE WITNESS: I don't know if he was
6 upset.

7 ATTORNEY TRYON: Can you look at
8 Exhibit 17 with me, please?

9 BY ATTORNEY TRYON:

10 Q. Let me know when you have that in front of you.

11 A. I do.

12 Q. This is fairly a short document so take a look
13 through there and let me know when you are able to
14 familiarize yourself with it.

15 ATTORNEY TRYON: If counsel would like us
16 to scroll through that, let me know and we'll have the
17 court reporter do that.

18 ATTORNEY BLOCK: I'm fine without the
19 scrolling.

20 BY ATTORNEY TRYON:

21 Q. Have you seen this document before?

22 A. Yes.

23 Q. When did you first see this?

24 A. When we filled it out.

1 Q. Is this your handwriting?

2 A. No, that's not my handwriting.

3 Q. Do you know whose handwriting that is?

4 A. The person that filled it out.

5 Q. Okay.

6 Is that somebody at the school?

7 A. Yes.

8 Q. And just for the record, this a Gender Support
9 Plan dated 8/23/19. So were you in the meeting where
10 this was filled out?

11 A. Yes.

12 Q. And there was some sort of meeting?

13 A. Yes, it was individuals in a room with paper.

14 Q. And on the last page it shows what appears to be
15 a signature of B [REDACTED]. Would that be BPJ?

16 A. Yes.

17 Q. And at the time that this was filled out on
18 August 23, 2019, you reviewed it at that time?

19 A. Was I what at that time?

20 Q. Did you --- did you fill --- I'm sorry, did you
21 review it at that time?

22 A. Yes, yes.

23 Q. And did BPJ review it at that time?

24 A. She didn't review the document. She was in the

1 meeting.

2 Q. Is there a reason that she did not review it?

3 A. No reason.

4 Q. In the first paragraph, under where it says
5 parent/guardian involvement ---

6 A. Correct.

7 Q. --- the language there says mom very supportive,
8 dad has struggled but coming around, seeking outside
9 help through church and parental side of families
10 help/support?

11 ATTORNEY BLOCK: Objection. You misread
12 the document.

13 ATTORNEY TRYON: Oh, I'm sorry. What did
14 I miss.

15 ATTORNEY BLOCK: Paternal instead of
16 parental.

17 BY ATTORNEY TRYON:

18 Q. Ma'am, can you help me out here? To me it looks
19 like it says paternal?

20 ATTORNEY BLOCK: Yeah. I think you said
21 parental unless I misheard.

22 ATTORNEY TRYON: Oh, okay.

23 BY ATTORNEY TRYON:

24 Q. So my question then is when it says dad

1 struggled, what's that referring to?

2 A. He was concerned, but on page three it says
3 parents are supportive.

4 Q. I understand. We can get to page three in a
5 minute, but when it says dad had struggled, does that
6 mean that he was uncomfortable with what I'll
7 characterize as the changing of BPJ's gender?

8 A. He was ---.

9 ATTORNEY BLOCK: Objection to form.

10 THE WITNESS: He was worried about any
11 sort of discrimination.

12 BY ATTORNEY TRYON:

13 Q. And then but coming around, what does but coming
14 around mean?

15 A. I don't know.

16 Q. Well, you gave the information --- let me strike
17 that.

18 Who gave the information to the person filling
19 this out?

20 A. I don't know if she paraphrased or what, but it
21 doesn't look like it's a quote.

22 Q. Who gave the information to the person filling
23 this out?

24 A. She would have been questioning me.

1 Q. Not BPJ?

2 A. BPJ was in the meeting, but I don't believe she
3 was questioned directly in regards to that.

4 Q. The next part says seeking outside help through
5 church. What outside help was dad seeking through
6 church?

7 A. Talking to the minister.

8 Q. About what?

9 A. Trying to reconcile religion and his daughter.

10 Q. And what reconciliation was that?

11 A. I don't know. I wasn't privy to those
12 conversations.

13 Q. Did you tell the person filling out this form
14 that dad was seeking outside help through the church?

15 A. Yes.

16 Q. Which church is that, by the way?

17 A. He goes to a different church than me.

18 Q. Do you know what denomination?

19 A. It's the --- it's the Church of God, whatever
20 denomination that is.

21 Q. And you don't go to that church?

22 A. I don't go to that church.

23 Q. But he told you that he was seeking help from
24 the church?

1 ATTORNEY BLOCK: Objection. Objection
2 marital communication, privileged.

3 BY ATTORNEY TRYON:

4 Q. Well, don't tell me the exact --- just tell me
5 in general if that was the purpose of seeking help.

6 A. He was trying to reconcile religion versus his
7 daughter.

8 Q. Do you know what that religion believes with
9 respect to this issue?

10 A. No, I don't go to that church.

11 Q. And then it says and paternal side of family's
12 help/support. Can you explain what you meant when you
13 conveyed that information ---?

14 A. They are also members of that church.

15 Q. Down further at the bottom of that page it says
16 B [REDACTED] is comfortable with others knowing her gender
17 identity and transition. Can you explain to me what was
18 --- well, let me back up. Does that accurately
19 represent what you told the person filling out this
20 form?

21 A. Yes.

22 Q. Can you explain to me a little more about what
23 that means that she's --- that B [REDACTED] is comfortable with
24 others knowing her gender identity and transition?

1 A. Just that --- it's just that. She is
2 comfortable with others knowing. She'll talk to you
3 about it if you want to.

4 Q. So she's comfortable talking about the
5 transition from being a boy to a girl?

6 ATTORNEY BLOCK: Objection to
7 terminology. I'll make that a standing objection.

8 THE WITNESS: She's comfortable with
9 explaining her transgender identity.

10 BY ATTORNEY TRYON:

11 Q. Does that include explaining that I was once a
12 boy and now I'm a girl, however --- you know, I'm not
13 trying to put it in --- those words in anybody's mouth.
14 That's the concept I'm trying to understand.

15 A. I've never witnessed a conversation where that
16 was said.

17 Q. Okay.

18 Then how do you know what BPJ was comfortable
19 with?

20 A. Because I've witnessed her talking to people
21 about her transgender identity.

22 Q. Great. And so what have you observed her
23 saying?

24 A. That she is transgender and that she is living

1 life as a female.

2 Q. Anything beyond that?

3 A. I would have to have a specific question.

4 Q. Anything else you can remember right now?

5 A. No.

6 Q. On the next page ---.

7 ATTORNEY TRYON: And Counsel, if you need
8 me to bring up the page, please say so. Oh, great, it's
9 being brought up. Okay.

10 BY ATTORNEY TRYON:

11 Q. Gender will be male, do you see that part down
12 almost at the bottom?

13 A. Oh, yeah, I see that.

14 Q. But B [REDACTED] will be in parentheses next to birth
15 name. So why would the gender be male?

16 A. I think it has to do with the WEVAS System.

17 Q. Can you explain that?

18 A. No, I don't understand WEVAS at all.

19 Q. Okay.

20 When this was filled out, you can see on that
21 page, for example, what name and gender marker are
22 listed on the student's identity documents, and there is
23 what we call a redaction, a black mark.

24 A. Okay.

1 Q. That covers up some information. Would that
2 information have been BPJ's birth name?

3 A. Yes.

4 Q. So remind me, did BPJ read this document before
5 she --- before BPJ signed it?

6 A. She was in the meeting, but she didn't read it
7 line for line, no.

8 Q. Okay.

9 But did sign it?

10 A. Yes. We were to sign it that we were present.

11 Q. On the page marked at the lower right-hand
12 corner BPJ 010, I think it's the fourth page --- yeah,
13 it says page four at the top. See at the bottom it says
14 received training, that part there?

15 A. Oh, okay.

16 Q. It says Norwood staff received training on
17 tolerance and cultural diversity and LGBTQ --- I think
18 that's plus IA on 8/21.

19 Do you see that?

20 A. Yes, I do see that.

21 Q. Do you know what that's referring to?

22 A. No, I don't.

23 Q. Have you ever been provided with any further
24 information on what tolerance or cultural diversity or

1 similar training that is given to the staff?

2 A. No.

3 Q. Next it says and provided protocol and multiple
4 resources --- multiple resource sources. Was that
5 meaning that you were provided with that information or
6 that was information that was provided to the Norwood
7 staff?

8 A. To the Norwood staff.

9 Q. Were you provided any resource sources at the
10 time that this was filled out?

11 A. No.

12 Q. Going back up to the first page where we talk
13 about your husband seeking outside help through the
14 church, did his views or feelings change in any way
15 after seeking that --- after getting help through the
16 church?

17 A. He has reconciled his religion with his
18 transgender daughter.

19 Q. Did he explain to you how?

20 A. No.

21 Q. Let me ask you to look at Exhibit 11C. In fact,
22 ma'am, if you could grab 11A, B, C and E. And I
23 apologize let me look at 11D first, D as in David. So
24 take a look at this, and I'll ask you a few questions

1 about it.

2 A. Go ahead.

3 Q. Okay.

4 And for the record, Exhibit 11D, at the top is
5 --- has the name of Andrew James Spurr, M.D., and it
6 says progress notes and it says encounter date, December
7 16, 2020. Do you see that at the top, ma'am?

8 A. Yes.

9 Q. I want to make sure we are looking at the same
10 thing together. And it says history obtained from
11 mother --- well, let me back up. First of all, have you
12 ever seen this document before?

13 A. No.

14 Q. Do you remember --- it says on here, history
15 obtained from mother. B [REDACTED] was not present for this
16 tele-medicine visit.

17 Do you see that?

18 A. Yes.

19 Q. Do you remember this --- that you had --- were
20 involved in this tele-medicine visit, as it says?

21 A. Yes.

22 Q. And I want to direct you to the next paragraph
23 that says B [REDACTED] is very happy with stopping puberty. Is
24 that something that you reported to the doctor?

1 A. Yes.

2 Q. And it was directed to the doctor not, someone
3 else?

4 A. To Andrew James Spurr.

5 Q. Right. How did you come to speak with Andrew
6 James Spurr? How did you find him as a doctor?

7 A. He was on --- he was just on that call as a
8 resident. I don't know how he got assigned to us. It's
9 the one and only time he was ever assigned to us. I
10 don't know if Dr. Montano was out or what.

11 Q. So Dr. Spurr is in Dr. Montano's office?

12 A. I would presume so, yes.

13 Q. It says she, referring to B [REDACTED], wants to know
14 when she can start hormone therapy. Were you told
15 anything in response to that?

16 A. I was not told anything in response to that.

17 Q. Next it says wants to get breasts and get rid of
18 her penis. You reported that to the doctor?

19 A. Correct.

20 Q. And did he have any response to that?

21 A. No.

22 Q. You next said she is experiencing dysphoria ---
23 strike that.

24 The document says she is experiencing dysphoria

1 with leg growth hair. Did you use that terminology with
2 the doctor?

3 ATTORNEY BLOCK: Objection, misread the
4 text.

5 BY ATTORNEY TRYON:

6 Q. Let me try again, she is experiencing dysphoria
7 [REDACTED]. Did you use the term dysphoria
8 when speaking to the doctor?

9 A. He used the term dysphoria.

10 Q. And what terminology did you use when you spoke
11 to the doctor?

12 [REDACTED]
13 [REDACTED]

14 [REDACTED]
15 A. Correct.

16 [REDACTED]
17 [REDACTED] And did you, in fact, tell the doctor
18 that?

19 A. Yes.

20 Q. And when --- so this is --- the encounter date
21 is December 16, 2020. [REDACTED]

22 [REDACTED]

23 A. I don't know the date that he said it. The date
24 --- the encounter date is just the date of the

1 appointment.

2 [REDACTED]

3 [REDACTED]

4 A. I'm guessing yes.

5 Q. And he said that to BPJ?

6 A. Correct.

7 Q. Why did he say that?

8 A. I don't know.

9 Q. Did you observe it?

10 A. I observed the aftereffects.

11 Q. So you didn't actually hear him say that?

12 A. No, she came and reported it to me.

13 Q. She being BPJ?

14 A. Correct.

15 Q. What did BPJ say about it?

16 A. She was crying and was upset.

17 [REDACTED]

18 A. According to her.

19 Q. What did that mean to BPJ?

20 ATTORNEY BLOCK: Objection. Calls for
21 speculation.

22 THE WITNESS: I just know that it upset
23 her, that she was crying and was upset.

24 BY ATTORNEY TRYON:

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[REDACTED]

A. I don't know what they were doing outside. I know they were outside because she came inside.

Q. Has your husband ever said that to BPJ before that, to your knowledge?

A. To my knowledge, no.

Q. Did BPJ say he said this to me before, or this is the first time, or any other discussion about it?

A. No other discussion about it.

Q. This just seems odd to me, so maybe I'll just ask the question. [REDACTED]

[REDACTED]

A. Yeah.

Q. Why would that be reported?

A. [REDACTED]

[REDACTED] My guess is he didn't read the case file.

Q. Okay. Okay.

[REDACTED]

Who's that transgender psychologist?

A. There was one locally, but he left after ---

1 during the COVID session and I never did get to see him.

2 Q. Who was that?

3 A. I don't know what his name was.

4 Q. And has --- have you ever found a transgender
5 psychologist?

6 A. We have found a psychologist that specializes in
7 transgender care.

8 Q. Who is that?

9 A. Doctor Matthew Bunner.

10 Q. When is the first time that you saw Doctor
11 Matthew Bunner?

12 A. I don't know. It would be in the medical
13 records, but I don't know the date off the top of my
14 head.

15 Q. All right.

16 Well, then we will find it in the medical
17 records in a bit. Was there a reason that B [REDACTED] was not
18 present for this tele-medicine visit?

19 A. I was out of town. My dad died.

20 Q. Sorry about that, by the way.

21 So prior to this appointment you had not ---
22 let me rephrase that. Prior to this appointment --- or
23 this encounter on December 16, 2020, BPJ had not yet met
24 with a psychiatrist or a psychologist.

1 Is that right?

2 A. Yeah, correct.

3 Q. And is Doctor Matthew Bunner, is he a
4 psychiatrist or psychologist?

5 A. I'm not sure of his credentials.

6 Q. Prior to this data, [REDACTED]
7 [REDACTED] Do you believe that
8 to be accurate date, more or less?

9 A. That's accurate.

10 Q. Do you know what a [REDACTED] is?

11 A. Yes, it's a hormone blocker.

12 Q. Can you describe for the record how that's
13 implanted?

14 A. The skin is separated from the tissue below it
15 and it's slid in underneath the skin and secured with a
16 suture.

17 Q. And where on the body?

18 A. Where is hers?

19 Q. Yes.

20 [REDACTED]

21 [REDACTED]

22 Q. Well, I don't know where [REDACTED], but
23 it gives me a good idea. Thank you.

24 And then how long is that supposed to last? Do

1 you need to replace it at some point?

2 A. It will have to be replaced at some point.

3 Q. Do you know how long?

4 A. It depends on her labs.

5 Q. Were you given a general time period for whether
6 it's a year, two years, six months?

7 [REDACTED]

8 [REDACTED]

9 Q. So from what I understand from what you told me,
10 then [REDACTED] before BPJ met with a
11 psychologist or psychiatrist.

12 Is that right?

13 A. Correct.

14 Q. Is there a reason you didn't wait to talk to a
15 psychologist or psychiatrist before doing this ---
16 taking this action?

17 A. We couldn't get in anywhere because of COVID.

18 Q. Is that the only reason?

19 A. Yes.

20 Q. Did you feel it was important to actually have
21 BPJ meet with a psychiatrist or psychologist before
22 taking this action?

23 ATTORNEY BLOCK: Objection to form.

24 [REDACTED]

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[REDACTED]

BY ATTORNEY TRYON:

Q. Are you familiar with the Tanner stages?

A. With what? I'm sorry.

Q. The Tanner stages, T-A-N-N-E-R?

A. I'm not sure.

Q. Can you look at Exhibit 11A, please?

A. 11A. Oh, yeah.

Q. Okay.

Take a look at that document and let me know when you're ready. I just have a question or two.

A. Okay.

Q. All right.

[REDACTED]

[REDACTED]

[REDACTED] She has been followed up for gender dysphoria with desire to start hormone blockers, [REDACTED] Does that refresh your recollection what the Tanner stage one means?

A. Yes.

Q. What's your understanding of that?

A. They take --- it almost looks like a beaded necklace, but it's different size representation of

1 testicular formation and they compare it to her testes
2 in order to see what stage they are.

3 Q. What's the purpose of that?

4 A. To measure the testes.

5 Q. And is --- why do that?

6 A. Because it's a sign of puberty.

7 Q. And is there a particular Tanner stage that you
8 need to be at in order to get the hormone blocker?

9 A. I do not know the answer to that. I'm not sure
10 which stage you must be at.

11 Q. Is that indicative --- do they use that in some
12 fashion to determine when you insert a --- or start
13 using the hormone blockers?

14 A. They use it as a sign for puberty.

15 Q. And does puberty have something to do with when
16 you --- well, let me just ask it this way. As I
17 understand it, before --- the doctors do not want to use
18 hormone blockers until you start into puberty Tanner
19 Stage 2?

20 A. Okay.

21 Q. Do you have any information on --- do you
22 believe that is accurate or not?

23 A. I don't know.

24 Q. Okay.

1 When you --- let me rephrase that. Did both
2 you and BPJ meet with the doctor, a doctor to discuss
3 the pros and cons or any side effects of using hormone
4 blockers?

5 A. Yes.

6 Q. So would that have been just you or would BPJ
7 have been involved as well?

8 A. B [REDACTED] would have been involved as well.

9 Q. How about your husband?

10 A. He was working. I would have to relay the
11 information after I got back from the doctor.

12 Q. And did you relay that information to him?

13 A. Yes.

14 Q. Was he okay with using hormone blockers?

15 A. We read like the package insert information.

16 Q. Okay.

17 A. To look at the possible side effects.

18 Q. And what were the possible side effects,
19 according to that insert?

20 A. Some of them off the top of my head was
21 decreased size in testes, osteoporosis.

22 Q. Were you concerned about the side effects?

23 A. The benefit outweighed the risk.

24 Q. And what was the risk? Those side effects?

1 A. The risk would be the side effects.

2 Q. And what was the benefit?

3 A. The benefit would be help with her transition.

4 Q. Explain what you mean by transition.

5 A. To live her life authentically, to stop the male
6 hormones.

7 Q. What would the male hormones do as you
8 understand it?

9 A. Male hormones would cause her penis size to
10 increase, her testicle size to increase, body hair to
11 start forming, Adam's apple would start forming, her
12 voice would change.

13 Q. And those are all things that you wanted to
14 avoid happening?

15 A. She wanted to avoid happening.

16 Q. How about you, did you care one way or the
17 other?

18 A. I wanted her to live her most authentic life.

19 Q. What did you mean by that, her most authentic
20 life?

21 A. I wanted her to be able to live as a female, as
22 she wished to live.

23 Q. Why does that make it her authentic life?

24 A. Because she's a girl.

1 Q. Okay.

2 So I'm done with this exhibit.

3 ATTORNEY TRYON: I'm finished with
4 Exhibits 11A, B, C and D, so we can put those aside.
5 It's 1:15. This would be a convenient place to stop if
6 we want to for lunch. Would you like to do that, ma'am,
7 or do you want to keep going?

8 THE WITNESS: I need a break to use the
9 restroom.

10 ATTORNEY TRYON: Would you like to take a
11 half an hour for lunch?

12 THE WITNESS: Sure.

13 ATTORNEY TRYON: Okay.

14 Everybody else is good with that?

15 ATTORNEY DENIKER: That's fine.

16 ATTORNEY BLOCK: See you at 1:45.

17 VIDEOGRAPHER: Going off the record. The
18 current time is 1:15 p.m.

19 OFF VIDEOTAPE

20 ---

21 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

22 ---

23 ON VIDEOTAPE

24 VIDEOGRAPHER: We are back on the record.

1 The current time reads 1:47 p.m.

2 BY ATTORNEY TRYON:

3 Q. Let's go to Exhibit 14, if you wouldn't mind,
4 ma'am. This Exhibit 14 is a group of medical records.
5 Take your time and look through there and let me know
6 when you're finished and then we'll come back to the
7 first couple of pages for some questions.

8 ---

9 (WHEREUPON, WITNESS REVIEWS DOCUMENT.)

10 ---

11 THE WITNESS: I've read the first page.

12 BY ATTORNEY TRYON:

13 Q. Are you finished?

14 A. Yes.

15 Q. Great. Let me go back and first ask you a
16 question on page two of the document on the bottom that
17 says page three?

18 A. Okay.

19 [REDACTED]

20 [REDACTED]

21 [REDACTED] Before I ask
22 you a question about that let me just back up. So this
23 appears to be from an office visit with a Jean
24 Someshwar.

1 Is that right?

2 A. Yes. That's about as good as I can pronounce
3 it.

4 Q. Were you in attendance at this meeting?

5 A. Yes.

6 Q. Was BPJ in attendance?

7 A. Yes.

8 Q. So then going back to my question, what I just
9 read on the second page, where it's marked as page three
10 on the bottom. [REDACTED]

11 [REDACTED] Do
12 you --- did you or BPJ say something that triggered this
13 note?

14 A. BPJ.

15 Q. And what did BPJ say that you believe triggered
16 this note?

17 A. Well, it's in quotes, so I'm saying that she
18 said that.

19 [REDACTED]
20 [REDACTED]

21 A. Yeah.

22 Q. What does that mean?

23 A. I'm going to guess when they are in fights or
24 spats.

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[REDACTED]

A. Probably have to ask Becky that one.

Q. Did she expound at all during this meeting?

A. Not according to the notes.

Q. I'm asking you from your memory?

A. I don't remember.

[REDACTED]

[REDACTED]

A. Yes.

Q. I'm sorry?

A. Yes.

Q. And what does that mean?

A. To me?

Q. Yes.

A. To me I would say that you would use it to lash out at somebody.

[REDACTED]

[REDACTED]

[REDACTED] I don't know.

Q. Did you observe anything like this?

A. No.

[REDACTED]

[REDACTED]

1 A. Not to me.

2 Q. Are you aware of BPJ saying this to anyone else?

3 A. No.

4 Q. Back on page one, starting --- let's go back up
5 on the screen. Let's see. Okay, that's right. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED] How did you locate Dr. Montano in
10 Pittsburgh?

11 A. Doctor Montano came to me through
12 recommendations from friends.

13 Q. Excuse me, what friends?

14 A. Friends that we know, one of which has a
15 transgender male child.

16 Q. And who is that?

17 A. I only know her first name.

18 Q. Which is?

19 A. Carolyn.

20 Q. Does Carolyn live --- well, where does Carolyn
21 live?

22 A. Clarksburg.

23 Q. Just for the record, how far is Clarksburg from
24 where you live?

1 A. Oh, maybe 30 minutes.

2 Q. And how do you know Carolyn?

3 A. I met her through the PFLAG Group in Morgantown.

4 Q. So what does PFLAG stand for?

5 A. I don't know.

6 Q. What is the PFLAG Group?

7 A. The group that I attend is a group of parents
8 who have transitioning children.

9 Q. Did BPJ attend meetings with a different PFLAG
10 group?

11 A. No.

12 Q. At the bottom of this page, towards the bottom,
13 if you could scroll down. Okay. Right there. It says
14 family was going to PFLAG meetings. But due to COVID,
15 meetings had been virtual B [REDACTED] misses seeing her PFLAG
16 friends in person. So was B [REDACTED] going to the same
17 meetings as you?

18 A. Yes.

19 Q. You indicated that the group you went to was for
20 parents?

21 A. Parents with children who were transitioning.
22 So the parents would meet and the children would play.

23 Q. So the children would play like what?

24 A. On the playground.

1 Q. Okay.

2 And they are both boys and girls?

3 A. Yes.

4 Q. That's kind of a weird question, given the
5 context, so I'm not quite sure. Would it include --- I
6 guess it would be trans boys and trans girls. Is that
7 the proper way to say that?

8 A. It includes just gender boys and girls and
9 transgender boys and girls.

10 Q. Very good. So in these meetings what did the
11 parents talk about?

12 A. The issues that we might have in the community,
13 like in our churches or in finding daycare or in support
14 groups.

15 Q. And you said something that I didn't understand.
16 You said parents with children that are transitioning,
17 which suggests they are in the process of making a
18 transition. Is that what that means?

19 A. Yes.

20 Q. And so what is that process of transitioning?

21 A. Well, with every parent and child, that's ---
22 that's up to them.

23 Q. Can you explain in broad terms what that
24 transitioning process is?

1 A. Identifying as your gender identity and living
2 authentically.

3 Q. So simply, stating that you are a different
4 gender than your birth gender. Is that all that's
5 required for that transitioning process?

6 A. That's how it can start.

7 Q. Okay.

8 So that's how it starts, but what happens after
9 that?

10 A. Like I said, with every parent and child it's
11 going to be different. With their cases, it may be
12 different than my case.

13 Q. And with your case then, tell me about that.

14 A. Okay.

15 Well, she presented around age three or four
16 wearing my clothes, wearing my shirts as dresses, not
17 wanting to sit to urinate.

18 Q. So that's part of the transitioning process?

19 A. I'm sorry?

20 Q. You're saying that's part of the transitioning
21 process?

22 A. That was part of B [REDACTED] transitioning process.

23 Q. Thank you for that clarification.

24 Let's see. Back up a little. [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

Do you see that?

A. I'm looking.

Q. It's about the middle of that paragraph.

A. Okay. I see it.

Q. I can point it out on the screen, but you found it.

A. Yeah, I found it.

Q. So tell me about the process for a legal name change to the extent that you know about it.

A. Well, it involves a lot of documents with legalese on it that's very difficult for me to weave my way through. But for the name change process, we have to fill out a form, several forms. They have to be notarized, filed with the Circuit Court, then it goes before a Judge, as I understand it.

Q. And what have you done in that --- you or BPJ have done in that process?

A. We've gotten forms. We've gotten them notarized. Wes has got to get his notarized, which he is supposed to be getting done today. And then we go up to the Courthouse to submit it with \$200.

1 Q. Do you know of anything else beyond that?

2 A. That's all I know so far.

3 Q. So why have you waited until now to do that?

4 A. Because it's been very hard for me to understand
5 and try to figure out what the documents are saying.
6 The first time I filled them out I filled them out
7 incorrectly.

8 Q. How did you find out you filled them out
9 incorrectly?

10 A. I took them up to the Circuit Court and they
11 said you did it wrong.

12 Q. Okay.

13 And when was that?

14 A. A couple of weeks ago.

15 Q. So why did you wait until a few weeks ago to
16 start the name change?

17 A. I'm been overwhelmed by the forms.

18 Q. When did you first get the forms?

19 A. I've had the forms for probably six months.

20 Q. Okay.

21 So just to help me out, I'm not trying to
22 insult you or anything, but I'm just trying to
23 understand because you --- because BPJ changed BPJ's
24 name to B [REDACTED] several years ago.

1 Right?

2 A. Correct.

3 Q. And so why didn't you and/or B [REDACTED] move forward
4 at that time?

5 A. We were deciding on middle names.

6 Q. Have you decided on any middle name?

7 A. Yes, we have.

8 Q. What is that?

9 A. It will be Maranlynn.

10 Q. So you spent the past several years just working
11 on a middle name.

12 Is that right?

13 A. Yes.

14 Q. You're laughing about that. Why?

15 A. Because she didn't want the name Meridan and I
16 wanted the name Maridan, so we came to a compromise that
17 it is Maranlynn. Plus the Lynn comes from her uncle and
18 she wanted to ask her uncle permission to use his middle
19 name as her middle name.

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED] Can you explain

24 that to me, please?

1 A. I don't know what [REDACTED] mean.
2 That would be a doctor term.

3 [REDACTED]
4 [REDACTED]
5 What is your understanding of what that hormone therapy
6 is?

7 A. She can either get implants or injections and
8 get hormones, female hormones, start female hormones.
9 It depends on her labs and if she goes into
10 osteoporosis. If she goes into osteoporosis from the
11 [REDACTED], she would have to start hormones
12 sooner.

13 Q. And what would those hormones do?

14 A. It would help her live authentically as a
15 female.

16 Q. You need to be more specific. Would those
17 hormones cause physical changes to BPJ's body?

18 A. Yes.

19 Q. What would those physical changes be?

20 A. She could grow breasts.

21 Q. Just to be clear, you say she could grow
22 breasts. Would it actually trigger breast growth?

23 A. Isn't that the same thing?

24 Q. You said could, which is a possibility. I'm

1 asking if that is, in fact, ---.

2 A. I'm not a doctor. I'm going to guess that
3 that's, you know, could be.

4 Q. No, I just want to understand --- make sure
5 we're communicating. And I think we are, so thank you.

6 [REDACTED] Is that
7 what she said?

8 A. That's her words.

9 Q. And we talked about this a little bit before,
10 but [REDACTED], do you know what that means?

11 [REDACTED]
12 [REDACTED]

13 Q. Do you know what age that is or what triggers
14 that?

15 A. I don't know at what age it's legal in the State
16 of West Virginia.

17 Q. So is that the only thing that would stop it
18 from happening sooner is just the legal age part?

19 ATTORNEY BLOCK: Objection to form.

20 THE WITNESS: And if she was medically
21 able to. If she has reached all of the milestones that
22 she's supposed to reach, being a transgender female on
23 hormone blockers, on hormone replacement therapy.

24 BY ATTORNEY TRYON:

1 Q. Do you know how that is accomplished?

2 A. Well, they take the penis and they split it
3 almost like a banana and they peel back the skin and
4 they take all of that and they put it into a cavity
5 inside the pelvis and create a vagina out of the
6 erectile tissue from the penis.

7 Q. I guess the answer's yes. Is she aware that
8 that is what the procedure is?

9 A. Yes.

10 Q. Was that --- who explained that to BPJ?

11 A. I did.

12 Q. And what was BPJ's reaction?

13 A. Ouch.

14 Q. That exact word?

15 A. Yep.

16 Q. After you explained that did BPJ still want to
17 proceed?

18 A. Yep.

19 Q. So I just want to go back to your discussions
20 with Carolyn I think it was who recommended Dr. Montano.
21 Do I remember that correctly?

22 A. Yes.

23 Q. And what exactly did Carolyn say about Dr.
24 Montano?

1 A. That he specialized in transgender care.

2 Q. Did you receive recommendations for any other
3 doctors that specialized in transgender care?

4 A. He was the only one that we could find in the
5 area that specialized in transgender care. He is quite
6 good.

7 Q. When you say he is quite good, what do you mean?

8 A. He is very good working with B [REDACTED] He talks to
9 her on her level.

10 Q. So did you review any other doctors for
11 specializing in transgender care before settling in with
12 Dr. Montano?

13 A. Nope.

14 Q. And then you then decided to change doctors.
15 Is that right?

16 A. Right.

17 Q. And why is that?

18 A. Doctor Kidd is practicing closer to home and
19 she's within my healthcare network.

20 Q. Did you interview with anybody else to see if
21 you wanted to use someone else instead?

22 A. Nope, she's the only one in my area.

23 Q. Are you satisfied with Dr. Kidd so far?

24 A. Yes.

1 Q. How many meetings have you and/or BPJ had with
2 Dr. Kidd?

3 A. Two. We were introduced to her in group with a
4 bunch of --- with that Dr. Someshwar. We were
5 introduced in a group there and then one on one with her
6 later on.

7 Q. Can you turn to --- it's marked at the bottom as
8 page seven? It also has what is called Bates stamp BPJ
9 152 at the bottom.

10 ATTORNEY TRYON: And if the court
11 reporter would put that up.

12 THE WITNESS: Okay.

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED] This was something that you reported or BPJ
24 reported?

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[REDACTED]

Q. And that was as of April of 2021?

A. Yeah.

[REDACTED]

Is that a fair statement or not?

ATTORNEY BLOCK: Objection to form.

THE WITNESS: Not. I wouldn't say that.

BY ATTORNEY TRYON:

Q. Okay.

[REDACTED]

1 know. It says progress note continued. I don't know
2 where the first page is.

3 Q. Okay.

4 The first page would be the prior page that
5 appears to me, but let me ask you if you met on this
6 occasion with Matthew Bunner?

7 A. I don't know who this meeting was with.

8 Q. Do you remember a meeting on --- I mean, this
9 reports a meeting that you've just indicated to me that
10 you attended?

11 A. Yes.

12 Q. Okay.

13 A. Yes.

14 Q. Okay.

15 A. I've been to a lot of doctors' appointments and
16 I don't know which doctor this is from.

17 Q. Okay.

18 A. It doesn't say.

19 Q. Well, it has two names throughout the documents.
20 One is --- if you go to the prior page, on page six, I
21 will let the court reporter bring that up. Towards the
22 top it says I saw and examined the patient. I received
23 resident's note. I agree with the findings and plan of
24 care as documented in the resident's note. Any

1 exceptions/additions are edited/noted. Jean Someshwar.

2 A. Jean Someshwar (corrects pronunciation).

3 Q. Thanks.

4 A. So this note would be from Dr. Someshwar or
5 however you pronounce it.

6 Q. But then down below it says progress notes by
7 Bunner, Matthew, LPC?

8 A. Okay.

9 Q. So let me first ask, do you specifically
10 remember meeting with Jean Someshwar?

11 A. I remember being in one meeting with him, yes.

12 Q. Is Jean a man or a woman?

13 A. I don't know how they identify as.

14 Q. Okay.

15 But you said --- all right. And Matthew
16 Bunner, do you know who Matthew Bunner is?

17 A. Yes, I do.

18 Q. In the middle of the page here it refers to
19 editor being Matthew Bunner and the author as being
20 Matthew Bunner.

21 A. Okay.

22 Q. So it appears --- and correct me if I'm wrong,
23 but it appears that Mr. Bunner also met with you on that
24 date?

1 A. Yes, there was a group of people there.

2 Q. Who else was there besides Mr. Bunner and Jean
3 Someshwar?

4 A. I don't know.

5 Q. Was there others?

6 A. Yeah. There was nurses.

7 Q. Was this all one big meeting or separate
8 meetings?

9 A. It was a big group. It was B [REDACTED] and I in a
10 room with these people.

11 Q. How many people?

12 A. I don't remember.

13 Q. Can you give me --- more than five?

14 A. I don't remember.

15 Q. At the bottom of page seven, under procedure, do
16 you see that?

17 A. Yes.

18 [REDACTED]
19 [REDACTED] Do you remember that procedure
20 as represented there?

21 A. I don't remember that.

22 Q. Then next it says provided assessment/treating
23 utilizing some or all interventions below from WPATH
24 standards of care version seven.

1 Do you see that?

2 A. Yes.

3 Q. Do you remember that assessment being or
4 treatment being provided to you?

5 A. I don't know what WPATH Standards of Care
6 version seven is.

7 Q. Have you ever --- so have you ever heard that
8 term WPATH Standards of Care?

9 A. No.

10 Q. And you've never seen the document just titled
11 WPATH Standards of Care?

12 A. No.

13 Q. First item under there is one, directly assess
14 gender dysphoria in children and adolescents. Was that
15 discussed with you?

16 A. It looks like it was an assessment on their
17 part.

18 Q. And was that assessment when they were
19 discussing it to you and BPJ?

20 A. I presume that they made their assessment based
21 on their interview.

22 Q. And do you know what their assessment was?

23 A. No.

24 Q. Do you remember what was discussed in that

1 interview?

2 A. Well, if I go to the first page I can read what
3 was discussed. But other than that ---.

4 Q. You don't have any independent recollection?

5 A. No.

6 Q. If you could go to the next page marked
7 page eight.

8 A. Okay.

9 Q. At the top it's got Item Number 4, it talks
10 about referring adolescents for additional physical
11 interventions. And the second sentence says the
12 referral should include documentation of an assessment
13 of gender dysphoria and mental health, the adolescent's
14 eligibility for physical interventions outlined below,
15 comma, the medical health professional's role and
16 expertise and any other information pertinent to the
17 use, health and referral for specific treatments. Are
18 you aware of any such referral?

19 ATTORNEY BLOCK: Objection to the form.

20 THE WITNESS: She already had blockers.

21 BY ATTORNEY TRYON:

22 Q. Understood. This is not limited to puberty
23 blockers.

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[REDACTED]

[REDACTED]

Q. Right. Do you anticipate a referral for any other physical interventions?

A. I don't know the answer to that.

Q. Prior to getting the puberty blocker, was there documentation of BPJ's --- strike that.

Let me start that over. Prior to getting the puberty blocker, [REDACTED] was there, to your knowledge, an assessment of gender dysphoria and mental health of BPJ?

A. The assessment was made by Dr. Montano.

Q. Do you know what documentation there is for that assessment?

A. No, I don't.

Q. Earlier in this deposition I asked you if you have documentation, and you said you have documents. What documents do you have relative to BPJ's gender dysphoria?

ATTORNEY BLOCK: Objection, MT.

THE WITNESS: I have copies of her Gender Care Plans given to me by the schools. Is that what you mean?

BY ATTORNEY TRYON:

1 Q. I'm just asking a broad question to see what
2 documents you have.

3 A. Oh, off the top of my head, I don't have them
4 with me.

5 Q. Okay.

6 And off the top of your head you mentioned the
7 plan assessments from the schools. Anything else?

8 A. I have --- I have the Gender Care Assessment ---
9 or Gender Care Plans from Norwood and I got one from
10 Bridgeport. I have those. And I have some copies of
11 partial of her records from UPMC that I gave to Dr. Kidd
12 at WVU.

13 Q. Have you shared those documents with your
14 counsel?

15 A. They're here.

16 Q. Okay.

17 So the documents --- when you say here you mean
18 in the conference room there?

19 A. Yes, they're with your exhibits.

20 Q. Okay.

21 Any other documents that are not with the
22 exhibits that you've seen so far that you think you have
23 in your possession?

24 A. No, I don't have anything other than what I

1 said.

2 Q. If you go to what's now page nine.

3 A. Okay.

4 [REDACTED]

5 [REDACTED]

6 A. Yes.

7 Q. Is that what that represents, [REDACTED] ?

8 A. [REDACTED] It's
9 definitely not mine.

10 [REDACTED]

11 [REDACTED]

12 Right?

13 A. Correct.

14 Q. And this is measured --- do you see down below,
15 at the bottom of that little chart, it says for boys?

16 A. Where does it say that at?

17 Q. So I'll just point with the cursor. It's kind
18 of hard to see on the screen, but right here. On the
19 hard copy that I have it's a little clearer?

20 A. I don't see the cursor moving on my screen. Oh,
21 now I do.

22 VIDEOGRAPHER: To move the cursor on your
23 screen you have to click first and then you can move it.

24 ATTORNEY TRYON: Oh.

1 VIDEOGRAPHER: There you go.

2 THE WITNESS: If you say that's what it
3 says then I can't read that, but ---.

4 BY ATTORNEY TRYON:

5 Q. Okay?

6 A. And I have it in this copy, too, and I can't
7 read it there either.

8 Q. Yeah. You know, I understand because I have a
9 copy under which is probably a copy and you have a ---.

10 A. A copy of a copy.

11 Q. But it does say --- in mine it says --- I can't
12 read all of it. [REDACTED]

13 [REDACTED]

14 [REDACTED] [REDACTED] [REDACTED]

15 [REDACTED]

16 [REDACTED] [REDACTED]

17 [REDACTED]

18 A. You would have to ask them.

19 Q. That was never discussed with you, I take it?

20 A. No.

21 Q. I will just note for the record on BP --- within
22 this document there is on Bates stamp BPJ 162 --- you
23 don't need to look at it, but there are some markings on
24 that page that says Dr. Brunner/Dr. Someshwar, and it

1 says 2021. I believe those are handwritten notes. Those
2 were not on the original. Those are my notes only. My
3 apologies. Those should have been taken off before this
4 started.

5 VIDEOGRAPHER: I'm sorry. Did you want
6 me to scroll to that one?

7 ATTORNEY TRYON: No, unless somebody else
8 wants to see it. But that's just for the record, so if
9 people see that in the future, they can say --- they can
10 understand what that is.

11 VIDEOGRAPHER: Okay.

12 BY ATTORNEY TRYON:

13 Q. Let me go back to Exhibit 1. If you could take
14 a quick look through here. I don't have any specific
15 questions. I just have a general question. If you want
16 to take a look through there.

17 A. Okay.

18 Q. So these documents came from the local Board of
19 Education as part of this discovery process. I think
20 that's right. Yes. And I apologize, West Virginia 1-R
21 you have got to look at.

22 A. Let me grab that.

23 ATTORNEY BLOCK: Do you have a Bates
24 number for that?

1 ATTORNEY TRYON: HBCBOE 00075.

2 ATTORNEY BLOCK: Thank you.

3 BY ATTORNEY TRYON:

4 Q. So my question on this, first of all, is so
5 these are medical records from the Davis Medical Center.
6 The date of the visit appears to be May 13, 2014. And I
7 believe I saw something in here that indicated that
8 these were given to the school in 2016. And I was
9 interested to know if you recall why these were
10 submitted to the school at that time?

11 ATTORNEY BLOCK: Objection. Foundation.

12 THE WITNESS: The school requires their
13 vaccination records and their oral evaluations.

14 BY ATTORNEY TRYON:

15 Q. What do you mean by oral evaluations?

16 A. Their dentist.

17 Q. Oh, okay. So this has more information than
18 just the vaccinations. Were you just being
19 overinclusive when you sent this to them?

20 A. I just gave them the well child visit.

21 Q. Okay.

22 If you could turn to Exhibit 3, please. Do you
23 know --- never mind. We don't need Exhibit 3. Exhibit
24 4?

1 A. Exhibit 4. Okay.

2 Q. Take a look through there and then I will have a
3 few questions.

4 A. Okay.

5 Q. At the top it says that it's from UPMC
6 Children's Hospital of Pittsburgh and it says adolescent
7 medicine evaluation. And the child listed is P [REDACTED]
8 J [REDACTED]. The first name is blocked out. It references
9 male, age nine years old. And then down below it has a
10 date of July 15, 2019. Do you see that? No, it's at
11 the top of that page.

12 A. Oh.

13 Q. Right at the very top of the page.

14 A. Oh, I see it, next to Montano's name. Okay.

15 Q. Yes. Do you remember having a visit on or about
16 that date?

17 A. I don't remember it, but I'm sure there was.

18 Q. And that was with Dr. Montano or --- yeah, Dr.
19 Montano?

20 A. Yes.

21 Q. Without referencing the notes here specifically,
22 do you remember what was discussed at this visit?

23 A. I don't remember what was discussed at this
24 visit.

1 Q. Do you remember the purpose of it?

2 A. I'm guessing just continued care plan.

3 Q. Do you remember --- tell me from what you know
4 who Dr. Montano is.

5 A. Doctor Gerald Montano. He specializes in gender
6 dysphoria, in transitional care patients.

7 Q. And it appears to me from my review of the
8 records, please correct me if I'm wrong, that this is
9 the first time when there was a diagnosis of gender
10 dysphoria by a medical professional?

11 ATTORNEY BLOCK: Objection to form.

12 BY ATTORNEY TRYON:

13 Q. Is that in your memory or not?

14 A. I don't know.

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 A. No.

20 Q. So it says B [REDACTED], legal name P [REDACTED] J [REDACTED], is
21 a nine-year-old transgender female coming to the clinic
22 for gender dysphoria. So does that suggest that's the
23 purpose of this visit.

24 Is that right?

1 A. Okay.

2 ATTORNEY BLOCK: Objection.

3 BY ATTORNEY TRYON:

4 Q. Is that consistent with your memory?

5 A. I'm just going by what the notes say, and the
6 notes say that we're there for gender dysphoria.

7 Q. Okay.

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Do you see all that?

15 A. Yes.

16 Q. And do you remember reporting this information
17 to Dr. Montano or that BPJ reported this information to
18 Dr. Montano on or about July 15, 2019?

19 [REDACTED]
20 [REDACTED]

21 Q. Okay.

22 And just to be clear, BPJ was in attendance for
23 this meeting as well?

24 A. Yes.

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 Q. So you don't know what that means then?

10 A. I would presume it meant [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 Q. Now, on the third page, which is labeled BPJ 036
14 in the lower right hand corner, do you have that?

15 A. Under social history?

16 Q. Yes.

17 A. Yes.

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

1 was?

2 A. No, I don't.

3 Q. Do you know how it was conducted?

4 A. No, I don't.

5 Q. Do you know of any documentation for it?

6 A. No, I don't.

7 Q. Other than what is here before us?

8 A. Unless it's in one of these exhibits, I don't
9 know.

10 Q. Okay.

11 Dr. Montano, did he diagnose BPJ with gender
12 dysphoria?

13 A. Yes.

14 Q. Do you know the basis of his diagnosis?

15 A. No. I presume that went with his medical
16 training to diagnose.

17 Q. Right. Do you know what factors or anything
18 else that he used to make that diagnosis?

19 A. That would be a question for him.

20 Q. It will be a question for him, but I'm asking
21 you if you know.

22 A. I don't know. I'm not a doctor.

23 Q. So if you go to page four --- let me know when
24 you are there?

1 A. Okay.

2 Q. At the bottom, where it says history suggests
3 that B [REDACTED] suggests --- excuse me, history suggests that
4 B [REDACTED] suffers from gender dysphoria.

5 Have you seen that note before today?

6 A. No.

7 Q. And then it says the World Professional
8 Association for Transgender Health. Are you familiar
9 with that organization?

10 A. No, sir.

11 Q. Have you ever heard of that organization before
12 today?

13 A. No, sir.

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 [REDACTED] Do you remember Dr. Montano discussing
19 that with you?

20 A. Yes.

21 Q. What else do you remember about what he
22 discussed with you?

23 A. Just informed --- that just falls under informed
24 consent. Just --- he just told us the benefits and the

1 risks.

2 Q. And if I recall correctly, you then discussed
3 these risks with your husband.

4 Is that right?

5 A. Correct.

6 ATTORNEY BLOCK: Objection, MT, vague.

7 BY ATTORNEY TRYON:

8 Q. And both --- so B [REDACTED], you and your husband are
9 all comfortable with the risks for infertility?

10 A. Yes.

11 Q. Has B [REDACTED] ever expressed an interest in having
12 children?

13 A. It has not really come up. I mean, she gets mad
14 at her brother, she says stuff like I'm never having
15 children.

16 Q. Sorry for laughing, but that is kind of funny.

17 A. Just in --- just in situations like that.

18 Q. Yeah. Yeah. Were you advised --- let me
19 rephrase that. Did Dr. Montano advise you that the
20 majority of pre-pubescent children with gender dysphoria
21 desist from gender dysphoria if given affirmation
22 therapy?

23 ATTORNEY BLOCK: Objection.

24 BY ATTORNEY TRYON:

1 Q. Sorry. Let me just start that all over again.

2 In fact, you can strike that all.

3 Let me ask you to take a look at Exhibit 33,
4 please.

5 A. Thirty-three (33)?

6 Q. Correct.

7 A. Okay. I have it.

8 Q. Ma'am, I will represent to you that this is an
9 excerpt from the Standards of Care of the World
10 Professional Association for Transgender Health. It
11 goes through page 21. And this is the seventh version.
12 And I have a few questions about it. You can either
13 read the entire thing right now or you can just wait for
14 me to ask you a question and then if you want to read
15 other parts of it as well, you can do that.

16 A. I've never seen this before.

17 Q. Okay.

18 So Dr. Montano, as I mentioned earlier in the
19 document that we were looking at before, references the
20 Standards of Care for the World Professional Association
21 of Transgender Health.

22 Do you recall that?

23 A. I remember it was mentioned in that other
24 document.

1 Q. Right.

2 ATTORNEY BLOCK: Objection to form.

3 BY ATTORNEY TRYON:

4 Q. Let me ask you to turn to page five.

5 A. I don't see page numbers.

6 Q. At the very bottom right it has page numbers.

7 It looks like they may not have printed very well. At
8 the top it says gender non-conformity is not the same as
9 gender dysphoria.

10 A. The difference between gender non-conformity and
11 gender dysphoria?

12 Q. At the top it says gender non-conformity is not
13 the same. Yes. Right. On page four it says the
14 difference between gender non-conformity and gender
15 dysphoria and then I have a question for you on page
16 five, at the top of page five. Take a look at that
17 paragraph and then I have a question about it. And then
18 if you want to --- before you answer my question, if you
19 want to look at more you can, but I don't think you will
20 need to.

21 A. The one that says gender nonconformity refers to
22 the extent, that paragraph?

23 Q. That paragraph.

24 ATTORNEY BLOCK: And while she's looking

1 at this document, I will just refer back to our standing
2 objections.

3 ATTORNEY TRYON: Thank you.

4 THE WITNESS: Okay.

5 BY ATTORNEY TRYON:

6 Q. So my question is did Dr. Montano explain to you
7 the difference between gender nonconformity and gender
8 dysphoria?

9 A. No.

10 Q. Having read that, do you think it would have
11 been useful for him to explain that to you?

12 A. No.

13 Q. If you could turn to page 11, please?

14 A. I have no page numbers.

15 Q. Well, keep scrolling down on the screen. Do you
16 see --- they're not as faint on the copy that is on the
17 screen, but at the lower right-hand corner it says
18 page 11. So if you count in it would be about 13 pages,
19 but it says differences between children and adolescents
20 with gender dysphoria. That's the topic near the top of
21 the page.

22 A. Okay.

23 I found the page.

24 Q. Okay.

1 I'm just going to read the first --- the
2 sentence that I'm interested in, couple of sentences.
3 And then I'm going to ask you a question. And if you
4 would like to read more of them --- of this before
5 answering you may. But it says an important difference
6 between gender dysphoric children and adolescents is in
7 the proportion for whom dysphoria persists into
8 childhood --- excuse me, into adulthood. Gender
9 dysphoria during childhood does not inevitably continue
10 into adulthood. Rather follow-up studies of pre-pubetal
11 children, mainly boys, who were referred to clinics for
12 assessment of gender dysphoria, the dysphoria persisted
13 into adulthood for only 6 to 23 percent of children.
14 And my question is did Dr. Montano explain that to you?

15 A. No.

16 ATTORNEY BLOCK: Objection to form.
17 First, there's a footnote in that paragraph that I think
18 is illegible on the piece of paper. And second, you
19 didn't read the entire paragraph.

20 ATTORNEY TRYON: I'll read the footnotes
21 that's not illegible because it's legible on my copy.
22 My apologies for that.

23 BY ATTORNEY TRYON:

24 Q. It says gender nonconforming behaviors in

1 children may continue into adulthood but such behaviors
2 are not necessarily indicative of gender dysphoria and a
3 need for treatment. As described in Section 3, gender
4 dysphoria is not synonymous in gender expression. So
5 when you're finished with your review, let me know. I'm
6 just interested if Dr. Montano did explain that to you.

7 A. I don't remember.

8 Q. Would that have been helpful for you to have
9 that information?

10 A. No.

11 ATTORNEY TRYON: Off the record for just
12 one moment, please.

13 VIDEOGRAPHER: Going off the record. The
14 current time reads 2:52 p.m.

15 OFF VIDEOTAPE

16 ---

17 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

18 ---

19 ON VIDEOTAPE

20 VIDEOGRAPHER: Back on the record. The
21 current time reads 2:53 p.m.

22 THE WITNESS: Yes. And I can't see that
23 footnote either on my copies.

24 BY ATTORNEY TRYON:

1 Q. Yes, my apologies. I don't know why that didn't
2 come through on the photocopy, but we'll try and remedy
3 that. Okay. I'm finished with that exhibit.

4 At what point did you start considering suing
5 the State to have this law declared unconstitutional?

6 A. When I realized that it was going to affect my
7 child.

8 Q. And was that before or after the law was
9 actually passed?

10 A. It was after it was signed by the Governor.

11 Q. And how did you come to be aware of it?

12 A. Be aware of the law?

13 Q. Yes.

14 A. That it was in consideration or that it was
15 signed?

16 Q. Well, let's start with consideration. When did
17 you first become aware that it was under consideration?

18 A. I don't know the date. I remember seeing it on
19 the news, that it was under consideration.

20 Q. And at that time were you aware that it could
21 affect your child?

22 A. I was alarmed.

23 Q. Did you contact any legislators about it?

24 A. Yes.

1 Q. Who did you contact?

2 A. Romano and Patrick. I can't remember his last
3 name.

4 Q. Are they --- do you remember which house they're
5 in?

6 A. No, I don't.

7 Q. And how did you contact them?

8 A. Via email.

9 Q. Do you remember the contents of the emails?

10 A. Asking them to vote against it.

11 Q. Did they vote against it?

12 A. I don't know.

13 Q. Do you have a copy of that email?

14 A. I have no idea.

15 Q. Was it the same email to each one of them?

16 A. Yes.

17 Q. And you sent it from your computer?

18 A. Yeah.

19 Q. Would it still be on your computer?

20 A. I don't think so. I don't know.

21 Q. Why do you think so? You said you don't think
22 so. Why would it not be?

23 A. Because at that point I didn't keep emails.

24 Q. Can you look on your computer and see if you

1 still have, them please? Obviously not right now.

2 A. Okay.

3 ATTORNEY TRYON: And then if so, we would
4 request copies of those from counsel. And we can make a
5 formal request or we can just have this be the formal
6 request if you prefer?

7 ATTORNEY BLOCK: I prefer this to be the
8 formal request. We will follow up with you.

9 ATTORNEY TRYON: Thank you.

10 BY ATTORNEY TRYON:

11 Q. Did you ever receive a response from either one
12 of those legislators?

13 A. No.

14 Q. Did that bother you?

15 A. Yes.

16 Q. Did you do any kind of follow-up?

17 A. No.

18 Q. Did you contact any other public officials about
19 that piece of legislation?

20 A. I called the Governor's Office and asked them
21 not to sign it.

22 Q. Did you get to talk to the Governor?

23 A. No.

24 Q. Do you know who you talked to?

1 A. A voicemail.

2 Q. Did you ever hear back?

3 A. No.

4 Q. He never saw this?

5 A. No.

6 Q. And then once you saw that the law was actually
7 passed, did you do anything else?

8 A. I contacted the ACLU and asked if they were
9 going to fight against this law.

10 Q. And how did you contact them?

11 A. By phone.

12 Q. Was that your first contact with the ACLU?

13 A. Correct.

14 Q. About anything at all?

15 A. Yep.

16 Q. And why did you think to call the ACLU?

17 A. Because they fight for civil liberties.

18 Q. So you just had that background knowledge about
19 the ACLU, you thought I will call the ACLU or was there
20 anything else that triggered your ---?

21 A. I felt like my daughter's --- I felt like my
22 daughter's civil liberties were being violated.

23 Q. And that was after the law was passed?

24 A. Correct.

1 Q. On the Complaint it has your name as next friend
2 and mother of BPJ.

3 Do you recall that?

4 A. Yes.

5 Q. And do you know why your name is on there?

6 A. Because I'm the next friend and mother of BPJ.

7 Q. Do you know why that is legally --- what the
8 legal impetus behind that is?

9 A. The next friend part?

10 Q. Do you know why your name needs to be on that
11 part of the document?

12 A. Because I'm the adult. I'm the mom.

13 Q. So it's your understanding simply because BPJ is
14 a minor your name needed to be on there in some
15 capacity?

16 A. Yes.

17 Q. Did you review the Complaint before it was
18 filed?

19 A. I don't remember. I reviewed documents.

20 Q. Let's take a look at Exhibit 32, which is the
21 Complaint.

22 ATTORNEY BLOCK: Before we do that I just
23 want to check to see if the witness needs a break at
24 all.

1 THE WITNESS: I'm good.

2 ATTORNEY TRYON: I'm nearing the end.

3 THE WITNESS: Oh, yeah, this.

4 BY ATTORNEY TRYON:

5 Q. Before we turn to that, let me ask you real
6 quick, my colleague gave two names. Would the
7 legislators have been Patrick Martin?

8 A. Pat Morrisey.

9 Q. Okay.

10 Well, Morrisey is the Attorney General. Is
11 there another Morrisey? Mike Romano?

12 A. Mike Romano, yeah.

13 Q. Okay.

14 Having this in front of you now, do you recall
15 reviewing this before it was filed?

16 A. Yes.

17 Q. On page eight there is a picture of BPJ?

18 A. Yeah.

19 Q. Is that a picture that you supplied?

20 A. Yes.

21 Q. And so it appears to be to me that BPJ is
22 wearing makeup.

23 Is that right?

24 A. Yes, for cheer competition.

1 Q. And did BPJ apply that makeup or did you?

2 A. We both did it.

3 Q. And BPJ is wearing an Indian jersey.

4 Is that right?

5 A. Correct.

6 Q. Is BPJ part American Indian?

7 A. No, she cheers for the Indians.

8 Q. Is that the name of the local team?

9 A. Yes.

10 Q. Not the Cleveland Indians?

11 A. No, not that they're known as Cleveland Indians
12 anymore.

13 Q. I understand.

14 A. The Cleveland Guardians.

15 Q. I understand. I'm from Cleveland.

16 A. Oh, are you a Browns fan?

17 Q. You know, I think we'll just leave that alone.

18 We can talk about it off the record. How's that?

19 Were you asked if you agreed with everything in
20 here before it was filed?

21 A. Yes.

22 Q. And do you understand the legal issues?

23 A. Which legal issues?

24 Q. Well, it talks about on --- you know, I should

1 just clarify. What I'm showing you is the Amended
2 Complaint. There was a prior Complaint that was filed
3 and then there was a subsequent that was filed for
4 clarification for the record. So on page 20 there's
5 count one?

6 A. Yes.

7 ATTORNEY BLOCK: Just objection. I'm
8 just going to refer back to our standing objections.

9 ATTORNEY TRYON: Okay. I haven't asked
10 the question yet, but that's okay.

11 BY ATTORNEY TRYON:

12 Q. Having --- did you review this count one?

13 A. A while back.

14 Q. And in your own mind or your own terminology
15 would you be able to explain what you understand count
16 one to ask or claim?

17 A. Well, I'd say that she is protected under Title
18 IX.

19 Q. What do you know about Title IX? And if you
20 don't know anything about it, that's okay. I'm just
21 asking for your --- what you know because your lawyers
22 are the ones that really put this aspect of it together.
23 I just want to understand your understanding.

24 ATTORNEY BLOCK: Objection to the form.

1 BY ATTORNEY TRYON:

2 Q. Go ahead.

3 A. You could be denied based on your sex, meaning
4 your biological sex.

5 Q. I didn't understand your answer. Could you say
6 that again?

7 A. You could be denied benefits based on your
8 biological sex, benefits afforded to you under Title IX.

9 Q. And then Count 2, if you could take a look at
10 that and tell me what your own understanding of what
11 that is about?

12 A. It's about the equal protection clause of the
13 14th Amendment.

14 Q. Do you know anything about that?

15 ATTORNEY BLOCK: Objection, vague.

16 BY ATTORNEY TRYON:

17 Q. Do you know anything about the equal protection,
18 the claim for equal protection --- excuse me, the 14th
19 Amendment, the equal protection clause?

20 A. It's just equal protection under the law.

21 Q. Have you looked into what that law is at all on
22 your own?

23 ATTORNEY BLOCK: Objection, vague.

24 THE WITNESS: No.

1 BY ATTORNEY TRYON:

2 Q. I didn't hear you.

3 A. No.

4 Q. Let me go back to the title, though. I'm just
5 going to ask you one more question about it. Where it
6 says BPJ, her next friend and mother, Heather Jackson,
7 is there a reason you were selected to be the next
8 friend as opposed to your husband as the next friend and
9 father?

10 A. I'm the one that reached out for help in the
11 first place.

12 Q. Did anyone ask if your husband wanted to be
13 named on here as also another next friend and parent?

14 ATTORNEY BLOCK: Just objection to the
15 extent that this calls for communications with your
16 attorneys. I'm instructing you not to answer.

17 BY ATTORNEY TRYON:

18 Q. Without any communication with your attorney,
19 did you have a discussion with your husband about him
20 being named on here?

21 A. My husband and I have been hand in hand
22 throughout this whole procedure.

23 Q. I understand. That wasn't my question. My
24 question was did you have any discussion with his name

1 appearing on here as well?

2 A. No.

3 Q. Let me ask you about Exhibit WV 23R.

4 A. Okay.

5 Q. So on the third page of this document?

6 A. Yes.

7 ATTORNEY TRYON: Can the court reporter
8 put that up?

9 VIDEOGRAPHER: I'm looking. I don't see
10 a 23R, I just see a 23.

11 ATTORNEY TRYON: Put up 23, and then it
12 should be --- if you scroll down it should be there.

13 VIDEOGRAPHER: So I got that article and
14 then it moves into 24.

15 ATTORNEY TRYON: Well, my apologies. We
16 will use 23 for this deposition. And as we've already
17 indicated, we will not be using this exhibit with BPJ.

18 BY ATTORNEY TRYON:

19 Q. So on the --- so can you look at 23?

20 A. Yes.

21 Q. So on the --- this is an article from 2016. And
22 in 2016 you were already referring to BPJ as B [REDACTED] and
23 using the pronouns her.

24 Right?

1 A. Correct, with family.

2 Q. So then, yes, my question is on page three, when
3 you're talking to apparently the reporter you say
4 Stratton looks forward to it. He does this every year
5 because he says he wants to help other babies. Why did
6 you continue to use [REDACTED] name in public?

7 ATTORNEY BLOCK: Objection, the document
8 looks like [REDACTED] is in brackets from the quote you
9 read.

10 ATTORNEY TRYON: Yes.

11 BY ATTORNEY TRYON:

12 Q. So ma'am, let's be ---.

13 ATTORNEY TRYON: Thank you for that
14 clarification.

15 BY ATTORNEY TRYON:

16 Q. Did you, in fact, refer to BPJ as [REDACTED] when
17 you talked to the reporter for this article?

18 A. Yes.

19 Q. And why did you do that?

20 A. Because it was public, not private.

21 Q. And when did you go public?

22 ATTORNEY BLOCK: Objection, vague.

23 THE WITNESS: I don't know the date.

24 BY ATTORNEY TRYON:

1 Q. Okay.

2 Let's take a look at 25.

3 VIDEOGRAPHER: There's 23R. It was right
4 after 24R.

5 ATTORNEY TRYON: Oh, well, my apologies.

6 BY ATTORNEY TRYON:

7 Q. Do you have 25 in front of you?

8 A. Correct.

9 Q. So on the second page of that exhibit it appears
10 to have a quote from BPJ saying I just want to run. I
11 come up from a family of runners, P [REDACTED] J [REDACTED] said in
12 a news release. I know how hurtful a law like this is
13 to all kids like me who just want to play sports with
14 their classmates and I'm doing this for them. Trans
15 kids deserve better, closed quote. Now, sometimes
16 newspapers misreport things, so I'm asking you if you
17 know if that's an accurate quote?

18 A. That is accurate.

19 Q. Was that an oral statement that BPJ made?

20 A. Oral.

21 Q. And did you help her come up with that or did
22 BPJ come up with that all on BPJ's own?

23 A. BPJ.

24 Q. So what exactly is BPJ doing for others, for

1 them?

2 ATTORNEY BLOCK: Objection, vague,
3 foundation.

4 THE WITNESS: She wants all kids to be
5 able to run with the teams that they identify with or
6 play with the teams that they identify with.

7 BY ATTORNEY TRYON:

8 Q. And trans kids deserve better, do you know what
9 that meant?

10 ATTORNEY BLOCK: Objection, speculation.

11 THE WITNESS: They deserve to be treated
12 equally.

13 BY ATTORNEY TRYON:

14 Q. On the next page, at the top of that page, the
15 second paragraph says the Complaint complains that House
16 Bill 3293 was prompted by unfounded stereotypes. Do you
17 have an opinion on what those unfounded stereotypes are?

18 A. Unfounded stereotypes ---.

19 ATTORNEY BLOCK: Just objection to
20 reading only part of the sentence.

21 BY ATTORNEY TRYON:

22 Q. Go ahead.

23 A. The fear that if she runs on a girls team, that
24 she's going to beat all the other girls because she was

1 born as a biological sex male. That's an unfounded
2 stereotype.

3 Q. How about false scientific claims, do you know
4 what that is?

5 A. Same thing.

6 Q. Do you know what baseless fear and
7 misunderstandings of girls who are transgender, do you
8 know what that refers to?

9 A. Same thing.

10 Q. Well, what's the fear?

11 A. The fear that they're going to beat out all the
12 other competition and win all the awards and get all the
13 scholarships.

14 Q. Okay.

15 And just to be clear that --- I think I
16 understood the prior testimony, you don't have any data
17 or articles or scientific claims to support this data,
18 do you?

19 ATTORNEY BLOCK: Objection to form.

20 THE WITNESS: I don't have anything.

21 BY ATTORNEY TRYON:

22 Q. Has anything been shown to you?

23 ATTORNEY BLOCK: Objection to form,

24 vague.

1 BY ATTORNEY TRYON:

2 Q. You're shaking your head no. Is that a no?

3 A. Shown to me in regards to ---?

4 Q. Thank you for asking for that clarification. Do
5 you have any --- this talks about false scientific
6 claims. Do you have any scientific evidence to show
7 that those claims are false?

8 A. I don't have anything to show that they're false
9 or true.

10 Q. And you haven't seen anything, have you?

11 A. No.

12 Q. Okay.

13 Let me ask you to take a look at Exhibit 27.
14 And I'm going to ask you a question about the seventh
15 page in. It's actually the last page of the article
16 itself.

17 A. Okay.

18 Q. All right.

19 So on that page B [REDACTED] is quoted as --- B [REDACTED]
20 was devastated. She said, quote, I felt horrible
21 because I knew then I couldn't run with the other girls.
22 So is that her quote or did somebody supply that to her?

23 A. No, that's her.

24 Q. And then it says B [REDACTED] immediately started

1 discussing potential lawsuit with her mom. Can you
2 explain that to me?

3 A. She wanted to know what we could do to fight it.

4 Q. Did she raise that before you did or ---

5 A. Yes.

6 Q. --- on her own?

7 A. Yes. She wanted to know how we could fight it.

8 Q. So it sounds like, and correct me if I'm wrong,
9 it sounds like the lawsuit was initially --- let me
10 rephrase that. Was the lawsuit her idea or just the
11 idea of fighting it?

12 A. The idea of fighting it.

13 ATTORNEY BLOCK: Objection to the form.

14 THE WITNESS: The idea of fighting it.

15 BY ATTORNEY TRYON:

16 Q. And then how was the idea of a lawsuit, how did
17 that come to pass?

18 A. That was the only way we could fight it.

19 Q. Well, did you come up with that idea or did that
20 idea come after you called the ACLU?

21 A. I asked for help.

22 Q. In the form of a lawsuit or was that a
23 suggestion they made to you?

24 A. No, a suggestion I made.

1 Q. Okay.

2 Exhibit 29.

3 A. Okay.

4 Q. I'm going to ask you a question about the third
5 paragraph down. That starts with the term --- with the
6 words that I just want to run. Take your time to read
7 through this as much as you want, and I just have a
8 question about that.

9 A. Okay.

10 Q. So this appears to be a press release by Lambda
11 Legal. And this appears to be a quote attributed to
12 B [REDACTED]. In the third paragraph it says I just want to
13 run and the State wants to stop me from running as part
14 of a team at my school, said B [REDACTED], an 11-year-old
15 middle school student. I love running and being part of
16 a team. And the State of West Virginia should explain
17 in court why they won't let me, closed quote.

18 You know, sometimes in the press releases like
19 this the person putting together the press release puts
20 together a quote and then attributes it to --- shows it
21 to the person to whom it's attributed and says is this
22 okay for me to say. And other times it's something that
23 the person quoted actually said. Can you tell me which
24 one of those it is?

1 A. That's B [REDACTED].

2 ATTORNEY BLOCK: Objection to the form.
3 Objection to the form.

4 THE WITNESS: That's B [REDACTED].

5 BY ATTORNEY TRYON:

6 Q. So she came up with this quote all on her own?

7 A. Yes.

8 Q. And so she wants the State of West Virginia to
9 explain in court why they won't let BPJ run as part of
10 the team.

11 Right?

12 A. Yes.

13 Q. Okay.

14 When this lawsuit was filed, did she understand
15 that she might be subject to a deposition?

16 A. We didn't even know what a deposition was.

17 Q. Okay.

18 So I'll ask the same question of you, although
19 I think the answer is obvious. At the time that you
20 filed this lawsuit, did you know that you might be
21 subject to a deposition?

22 A. I didn't even know what a deposition was.

23 Q. So the answer would be no?

24 A. That would be a no.

1 ATTORNEY TRYON: Let me go off the record
2 for just a minute and see if I have any other questions.

3 VIDEOGRAPHER: Going off the record. The
4 current time reads 3:23 p.m.

5 OFF VIDEOTAPE

6 ---

7 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

8 ---

9 ON VIDEOTAPE

10 VIDEOGRAPHER: We are back on the record.
11 The current time reads 3:27 p.m.

12 BY ATTORNEY TRYON:

13 Q. I want to go back and just reconfirm something
14 about --- you said you wrote to two legislators. And we
15 just checked to see which legislators are in your
16 district, and one is Patrick Martin and one is Mike
17 Romano.

18 A. That's who it is. It's Patrick Martin.

19 Q. Okay.

20 Very good. And then I'm interested, given
21 there's been a fair amount of publicity in this case,
22 have you received media inquiries about this case?

23 A. The only inquiries I have had has come to me
24 through my lawyers.

1 Q. Okay.

2 Do you have any --- has anyone contacted you
3 about you or BPJ being some sort of representative or
4 advocate for transgender rights?

5 A. No.

6 Q. And you said that you have received --- no, let
7 me rephrase that. Have you received any press inquiries
8 about this case through your attorneys?

9 A. The inquiries I have were the ones that you
10 brought forth as exhibits.

11 Q. There weren't any others?

12 A. No.

13 Q. Well, I should represent to you there are a few
14 others that I have not shown.

15 A. Okay.

16 Q. So I'm not trying to trick you. I just want to
17 --- but you don't remember any others right now?

18 A. No, but I haven't seen all the exhibits either.
19 I don't know if you have them in here as exhibits.

20 Q. Yeah, and that's fine. If you don't remember
21 any others, that's all right. There are one or two
22 more, but that's okay.

23 ATTORNEY TRYON: I don't think I have any
24 other questions at this time, subject to any follow-up

1 after other questions and any other reservation rights
2 we might make at the end of this deposition. Thank you
3 for your time.

4 ATTORNEY BLOCK: Before other counsel
5 begins, do you need a break, Heather?

6 THE WITNESS: I would like to use the
7 restroom.

8 ATTORNEY BLOCK: Okay.

9 So let's come back at 3:35, everyone.

10 ATTORNEY TRYON: Okay. Thank you.

11 VIDEOGRAPHER: Going off the record. The
12 current time reads 3:29 p.m.

13 OFF VIDEOTAPE

14 ---

15 (WHEREUPON, A BREAK WAS TAKEN.)

16 ---

17 ON VIDEOTAPE

18 VIDEOGRAPHER: We are back on the record.

19 The current time reads 3:36 p.m.

20 ---

21 EXAMINATION

22 ---

23 BY ATTORNEY GREEN:

24 Q. All right. We are back on the record. And I've

1 just --- the State has signed off officially, and so ---
2 oh, there you are. You just popped her into the screen.
3 It took me a minute to find her.

4 Ms. Jackson, my name is Roberta Green. I'm an
5 attorney here on behalf of West Virginia Secondary
6 School Activities Commission, also known as WVSSAC.

7 Do you know the those initials, WVSSAC?

8 A. Yes, I know the WVSSAC initials. Yes.

9 Q. Okay. Great. So if I refer to it then --- it
10 as WVSSAC, you'll know who I mean?

11 A. Yes, yes.

12 Q. That will save us ten words every time I --- so
13 I just have a few questions for you today. If I
14 understood your testimony correctly, you learned of
15 House Bill 3293 when you heard about it on the news.

16 Is that accurate?

17 A. Yes, that's accurate.

18 Q. Do you recollect whether at any time prior to
19 learning of House Bill 3293 you had notified WVSSAC of
20 BPJ's interest in running on the girls cross-country
21 team?

22 A. I did not notify them of her desire.

23 Q. All right.

24 And at any time prior to filing the lawsuit do

1 you recall whether you ever notified WVSSAC of BPJ's
2 interest in running on the girls cross-country team?

3 A. I did not contact the WVSSAC in advance.

4 Q. All right.

5 And do you know whether at any time, like up
6 until today, you have contacted WVSSAC to notify them of
7 BPJ's interest in running on the girls cross-country
8 team?

9 A. I have not.

10 ATTORNEY GREEN: Okay.

11 I don't think I have any other questions.
12 So thank you very much. I appreciate it.

13 ---

14 EXAMINATION

15 ---

16 BY ATTORNEY DENIKER:

17 Q. Good afternoon, Ms. Jackson. My name is Susan
18 Deniker. I introduced myself earlier today, but I
19 represent the Harrison County Board of Education and
20 superintendant Dora Stutler in this litigation. Thank
21 you for your time today. I know it's been a long day
22 and I appreciate you hanging in there with us.

23 I do have some additional questions for you.
24 If I ask you anything that you don't understand today

1 please tell me and I'll be glad to rephrase the
2 question. If you don't do that I will assume that you
3 have understood the question.

4 Is that fair?

5 A. Okay.

6 Q. Thank you.

7 Ms. Jackson, tell me about BPJ's education.
8 Did she start her education in Harrison County schools?

9 A. Yes, she started her education in Harrison
10 County schools.

11 Q. And did she start in pre-K or in kindergarten?

12 A. Kindergarten.

13 Q. Did she have any formal education before going
14 to kindergarten? In other words, was she in a
15 pre-school program or a pre-K program anywhere before
16 starting kindergarten?

17 A. No.

18 Q. And did she do her entire elementary schooling
19 at Norwood Elementary?

20 A. Yes, she did.

21 Q. Tell me the first --- well, in general, how was
22 your experience for --- how was the experience for BPJ
23 at the Norwood Elementary School did she have a positive
24 experience at that elementary school?

1 A. She had a positive experience.

2 Q. The current Superintendent of Harrison County
3 schools is Dora Stutler. Was she the principal at
4 Norwood during part of the time period that BPJ would
5 have been enrolled at Norwood Elementary School?

6 A. Yes, she was.

7 Q. So you had interactions with Ms. Stutler while
8 she was the principal at Norwood.

9 Is that true?

10 A. Interactions, yes.

11 Q. And were your interactions with her positive?

12 A. I think I've received a couple phone calls from
13 her in regards to B [REDACTED], that maybe she had concerns
14 over not getting a homework assignment in or that kind
15 of thing, but it was positive criticism.

16 Q. So your interactions with Ms. Stutler when she
17 was principal at Norwood Elementary School were all
18 professional in nature?

19 A. Yes.

20 Q. And you didn't have any concerns with those
21 communications?

22 A. No concerns.

23 Q. Did your other --- did your two older children,
24 your sons, did they go through Norwood Elementary School

1 as well?

2 A. Yes.

3 Q. And did you have any issues or concerns when
4 they went through Norwood Elementary School?

5 A. Correct that. My oldest one transferred from
6 St. Mary's to Bridgeport Middle. My second one was all
7 in Norwood.

8 Q. Okay.

9 A. I think his kindergarten year, there was no room
10 at Norwood and he had to go to Johnson.

11 Q. Very good.

12 So you transferred your oldest child to St.
13 Mary's?

14 A. From St. Mary's directly to Bridgeport Middle,
15 so I correct that.

16 Q. So your middle --- your middle child, that child
17 did go through Norwood Elementary School?

18 A. Yes, yes.

19 Q. Any issues or concerns during his time at
20 Norwood Elementary School?

21 A. No.

22 Q. When did you first make any employees of Norwood
23 Elementary School or anybody in Harrison County schools
24 aware that BPJ identified as a female and was a

1 transgender student?

2 A. I contacted Mr. James Thornton, who was the
3 school counselor, but I don't know the date.

4 Q. Do you recall what grade BPJ was in at the time?

5 A. Third.

6 Q. And Mr. Thornton was the guidance counselor at
7 Norwood Elementary School at that time?

8 A. Yes.

9 Q. And can you tell me at about that communication?
10 What was discussed when you contacted Mr. Thornton?

11 A. That B [REDACTED] is a transgender female and wishes to
12 be --- conduct her life as such and her pronouns were
13 she/her.

14 Q. What was Mr. Thornton's response to that?

15 A. He understood and was going to take it to a
16 higher power. I'm guessing it was the principal at the
17 time.

18 Q. Was there anything else that you can recall that
19 was part of that initial communication with Mr. Thornton
20 about BPJ's transgender status?

21 A. That she was going to start presenting as a
22 female at school.

23 Q. And then what was Mr. Thornton's response to
24 that?

1 A. The same, that he would go ahead and handle what
2 had to be handled on his end.

3 Q. Did you find him to be supportive of ---?

4 A. Yes.

5 Q. Did you say extremely?

6 A. Extremely supportive of Becky's transition.

7 Q. Very good. Did Mr. Thornton, in fact, get back
8 to you after he spoke with the principal?

9 A. I don't recall.

10 Q. What was --- what was the next communication
11 that you recall having with the school officials with
12 regard to B [REDACTED] transition?

13 A. I would have had contact with her teacher at
14 that time. I can't remember her name at that time. And
15 realizing that she was going to have questions or that
16 the students would have questions, but I can't remember
17 that teacher's name. I apologize.

18 Q. That's no problem.

19 Tell me about the nature of your communications
20 with --- this would have been the third grade teacher.

21 Is that correct?

22 A. Right, right. That she was going to start
23 presenting as a female at school.

24 Q. And was the teacher supportive of that?

1 A. Yes.

2 Q. And then BPJ did start presenting as a female at
3 school I think I heard you testify earlier.

4 Is that correct?

5 A. That is correct.

6 Q. Were there any problems or issues with that?

7 A. The only thing that I know of is that the
8 teacher did get questions as to why B [REDACTED] was dressing
9 the way she was dressing, and her answer was she's B [REDACTED]
10 and that's what makes her happy.

11 Q. Were you comfortable with that response from the
12 teacher?

13 A. Yes.

14 Q. And so in the third grade did you have any
15 concerns with regard to how the school handled B [REDACTED]
16 transition?

17 A. No, I did not.

18 Q. And then BPJ also would have been enrolled at
19 Norwood Elementary School in the fourth and fifth
20 grades.

21 Is that true?

22 A. That is correct.

23 Q. And at that point she was --- in those grades
24 she was fully transitioned ---

1 A. Correct.

2 Q. --- to being a female student.

3 Is that correct?

4 A. Correct.

5 Q. And did you have any issues or concerns with the
6 way school officials handled that?

7 A. School officials handled it quite well.

8 Q. So during BPJ's tenure as a student at Norwood
9 Elementary School did you have any concerns or issues
10 with regard to how school officials handled --- how your
11 daughter wanted to handle her transgender status and how
12 she wanted to present at school?

13 A. They respected her transition and her
14 transgender status. They used her correct pronouns,
15 which was she/her.

16 Q. That was something that was important to you and
17 BPJ.

18 Is that correct?

19 A. Correct.

20 Q. So part of that --- my understanding is that
21 part of the communications that you would have had with
22 school officials at Norwood Elementary School included
23 completing a Gender Support Plan for BPJ.

24 Is that correct?

1 A. That is correct.

2 Q. And I'll ask you --- I'm going to ask you about
3 both Gender Support Plans because I know you're having
4 to grab things. I'm going to ask you about Exhibits 17
5 and 19, if you want to pull them out. We'll look at
6 Exhibit 17 first.

7 A. I've got 17 in front of me.

8 Q. Okay. Very good. We'll start there. We can
9 get to 19 when we get there.

10 And you can take as much time as you want to
11 review this, but my initial question is going to be is
12 this the Gender Support Plan that was in place when BPJ
13 was at Norwood Elementary School?

14 A. Yes, it is.

15 Q. And you would agree with me that this document
16 is dated August 23rd, 2019?

17 A. Correct.

18 Q. And this was a document that the Harrison County
19 Board of Education had in place, so that there was a
20 process to discuss a combination of a student who's
21 transgender like BPJ.

22 Is that correct?

23 ATTORNEY BLOCK: Objection to form.

24 THE WITNESS: That's my understanding.

1 BY ATTORNEY DENIKER:

2 Q. And in fact, did you meet with school officials
3 from the Harrison County Board of Education to develop
4 this Gender Support Plan to support BPJ?

5 A. I met with the people that are listed on the
6 last page of the Gender Peer Support Plan.

7 Q. Was there anybody present in the meeting on
8 August 23rd, 2019, whose name doesn't appear on the
9 signature page on page five, which is Bates number BPJ
10 011?

11 A. I don't know. I know that we were all supposed
12 to sign it to say that we were there in attendance. So
13 I presume everyone signed it.

14 Q. In looking at this signature page, do you recall
15 anybody being there whose name you don't see there?

16 A. I don't off the top of my head, no.

17 Q. Is your signature on this document?

18 A. Yes, ma'am, it is.

19 Q. And it looks like BPJ's signature is on this
20 document as well.

21 Is that correct?

22 A. Correct, because she was in attendance. She had
23 to sign it.

24 Q. So she was part of this meeting.

1 Is that right?

2 A. That's correct.

3 Q. Did you find the school officials that
4 participated in this process to be respectful of you and
5 of BPJ?

6 A. Yes, I did.

7 Q. And did you find that the purpose of this was to
8 help accommodate any needs that BPJ might have as a
9 transgender student?

10 ATTORNEY BLOCK: Objection to form.

11 THE WITNESS: That's my understanding that
12 that was the purpose of the document.

13 BY ATTORNEY DENIKER:

14 Q. Did you --- were you in agreement with the
15 Gender Support Plan that was put into place through this
16 August 23rd, 2019 document?

17 A. Yes, I was in agreement with it.

18 Q. Was BPJ in agreement with it?

19 A. Yes, as much as she understood. Yes.

20 Q. And did you believe that the school followed
21 through and accommodated her in accordance with this
22 Gender Support Plan while she was at the Norwood
23 Elementary School?

24 A. They followed the Gender Support Peer Plan, yes.

1 Q. So is it fair to say that you didn't have any
2 issues or concerns of BPJ's treatment as a transgender
3 student during the time that she was a student at
4 Norwood Elementary School?

5 A. I would say correct.

6 COURT REPORTER: I'm sorry. I'm sorry.
7 Can you state that question one more time? It was a
8 little fast.

9 ATTORNEY DENIKER: I will try to do that.

10 BY ATTORNEY DENIKER:

11 Q. Is it fair to say that you did not have any
12 issues or concerns with BPJ's treatment as a transgender
13 student during the time that she was enrolled as a
14 student at Norwood Elementary School?

15 A. We had no issues.

16 Q. Ms. Jackson, to confirm, it is my understanding
17 that Harrison County Schools does not offer
18 school-sponsored athletics for students who are in
19 elementary school. Is that consistent with your
20 understanding?

21 A. That's my understanding.

22 Q. And I heard you testify earlier that BPJ
23 participated in cheerleading, which was not a
24 school-related activity, while we was in elementary

1 school.

2 Is that correct?

3 A. That was through the Bridgeport Youth Football.

4 Q. And that's not affiliated with the Harrison
5 County Board of Education.

6 Is that correct?

7 A. That is --- that is correct.

8 Q. So the first time that BPJ was eligible to
9 participate in school-sponsored sports was when she went
10 to middle school for this coming academic year.

11 Is that correct?

12 A. That is correct.

13 Q. And BPJ, is she currently in the 6th grade?

14 A. That is correct.

15 Q. And is she still 11 years old?

16 A. Yes.

17 Q. And prior to her --- so she would have
18 transferred from Norwood Elementary School to Bridgeport
19 Middle School for the beginning of this academic year.

20 Is that correct?

21 A. Correct.

22 Q. And it's my understanding that Bridgeport Middle
23 School is a three-year middle school that has grades
24 six, seven and eight.

1 Is that correct?

2 A. That is correct.

3 Q. Your older children, your two sons, have they
4 both gone through Bridgeport Middle School?

5 A. Yes, they have.

6 Q. So you're familiar with the school?

7 A. Yes.

8 Q. And you were familiar with it before BPJ
9 enrolled there.

10 Is that correct?

11 A. Yes.

12 Q. And did you have --- well, strike that.

13 Now, I am going to ask you to look at Exhibit
14 Number 19, if you can find it, please.

15 A. I got to find it. Can they bring it up on the
16 screen rather than me finding it?

17 Q. Yes. And if you need to see a paper copy, I'll
18 be glad to take a break for you to be able to find it.

19 A. That's okay. I can look on the screen. I'm
20 familiar with this document.

21 Q. Great. Would you agree with me that this
22 document we just marked as Exhibit West Virginia 19 is a
23 Gender Support Plan for BPJ, which is dated May 18th,
24 2021?

1 A. Correct.

2 Q. And was this a meeting that you would have had
3 with school officials to create another Gender Support
4 Plan for BPJ?

5 A. Correct.

6 Q. May 18th of 2021, at that time am I correct that
7 BPJ would have been finishing her 5th-grade year at
8 Norwood at that time?

9 A. Yes.

10 Q. So this meeting was done in preparation for
11 BPJ's transition to Bridgeport Middle School.

12 Is that correct?

13 A. Correct, and the meeting was held at Norwood.

14 Q. And as before, the folks that were in
15 attendance, are their signatures on page five of this
16 document, which is Bates number BPJ 006?

17 A. Yes, I presume that is everyone that was there.
18 We were all asked to sign in if we attended.

19 Q. And again, as I asked you before, is there
20 anybody who you recall being present for this meeting
21 whose name or signature doesn't appear on page five of
22 this document?

23 A. I don't think so.

24 Q. Is your signature on this document?

1 A. Yes, it is.

2 Q. And I also see BPJ's signature on this document.
3 Is that correct?

4 A. Yes.

5 Q. This included --- even though it was held at
6 Norwood Elementary School, this did include school
7 officials from Bridgeport Middle School.

8 Is that correct?

9 A. Correct.

10 Q. And this included a discussion about
11 accommodation for BPJ once she got to the middle school
12 for this current academic year.

13 Is that correct?

14 A. Correct.

15 Q. Was this meeting conducted professionally in
16 your opinion?

17 A. Yes.

18 Q. And were you able to discuss wishes, ideas, and
19 concerns you had about accommodations for BPJ as she was
20 starting into the middle school?

21 A. Yes.

22 Q. And did you feel like this was a positive
23 meeting?

24 A. Yes.

1 Q. Dave Mazza is somebody who's on the signature
2 page. He's the principal at Bridgeport Middle School.

3 Is that correct?

4 A. That is correct.

5 Q. Did you know Mr. Mazza before you had this
6 meeting?

7 A. Yes.

8 Q. And again, you would have been a parent of
9 students who have been at Bridgeport Middle School.

10 Is that correct?

11 A. That is correct.

12 Q. Your middle child, Ms. Jackson, I'm trying to
13 figure out the ages, is he a couple of years older than
14 BPJ?

15 A. Thirteen (13).

16 Q. He's 13. And what grade is he currently in?

17 A. Eighth.

18 Q. So you have two children currently at the middle
19 school.

20 Is that correct?

21 A. That is correct.

22 Q. Okay.

23 So Mr. Mazza wasn't new to you in this meeting?

24 A. That is correct.

1 Q. And did you have a --- prior to this meeting,
2 did you have a positive relationship with Mr. Mazza?

3 A. That is correct.

4 Q. He's a nice guy, isn't he?

5 A. He is.

6 Q. And my experience with him has been that he's
7 very student centered. Has that been your experience as
8 it relates to your children?

9 A. He's extremely student oriented.

10 Q. He really cares about the students, doesn't he?

11 A. I believe so, yes.

12 Q. And I see that Tarra Shields was on this
13 document. Is she the counselor at Bridgeport Middle
14 School?

15 A. She's the principal I believe now, isn't she?

16 Q. Is she one of the principals there?

17 A. I think so, at Norwood.

18 Q. At Norwood?

19 A. At Norwood.

20 Q. That's right. That's right, Ms. Jackson. So
21 she was there as the Norwood principal.

22 Is that correct?

23 A. Correct, correct.

24 Q. And it looks like Ms. Merrill was there and she

1 is a counselor at Bridgeport Middle School.

2 Is that correct?

3 A. That is correct.

4 Q. And how was your experience with her in this
5 meeting?

6 A. Can you be more specific?

7 Q. Sure. Was she professional with you?

8 A. Yes.

9 Q. And was she helpful in terms of identifying
10 appropriate accommodations for your daughter as she was
11 getting ready to transition to the middle school?

12 A. Yes.

13 Q. Did you feel that the Bridgeport Middle School
14 team was committed to making your daughter's transition
15 to the school as a transgender student a positive
16 experience?

17 A. Yeah. The only concern that was raised was the
18 concern about her participating in cross-country.

19 Q. And I wanted to talk to you about this, Ms.
20 Jackson. Let me ask you this. Other than conversation
21 as it related to participation on the cross-country
22 team, did you have any concerns at all about what was
23 discussed during this meeting for the Gender Support
24 Plan on May 18th, 2021?

1 A. No.

2 Q. So during this meeting it sounds like you did
3 have a discussion with the school officials with regard
4 to BPJ's participation in athletics.

5 Is that correct?

6 A. That is correct.

7 Q. And in fact, that's part of this plan is to
8 discuss --- that is a topic to be discussed.

9 Is that correct?

10 A. I'm sorry. Can you repeat that?

11 Q. Sure. And I probably didn't ask it very well.
12 And let me actually ask you by looking at the document.
13 Let's look at page four of the document. And this is
14 Bates number BPJ 005. And Ms. Jackson, I will ask you
15 to look at the top of that document as we scroll up to
16 it. And there's a specific section on this Gender
17 Support Plan to have a discussion about the student's
18 participation in extracurricular activities.

19 Would you agree with that?

20 A. Yeah, there's definitely information there
21 regarding that.

22 Q. And it specifically also addresses sports,
23 doesn't it?

24 A. Yes, specifically is cross-country and track.

1 Q. Okay.

2 And so I think the question on the form, it
3 says, in what extracurricular programs or activities
4 will the student be participating and then in
5 parentheses it says sports, theater, clubs, et cetera,
6 question mark. Did I read that accurately, Ms. Jackson?

7 A. Yes.

8 Q. And then in handwriting under that question it
9 says cross-country and track.

10 Is that right?

11 A. That is correct.

12 Q. And did you fill this document out?

13 A. No, that is Ms. Merrill's handwriting.

14 Q. Okay.

15 And the entries that say cross-country and
16 track, did that --- where did that information come
17 from?

18 A. From B [REDACTED] and myself, that she wanted to
19 participate in cross-country and track.

20 Q. Okay.

21 And that was noted on this form.

22 Is that correct?

23 A. Correct.

24 Q. And was there a discussion about BPJ's

1 participation in school sports and specifically
2 cross-country and track since BPJ expressed an interest
3 in that participation?

4 A. Yes. What was discussed is actually on that
5 next line, about the coaches have to be aware of the
6 transition.

7 Q. Okay.

8 The next line says what steps will be necessary
9 for supporting the student there. And as you noted, it
10 says coaches would need to be aware of Becky's
11 transition. If teammates have questions, they can
12 approach the coach or administration. Did you have any
13 concern with that?

14 A. The only concern I had at the time was, was she
15 going to be able to run on the girls cross-country team.

16 Q. And did you ask that question during the
17 meeting?

18 A. It came up during the meeting. I don't know if
19 it was in question form or in statement form.

20 Q. Do you remember who brought it up?

21 A. I brought it up.

22 Q. Do you remember what you said during the
23 meeting?

24 A. Not specifically, just that I was concerned that

1 she would be able to run on the girls cross-country
2 team.

3 Q. And did somebody respond to that inquiry from
4 you?

5 A. David Mazza.

6 Q. And what did Mr. Mazza say?

7 A. That it would all depend on how the bill was
8 going to come about, and that if she wanted to run, she
9 wouldn't be able to run on the girls cross-country
10 because of the bill.

11 Q. And when you say the bill, are you talking about
12 House Bill 3293?

13 A. Yeah.

14 Q. And is that the bill that --- is it your
15 understanding that it's House Bill 3293 that your
16 current litigation seeks to overturn and address?

17 A. Yes.

18 Q. So were you aware as of the date of this Gender
19 Support Plan, May 18th, 2021, what the status of House
20 Bill 3293 was?

21 A. I just knew it was in legislature.

22 Q. And Mr. Mazza was also aware of it, it sounds
23 like from his response to you.

24 Is that your understanding?

1 A. Yes.

2 Q. And so was there any further discussion of BPJ's
3 ability to run on the girls team other than what you
4 have already told me?

5 A. That was the gist of the conversation, was
6 regarding my concerns whether or not she would be able
7 to run on the girls cross-country team.

8 Q. And so you were aware of the House Bill --- and
9 were you aware that it was a state law?

10 A. All I knew was about the bill.

11 Q. Okay.

12 And were you aware that that was a bill that
13 was considered and passed by the West Virginia State
14 Legislature?

15 A. I'm not sure what year it was passed. I know it
16 was signed by the Governor in April.

17 Q. So you understood that the bill was signed by
18 the Governor.

19 Correct?

20 A. Yes.

21 Q. I'm not trying to quiz you on dates here, Ms.
22 Jackson, but were you aware that at some point the West
23 Virginia Legislature passed that bill?

24 A. Yes. Yes, it was passed. Yes.

1 Q. Would you agree with me that there is no
2 Harrison County Schools rule or policy that addresses
3 transgender student participation in sports?

4 A. I don't know that there is or is not.

5 Q. Has anybody ever told you that there is a
6 Harrison County policy or rule that would prohibit BPJ
7 from participating in a girls sports team?

8 A. No one has ever told me that.

9 Q. And the only discussion that you had with Mr.
10 Mazza with regard to BPJ's participation on a girls
11 sports team related specifically to House Bill 3293.

12 Is that correct?

13 A. Can you repeat that question, please?

14 Q. Sure. The only conversation you had with Mr.
15 Mazza with regard to BPJ's ability to participate in a
16 girls sports team at Bridgeport Middle School related to
17 House Bill 3293.

18 Is that correct?

19 A. Yes.

20 Q. Have you had any communication with any other
21 official of Harrison County Board of Education or
22 Harrison County Schools related to BPJ's ability to
23 participate in girls sports?

24 A. No, I have not.

1 Q. So the only communication related to this
2 occurred with Mr. Mazza on May 18th, 2021.

3 Is that correct?

4 A. Correct.

5 Q. And your only discussion about a possible
6 limitation of BPJ's ability to participate in girls
7 sports related to House Bill 3293.

8 Correct?

9 A. I'm sorry. I thought I answered that. Can you
10 repeat the question? I'm confused.

11 Q. Sure. And your only communication then with
12 anybody in Harrison County Schools related to BPJ's
13 ability to participate on a girls sports team was with
14 Mr. Mazza.

15 Correct?

16 A. Correct.

17 Q. And that conversation only related to BPJ's
18 ability to run as it would have been impacted by House
19 Bill 3293.

20 Is that correct?

21 A. The conversation was in regards to how --- if
22 she would be able to run on the girls cross-country team
23 and that would have been dictated by that House Bill.

24 Q. Mr. Mazza didn't tell you that it would be

1 dictated by anything else, did he?

2 A. No.

3 Q. And Mr. Mazza, he did not indicate to you that
4 he wouldn't permit BPJ to participate on the girls team
5 personally.

6 Is that correct?

7 ATTORNEY BLOCK: Objection to form.

8 THE WITNESS: Yeah. Can you repeat that
9 question?

10 BY ATTORNEY DENIKER:

11 Q. Sure. Did Mr. Mazza tell you that he personally
12 had any objection to BPJ participating on a girls sports
13 team?

14 A. He never said those words, no.

15 Q. Okay.

16 And did anybody else in Harrison County Schools
17 affiliated with Harrison County Schools in any way tell
18 you that they wouldn't permit or had a problem with BPJ
19 participating in a girls sports team?

20 ATTORNEY BLOCK: Objection. Compound
21 question.

22 THE WITNESS: I didn't contact --- I
23 wasn't in contact with any other individuals.

24 BY ATTORNEY DENIKER:

1 Q. So you didn't have any communications with
2 anybody else about that.

3 Is that correct?

4 A. That is correct.

5 Q. Is there any other communication that you had
6 with anybody in Harrison County Schools about BPJ's
7 participation on a girls sports team other than what we
8 just talked about?

9 A. No.

10 Q. Were you otherwise comfortable --- well, strike
11 that.

12 This Gender Support Plan that is dated
13 May 18th, 2021, is that currently in effect for BPJ?

14 A. Yes.

15 Q. And were you in agreement with that when you
16 signed it on May 18th, 2021?

17 A. Correct.

18 Q. And have you had any issues or concerns or
19 problems with the implementation of this Gender Support
20 Plan during the school year?

21 A. With the Gender Support Plan I've had no issues.

22 Q. Did you raise any concerns with anybody within
23 the Harrison County Board of Education or Harrison
24 County Schools about your objections or disagreements

1 with House Bill 3293?

2 A. I hadn't had any conversations with those
3 individuals.

4 Q. And when you say I hadn't I just want to make
5 sure that sitting here today have you had any
6 discussions with anybody affiliated with Harrison County
7 Board of Education other than the communication you had
8 with Mr. Mazza about concerns or problems you had with
9 House Bill 3293?

10 A. I have not.

11 Q. Are you aware that there is an elected Board of
12 Education for all of the county Boards of Education in
13 West Virginia?

14 A. Yes.

15 Q. And are you aware that there is a specific
16 County Board --- elected County Board of Education for
17 Harrison County Schools?

18 A. Yes.

19 Q. Did you have any communications with anybody on
20 the elected Board of Education with regard to BPJ and
21 her ability to participate in girls sports teams?

22 A. I've had no contact with anybody on the elected
23 board.

24 Q. Have you had any communication with Dora Stutler

1 with regard to BPJ's ability to participate in school
2 sports?

3 A. No.

4 Q. Was BPJ permitted to participate in summer
5 conditioning with the Bridgeport Middle School
6 cross-country team in the summer of 2021?

7 A. Yes.

8 ATTORNEY BLOCK: Objection to form.

9 BY ATTORNEY DENIKER:

10 Q. And it's my understanding that the Middle School
11 cross-country team at Bridgeport Middle School does the
12 summer conditioning where they run together.

13 Is that correct?

14 A. They --- they all condition together, but they
15 separate out into groups, if that makes sense.

16 Q. How were those groups separated? Do you know?

17 A. Normally by speed in the conditioning
18 environment.

19 Q. Are they separated by sex or gender in any way?

20 A. Only by boys team and girls team.

21 Q. And was BPJ permitted to run then with the girls
22 teams in the girls groups?

23 A. Correct.

24 ATTORNEY BLOCK: Objection to form.

1 BY ATTORNEY DENIKER:

2 Q. Did you have any issues or concerns with how BPJ
3 was treated concerning conditioning?

4 A. No. The coaches were very respectful of her
5 pronouns and her transgender identity.

6 Q. And was that true for the entire cross-country
7 season?

8 A. The coaches --- yes, the coaches were very much
9 so, yes.

10 Q. So you had --- did BPJ have a positive
11 experience participating on the girls cross-country
12 team?

13 A. Yes.

14 Q. And so I got a little bit ahead of myself
15 because we were talking about summer conditioning and
16 then there were tryouts for cross-country.

17 Is that correct?

18 A. That's correct.

19 Q. And did that take place in August of 2021?

20 A. Yes.

21 Q. And BPJ tried out for the girls cross-country
22 team.

23 Is that correct?

24 A. That is correct.

1 Q. And she was permitted to do so by the middle
2 school.

3 Is that right?

4 A. That is correct.

5 Q. And was she selected for membership on the girls
6 cross-country team?

7 A. That is correct.

8 Q. And I think I heard you testify earlier that she
9 did compete through the whole season on the girls
10 cross-country team.

11 Is that right?

12 A. That is correct.

13 Q. And she had a good experience doing that?

14 A. Yes, she did.

15 Q. Good. I'm glad to hear that. And I had to
16 laugh when Mr. Tryon was asking you questions about
17 where she placed because it's clear to me that he has
18 never been to a middle school cross-country meet because
19 they're just --- even in high school, there are just
20 tons of kids and lots of runners, aren't there?

21 A. There's tons of them, yes.

22 Q. And just for the record, my kids never came in
23 first or second either, so I understand that.

24 Who were the coaches for the cross-country team

1 this year at the Bridgeport Middle School?

2 A. Schoonmaker or Shumaker, I'm not sure how to
3 pronounce her name, and I can't remember the names of
4 the other two.

5 ATTORNEY BLOCK: Sorry. Just can you
6 give me a five-second pause while I move to the other
7 room. My son is about to come home from school.

8 ATTORNEY DENIKER: Absolutely. No
9 problem.

10 ATTORNEY BLOCK: Shift over. All set.

11 ATTORNEY DENIKER: That was fast.

12 ATTORNEY BLOCK: Small apartment.

13 BY ATTORNEY DENIKER:

14 Q. Ms. Jackson, I was asking you about the
15 Bridgeport cross-country coaches. Are the coaches the
16 same for the girls and the boys teams?

17 A. Yes, they are.

18 Q. And was the head coach Danielle I think maybe
19 it's Schoonmacher?

20 A. Yes.

21 Q. And then you said there were two other coaches.
22 I think one of them may be Natalie McBriar?

23 A. Yes, that is one of them.

24 Q. Is that correct?

1 A. Yes.

2 Q. And do you who the other one was?

3 A. I can't remember her name.

4 Q. But your daughter would have interacted with
5 these coaches throughout the season?

6 A. Correct.

7 Q. And didn't have any issue or problem with them.
8 Is that correct?

9 A. That is correct.

10 Q. Did she have any issues or problems with other
11 students on the cross-country team?

12 A. At one point she came home and reported that
13 somebody had told her that she's not a real girl. I
14 asked her at that point if she reported it to the coach
15 and she said that she did.

16 Q. And do you know whether the situation was
17 addressed by the coaches?

18 A. I do not know.

19 Q. Did you follow up with the coaches to discuss
20 this concern?

21 A. I did not.

22 Q. Did you feel that BPJ had handled it herself and
23 you were comfortable with that?

24 A. Oh, quite well, yes.

1 Q. And were there any issues after that with
2 students, after BPJ raised this concern with the
3 coaches?

4 A. There was not.

5 Q. If you thought that there was a further problem
6 would you have gotten involved and either addressed it
7 with either the coaches or school officials?

8 A. Most definitely.

9 Q. Is it fair to say you didn't think that was
10 necessary?

11 A. Correct.

12 Q. That season is over now.

13 Is that correct?

14 A. That is correct.

15 Q. And is BPJ --- did she try out for any winter
16 sports at the middle school?

17 A. No, she did not.

18 Q. Does she intend to try out for any spring
19 sports?

20 A. Yes, she does.

21 Q. And what does she intend to try out for?

22 A. Track.

23 Q. And has --- have you had any communications with
24 school officials about her ability to try out for track

1 this spring?

2 A. We have not.

3 Q. Is it your understanding that she will be
4 permitted to try out for the girls track team?

5 A. I don't have an understanding whether she'll be
6 permitted or not.

7 Q. Because you have not had any discussions.
8 Is that correct?

9 A. Correct.

10 Q. Let me talk more candidly about BPJ's school
11 year. And I'm sorry if I already asked you this, but at
12 the middle school she's I guess almost halfway through
13 her sixth grade year.

14 Is that correct?

15 A. That is correct.

16 Q. And is she having a good school year?

17 A. She's having an excellent school year. After
18 she learned her locker combination, everything went
19 well.

20 Q. Right now all of us are having a flashback to
21 middle school and the trauma that was remembering your
22 locker code. I understand that, Ms. Jackson. And do
23 you feel that the school has appropriately implemented
24 the Gender Support Plan that you agreed upon?

1 A. Yes.

2 Q. And you don't have any issues or concerns with
3 how school officials have treated BPJ this school
4 year-to-date?

5 A. No.

6 Q. I want to follow up on a question that Mr. Tryon
7 asked about cross-country meets this fall. You
8 mentioned that some meets --- I think you called them
9 one and done meets?

10 A. Yes.

11 Q. And I think you described that everybody ---
12 they have the girls teams and the boys teams all run at
13 one time.

14 Is that correct?

15 A. Correct, correct.

16 Q. And in those situations the boys teams are still
17 competing against the boys teams and the girls teams are
18 still competing against the girls teams.

19 Is that correct?

20 A. Yes. The statistics go towards the appropriate
21 team.

22 Q. That was what I assumed was the case in those
23 meets, but I just wanted to ask you. I haven't seen one
24 of those, but I figured they still separated the results

1 by girls teams and boys teams.

2 Right?

3 A. Correct.

4 Q. And in those situations BPJ would have been
5 listed on girls roster and would have been competing
6 against other girls teams.

7 Correct?

8 A. That is correct.

9 Q. I did notice in one of the pictures that was
10 provided through your counsel in discovery there were
11 some pictures of BPJ at various cross-country meets this
12 fall. It looks like she was having a good time.

13 Was that correct?

14 A. That is correct.

15 Q. I saw the one of her in the creek, and I will
16 tell you that I have been there with my daughter and
17 what a muddy mess. Huh?

18 A. Yes, very much so.

19 Q. But the middle school kids love it. I don't
20 know if BPJ loved it, but I know that my daughter
21 thought it was great to get muddy.

22 A. The creek crossing runs are her favorites.

23 Q. Let me just look at my notes here, Ms. Jackson.
24 I'm almost done.

1 I want to go back briefly to your
2 communications with Mr. Mazza about House Bill 3293.
3 Mr. Mazza did not tell you that he agreed with that
4 bill, did he?

5 A. He didn't say he agreed or disagreed.

6 Q. And did anybody employed by Harrison County
7 Schools or any elected official of Harrison County
8 Schools ever tell you that they agreed with House Bill
9 3293?

10 A. I've had no communication with anybody in that
11 genre whether they agreed or disagreed.

12 Q. And that would include Superintendant Stutler,
13 she also didn't tell you that she agreed with House Bill
14 3293.

15 Correct?

16 A. Yes, there has been no communication between me
17 or her whether she agrees or disagrees.

18 ATTORNEY DENIKER: Ms. Jackson, thank
19 you. I don't have any further questions at this time.

20 ---

21 EXAMINATION

22 ---

23 BY ATTORNEY MORGAN:

24 Q. Ms. Jackson, my name is Kelly Morgan and I

1 represent the West Virginia Board of Education and
2 Superintendent Burch. Can you hear me okay?

3 A. Yes.

4 Q. All right.

5 I only anticipate a few questions here, so I
6 don't anticipate going very long. But if you don't
7 understand my question, please let me know. Otherwise,
8 I'm going to assume that you understood my question if
9 you answer my question.

10 Is that fair?

11 A. Okay. Yes.

12 Q. All right.

13 Had you ever had any discussions with anyone
14 from the West Virginia Board of Education?

15 A. I have not.

16 Q. And when I say the West Virginia Board of
17 Education, what does that mean to you?

18 A. I don't know how to answer that. That means the
19 West Virginia Board of Education.

20 Q. Do you know what the West Virginia Board of
21 Education is?

22 A. Yeah, the governing body of the board --- of the
23 educational system.

24 Q. Can you describe that any more for me as to what

1 your understanding is?

2 A. No, I cannot.

3 Q. Do you know like the hierarchy of how that's set
4 up at all?

5 A. No.

6 Q. Okay.

7 Do you know where they are in relation to say
8 Harrison County Board of Education?

9 A. No.

10 Q. Fair enough.

11 A. Do you mean physically where they're located?

12 Q. No, not physically?

13 A. Oh, okay.

14 Q. Like as who might give direction to who?

15 A. Oh, okay. No.

16 Q. Or who does what or anything like that?

17 A. No.

18 Q. Okay. Fair enough.

19 I just wondered. Have you ever talked to
20 Superintendent Burch?

21 A. No.

22 Q. Have you ever contacted his office?

23 A. No.

24 Q. Are you aware of anyone in your family who has

1 contacted the West Virginia Board of Education or
2 Superintendent Burch?

3 A. I am not aware.

4 Q. Do you have any reason to believe that the West
5 Virginia Board of Education had any specific role or
6 involvement in the passage of House Bill 3293?

7 A. I don't know.

8 Q. You wouldn't know one way or another?

9 A. Nope.

10 Q. Okay.

11 And so if you never had any contact with the
12 West Virginia Board of Education or Superintendent
13 Burch, is it fair to say that you don't have any
14 complaints of anything that they've done in this case
15 with regard to BPJ?

16 ATTORNEY BLOCK: Objection to form.

17 THE WITNESS: Can you repeat the
18 question?

19 BY ATTORNEY MORGAN:

20 Q. Sure. Let me even rephrase it a different way.
21 Do you have any complaints as to anything that the West
22 Virginia Board of Education has done with regard to BPJ?

23 A. Up to this point they have let her run on the
24 girls cross-country team, so we're happy with that.

1 Q. And when you say they, who are you referring to?

2 A. The Board of Education. They have not ---
3 because of the stay, they didn't tell her she couldn't
4 run.

5 Q. And are you specifically referring to Harrison
6 County Board of Education?

7 A. I'm referring to any Board of Education.

8 Q. You said earlier that you had never been
9 contacted by anyone for BPJ to be, in essence, the
10 spokesperson for transgender rights.

11 Is that right?

12 A. That's correct.

13 Q. Had you ever contemplated her being a
14 spokesperson for transgender rights?

15 A. Heavens, no.

16 Q. You said that you had a family friend who also
17 had a transgender, I believe male.

18 Is that right?

19 A. That's correct.

20 Q. What discussions have you had with that friend
21 regarding transgender rights?

22 ATTORNEY BLOCK: Objection. Vague.

23 THE WITNESS: Yeah, I'm not sure how to
24 answer that. I mean ---.

1 BY ATTORNEY MORGAN:

2 Q. As you sit here today, can you think of anything
3 specific about things you might do to promote
4 transgender rights?

5 A. What we would do as individuals to promote it?

6 Q. Yes.

7 A. Like publicly promote it?

8 Q. Sure.

9 A. No.

10 Q. Have you talked to this friend? And I forget
11 her name.

12 A. Carolyn.

13 Q. Carolyn. Have you talked to Carolyn about this
14 case?

15 A. No.

16 Q. Do you know whether B [REDACTED] has talked to Carolyn
17 or her transgender son, if I'm using that term
18 correctly, about this case?

19 A. She has not.

20 ATTORNEY MORGAN: Ms. Jackson, those are
21 all the questions that I have for you. Thank you.

22 And before someone questions, I think it
23 was Tim possibly, I may be switching to a different
24 device so just be patient if I drop off this for the

1 court reporter and all other counsel. I'll be joining
2 on another device. Thank you again.

3 ---

4 EXAMINATION

5 ---

6 BY ATTORNEY DUCAR:

7 Q. Good afternoon, Ms. Jackson. I'm Tim Ducar and
8 I represent Lainey Armistead, an intervenor in this
9 case. You previously --- strike that.

10 Let's go back to this cross-country competition
11 example that we were talking about because I am
12 unfamiliar with it. Is this one and done competition
13 everybody runs all at one time but the rankings are kept
14 track somehow?

15 A. Correct.

16 Q. And you said the rankings are done in what
17 manner?

18 A. Sometimes they have chips, sometimes it's done
19 manually.

20 Q. So it is separated by gender or sex or is it
21 separated by --- how are those separated?

22 A. Sorry. There's a huge echo.

23 ATTORNEY MORGAN: Sorry. That may have
24 been me. I think I fixed it.

1 THE WITNESS: Okay.

2 I'm sorry. Mr. Ducar, could you repeat?

3 BY ATTORNEY DUCAR:

4 Q. How are the groups that are competing separated
5 in those kinds of events?

6 A. I'm not sure how the logistics works. I've
7 never worked an event where that happens, so I'm not
8 sure how they do it.

9 Q. Okay.

10 But when BPJ ran in an event like that, I guess
11 she only ran in one, would you describe her as not being
12 first, not being second, not being last, but how?

13 A. I wouldn't know to tell you where she ranked.

14 Q. Okay.

15 On the times that she competed against --- on
16 the girls team, she didn't end up first, second or last.
17 Was she in the front of the pack? Was she in the back?
18 How did she end up?

19 A. She was in the back of the pack.

20 Q. So the second 50 percent anyway.

21 Correct?

22 A. She was not in the top 50 percent.

23 Q. She still enjoyed herself.

24 Right?

1 A. She had a blast.

2 Q. You previously testified that BPJ was born a
3 male. Can you please explain what you meant when you
4 said BPJ was born a male?

5 A. She was born as a male in that she was
6 designated male at birth because she had a penis when
7 she was born.

8 Q. Is there any other characteristics that would
9 conclude you to say BPJ was born a male?

10 A. No. That is how they're identified when you
11 give birth. They look at the genitalia and tell you
12 it's a boy or a girl.

13 Q. You previously testified the reason BPJ is
14 female is based upon BPJ's identification as a female.
15 In your view, how does someone know what they identify
16 as?

17 A. She knows that she's a female just like I know
18 that I'm a female and you know that you're a male.

19 Q. So it's something somebody knows internally.
20 Correct?

21 A. Yes. She knows that she's a female.

22 Q. And the way one identifies whether or not
23 they're male or female is their internal thought about
24 that.

1 Correct?

2 ATTORNEY BLOCK: Objection to form.

3 THE WITNESS: Their internal thought and
4 their outward thought.

5 BY ATTORNEY DUCAR:

6 Q. How they act, is that what you're saying?

7 A. How they express themselves, if they come out
8 and say that I am a female.

9 Q. Very well.

10 You testified earlier that someone who
11 identifies as a female should be able to run on girls
12 cross-country teams. Do you think it's true even if the
13 person was born a biological male and has not taken
14 puberty blockers?

15 A. Yes.

16 Q. Earlier you testified that BPJ showed female
17 characteristics at about age three. What are female
18 characteristics that she would have --- or that BPJ
19 displayed?

20 A. Her mannerisms, her choice of clothing, limited
21 vocabulary but able to say that she's a girl, expressing
22 concern over the fact that she had a penis.

23 Q. I presume you supported her the entire time when
24 she was showing these characteristics?

1 A. Yes, I nurtured her.

2 Q. Did you ever dissuade BPJ's from these
3 characteristics?

4 A. Nope.

5 Q. Have you ever?

6 A. Nope.

7 Q. How do you feel about BPJ's transitioning?

8 A. I think she's a beautiful little girl.

9 Q. Do you think her desire to transform is
10 permanent?

11 A. Yes.

12 Q. What happens if BPJ changes BPJ's mind and wants
13 to transition back?

14 ATTORNEY BLOCK: Objection to form.

15 BY ATTORNEY DUCAR:

16 Q. Would you support that?

17 A. I would support her true self, however she
18 chooses live authentically.

19 Q. So would you support de-transitioning if that is
20 what BPJ wanted to do?

21 A. If some day she came to me and said she chose to
22 de-transition, yes, I would support her.

23 Q. Does the fact that BPJ wants to transition or is
24 transitioning causing you any anxiety?

1 A. Just worried about any sort of discrimination
2 that she may face.

3 Q. Anything else?

4 A. No.

5 Q. Is it causing your husband any anxiety?

6 A. You would have to ask him.

7 Q. None that you're aware of?

8 A. It seems that he's doing just fine.

9 Q. Is it causing BPJ any anxiety?

10 ATTORNEY BLOCK: Objection to form.

11 THE WITNESS: If she gets misgendered,
12 she's upset.

13 BY ATTORNEY DUCAR:

14 Q. Is there anything else about the transitioning
15 that causes her anxiety?

16 A. No. She's happy to transition.

17 Q. How about this lawsuit, is this lawsuit causing
18 you anxiety?

19 A. The whole process of it is quite overwhelming.

20 Q. Is it causing your husband anxiety?

21 A. You would have to ask him on that one.

22 Q. Is it causing BPJ anxiety?

23 A. Not that I know of.

24 Q. Has your husband told you about how he feels

1 about BPJ's desire to transition?

2 A. I know that he supports her.

3 Q. Do you have any hesitation about BPJ's interest
4 in socially or medically transitioning?

5 A. Can you repeat that, please?

6 Q. Do you have any hesitation about BPJ's interest
7 in socially or medically transitioning?

8 A. No hesitation.

9 Q. Have you encouraged BPJ's interest in
10 transitioning?

11 A. I have helped ---.

12 ATTORNEY BLOCK: Objection to form.

13 THE WITNESS: I have helped her in her
14 desire to transition.

15 BY ATTORNEY DUCAR:

16 Q. So that would be yes.

17 Correct?

18 A. I helped her in her desire to transition.

19 Q. Have you encouraged her?

20 A. I have helped her.

21 ATTORNEY BLOCK: Objection to the form.

22 BY ATTORNEY DUCAR:

23 Q. So you have not encouraged BPJ?

24 A. I wouldn't use the word encourage.

1 Q. Do you think it's important that team sports
2 have fair rules?

3 ATTORNEY BLOCK: Objection to form.

4 ATTORNEY DUCAR: Excuse me. What is
5 wrong with the form? That's a simple question.

6 ATTORNEY BLOCK: I think the fair rules
7 is vague.

8 ATTORNEY DUCAR: Okay. Thank you.

9 BY ATTORNEY DUCAR:

10 Q. So I'll ask it again. Ms. Jackson, do you think
11 it's important that team sports have fair rules?

12 A. I think rules are necessary in society.

13 Q. Do you think it's important that team sports
14 have fair rules?

15 A. What constitutes fair?

16 Q. Well, that's a good question. Okay. I'll move
17 on then.

18 Do you have any long-term treatment goals for
19 BPJ?

20 A. Well, I hope she'll continue her blockers until
21 she's ready for her next step, whatever she and her
22 doctors decide that need be.

23 Q. You're going to follow the medical advice of the
24 doctors.

1 Correct?

2 A. Correct.

3 Q. Whose idea was it for BPJ to start puberty
4 blockers?

5 A. She expressed her desire to start the puberty
6 blockers. She was concerned about her body producing
7 male hormones.

8 Q. Earlier you testified that Dr. Montano talked to
9 you about risks of puberty blockers.

10 Did you understand what he said?

11 A. Yes.

12 Q. Did BPJ understand what he said?

13 A. Yes.

14 Q. And do you understand the long-term
15 ramifications of BPJ taking puberty blockers?

16 A. As I read the package insert.

17 Q. What do you understand the risks to be of cross
18 sex hormones?

19 A. I don't understand the question.

20 Q. You talked about hormone therapy throughout this
21 deposition.

22 Correct?

23 A. Correct.

24 Q. What do you define as hormone therapy?

1 A. Well, in her particular case she will be
2 receiving female hormones.

3 Q. Do you understand the risks of her taking female
4 hormones?

5 A. Yes.

6 Q. Does B [REDACTED]?

7 A. Yes.

8 Q. And you understand the long-term ramifications
9 of BPJ taking these hormones.

10 Correct?

11 A. I know there are risks.

12 Q. And BPJ knows those as well.

13 Right?

14 A. There are risks, yes.

15 Q. What are those risks?

16 A. Possibility of increased chance of cancer.

17 Q. Anything else?

18 A. Non-reversible characteristics.

19 Q. For example, what would that be?

20 A. Decreased size in testes.

21 Q. Anything else?

22 A. If she would eventually want to go off the
23 hormones, a decreased size in breasts.

24 Q. Anything else?

1 A. Those are the biggies.

2 Q. Earlier I did not hear that Dr. Montano talked
3 about the risks of testosterone. Did Dr. Montano talk
4 to you about the risks of testosterone?

5 A. She's not taking testosterone.

6 Q. Did Dr. Montano ever talk to you about that?

7 A. She won't be taking testosterone.

8 Q. Does that mean no?

9 A. No, because she's not taking testosterone.

10 Q. Has any medical professional talked to you about
11 the risks of taking testosterone?

12 A. No, because she wouldn't be taking testosterone.

13 Q. Is BPJ eligible to compete on Bridgeport Middle
14 Schools cross-country team, girls?

15 ATTORNEY BLOCK: Objection to form.

16 THE WITNESS: She was permitted to
17 participate this past season.

18 BY ATTORNEY DUCAR:

19 Q. Bridgeport Middle School has a boys
20 cross-country team.

21 Correct

22 A. Correct.

23 Q. Is BPJ eligible to compete on Bridgeport Middle
24 School's boys cross-country team?

1 A. She would not participate.

2 Q. Do you know if BPJ is eligible to do so?

3 A. It was irrelevant to the conversation in regards
4 that she would refuse to try out for the boys
5 cross-country team.

6 Q. So is it fair to say you're not sure?

7 A. I don't know if she would be eligible.

8 Q. I believe in your Declaration you said that
9 BPJ's running on a boys cross-country team is not an
10 option. What did you mean by that?

11 A. She will not be running on a boys cross-country
12 team. She has exhibited absolutely no desire to run on
13 a boys cross-country team.

14 Q. Are there situations where it would be not fair
15 to allow a male, a biological male, to run on a girls
16 cross-country team?

17 A. Can you repeat the question?

18 Q. Are there situations where it would be not fair
19 to allow a biological male to run on a girls
20 cross-country team?

21 A. If a biological male identifies as a female they
22 should be allowed to run on a girls cross-country team
23 or play girls sports.

24 Q. Okay.

1 ATTORNEY DUCAR: All right. Do you need
2 a break, Heather?

3 THE WITNESS: I just need to get a little
4 more water. I'm out.

5 ATTORNEY DUCAR: Okay.

6 I'm changing my mind. I've already
7 handled these questions, so I'm sorry for interrupting
8 and now I have no further questions.

9 THE WITNESS: Got it.

10 BY ATTORNEY TRYON:

11 Q. Two quick questions. You indicated during some
12 of the other questioning that BPJ intends to or wants to
13 run in track this next year.

14 Is that right?

15 A. That is correct.

16 Q. Do you know which events that BPJ wants to or
17 intends to run in this next year?

18 A. She's interested in distance running.

19 Q. Can you be more specific?

20 A. The mile, two-mile.

21 Q. Any others?

22 A. She's not really experienced any of the other
23 events in track because this would be her first year to
24 be exposed to them. So she hasn't really raised any

1 desire because she hasn't experienced them.

2 Q. Okay.

3 So what about cross-country, does BPJ want to
4 do them again?

5 A. Oh, yes.

6 Q. Great. Then when running in these meets, these
7 cross-country meets, it's my understanding that BPJ was
8 competing against both sixth, seventh and eighth
9 graders.

10 Is that right?

11 A. That is correct.

12 Q. Ninth graders?

13 A. No.

14 Q. That's true for all cross-country that BPJ's
15 grade levels.

16 Right?

17 A. That is correct.

18 ATTORNEY TRYON: Thank you. I have no
19 further questions with the caveat in the event that we
20 need to reopen this upon delivery of additional
21 documents we would want to continue this deposition.
22 Other than that, I have no other questions.

23 ATTORNEY BLOCK: And Plaintiff would
24 object to any continuation of the deposition.

1 STATE OF WEST VIRGINIA)

2 CERTIFICATE

3 I, Nicole Montagano, a Notary Public in
4 and for the State of West Virginia, do hereby
5 certify:

6 That the witness whose testimony appears
7 in the foregoing deposition, was duly sworn by me
8 on said date, and that the transcribed deposition
9 of said witness is a true record of the testimony
10 given by said witness;

11 That the proceeding is herein recorded
12 fully and accurately;

13 That I am neither attorney nor counsel
14 for, nor related to any of the parties to the
15 action in which these depositions were taken, and
16 further that I am not a relative of any attorney
17 or counsel employed by the parties hereto, or
18 financially interested in this action.

19 I certify that the attached transcript
20 meets the requirements set forth within article
21 twenty-seven, chapter forty-seven of the West
22 Virginia.



Nicole Montagano
Nicole Montagano,
Court Reporter

Exhibit 15

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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 * Case 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 * VIDEOTAPED DEPOSITION
Superintendent, PATRICK MORRISEY * OF
In his official capacity as * WESLEY SCOTT PEPPER
Attorney General, and THE STATE * January 19, 2022
OF WEST VIRGINIA, *
Defendants *

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VIDEOTAPED DEPOSITION
OF
WESLEY SCOTT PEPPER, taken on behalf of the Defendant,
State of West Virginia, herein, pursuant to the Rules of
Civil Procedure, taken before me, the undersigned,
Nicole Montagano, a Court Reporter and Notary Public in
and for the State of West Virginia, on Wednesday,
January 19, 2022, beginning at 10:07 a.m.

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A P P E A R A N C E S

JOSHUA BLOCK, ESQUIRE
American Civil Liberties Union Foundation
125 Broad Street
New York, NY 10004

COUNSEL FOR PLAINTIFF

KATHLEEN R. HARTNETT, ESQUIRE

ANDREW BARR, ESQUIRE

JULIE VEROFF, ESQUIRE

ZOE HELSTROM, ESQUIRE

Cooley, LLP
3 Embarcadero Center
20th Floor
San Francisco, CA 94111-4004

COUNSELS FOR PLAINTIFF

SRUTI SWAMINATHAN, ESQUIRE

Lambda Legal
120 Wall Street
19th Floor
New York, NY 10005-3919

COUNSEL FOR PLAINTIFF

1
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A P P E A R A N C E S (cont'd)

DAVID TRYON, ESQUIRE

CURTIS R.A. CAPEHART, ESQUIRE

State Capitol Complex

Building 1, Room E-26

Charleston, WV 25305

COUNSEL FOR STATE OF WEST VIRGINIA

ROBERTA F. GREEN, ESQUIRE

Shuman McCuskey Slicer, PLLC

1411 Virginia Street East

Suite 200

Charleston, WV 25301

COUNSEL FOR WEST VIRGINIA SECONDARY SCHOOL

ACTIVITIES COMMISSION

SUSAN DENIKER, ESQUIRE

Steptoe & Johnson

400 White Oaks Boulevard

Bridgeport, WV 26330

COUNSEL FOR HARRISON COUNTY BOARD OF EDUCATION and

HARRISON COUNTY SUPERINTENDENT DORA STUTLER

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A P P E A R A N C E S (cont'd)

KELLY C. MORGAN, ESQUIRE

KRISTEN V. HAMMOND, ESQUIRE

Bailey Wyant

500 Virginia Street East

Suite 600

Charleston, WV 25301

COUNSEL FOR WEST VIRGINIA BOARD OF EDUCATION and

SUPERINTENDANT W. CLAYTON BURCH

TIMOTHY D. DUCAR, ESQUIRE

Law Office of Timothy D. Ducar

7430 East Butherus Drive, Suite E

Scottsdale, AZ 85260

COUNSEL FOR INTERVENOR, LAINEY ARMISTEAD

JOSHUA BROWN, ESQUIRE

CHRISTIANA HOLCOMB, ESQUIRE

RACHEL CSUTOROS, ESQUIRE

Alliance Defending Freedom

15100 North 90th Street

Scottsdale, AZ 85260

COUNSEL FOR INTERVENOR, LAINEY ARMISTEAD

1	I N D E X	
2		
3	DISCUSSION AMONG PARTIES	11 - 13
4	<u>WITNESS</u> : WESLEY SCOTT PEPPER	
5	EXAMINATION	
6	By Attorney Tryon	13 - 124
7	DISCUSSION AMONG PARTIES	124 - 126
8	EXAMINATION	
9	By Attorney Green	126 - 128
10	EXAMINATION	
11	By Attorney Deniker	128 - 143
12	EXAMINATION	
13	By Attorney Morgan	143 - 149
14	EXAMINATION	
15	By Attorney Ducar	149 - 179
16	DISCUSSION AMONG PARTIES	180 - 182
17	RE-EXAMINATION	
18	By Attorney Tryon	182 - 186
19	RE-EXAMINATION	
20	By Attorney Deniker	186 - 189
21	DISCUSSION AMONG PARTIES	189 - 190
22	CERTIFICATE	191
23		
24		

1	<u>EXHIBIT PAGE</u>		
2			
3			PAGE
4	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>
5	Exhibit 1	Davis Medical Records	-- *
6	Exhibit 1R	Davis Medical Records	-- *
7	Exhibit 2	Davis Medical Records	-- *
8	Exhibit 3	WVU Medical Records	119*
9	Exhibit 4	UPMC Children's Medical	
10		Records	-- *
11	Exhibit 5	UPMC Children's Medical	
12		Records	-- *
13	Exhibit 6	UPMC Children's Medical	
14		Records	-- *
15	Exhibit 7	UPMC Children's Medical	
16		Records	
17	Exhibit 8	UPMC Children's Medical	
18		Records	-- *
19	Exhibit 9	UPMC Children's Medical	
20		Records	-- *
21	Exhibit 11A	Progress Notes	-- *
22	Exhibit 11B	Progress Notes	-- *
23	Exhibit 11C	Progress Notes	-- *
24	Exhibit 11D	Progress Notes	69*

1	EXHIBIT PAGE		
2			
3			PAGE
4	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>IDENTIFIED</u>
5	Exhibit 12	UPMC Children's Medical	
6		Records	--*
7	Exhibit 13	UMPC Children's Medical	
8		Records	--*
9	Exhibit 14	WVU Medical Records	73*
10	Exhibit 15	WVU Medical Records	--*
11	Exhibit 16	WVU Medical Records	--*
12	Exhibit 17	Gender Support Plan	63*
13	Exhibit 18	Preferred Name Request Form	--*
14	Exhibit 19	Gender Support Plan	132*
15	Exhibit 20	Student Information	--*
16	Exhibit 20R	Student Information	--*
17	Exhibit 21	Screening Results	--*
18	Exhibit 21R	Screening Results	--*
19	Exhibit 22	Birth Certificate	52*
20	Exhibit 22R	Birth Certificate	52*
21	Exhibit 23	Heart Walk Article	--
22	Exhibit 23R	Heart Walk Article	--
23	Exhibit 24	Photo	--
24	Exhibit 24R	Photo	--

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EXHIBIT PAGE

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE IDENTIFIED</u>
Exhibit 25	WV Record	--
Exhibit 26	Photo of Mom and BPJ	--
Exhibit 27	Article	--
Exhibit 28	Article	--
Exhibit 29	Lambda Legal Article	--
Exhibit 30	Declaration of Heather Jackson	--
Exhibit 31	Declaration of BJP	--
Exhibit 32	First Amended Complaint	--
Exhibit 33	Standards of Care	--
Exhibit 34	House Bill 3293	25

* CONFIDENTIAL EXHIBITS

1
2
3
4
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11
12
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14
15
16
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OBJECTION PAGE

ATTORNEY

PAGE

Hartnett 16, 19, 21, 22, 23, 24, 28, 29, 30, 31, 32, 33,
35, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 51, 55, 56,
57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 70, 71, 72,
74, 77, 78, 79, 80, 81, 83, 87, 88, 89, 90, 91, 92, 94,
95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106,
107, 108, 109, 110, 111, 112, 113, 114, 115, 118, 120,
122, 124, 127, 133, 134, 135, 136, 137, 138, 139, 140,
141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151,
152, 153, 154, 155, 157, 158, 159, 160, 161, 162, 163,
164, 165, 166, 167, 168, 169, 170, 171, 172, 175, 176,
177, 178, 184, 185, 186, 187, 188, 189

Tryon

51

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S T I P U L A T I O N

(It is hereby stipulated and agreed by and between counsel for the respective parties that reading, signing, sealing, certification and filing are not waived.)

VIDEOGRAPHER: We are now on the record. My name is Jacob Stock. I'm a Certified Legal Video Specialist employed by Sargent's Court Reporting Services. The date today is January 19th, 2022, and the current time reads 10:07 a.m. This deposition is being taken remotely by Zoom conference. The caption of the case is: In the United States District Court, for the Southern District of West Virginia, Charleston Division, BPJ by her Next Friend and Mother, Heather Jackson, v. West Virginia State Board of Education, et al., Case Number 2:21-CV-00316. The name of the witness is Wesley Scott Pepper.

Will the attorneys present state their names and the parties they represent.

ATTORNEY TRYON: This is David Tryon. I represent the Defendant, State of West Virginia.

ATTORNEY HARTNETT: This is Kathleen

1 Hartnett from Cooley, LLP, and I represent the Plaintiff
2 as well as the witness.

3 ATTORNEY GREEN: This is Roberta Green
4 here on behalf of West Virginia Secondary School
5 Activities Commission. I'm with Shuman, McCuskey,
6 Slicer.

7 ATTORNEY DENIKER: Good morning. Susan
8 Deniker, Counsel for Defendants, Harrison County Board
9 of Education and Superintendant Dora Stutler.

10 ATTORNEY DUCAR: Good morning. Timothy
11 Ducar on behalf of Intervenor, Lainey Armistead.

12 ATTORNEY BROWN: Joshua Brown serving as
13 local counsel for Alliance Defending Freedom on behalf
14 of Lainey Armistead.

15 ATTORNEY MORGAN: Kelly Morgan and
16 Kristen Hammond on behalf of the West Virginia Board of
17 Education and Superintendant Burch with Bailey and
18 Wyant.

19 ATTORNEY SWAMINATHAN: Sruti Swaminathan
20 on behalf of Plaintiff and witness from Lambda Legal.

21 ATTORNEY BLOCK: Josh Block on behalf of
22 Plaintiff.

23 ATTORNEY BARR: Andrew Barr from Cooley,
24 LLP, on behalf of the Plaintiff and witness.

1 BY ATTORNEY TRYON:

2 Q. Thank you. And just for the record right now
3 could you state your full name again?

4 A. Wesley Scott Pepper.

5 Q. Thank you. So my name is David Tryon. I
6 represent the State of West Virginia. And first of all,
7 I just want to kind of understand, given the unusual
8 circumstances of doing this remotely, can you describe
9 the room you're in and what equipment you're using?

10 A. It is a room in a lawyer's office and I'm here
11 by myself at a table and a semi-comfortable chair.

12 Q. And do you have a laptop in front of you?

13 A. Yes, yes.

14 Q. Great.

15 And are you represented by counsel today?

16 A. Yes, I am.

17 Q. Can you identify for me who represents you?

18 A. Kathleen Hartnett.

19 Q. All right.

20 A. I guess that's Lambda, right?

21 ATTORNEY HARTNETT: I'm from Cooley, but
22 --- so just to be clear, the counsel that identified
23 themselves as counsel for the Plaintiff on this
24 deposition are also representing the witness today.

1 BY ATTORNEY TRYON:

2 Q. Thank you.

3 And Mr. Pepper, do you have any sort of
4 engagement letter or representation letter with any of
5 these attorneys?

6 A. Do I?

7 Q. That's my question.

8 A. I didn't understand the question, sir.

9 Q. Did you sign any engagement letter or
10 representation letter retaining any of these attorneys?

11 A. Not to my knowledge. I mean, my wife and I
12 probably did. I don't remember.

13 Q. Okay.

14 A. It has been a while.

15 Q. Okay.

16 Can you tell us for purposes of identification
17 your location where you're currently at?

18 A. I am in Buckhannon, West Virginia.

19 Q. Do you know the address where you're located?

20 A. I do not.

21 Q. Have you ever been deposed before?

22 A. Yes.

23 Q. Can you tell us about when and where and what
24 that was about?

1 A. I've been through a divorce.

2 Q. And so you were deposed in connection with that
3 divorce?

4 A. Yes.

5 Q. How long ago was that?

6 A. 1990.

7 Q. Okay.

8 And any other depositions you've been in?

9 A. My oldest son had a dog bite case in Georgia. I
10 was under a deposition for that as well.

11 Q. When was that?

12 A. 2005, 2006.

13 Q. Any other depositions you've been in?

14 A. No.

15 Q. Have you been sued before other than in
16 connection with your divorce?

17 A. No.

18 ATTORNEY HARTNETT: Objection,
19 foundation.

20 BY ATTORNEY TRYON:

21 Q. Is your wife listening to this and watching this
22 in any fashion?

23 A. No.

24 Q. So just a question, you've been deposed before

1 so you already have some idea of what we're doing. But
2 a deposition is oftentimes an unusual situation because
3 it's not really any other type of communication that
4 we're typically involved in. It's an opportunity for
5 the attorneys to ask you questions and for you to give
6 them answers. And so I'm going to give you a few
7 instructions on how we'll handle this to try to make it
8 work out the best for everyone.

9 Would that be okay?

10 A. Yes.

11 Q. So first of all, we're operating in Federal
12 Court so the Federal Rules of Civil Procedure apply
13 here. And you're going to hear objections from time to
14 time, and I just want to let you kind of give you an
15 idea of how that's handled as of the Rules. And I'll
16 just read from what's called Federal Rule of Civil
17 Procedure C2, which says an objection at the time of the
18 examination, whether to evidence to a party's conduct,
19 the officer's qualifications, to the manner for taking
20 the deposition or any other aspect of the deposition
21 must be noted on the record but examination still
22 proceeds. The testimony is taken subject to any
23 objection and an objection must be stated concisely in a
24 non-argumentative and non-suggestive manner.

1 So in other words, if your counsel or any other
2 lawyer objects, they can only state objection with the
3 statement such as you've already heard foundation or
4 something like that, and then you still need to answer
5 the question unless your attorney instructs you to not
6 answer the question. So --- and I would also ask you to
7 as we're going through this to answer verbally so that
8 the court reporter can take this down as opposed to
9 nodding your head or shaking your head.

10 Okay?

11 A. Yes.

12 Q. Thank you.

13 And if you don't understand a question, feel
14 free to ask me to clarify it, which you've already done.
15 And if you do answer, then that implies that you
16 understand the question. So please let me know if you
17 don't understand.

18 Okay?

19 A. Yes.

20 Q. If you need to take a break for whatever reason,
21 please let me know and we'll arrange for that, although
22 we don't take breaks during the course of a question.
23 After you answer a question, then we can take a break.

24 And just for the record, this deposition is

1 being conducted as on Cross Examination, which for you
2 that just means that's a legal concept as to the
3 procedure.

4 Now, before we get started with our questions I
5 wanted to just let you know we understand this whole
6 situation is sensitive and we, as representing the State
7 and I'm sure others as well, we're not here to judge
8 you, your family, your child or anyone else and --- but
9 since BPJ has filed this lawsuit and we as the State
10 have an obligation to defend the statute that is being
11 challenged here, we are --- I mean, it's a serious
12 charge to challenge the validity of the statute, so we
13 have an obligation to ask questions to address that
14 issues.

15 So some of these questions, as in all
16 depositions, sometimes things are a little
17 uncomfortable, but that is the procedure that we need to
18 follow as required by the Courts.

19 Does that sound fair to you?

20 ATTORNEY HARTNETT: Objection to the
21 description of the obligations and other --- other
22 concepts that you've stated, but I think --- just for
23 the record, we've had conversations with Counsel for the
24 Defense about the conduct of the deposition and we

1 expect it to proceed civilly and professionally, but I'm
2 not sure if you have a question for the witness. I
3 don't think he needs to necessarily adopt your view of
4 your obligation to defend the case.

5 BY ATTORNEY TRYON:

6 Q. Mr. Pepper, the procedure that I just described,
7 does that sound fair to you?

8 A. Yes. I have one request. Can you turn your
9 volume up just a little bit so I can hear you a little
10 bit better, please?

11 Q. I don't know if I can do that. At your end you
12 should be able to do that.

13 A. I've got mine at a hundred here, and it's --- it
14 just seems like it's --- I can hear you, but I'm
15 straining just a little bit.

16 ATTORNEY HARTNETT: Can we go off the
17 record briefly? I might have a suggestion for that.
18 I'm happy to put it on the record, too.

19 ATTORNEY TRYON: Go ahead. Let's go off
20 the record.

21 VIDEOGRAPHER: We're going off the
22 record. The current time reads 10:19 a.m.

23 OFF VIDEOTAPE

24

1 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

2 ---

3 ON VIDEOTAPE

4 VIDEOGRAPHER: We are back on the record.
5 The current time reads 10:20 a.m.

6 BY ATTORNEY TRYON:

7 Q. So Mr. Pepper, in preparation for this
8 deposition did you review any documents?

9 ATTORNEY HARTNETT: Object to the extent
10 you --- I just would caution you, Mr. Pepper, to not
11 divulge the content of your discussions with your
12 attorneys, but you can answer the question.

13 THE WITNESS: Yes, I have reviewed some.

14 BY ATTORNEY TRYON:

15 Q. Can you tell me what documents you've reviewed
16 without disclosing your discussions with your lawyers?

17 A. I'm sorry. I didn't quite hear you.

18 Q. Can you tell me what documents you looked at in
19 preparation of this deposition other than discussions
20 with your lawyers?

21 A. I can't tell you the name of them, no.

22 Q. What were the nature of them?

23 A. Some were documents to --- I guess for these
24 proceedings and some were doctors' recommendations.

1 Q. Anything else?

2 A. Nope.

3 Q. And do you feel like you had ample time to
4 prepare for this deposition with your lawyers?

5 A. Yes.

6 Q. Did you have any discussions with either your
7 wife or BPJ in preparation for this deposition?

8 ATTORNEY HARTNETT: I would just object
9 based on the marital communications privilege. To the
10 extent that --- you know, I would direct you not to
11 answer with respect to any content of your
12 communications that were confidential with your wife.
13 But otherwise, you can answer the question.

14 THE WITNESS: I've conferred with my
15 wife.

16 BY ATTORNEY TRYON:

17 Q. Okay.

18 And how about your child, BPJ?

19 A. Somewhat.

20 Q. What discussions have you had with BPJ?

21 ATTORNEY HARTNETT: I would just object
22 to the extent it calls for any discussions that you had
23 with BPJ with your lawyers present to the --- that would
24 be covered by the attorney/client privilege. Otherwise,

1 you can answer.

2 THE WITNESS: My communication with my
3 daughter is pretty much father to daughter like I
4 communicate with my son, father to son, very general.

5 BY ATTORNEY TRYON:

6 Q. So you're aware of this lawsuit.

7 Right?

8 A. Yes.

9 Q. Have you read the Complaint?

10 A. Yes.

11 Q. Have you --- your name does not appear on here
12 but rather your wife's name. Let me just clarify, can
13 you tell us who your wife is?

14 A. My wife's name is Heather Denise Jackson.

15 Q. And her name appears on the Complaint.

16 Correct?

17 A. I believe so.

18 Q. At the time of filing the Complaint were you
19 asked to put your name on it as well?

20 ATTORNEY HARTNETT: Objection to the
21 extent it calls for communications between you and your
22 lawyers, us. But to the extent you can answer otherwise
23 --- also, to the extent it calls for any communications
24 between you and your wife, but otherwise you can answer.

1 THE WITNESS: I don't recall that my name
2 was asked to be placed on the documents, no.

3 BY ATTORNEY TRYON:

4 Q. Did you consent to the filing of the lawsuit?

5 ATTORNEY HARTNETT: Objection, vague.

6 BY ATTORNEY Tryon

7 Q. Go ahead, you may answer.

8 A. Yes.

9 Q. When you reviewed the Complaint, did you agree
10 with everything in there or was there anything you
11 disagreed within there?

12 ATTORNEY HARTNETT: Objection, vague and
13 compound.

14 BY ATTORNEY TRYON:

15 Q. Go ahead.

16 A. I agree with --- I agree with what's in the
17 papers.

18 Q. So the law known as HB3293, which is the law ---
19 which is the subject of this case, have you read that?

20 A. Somewhat.

21 Q. Okay.

22 ATTORNEY TRYON: I would like to ask the
23 videographer to bring that up?

24 VIDEOGRAPHER: Which document?

1 VIDEOGRAPHER: Yes.

2 BY ATTORNEY TRON:

3 Q. Mr. Pepper, are you able to read this?

4 A. It's pretty small.

5 Q. At the top of the screen there's a percentage.
6 Mine says 57.9 percent. You can increase the size on
7 your screen.

8 ATTORNEY HARTNETT: I'm sorry. We can't
9 do that, but it looks like the court reporter can.

10 ATTORNEY TRYON: I just did it. Can you
11 see it better now?

12 THE WITNESS: Yes, 75 is good.

13 BY ATTORNEY TRYON:

14 Q. Okay. Very good. So I want to go over a couple
15 of provisions in here.

16 ATTORNEY HARTNETT: David, would you be
17 able to please just scroll through the document so he
18 can see what the document is before you start reading
19 from a part of it?

20 ATTORNEY TRYON: Sure.

21 VIDEOGRAPHER: This is the videographer.
22 I just wanted to point out that basically I gave you
23 control of the --- of the documents. So you're the only
24 one that can actually control it right now. It's not

1 separate for everyone. It's --- whatever you do, that's
2 what everyone else is going to see right now.

3 ATTORNEY TRYON: Thank you.

4 BY ATTORNEY TRYON:

5 Q. So this is the bill. You can see the front
6 page. And then it consists of various articles. It's
7 not very long. It looks like it's a total of five
8 pages.

9 ATTORNEY HARTNETT: Thank you.

10 BY ATTORNEY TRYON:

11 Q. So under --- on the second page it has
12 definitions. The first definition I want to read is
13 biological sex. It means an individual's physical form
14 as a male or a female based solely on the individual's
15 reproductive biology and genetics at birth.

16 Have I read that correctly?

17 Mr. Pepper, are you there?

18 VIDEOGRAPHER: Counsel, it looks like we
19 might have lost him. I no longer see him in the list of
20 participants.

21 ATTORNEY HARTNETT: It looks like he just
22 rejoined.

23 VIDEOGRAPHER: Okay. Give me one second
24 then.

1 THE WITNESS: Okay. I think we lost
2 connection there. Can you hear me?

3 ATTORNEY TRYON: Yes, welcome back.

4 BY ATTORNEY TRYON:

5 Q. I'm not sure. Are you --- I'm not sure --- what
6 was the last thing you heard before you lost connection?

7 A. You scrolled back to the top of the document and
8 I lost you after that. Everything seemed to freeze up
9 on me.

10 Q. Okay. All right.

11 So it's a five page document. And let me
12 scroll through again just generally what's here. The
13 fourth page appears to be blank and then the fifth page
14 is just the signature page. So I'm going to go to the
15 definition section here.

16 The definition of biological says means an
17 individual's physical form as a male or a female based
18 solely on the individual's reproductive biology and
19 genetics at birth.

20 Have I read that correctly?

21 A. Yes.

22 Q. Do you agree that that's a fair definition of
23 biological sex?

24 ATTORNEY HARTNETT: Objection, calls for

1 a legal conclusion. Vague.

2 BY ATTORNEY TRYON:

3 Q. Go ahead.

4 A. I guess so, yeah.

5 Q. And then female says means an individual's whose
6 biological sex determined at birth as female as used in
7 this section women or girls refers to biological
8 females.

9 And is that a fair definition of female?

10 ATTORNEY HARTNETT: Objection, calls for
11 a legal conclusion, vague.

12 THE WITNESS: Yes.

13 BY ATTORNEY TRYON:

14 Q. And then the next definition is male, means an
15 individual's whose biological sex determined at birth is
16 male, as used in this section men or boys refers to
17 biological males.

18 Is that a fair definition of male?

19 ATTORNEY HARTNETT: Objection, again
20 calls for a legal conclusion and is vague.

21 THE WITNESS: I guess so.

22 BY ATTORNEY TRYON:

23 Q. In the --- on page three it has an operative
24 provision. Number two, it says athletic teams or sports

1 designated for females, women or girls shall not be open
2 to students of the male sex where the selection for such
3 teams is based upon competitive skill or the activity
4 involved is a contact sport.

5 Do you believe that that's fair?

6 ATTORNEY HARTNETT: Objection. Calls for
7 a legal conclusion and vague.

8 THE WITNESS: Do I think it's fair?

9 BY ATTORNEY TRYON:

10 Q. That's my question.

11 A. I guess.

12 Q. Now the State claims that this bill is designed
13 to preserve women's sports. Do you agree that that is a
14 reasonable objective for a bill?

15 ATTORNEY HARTNETT: Objection, foundation
16 and calls for a legal conclusion and vague.

17 THE WITNESS: Can you repeat the
18 question, please? I'm not sure I understand it.

19 BY ATTORNEY TRYON:

20 Q. Sure. Again, this bill claims that it is
21 designed to preserve women's sports. Irrespective of
22 whether or not it accomplishes that, I want to know
23 first of all if you think that is a reasonable objective
24 for a law, to preserve women's sports.

1 ATTORNEY HARTNETT: Same objections.

2 THE WITNESS: I don't know how to answer
3 that.

4 BY ATTORNEY TRYON:

5 Q. Okay.

6 Do you know anything about Title 9?

7 A. Vague.

8 Q. Title 9 is one of the claims in the Complaints
9 --- excuse me. Let me rephrase that. The Complaint
10 claims that this law violates Title 9. Are you aware
11 that the Complaint does that?

12 A. I do now.

13 Q. Okay. Fair enough.

14 One of the purposes of Title 9 is to preserve
15 and encourage women's sports. And so my question for
16 you is do you think it is a legitimate purpose of a law
17 to try to preserve and encourage women's sports?

18 ATTORNEY HARTNETT: Objection, foundation
19 and calls for a legal conclusion and vague.

20 THE WITNESS: Once again, I'm not sure
21 how to answer that.

22 BY ATTORNEY TRYON:

23 Q. Okay. Fair enough.

24 Another purpose that this law is designed for,

1 according to legislature, is to protect women's safety,
2 especially in high school, college sports. Would you
3 think that is an appropriate purpose for a law?

4 ATTORNEY HARTNETT: Objection,
5 foundation, calls for a legal conclusion and vague

6 THE WITNESS: I guess. I see what you're
7 saying, but I don't know. I'll leave it at that.

8 BY ATTORNEY TRYON:

9 Q. Okay.

10 Do you believe that this law is designed to
11 preserve women's sports?

12 ATTORNEY HARTNETT: Objection, calls for
13 a legal conclusion and vague.

14 THE WITNESS: Well, I'm no expert on
15 this, but that's what you're saying is a possibility
16 there.

17 BY ATTORNEY TRYON:

18 Q. Okay.

19 Well, you said you had read the lawsuit before
20 it was filed, right? Do I remember that correctly?

21 A. Yes.

22 Q. And that lawsuit challenges that and says that
23 it does not protect women's sports as I interpret the
24 Complaint. Do you know anything that you see in this

1 law that you believe does not preserve women's --- is
2 designed to do something other than to preserve women's
3 sports?

4 ATTORNEY HARTNETT: Objection, vague,
5 calls for speculation, calls for a legal conclusion.

6 THE WITNESS: I'm not quite well versed
7 in all this terminology, but ---.

8 BY ATTORNEY TRYON:

9 Q. But what?

10 A. I don't understand it.

11 Q. Okay.

12 A. I'm no expert in it.

13 Q. I understand. So let me back up just a little
14 bit and ask you --- you already stated your full name.
15 Can you give us your address and your phone number,
16 please?

17 A. My home address?

18 Q. Yes.

19 A. My home address is 12537 Buckhannon Pike, Lost
20 Creek, West Virginia 26385. And I'm sorry, what was
21 the other thing you wanted?

22 Q. Your phone number.

23 A. My cellphone number or my home phone number?

24 Q. How about both? And just to give you a heads

1 up, we would not place --- we would not call you as a
2 general rule. We would try to contact you through your
3 attorneys, but we would want to have this for record, if
4 for some reason you're no longer represented by counsel.

5 A. Understood. Cellphone, my cell is 770-546-5869.
6 My home phone is 304-624-1757.

7 Q. Thank you. Did you graduate from high school?

8 A. Yes, I did.

9 Q. Where did you go to high school?

10 A. In Pennsylvania. I graduated in 1980.

11 Q. And after high school did you have any further
12 education?

13 A. Yes.

14 Q. Okay.

15 What was --- after high school what education
16 did you have?

17 A. I went to nursing school. I got my Associate
18 degree in Fort Pierce, Florida. I got my Bachelor's
19 degree from Miami Shores, Florida. And I also have a
20 doctorate degree in chiropractic I got from Marietta,
21 Georgia.

22 Q. And when did you get your Associate's degree?

23 A. 1995.

24 Q. And when did you get your Bachelor's degree?

1 A. 1998.

2 Q. And finally, your Doctorate?

3 A. 2005.

4 Q. What is your current profession?

5 A. I am practicing as a Registered Nurse.

6 Q. How long have you done that?

7 A. I've been a nurse for 25, 26 years.

8 Q. And where do you currently work?

9 A. I currently work at John Manchin Senior
10 Healthcare Clinic in Fairmont, West Virginia.

11 Q. And you work in the capacity of a Registered
12 Nurse.

13 Is that right?

14 A. I'm sorry?

15 Q. Your current capacity there is as a Registered
16 Nurse?

17 ATTORNEY HARTNETT: Objection, asked and
18 answered.

19 THE WITNESS: Yes.

20 BY ATTORNEY TRYON:

21 Q. Have you ever worked as a chiropractor?

22 A. Yes.

23 Q. When was that?

24 A. 2005 through 2007. And my last stint was part

1 time in 2019, I believe.

2 Q. Did you have your own chiropractic practice or
3 did you work for somebody else?

4 A. I worked for someone else.

5 Q. And who was that?

6 A. Doctor Dan and Doctor Kim Gambino.

7 Q. How many children do you have?

8 A. I have four.

9 Q. So from your current marriage you have three.
10 Is that right?

11 A. Yes.

12 Q. And from your former marriage then you would
13 have one.

14 Is that right?

15 A. That's correct, yes.

16 Q. And what is the name of your ex-wife?

17 A. My ex-wife's name is Heather Lowry.

18 Q. When did you get married to your current wife?

19 A. In 2001. January 22nd to be exact.

20 Q. So your anniversary is coming up.

21 Right?

22 A. It's very close.

23 Q. You don't want to forget that.

24 So let me ask you some questions about BPJ.

1 And as I understand it, when BPJ was born BPJ --- whoops
2 --- oh, you there you are. I just lost my screen for a
3 second. When BPJ was born, BPJ had male body parts.

4 Right?

5 ATTORNEY HARTNETT: Objection, vague.

6 BY ATTORNEY TRYON:

7 Q. You may answer.

8 A. Yes.

9 Q. Is there anything vague about that question to
10 you?

11 ATTORNEY HARTNETT: Objection, vague.

12 And vague as to body parts, but you can answer.

13 THE WITNESS: I'm not sure of the
14 definition of vague.

15 BY ATTORNEY TRYON:

16 Q. Okay.

17 When BPJ was first born you considered BPJ as a
18 male.

19 Right?

20 A. Yes.

21 Q. And as your son.

22 Correct?

23 A. Yes.

24 Q. And now, you know, I understand BPJ had a

1 different birth name.

2 That's true, isn't it?

3 A. Yes.

4 Q. Now, how do you refer to BPJ now? What name do
5 you use for BPJ?

6 A. Her name is B [REDACTED].

7 Q. Okay.

8 And when did you change using BPJ's birth name
9 to B [REDACTED]?

10 A. When she requested it.

11 Q. Do you remember when that was?

12 A. Eight, nine years ago.

13 Q. At some point you noticed something that
14 suggested that BPJ may self identify as a female rather
15 than a male?

16 A. Can you repeat that, please?

17 Q. Yes. At some point did you notice something
18 that suggested that BPJ might self identify as a female
19 rather than a male?

20 A. Yes.

21 Q. Can you tell us, first of all, when that was,
22 the first time you noticed that, and when it was?

23 A. Approximately eight years ago. She liked to do
24 female things.

1 Q. What are those that she liked to do?

2 A. Mannerisms, dress.

3 Q. What mannerisms?

4 A. Talking like a female, acting like a female.

5 Q. What do you mean talking like a female?

6 A. Using pronouns she, her.

7 Q. So BPJ is --- usually when you talk about
8 yourself you don't use pronouns. Can you explain that
9 for me?

10 ATTORNEY HARTNETT: Objection,
11 foundation.

12 THE WITNESS: She preferred to be called
13 B [REDACTED] P [REDACTED] J [REDACTED], not by her birth name.

14 BY ATTORNEY TRYON:

15 Q. Okay.

16 Do you recall when BPJ --- and just to be
17 clear, the reason I'm using the initials BPJ is because
18 that's typically the way we refer to minors in court
19 proceedings. You're free to use whatever names you
20 prefer. I'm not objecting to that. But I just wanted
21 you to understand why I'm using those initials.

22 Okay?

23 A. Yes.

24 Q. And that is also the name that is used in the

1 Court filing, so that's why I'm doing that.

2 Okay?

3 A. Yes.

4 Q. So you said that at some point BPJ decided to
5 use the name B [REDACTED]. And can you tell us how it came
6 about that BPJ selected that name?

7 ATTORNEY HARTNETT: Objection. Calls for
8 speculation.

9 THE WITNESS: I still don't know where
10 that name came from today, where she chose that name.

11 BY ATTORNEY TRYON:

12 Q. And when BPJ chose that name, did you
13 immediately begin using that or were you hesitant, did
14 it take you sometime before you switched over?

15 ATTORNEY HARTNETT: Objection, compound.

16 THE WITNESS: In the beginning I was
17 confused. In the beginning I didn't understand.

18 BY ATTORNEY TRYON:

19 Q. And so my question then is at the beginning were
20 you --- did you not change immediately or did you --- or
21 what, how did that go?

22 ATTORNEY HARTNETT: Objection, compound,
23 vague.

24 THE WITNESS: It took a little while.

1 BY ATTORNEY TRYON:

2 Q. How long is a little while?

3 A. I don't remember. That's been years ago.

4 Q. Did it take a couple of years for you to change
5 what name you used?

6 A. No.

7 Q. Okay.

8 I believe that there are other mannerisms. You
9 said liked to talk like a female. What did you mean
10 that BPJ liked to talk like a female other than using
11 female pronouns?

12 ATTORNEY HARTNETT: Objection, asked and
13 answered.

14 THE WITNESS: Dressing like a female,
15 talking like a female, doing female things, things that
16 girls like to do.

17 BY ATTORNEY TRYON:

18 Q. When you say dressing, can you describe what
19 that means?

20 A. Wearing dresses, wearing female shoes.

21 Q. Anything else?

22 A. Jewelry, makeup.

23 Q. Anything else?

24 A. Not that I can think of right now.

1 Q. Well, let me ask you this question, a little
2 different question. For you what does it mean to be
3 female?

4 ATTORNEY HARTNETT: Objection, vague.

5 THE WITNESS: And I'm no expert, but
6 females at that age like to hang out with other females
7 that age. Do the things that they like to do, play
8 dolls, play house, talk on the phone.

9 BY ATTORNEY TRYON:

10 Q. Anything else?

11 A. No, sir.

12 Q. So if --- let me just see if I understand. Are
13 you saying that if any male likes to play with dolls,
14 talk on the phone, play with other girls and to dress in
15 dresses and wear jewelry or makeup, does that mean that
16 that child is female rather than male?

17 ATTORNEY HARTNETT: Objection, misstates
18 his testimony.

19 ATTORNEY TRYON: I'm not misstating
20 anything.

21 BY ATTORNEY TRYON:

22 Q. I'm asking, sir, if that is what you mean?

23 A. No, I think each individual has a right to
24 choose whatever they want.

1 Q. And if an individual has a right to choose what
2 they want, do they then just declare this is what I want
3 and identify as male or identify as female and is that
4 the determination?

5 ATTORNEY HARTNETT: Objection. Vague,
6 calls for speculation, compound and to the extent it
7 calls for expert opinion.

8 BY ATTORNEY TRYON:

9 Q. Go ahead.

10 A. I really don't know how to answer your question.

11 Q. Fair enough. Let me ask it in a different way
12 to try and clarify. Let me just ask a different
13 question. In your mind what does it mean to be a male?

14 ATTORNEY HARTNETT: Objection, vague.

15 THE WITNESS: I'm sorry. I missed the
16 question.

17 BY ATTORNEY TRYON:

18 Q. Sure. In your mind what does it mean to be
19 male?

20 ATTORNEY HARTNETT: Same objection.

21 THE WITNESS: In my mind what does it
22 mean to be male?

23 BY ATTORNEY TRYON:

24 Q. Yes.

1 A. To be the President of the United States, to be
2 the head of your household.

3 Q. So the President of the United States would have
4 to be male?

5 ATTORNEY HARTNETT: Objection.

6 THE WITNESS: Not necessarily.

7 ATTORNEY HARTNETT: Misstates his
8 testimony.

9 BY ATTORNEY TRYON:

10 Q. Then what do you mean by that, President of the
11 United States? My question was what does it mean for
12 you, what does it mean to be male, and you said it would
13 be the President of the United States.

14 Can you explain that?

15 A. Our history has shown that we've always had a
16 male dominant figure over the United States of America.

17 Q. So maybe a little bit generically can you tell
18 me what in your mind it means to be male?

19 ATTORNEY HARTNETT: Objection, vague and
20 to the extent you're seeking some sort of an expert
21 opinion, but you can answer.

22 THE WITNESS: To be male, in my opinion,
23 to be a father, to be a brother.

24 BY ATTORNEY TRYON:

1 Q. Does it matter what body parts you are born
2 with?

3 ATTORNEY HARTNETT: Objection, vague and
4 to the extent it calls for an expert opinion.

5 THE WITNESS: I don't believe that what
6 you're born with biologically has to do anything with
7 being a father or not.

8 BY ATTORNEY TRYON:

9 Q. Can you explain what you mean by that?

10 A. Well, I'm a male, but I'm a nurse. Women can
11 live together and one can be male and one can be female,
12 but I'm no expert.

13 Q. So you're --- as you said, as a nurse you
14 recognize that a child when they're born their body
15 parts determines whether they are a male or a female?

16 ATTORNEY HARTNETT: Objection, vague,
17 calls for expert opinion, calls for a legal conclusion,
18 calls for speculation.

19 BY ATTORNEY TRYON:

20 Q. Go ahead.

21 A. I would guess because that's what Webster's
22 Dictionary defines male and female or whatever other
23 book that you might look at.

24 Q. Well, your child was born as a male you said.

1 And you now --- I think you also said that you now
2 regard --- I'm not sure you said this, so let me just
3 ask the question. Forgive me if you've already answered
4 it. Your child was born as a male. Do you regard your
5 child BPJ as a female now?

6 A. That's correct.

7 ATTORNEY HARTNETT: Objection, vague, but
8 go ahead.

9 BY ATTORNEY TRYON:

10 Q. What was your answer?

11 A. I said that's correct.

12 Q. And why?

13 A. She is an individual. She has the right to her
14 body. That is her decision and I support her
15 100 percent.

16 Q. So BPJ identifies female. You believe that she
17 is a female?

18 ATTORNEY HARTNETT: Objection, vague.
19 You can answer.

20 THE WITNESS: That's correct.

21 BY ATTORNEY TRYON:

22 Q. Now, looking through the medical records it's
23 unclear when BPJ first identified as a girl. In one
24 place it said that was when BPJ was two years old.

1 Another place it says that when BPJ was in second grade
2 and another says when BPJ was three years old. Do you
3 know which one is accurate?

4 ATTORNEY HARTNETT: Objection. You're
5 reading from documents you're not showing him and
6 compound and incomplete description of the record.

7 BY ATTORNEY TRYON:

8 Q. You can answer if you know.

9 A. I believe it was around three years old. That
10 is an estimate. That has been many years ago.

11 Q. Yeah. Well, I'm asking your specific memory and
12 I'm just trying to jog your memory from what I've read.
13 So you believe it was about three years old.

14 Is that right?

15 A. That's correct.

16 ATTORNEY HARTNETT: David, if we could
17 take a break in the next couple of minutes, that would
18 be appreciated.

19 ATTORNEY TRYON: Okay.

20 Let me just finish up a couple of things
21 if you don't mind.

22 BY ATTORNEY TRYON:

23 Q. So let's take a look at Exhibits 22 and 22R.

24 ATTORNEY TRYON: If the videographer

1 could bring that up.

2 ATTORNEY HARTNETT: Actually, I would
3 request a break before we go into --- don't put it up so
4 we don't want him to be looking over to the break.
5 Before we go into the exhibits I would like to take a
6 break.

7 ATTORNEY TRYON: All right.

8 How long a break do you need?

9 ATTORNEY HARTNETT: Let's say ten
10 minutes.

11 ATTORNEY TRYON: Okay.

12 And if I could just alert the witness
13 that since we're in the middle of a deposition, that
14 you're not permitted to have discussions with your
15 counsel about your deposition. Okay. We will reconvene
16 in ten.

17 VIDEOGRAPHER: Going off the record. The
18 current time reads 10:59 a.m.

19 OFF VIDEOTAPE

20 ---

21 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

22 ---

23 ON VIDEOTAPE

24 VIDEOGRAPHER: We are back on the record.

1 The current time reads 11:10:00 a.m.

2 ATTORNEY HARTNETT: Could I just ---
3 while we are back on the record, you had mentioned
4 before the break, Mr. Tryon, that we should not confer
5 with our client. Is there a specific rule or authority
6 in this jurisdiction that you are citing to because ---
7 general rule as you stated.

8 ATTORNEY TRYON: It's my understanding
9 that during the course of a --- that prior to deposition
10 you may consult with your client and prepare them for
11 the deposition, but during a deposition it's just the
12 same as when you're in trial and --- your face is
13 frozen. Can you still hear me? Kathleen?

14 THE WITNESS: She's frozen on my end,
15 too.

16 VIDEOGRAPHER: She is frozen on this end
17 as well.

18 ATTORNEY TRYON: Go off the record.

19 VIDEOGRAPHER: Going off the record. The
20 current time reads 11:11 a.m.

21 OFF VIDEOTAPE

22 ---
23 (HEREUPON, A SHORT BREAK WAS TAKEN.)

24 ---

1 ON VIDEOTAPE

2 VIDEOGRAPHER: We are back on the record.
3 The current time is 11:13 a.m.

4 ATTORNEY TRYON: Counsel, it's my
5 understanding, to answer your question, that when you
6 are taking a deposition it's the same as being at trial.
7 In the middle of a trial deposition you're not permitted
8 to counsel with your client. You can counsel with your
9 client in preparing them for deposition but not during
10 the deposition. That is my understanding.

11 ATTORNEY HARTNETT: Yeah, I think that's
12 not our understanding. And I believe we're probably
13 under Federal common-law, but there's at least a Supreme
14 Court of West Virginia case saying that you can confer
15 during the deposition as long as it's not for an
16 improper purpose, such as, for example, in the middle of
17 a question. So I would appreciate if you could bring
18 some authority to our attention. Otherwise, we would
19 like to be able to check in with our client on breaks.
20 Obviously, for no improper purpose. But like I said we
21 did not speak to him on this break.

22 ATTORNEY TRYON: Okay.

23 Well, that's the understanding that I'm
24 operating under and will continue to operate under until

1 you can provide me some ulterior authority.

2 ATTORNEY HARTNETT: I actually think it's
3 the other way around. I'm unfamiliar with that
4 principle. And other than certain judges I know have
5 idiosyncratic rules at times about that issue, but my
6 understanding is in general you are able to consult with
7 your client on a break. I didn't expect this issue to
8 arise. I believe that the state ex rel Means v. King
9 case from the Supreme Court of Appeals from West
10 Virginia, 1999.

11 ATTORNEY TRYON: Okay.

12 Well, let's move on with the deposition,
13 please.

14 ATTORNEY HARTNETT: Well, okay, but I
15 would say, just to be clear on the record here, that we
16 do intend to confer with our client, to check in with
17 him, again for no improper purpose, on breaks unless
18 directed to some contrary authority because our
19 understanding is there is no such prohibition in this
20 jurisdiction.

21 ATTORNEY TRYON: And I object to you
22 doing that.

23 ATTORNEY HARTNETT: I object to the
24 objection without any authority to do so. And if you

1 direct me to any authority that makes that point in this
2 jurisdiction, we would obviously be happy to review it.
3 I've directed you to authority State ex rel Means.

4 ATTORNEY TRYON: As you well pointed out,
5 that's irrelevant because it is State authority. We are
6 under Federal Court at the moment. Thank you. Let's
7 continue with the deposition, please.

8 BY ATTORNEY TRYON:

9 Q. Mr. Pepper, during the deposition --- during the
10 break did you confer with anyone?

11 A. No.

12 Q. Thank you.

13

14 (Whereupon, Exhibit 22, Birth
15 Certificate, was marked for
16 identification.)

17 (Whereupon, Exhibit 22R, Birth
18 Certificate, was marked for
19 identification.)

20

21 ATTORNEY TRYON: Let me direct you to
22 Exhibits 22 and 22R. So for Counsel's information, 22
23 and 22R are the same document. They've been redacted in
24 different ways. Exhibit 22 came from the school and 22R

1 came from Plaintiff's Counsel. And in other exhibits we
2 have marked where we have gotten documents that includes
3 the --- BPJ's birth name, we have two exhibits and one
4 where we've redacted the name. It has the R attached to
5 it. I intend to primarily use the ones with the R
6 attached to it, but there may be circumstances where I
7 will use the other or someone else may wish to use the
8 other document.

9 BY ATTORNEY TRYON:

10 Q. So I have a very simple questions on these two
11 documents. This is 22.

12 ATTORNEY HARTNETT: Just to be clear, did
13 you apply any redactions to these documents or were they
14 produced with the redactions reflected in Exhibits 22
15 and 22R?

16 ATTORNEY TRYON: Happy to clarify.
17 Exhibit 22, I did not do anything with this document,
18 not redacted at all. These are redactions that came
19 from --- this came from the school. It was redacted in
20 this fashion.

21 And then let me scroll down to 22R. This
22 is the document produced by the Plaintiff and it is
23 redacted in a different fashion.

24 ATTORNEY HARTNETT: And just for the ---

1 I would just object to the --- any unnecessary use of
2 documents or putting documents into the record with our
3 client's birth name, which is a request that we had
4 made. But obviously you can introduce whatever exhibit
5 you want here. We would request that you use the
6 documents without the birth name in the interest of our
7 client's privacy and the other sensitivities we
8 discussed. And we also just would generally hold this,
9 you know, request that the exhibits and the transcript
10 be treated as confidential until we have an opportunity
11 to review them and ensure that any exhibits that should
12 be maintained as confidential are.

13 ATTORNEY TRYON: Yeah. And just on that
14 point, Counsel, we have gotten the --- the court
15 reporter did sign a Confidentiality Agreement --- or
16 excuse me, Protective Order.

17 ATTORNEY HARTNETT: Thank you very much.

18 ATTORNEY TRYON: Yes.

19 BY ATTORNEY TRYON:

20 Q. So Mr. Pepper, I just want to confirm, as far as
21 you know, these two documents, are these correct and
22 accurate?

23 A. From what I can read, yes.

24 Q. Okay.

1 That says 22. And let me show you 22R. That's
2 a little clearer. Is that correct and accurate to the
3 best of your knowledge?

4 A. Yes.

5 Q. Thank you. I have no other questions on these
6 two exhibits.

7 Let me ask you about the term gender dysphoria.
8 Mr. Pepper, when is the first time you heard that term?

9 ATTORNEY HARTNETT: Objection,
10 foundation.

11 ATTORNEY TRYON: Well, let's lay the
12 foundation.

13 BY ATTORNEY TRYON:

14 Q. Have you ever heard the term gender dysphoria
15 before?

16 A. Yes, but I'm not an expert on it.

17 Q. Right. When is the first time you heard it?

18 A. Months ago.

19 Q. So sometime in the past year?

20 ATTORNEY HARTNETT: Objection.

21 THE WITNESS: I don't recall.

22 BY ATTORNEY TRYON:

23 Q. Okay.

24 Well, when BPJ first started to use your

1 concept, acting or speaking like a girl, at that time
2 had you heard the term gender dysphoria?

3 ATTORNEY HARTNETT: Objection, vague,
4 mischaracterization of the testimony.

5 THE WITNESS: I heard it through my wife
6 and the doctors' notes.

7 BY ATTORNEY TRYON:

8 Q. Which doctor?

9 A. I don't recall.

10 Q. And tell me about when you first heard the term,
11 what was your understanding of it?

12 ATTORNEY HARTNETT: Objection. I'm
13 sorry, objection, foundation.

14 THE WITNESS: That an individual, what
15 they're born with biologically is not what they
16 represent themselves as, in a roundabout way.

17 BY ATTORNEY TRYON:

18 Q. So then you indicated about three years old is
19 when BPJ started identifying as a female. Is that a
20 fair characterization of your testimony?

21 A. Yes.

22 Q. And at that time you still had not heard the
23 term gender dysphoria.

24 Is that true?

1 A. At that time, no. Yes.

2 Q. So when BPJ started wanting to dress and act
3 like a girl, did you think that it was a phase that BPJ
4 would grow out of?

5 ATTORNEY HARTNETT: Objection, vague.

6 THE WITNESS: I didn't know.

7 BY ATTORNEY TRYON:

8 Q. Did you think that that was a possibility?

9 ATTORNEY HARTNETT: Objection, vague.
10 Calls for speculation.

11 THE WITNESS: Anything is possible.

12 BY ATTORNEY TRYON:

13 Q. At that time did you expect that BPJ would grow
14 out of this phase?

15 ATTORNEY HARTNETT: Objection vague,
16 foundation.

17 THE WITNESS: I did not know.

18 BY ATTORNEY TRYON:

19 Q. So you didn't know one way or the other.
20 Is that right?

21 ATTORNEY HARTNETT: Objection, asked and
22 answered?

23 THE WITNESS: That's correct, I didn't
24 know.

1 BY ATTORNEY TRYON:

2 Q. Did you think it might be a mental health issue?

3 ATTORNEY HARTNETT: Objection, vague.

4 THE WITNESS: I'm no mental health
5 expert, so I can't answer that question.

6 BY ATTORNEY TRYON:

7 Q. Well, as a nurse have you observed people who
8 have mental health issues?

9 ATTORNEY HARTNETT: Objection, vague.

10 THE WITNESS: Everyone has mental health
11 issues in my opinion.

12 BY ATTORNEY TRYON:

13 Q. Well, I agree with you there, but there's some
14 people who have mental health issues that need
15 treatment. Did you believe when your daughter --- when
16 your child BPJ was three years old that BPJ might need
17 some mental health --- some assistance with mental
18 health issues?

19 ATTORNEY HARTNETT: Objection, vague.

20 THE WITNESS: Maybe counseling. I don't
21 know about mental health.

22 BY ATTORNEY TRYON:

23 Q. Okay.

24 Counseling, you thought that perhaps BPJ might

1 need mental --- or excuse me, counseling when BPJ was
2 three years old?

3 ATTORNEY HARTNETT: Objection. Vague,
4 asked and answered.

5 THE WITNESS: Sure, to help her try to
6 sort everything out.

7 BY ATTORNEY TRYON:

8 Q. And when BPJ was three years old did you or your
9 wife get mental --- get counseling for BPJ?

10 A. I don't know the dates that she had counseling.
11 I've only been to one session with her. Most of the
12 time I'm at work, so ---.

13 Q. And when was --- which session were you at with
14 BPJ?

15 A. I believe it was last summer in Morgantown. I
16 believe it was Doctor Bunner or therapist. I don't know
17 if that is a doctor or therapist, but ---.

18 Q. Did you have have discussions with BPJ --- let
19 me rephrase that. When BPJ was three years old did you
20 have discussions with your wife about how to handle the
21 situation?

22 ATTORNEY HARTNETT: Objection, based on
23 the marital communications privilege. You can answer as
24 to whether --- I guess the fact of whether you talked to

1 your wife but not --- at any particular time but not the
2 content of the conversation.

3 THE WITNESS: Yes, I've conferred with my
4 wife through all this with her. We both agree on what's
5 best for my child --- our child.

6 BY ATTORNEY TRYON:

7 Q. Did you talk to anyone else either where you
8 work or other friends about the situation with BPJ, that
9 BPJ was identifying as a girl rather than a boy?

10 ATTORNEY HARTNETT: Objection, vague and
11 compound.

12 THE WITNESS: I spoke with one of my
13 colleagues very general but nothing specific. And as
14 far as talking with anyone else, no, I have not talked
15 to anyone else because it's really none of their
16 concern.

17 BY ATTORNEY TRYON:

18 Q. Who is that colleague?

19 A. A nurse --- a nurse friend of mine.

20 Q. Is that nurse ---?

21 A. I can't hear you. You're shotty.

22 Q. Does that nurse friend have a name?

23 A. Yes.

24 ATTORNEY HARTNETT: Objection, sorry

1 argumentative. And I guess you can answer the question
2 and we can seek to keep it confidential, but I just
3 object to the unnecessary questioning into other ---
4 other individuals.

5 BY ATTORNEY TRYON:

6 Q. Go ahead.

7 A. Her name is Missy Harrison.

8 Q. And is she a nurse. I assume it's a she. I
9 don't know. Is Missy Harrison a nurse?

10 A. Yes.

11 Q. And why did you talk to Missy Harrison about
12 BPJ?

13 ATTORNEY HARTNETT: Objection, misstates
14 the testimony.

15 BY ATTORNEY TRYON:

16 Q. Go ahead.

17 A. We --- we work close together.

18 Q. Tell me about your conversation with Missy
19 Harrison.

20 A. I told her that my child has chosen to be a
21 female and that's what she is going to be the rest of
22 her life.

23 Q. How old was BPJ at that time?

24 A. Nine, ten.

1 Q. Before BPJ was nine or ten did you talk to
2 anyone else about BPJ's desire to be identified as a
3 female?

4 A. No.

5 Q. So why not?

6 ATTORNEY HARTNETT: Objection.
7 Argumentative.

8 BY ATTORNEY TRYON:

9 Q. I'm nothing arguing with you, sir. I'm just
10 interested in the situation.

11 ATTORNEY HARTNETT: Objection to the
12 commentary.

13 THE WITNESS: I didn't feel the need to.

14 BY ATTORNEY TRYON:

15 Q. Were you embarrassed about the situation?

16 ATTORNEY HARTNETT: Objection.
17 Foundation.

18 THE WITNESS: Maybe in the beginning.

19 BY ATTORNEY TRYON:

20 Q. So in the beginning. How long did that last
21 where you felt some embarrassment?

22 A. A couple of months.

23 Q. Let me direct your attention to Exhibit 17.

24

1 (Whereupon, Exhibit 17, Gender Support
2 Plan, was marked for identification.)

3 ---

4 BY ATTORNEY TRYON:

5 Q. So this is a document that you received from the
6 school. It's a Gender Support Plan that appears to me
7 was either filled out by either the school or your wife
8 and it has signature pages --- signatures at the end,
9 including --- let me scroll down here. So at the bottom
10 here it has it looks like the name B [REDACTED]. Would that be
11 BPJ's signature or name?

12 ATTORNEY HARTNETT: Objection, compound.

13 THE WITNESS: Yes.

14 BY ATTORNEY TRYON:

15 Q. And let me scroll down so you can see the
16 entirety of the exhibit here. That goes into
17 Exhibit 18. So let me stick with Exhibit 17 and go back
18 up to the top. Have you ever seen this document before?

19 A. I have not.

20 Q. Are you aware that a document was filled out at
21 the school called a Gender Support Plan?

22 A. I'm not aware of it.

23 Q. Okay.

24 So in the very first part here you can see it

1 has this language that says mom very supportive, dad has
2 struggled but coming around. Seeking outside help
3 through church and paternal side of family's
4 help/support. Does that accurately represent the
5 situation for you in 2019, the date of this document?

6 A. I have no idea who wrote that. And no, that's
7 not my --- that's not my recollection of what was going
8 on.

9 Q. Okay.

10 It says dad has struggled. Do you know what
11 that is referring to?

12 A. I do not.

13 Q. It also says seeking outside help through
14 church. Do you know what that's referring to?

15 A. I do not.

16 Q. Did you have any counseling through your church
17 about this situation?

18 ATTORNEY HARTNETT: Objection, vague.
19 Foundation.

20 THE WITNESS: Like I said, I have not
21 seen this document and I don't know what it represents.

22 BY ATTORNEY TRYON:

23 Q. Okay.

24 And my question is specifically did you have

1 any counseling through your church about BPJ's
2 situation?

3 ATTORNEY HARTNETT: Objection, vague and
4 foundation.

5 THE WITNESS: Not to my knowledge.

6 BY ATTORNEY TRYON:

7 Q. Well, that answer puzzles me because if you had
8 counseling, you would certainly know about it. So why
9 did you qualify that not to your knowledge?

10 ATTORNEY HARTNETT: Objection.
11 Argumentative.

12 THE WITNESS: I'm not always present with
13 every last detail that has been conducted with my
14 daughter. My wife has been the main support.

15 BY ATTORNEY TRYON:

16 Q. Okay.

17 But you have not sought outside help from your
18 church with respect to BPJ?

19 A. Please repeat that. You are very shotty.

20 Q. When you say shotty, you mean it's breaking up,
21 my voice is breaking?

22 A. Yes, breaking up.

23 Q. Okay.

24 I want to make sure I'm not shotty in some

1 other way.

2 A. No, no.

3 Q. So it says seeking outside help through church.
4 Does that refer to any kind of outside help that you
5 were seeking through the church?

6 A. Not to my knowledge.

7 Q. Okay.

8 Then it says and paternal side of family's
9 help/support. Did you seek any help from your family
10 other than your wife with respect to BPJ's situation?

11 ATTORNEY HARTNETT: Objection. Vague.

12 THE WITNESS: All my family has been
13 supportive of B [REDACTED] decision.

14 BY ATTORNEY TRYON:

15 Q. So who did you discuss your situation with?

16 A. Well, I have two sisters. They are both nurses.

17 Q. And when did you consult with them?

18 ATTORNEY HARTNETT: Objection,
19 foundation.

20 THE WITNESS: Years ago. I don't
21 remember the exact date.

22 BY ATTORNEY TRYON:

23 Q. Now, on the next document B [REDACTED] is comfortable
24 with others knowing her gender identity and transition.

1 Do you know what that --- when you see that --- let me
2 rephrase this. You believe that, quote, B [REDACTED] is
3 comfortable with others knowing her gender identity and
4 transition?

5 A. I would assume, according to what it says there
6 on that line.

7 Q. In your experience, did BPJ believe that's
8 accurate?

9 A. Yes.

10 Q. And is BPJ comfortable letting people know what
11 her original name was, what her birth name was?

12 ATTORNEY HARTNETT: Objection. Calls for
13 speculation.

14 THE WITNESS: She does not even discuss
15 that. That's not even part of who she is now.

16 BY ATTORNEY TRYON:

17 Q. What do BPJ's brothers call BPJ?

18 A. The same, B [REDACTED].

19 ATTORNEY HARTNETT: David, if you're
20 going to ask more questions about this document that the
21 deponent has said that he has not previously seen, could
22 you please let him review the document?

23 ATTORNEY TRYON: Yes. I was trying to do
24 that as the parts --- you want him to see the whole

1 document, is that what you're asking?

2 ATTORNEY HARTNETT: Yes, I would like
3 you ---.

4 ATTORNEY TRYON: I can do that.

5 ATTORNEY HARTNETT: This provider doesn't
6 appear to have a separate exhibit function, but if you
7 would be able to or someone could page down and he can
8 review the entire document before you ask more
9 questions, I would appreciate it.

10 ATTORNEY TRYON: That's a fair request.
11 I'm not sure if I have any more questions. Let me take
12 a look here.

13 BY ATTORNEY TRYON:

14 Q. I have no other questions on this particular
15 document. Would you like to see any more of it, Mr.
16 Pepper?

17 A. No, sir.

18 Q. Okay.

19 Let me direct you next to 11C.

20 VIDEOGRAPHER: Did you say 9C?

21 ATTORNEY TRYON: No, 11C.

22 VIDEOGRAPHER: Okay. Thank you.

23 ATTORNEY TRYON: I'm sorry. This might
24 be the wrong one. 11D is what I'm looking for. Okay.

1 So this is 11D, right. Can you give me control?

2 ---

3 (Whereupon, Exhibit 11D, Progress Notes,
4 was marked for identification.)

5 ---

6 BY ATTORNEY TRYON:

7 Q. Okay.

8 So this is three pages long. So take your time
9 and look through this, if you would like. I just have a
10 couple of questions about this. My first question is
11 going to be if you've ever seen this before?

12 A. I've not seen this before, no.

13 Q. Okay.

14 Well, per your attorney's request, this is
15 page one. Let me know if you feel comfortable moving on
16 to page two. You don't need to read all of it. You can
17 if you'd like.

18 A. Okay.

19 Q. Okay.

20 This is page two.

21 A. Okay.

22 Q. And then here is the third page of that exhibit,
23 which is actually a different document, but it's part of
24 this exhibit.

1 A. Okay.

2 Q. All right.

3 And down further that is the end of that
4 document and goes to document 12. So in this paragraph
5 here it says B [REDACTED] --- with stopping puberty. She wants
6 to know when she can start hormone therapy. So let me
7 first follow up. Did BPJ ever discuss with you about
8 stopping puberty?

9 A. No.

10 Q. All right.

11 And then wants to know about hormone therapy.
12 Was that discussed with you by anyone?

13 ATTORNEY HARTNETT: Objection, vague?

14 THE WITNESS: It was briefly discussed
15 with my wife.

16 BY ATTORNEY TRYON:

17 Q. Did you discuss that --- with your wife?

18 A. Just my wife.

19 COURT REPORTER: I'm sorry, Counsel. I
20 didn't get that question. It cut out.

21 ATTORNEY TRYON: I said that --- I asked
22 if he discussed that with any caregivers or just his
23 wife.

24 THE WITNESS: My answer was just my wife.

1 BY ATTORNEY TRYON:

2 Q. Right. And then it says wants to get breasts
3 and get rid of her penis. Was --- did anybody discuss
4 that with you?

5 ATTORNEY HARTNETT: Objection, vague.

6 THE WITNESS: No.

7 BY ATTORNEY TRYON:

8 Q. Do you have any concerns about that?

9 ATTORNEY HARTNETT: Objection, vague.

10 THE WITNESS: I have no concerns.

11 BY ATTORNEY TRYON:

12 Q. Do you know anything about the process of
13 removing a penis?

14 ATTORNEY HARTNETT: Objection, vague.

15 THE WITNESS: I do not.

16 BY ATTORNEY TRYON:

17 Q. It next says she is experiencing dysphoria with
18 leg hair growth. [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

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[REDACTED] [REDACTED] [REDACTED]
[REDACTED]
BY ATTORNEY TRYON:

Q. Well, let me try it again. Is it your testimony
--- have you ever said man up?

A. No.

Q. Any idea why this might be reported in this
document?

ATTORNEY HARTNETT: Objection, calls for
speculation.

THE WITNESS: I have no idea. I was not
present at the appointment.

BY ATTORNEY TRYON:

Q. Okay.

Next it says mom has a transgender psychologist
in mind, but their office has been closed. Do you know
who that transgender psychologist is or was?

ATTORNEY HARTNETT: Just for the record,
you're moving to the next paragraph?

ATTORNEY TRYON: Yes

THE WITNESS: No, I do not know.

BY ATTORNEY TRYON:

Q. Is there currently a transgender --- strike
that.

1 Q. Yes.

2 A. Thank you. That's better.

3 ATTORNEY HARTNETT: I would object to the
4 characterization of the document. This appears to be a
5 15 --- let's see here, 17-page document with pagination
6 on the bottom and this is page 2 of a 17-page document.

7 ATTORNEY TRYON: Well, let's see here.

8 ATTORNEY HARTNETT: This appears to be a
9 medical record from a particular visit date.

10 ATTORNEY TRYON: Yeah, thank you for your
11 clarification on that, but I think these are separate
12 entries.

13 ATTORNEY HARTNETT: No. I would just
14 direct your attention to --- it's like a progress note,
15 so it begins on the first page that you have here, which
16 is page two of the document. And then it goes on to say
17 progress note continued at least through page eight.

18 ATTORNEY TRYON: Okay.

19 ATTORNEY HARTNETT: And then the office
20 note appears to continue, although it is a separate part
21 of the record from the progress note. It's the
22 documents portion for the remainder of the document. So
23 it's all the office visit note and then there is a
24 progress note and a document portion.

1 ATTORNEY TRYON: Okay.

2 ATTORNEY HARTNETT: I don't need to argue
3 it. I mean, it would be helpful --- I mean, you can ask
4 the witness whatever you'd like about the familiarity of
5 the document, but I would appreciate him having the
6 chance to review the document before you ask questions
7 about it.

8 BY ATTORNEY TRYON:

9 Q. Well, let me ask you, first of all, have you
10 ever seen this document before?

11 A. No, I have not.

12 COURT REPORTER: Excuse me, Counsel. Can
13 you make it bigger than 100 percent? I can't read it
14 very well.

15 ATTORNEY TRYON: How's that?

16 BY ATTORNEY TRYON:

17 Q. Mr. Pepper, can you read it all right?

18 A. Yes.

19 Q. I don't have any questions for you on this page.

20 A. You say you do have questions?

21 Q. I do not. Let me know when you're ready for the
22 next page.

23 ATTORNEY HARTNETT: Yes, I would just ---
24 I think what might be help for you or someone to page

1 through the full document. Obviously, for him to read
2 it at whatever pace he wants. I'm assuming he's not
3 going to --- he can read everything word for word, but
4 it would be helpful for him to see what this document is
5 in full before you start asking questions about it.

6 ATTORNEY TRYON: Okay. We'll do that.

7 BY ATTORNEY TRYON:

8 Q. Is that okay with you, Mr. Pepper?

9 A. Yes.

10 Q. So here is page --- here's the next page. Tell
11 me if you want me to stop at any particular place. And
12 when I go back and ask you a question, then you'll have
13 plenty of time to read that. Or if you want to look at
14 more portions of it before you answer the question, just
15 let me know.

16 A. Okay.

17 Q. Sorry?

18 VIDEOGRAPHER: I believe he got
19 disconnected again. I don't see him in the video feed.

20 THE WITNESS: Yes. I --- I stated
21 earlier it looks like everybody else was frozen, but the
22 page before this one, I didn't get a real good chance to
23 review it.

24 BY ATTORNEY TRYON:

1 Q. Okay.

2 Let me back up again. A lot in this one, so it
3 is --- okay. Let me see if I can scroll back up at the
4 top of the Complaint. Okay. So here is the beginning
5 of that document. [REDACTED]

6 [REDACTED] [REDACTED]
7 [REDACTED] Do you
8 know what that is referring to, Mr. Pepper?

9 A. I do not. I was not at that meeting.

10 Q. Do you believe you've ever used gender as a
11 weapon?

12 ATTORNEY HARTNETT: Objection. Vague.

13 THE WITNESS: Maybe in the beginning.

14 BY ATTORNEY TRYON:

15 Q. How so?

16 A. I would call B [REDACTED] by her birth name.

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED] B [REDACTED]
21 [REDACTED] [REDACTED] [REDACTED]
22 [REDACTED] [REDACTED]
23 [REDACTED]
24 [REDACTED] [REDACTED] [REDACTED]

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[REDACTED]

B [REDACTED]

[REDACTED] Do you know who that would be?

ATTORNEY HARTNETT: Objection.

Foundation.

THE WITNESS: No, I don't know. Once

again, I was not at the visit.

BY ATTORNEY TRYON:

Q. I understand, but do you know what a gender affirming therapist is?

ATTORNEY HARTNETT: Objection. Vague.

THE WITNESS: No, I do not.

BY ATTORNEY TRYON:

Q. Do you know what a gender therapist is?

ATTORNEY HARTNETT: Objection. Vague.

THE WITNESS: No, I do not.

BY ATTORNEY TRYON:

Q. Okay.

For some reason I can't see you, sir. Is your camera on?

A. My camera?

Q. Yes. There you are. Now I got you, okay.
Thank you.

VIDEOGRAPHER: Counsel, to avoid that

1 problem in the future, you would probably want to pin
2 the witness and then it would always show him instead of
3 the active speakers.

4 ATTORNEY TRYON: Okay.

5 BY ATTORNEY TRYON:

6 Q. Have you had any counseling, sir, with any
7 therapist with respect to this situation?

8 ATTORNEY HARTNETT: Objection. Vague.

9 THE WITNESS: No, sir. I'm working all
10 the time.

11 BY ATTORNEY TRYON:

12 Q. Okay.

13 So BPJ, as I understand it, does have a
14 therapist.

15 Is that right?

16 A. Yes.

17 Q. Do you know how that therapist --- how either
18 you or your wife or your child found that therapist?

19 ATTORNEY HARTNETT: Objection. Compound.

20 THE WITNESS: I'm sure my wife found that
21 therapist. How? I don't know. You would have to ask
22 her.

23 BY ATTORNEY TRYON:

24 Q. Okay.

1 Did you interview that therapist before BPJ
2 started meeting with the therapist?

3 A. Personally, no.

4 Q. When you say personally, is there some other way
5 that you did?

6 A. Telephone.

7 Q. Okay.

8 And which therapist did you talk to?

9 A. I did not talk to any therapist before she went.

10 Q. What therapist did you talk to by phone?

11 A. Oh, that was just a general statement. I wasn't
12 saying --- you know, other than personally, you can talk
13 to them by phone. But I hadn't talked to any therapist
14 prior to her going to therapy. I had just conferred
15 with my wife.

16 Q. Have you since talked to any therapist?

17 A. I took B [REDACTED] to one therapy in Morgantown to see
18 Dr. Bunner and that was --- briefly spoke with a
19 therapist before and after her session.

20 Q. Okay.

21 What happened during that session?

22 ATTORNEY HARTNETT: Objection. Calls for
23 speculation.

24 BY ATTORNEY TRYON:

1 Q. Go ahead. Are you still there? Mr. Pepper?

2 VIDEOGRAPHER: He appears to be frozen I
3 think. And there he disconnected, so hopefully he will
4 be reconnecting.

5 ATTORNEY HARTNETT: The witness is here.

6 BY ATTORNEY TRYON:

7 Q. Okay.

8 Mr. Pepper, can you hear me now?

9 A. Yes.

10 Q. Okay.

11 So my question is what discussions --- my
12 question was, what happened in that session where you
13 attended with the therapist?

14 ATTORNEY HARTNETT: Objection. Misstates
15 the record.

16 BY ATTORNEY TRYON:

17 Q. Okay.

18 Let me back up and make sure I understand. You
19 were in that session with the therapist with your ---
20 with BPJ.

21 Is that correct?

22 A. One, yes.

23 Q. And what happened during that session?

24 ATTORNEY HARTNETT: Objection. Vague.

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[REDACTED] [REDACTED]
BY ATTORNEY TRYON:

Q. Can you elaborate, please?

[REDACTED]
[REDACTED]

Q. And what was --- did you answer that question or did BPJ answer those questions?

A. We both spoke on it briefly before the session.

Q. Before the session?

A. Yes.

Q. When you say both, you mean you and BPJ spoke together? Is that what you are saying?

A. We were speaking with the therapist and he kind of like was going through laying down guidelines, you know, what they're going to be talking about and things that --- you know, that I wasn't going to be privy to but we could talk about how the session went and what is going to be talked about during that session. So he was kind of laying down guidelines for me because I had never been there before and he was introducing himself and just giving a general rundown.

Q. And then there was a session where only BPJ and the therapist were present.

Is that right?

1 A. Yes, that is correct.

2 Q. And as far as acceptance, are people accepting
3 of BPJ's situation?

4 ATTORNEY HARTNETT: Objection. Vague,
5 calls for speculation.

6 BY ATTORNEY TRYON:

7 Q. It is a general question. If you can answer
8 generally.

9 A. I would say generally, yes.

10 Q. Are there those that are not accepting of BPJ's
11 situation?

12 A. Not to my knowledge.

13 Any chance we could request five minutes to go
14 to the restroom?

15 ATTORNEY TRYON: Yeah. So what we could
16 do, actually, it is after 12 o'clock now. I don't know
17 what people feel about --- let's go off the record if we
18 may.

19 VIDEOGRAPHER: Going off the record ---.

20 ATTORNEY HARTNETT: Sorry. Can we stay
21 on the record for one ---?

22 VIDEOGRAPHER: Yes, sorry.

23 ATTORNEY HARTNETT: I just wanted to
24 direct Counsel's attention to the --- I think it's the

1 Page Act, the Under Armour case in the Northern District
2 of West Virginia. That's from November of 2020. And it
3 is Judge Alloy, I believe, making clear that we are able
4 to confer with our client on breaks of depositions even
5 if it's --- so long as it's not an improper purpose,
6 which, as I stated, it would not be. So our intent is
7 to check in with our client on a break, particularly if
8 there's a more extended one. And I think if you have
9 some contrary authority that disallows that, we would
10 appreciate you bringing it to our attention promptly.

11 ATTORNEY TRYON: Counsel, what do you
12 consider to be a proper purpose?

13 ATTORNEY HARTNETT: Checking in with how
14 he's feeling, is he comfortable. Obviously, we're not
15 going to coach him on any answer to any question, but we
16 can talk to him about potential Redirect. Those are all
17 appropriate topics for a deposition. We will not be
18 sharing any of the exhibits that you forwarded as a
19 courtesy with him before --- use them or don't use them
20 in a deposition.

21 ATTORNEY TRYON: And so you would agree
22 that you're not going to coach him on how to answer
23 questions? Is that your statement?

24 ATTORNEY HARTNETT: I would never coach

1 my witness on how to answer a question. He's been
2 coached, if anything, to tell the truth. And what I'm
3 telling you is out of courtesy we will not review any of
4 the exhibits with him that you sent ahead of time before
5 the deposition. And that it is our right, I believe,
6 under the Rules and under the precedent from this
7 jurisdiction to speak with our client. And as the case
8 sets forth, that it actually helps to advance the truth
9 seeking function here to make sure that our client is
10 comfortable, understands the questions and is able to
11 function properly in the deposition today.

12 ATTORNEY TRYON: Okay.

13 So let's go off the record for a second
14 and then we will come back on and reconfer.

15 VIDEOGRAPHER: Going off the record. The
16 current time is 12:09 p.m.

17 OFF VIDEOTAPE

18 ---

19 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

20 ---

21 ON VIDEOTAPE

22 VIDEOGRAPHER: Back on the record. The
23 current time reads 12:12 p.m.

24 ATTORNEY TRYON: Okay.

1 We're going to take a five-minute break
2 now and then in about an hour we're going to take a
3 lunch break for about a half hour after that. And so we
4 will reconvene in ten minutes, which would be 12:22.

5 ATTORNEY MORGAN: This doesn't have to do
6 with that, but since we're off the record here ---.

7 VIDEOGRAPHER: We are on the record.

8 ATTORNEY MORGAN: Okay.

9 I will wait until we are off.

10 OFF VIDEOTAPE

11 ---

12 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

13 ---

14 VIDEOGRAPHER: Is everyone ready to go
15 off the record?

16 ATTORNEY HARTNETT: I would just we had
17 no further discussion about the issue of talking to our
18 client while we were off the record, but we stand by
19 what we said on the record.

20 VIDEOGRAPHER: Okay.

21 Going off the record. The current time
22 reads 12:12 p.m.

23 ---

24 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

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ON VIDEOTAPE

VIDEOGRAPHER: Back on the record. The current time reads 12:26 p.m.

BY ATTORNEY TRYON:

Q. Okay.

Mr. Pepper, I had a question, a few more questions about counseling and therapy. [REDACTED]

[REDACTED]

[REDACTED] Does that comport with your memory?

ATTORNEY HARTNETT: Objection to the characterization of records that you're not showing the witness.

BY ATTORNEY TRYON:

Q. Go ahead, sir.

A. I have no recollection of it.

Q. So do you know when the first therapist appointment was?

A. No, I don't.

Q. Do you have any documents that would show that?

A. I do not.

ATTORNEY HARTNETT: Objection. Vague.

BY ATTORNEY TRYON:

1 Q. Did you answer?

2 A. I said I do not. I do not.

3 Q. Have you kept any records in your personal files
4 about any therapy or any visits with therapists for BPJ?

5 ATTORNEY HARTNETT: Objection. Vague,
6 compound.

7 THE WITNESS: My wife takes care of all
8 that.

9 BY ATTORNEY TRYON:

10 Q. So would that be a no?

11 A. Yes.

12 Q. Do you know if your wife has --- with respect to
13 BPJ?

14 A. Yes, she takes care of all of the records.

15 Q. Now, it's also my understanding that BPJ
16 received a [REDACTED] Do you know what a
17 [REDACTED] is?

18 A. I do not.

19 Q. Do you know --- are you aware that BPJ received
20 a [REDACTED]

21 A. Yes.

22 Q. From what I read, [REDACTED]
23 [REDACTED] Is that consistent with your memory?

24 ATTORNEY HARTNETT: Objection to the

1 description of documents that you're not showing the
2 witness.

3 BY ATTORNEY TRYON:

4 Q. I didn't say anything about documents. I said
5 that's my understanding. So what is your understanding,
6 sir?

7 ATTORNEY HARTNETT: You said about from
8 the documents you reviewed. But it doesn't matter. I'm
9 just objecting to the extent you're characterizing
10 documents that are not before the witness.

11 THE WITNESS: I don't remember.

12 BY ATTORNEY TRYON:

13 Q. Fair enough.

14 Did you specifically consent to the
15 implantation of the [REDACTED]

16 A. Through my wife.

17 Q. Did anybody tell you what the [REDACTED] does?

18 A. I believe it stops puberty.

19 Q. Were you okay with that?

20 A. Yes.

21 ATTORNEY HARTNETT: Objection.

22 BY ATTORNEY TRYON:

23 Q. So BPJ at some point became interested in
24 sports.

1 Is that right?

2 A. Yes.

3 Q. Do you remember when that was?

4 A. The exact date, no.

5 Q. More or less?

6 A. Years ago.

7 ATTORNEY HARTNETT: Objection.

8 BY ATTORNEY TRYON:

9 Q. And what sports did BPJ initially become
10 interested in?

11 A. Cheerleading.

12 Q. Anything else?

13 A. Cross-country.

14 Q. Anything else?

15 A. Not to my knowledge.

16 Q. Do you remember when BPJ first became interested
17 in cheerleading?

18 A. Many years ago.

19 Q. Okay.

20 So that was before BPJ actually went onto the
21 cheerleading team?

22 A. That's correct.

23 Q. Do you remember what year it was that BPJ joined
24 the cheerleading team?

1 A. I do not.

2 Q. And do you remember when BPJ first got
3 interested in cross-country?

4 A. I would answer years ago, but I'm not sure of
5 the exact date.

6 Q. When did BPJ first start to participate in
7 cross-country in school?

8 A. Years ago. Like I said, I don't remember the
9 exact date.

10 Q. So you don't know when the first time that BPJ
11 was on the cross-country team?

12 A. No, sir, I don't.

13 Q. Do you know if ---?

14 COURT REPORTER: I'm sorry. I didn't get
15 that question.

16 BY ATTORNEY TRYON:

17 Q. I said do you ever go to BPJ's cross-country
18 events?

19 A. Whenever I'm not working I try to, yes.

20 Q. How many of those events did you attend?

21 ATTORNEY HARTNETT: Objection. Vague.

22 THE WITNESS: Half a dozen.

23 BY ATTORNEY TRYON:

24 Q. Do you know when BPJ tried out for

1 cross-country?

2 ATTORNEY HARTNETT: Objection. Vague.

3 THE WITNESS: Three, four --- three to
4 four years ago. I'm not real certain on that.

5 BY ATTORNEY TRYON:

6 Q. So it's your belief that three or four years ago
7 BPJ tried out for cross-country? Is that your
8 testimony?

9 ATTORNEY HARTNETT: Objection.
10 Argumentative. Asked and answered.

11 THE WITNESS: Yes.

12 BY ATTORNEY TRYON:

13 Q. And when is the first event that you went to
14 where BPJ was on the cross-country team?

15 A. I don't remember.

16 Q. What grade was BPJ in when BPJ participated on a
17 cross-country team?

18 ATTORNEY HARTNETT: Could you please
19 repeat that? I'm sorry, I didn't hear the beginning of
20 the question.

21 ATTORNEY TRYON: Can the court reporter
22 read that back, please?

23 COURT REPORTER: And when is the first
24 event that you ---?

1 ATTORNEY HARTNETT: You're on mute.

2 ---

3 (WHEREUPON, COURT REPORTER READS BACK PREVIOUS
4 QUESTION.)

5 ---

6 THE WITNESS: I don't remember. Fifth
7 grade, sixth grade. That's my guess.

8 BY ATTORNEY TRYON:

9 Q. And did BPJ participate in a cross-country team
10 this year?

11 A. Yes.

12 Q. What grade is BPJ in this year?

13 A. 6th or 7th. I don't remember.

14 Q. Okay.

15 Do you know why BPJ chose to be on the
16 cross-country team?

17 A. Do I know?

18 Q. That's my question.

19 A. No, I do not.

20 Q. Did you ever discuss that with BPJ?

21 A. Well, she comes from a family of runners. I
22 mean, my wife and I are runners and ---.

23 Q. And what did BPJ tell you about BPJ's desire to
24 run on a cross-country team?

1 A. Well, it's you against yourself and that's ---
2 she doesn't have --- I mean, you have coaches but you
3 just go do the best you can.

4 Q. Did BPJ want to compete against other runners?

5 A. Did she want to?

6 Q. Yes.

7 A. As far as I know, yes.

8 Q. Was it important for BPJ to try and win in
9 cross-country?

10 ATTORNEY HARTNETT: Objection. Calls for
11 speculation.

12 THE WITNESS: Of course. Everybody wants
13 to win, but I mean ---.

14 BY ATTORNEY TRYON:

15 Q. Okay.

16 Are there coed cross-country teams?

17 ATTORNEY HARTNETT: Objection. Vague,
18 calls for speculation.

19 THE WITNESS: Not to my knowledge.

20 BY ATTORNEY TRYON:

21 Q. What school does BPJ go to?

22 A. Let's see. I just --- slate went blank. Give
23 me a second here. You'll have to give me a minute
24 because my mind just went blank. It's in Harrison

1 County. I'm not sure what the name of the school is.
2 It's the junior high, the middle school.

3 Q. Do you know if the middle school has a boys
4 track cross-country team?

5 A. Yes.

6 Q. And which team did BPJ want to try out for?

7 A. Well, she's a girl, so she's going to be on the
8 girls team.

9 Q. Well, that wasn't my question. My question is,
10 which team did BPJ want to try out for?

11 ATTORNEY HARTNETT: Objection. Asked and
12 answered.

13 THE WITNESS: The girls team.

14 BY ATTORNEY TRYON:

15 Q. Thank you.

16 If there had been a coed team, would BPJ prefer
17 to be on that?

18 ATTORNEY HARTNETT: Objection, calls for
19 speculation.

20 THE WITNESS: You would have to ask her.
21 I don't know the answer to that.

22 BY ATTORNEY TRYON:

23 Q. Are try-outs for the girls cross-country team
24 competitive?

1 ATTORNEY HARTNETT: Objection, vague,
2 calls for speculation, to the extent it's calling for a
3 legal conclusion.

4 THE WITNESS: Yes, all sports is
5 competitive.

6 BY ATTORNEY TRYON:

7 Q. What do you know about --- tell me what you know
8 about cross-country. I'm not a cross-country runner, so
9 I don't know much about it. Can you help me out here?

10 ATTORNEY HARTNETT: Objection. Vague,
11 calls for a narrative.

12 THE WITNESS: I have not run
13 cross-country, but you're basically running over hill
14 and dale, up and down, doesn't matter what the weather
15 is, mud, you're going and you got to be in really good
16 shape.

17 BY ATTORNEY TRYON:

18 Q. Anyone else in your family --- let me rephrase
19 that. Has anyone else in your family run cross-country,
20 your wife or your other kids?

21 A. My wife has not that I know of. My oldest two
22 have.

23 Q. And are there specific tryouts for the
24 cross-country team?

1 A. Yes.

2 Q. Are there some that do not make it onto the
3 team?

4 ATTORNEY HARTNETT: Objection. Vague,
5 calls for speculation.

6 THE WITNESS: Well, if they've only got
7 so many spots, then only the kids that make it, make it.

8 BY ATTORNEY TRYON:

9 Q. Do you know how many classes there are in the
10 middle school where BPJ attends?

11 A. I do not.

12 Q. Do you know if she made the team for this year?

13 A. She did because she went to practice. If you
14 miss so many practices you're not going to be accepted
15 on the team. You have to attend practices.

16 Q. And did she participate in the actual races
17 besides practices?

18 A. I'm sorry. Say that again, please.

19 Q. Did she participate in any cross-country races
20 besides just practices?

21 A. Yes.

22 Q. Were there some people that were not --- did not
23 make it onto the team that you are aware of?

24 A. No, I didn't pay that close attention.

1 Q. Fair enough. Well, you're aware, though, that
2 there is a boys track team --- excuse me, a boys
3 cross-country team at the middle school.

4 Is that right?

5 ATTORNEY HARTNETT: Objection. Asked and
6 answered.

7 THE WITNESS: Yes.

8 BY ATTORNEY TRYON:

9 Q. Are the boys who participate on the
10 cross-country --- the boys cross-country team allowed to
11 compete against the girls on the girls cross-country
12 team?

13 ATTORNEY HARTNETT: Objection. Vague, to
14 the extent it calls for a legal conclusion, calls for
15 speculation.

16 THE WITNESS: That I'm not --- I'm not
17 aware of.

18 BY ATTORNEY TRYON:

19 Q. Okay.

20 Do you think that boys on the boys track team
21 should be allowed to compete against girls on the girls
22 track teams? By track I mean including cross-country.

23 ATTORNEY HARTNETT: Objection. Vague and
24 to the extent it calls for an expert or legal opinion.

1 THE WITNESS: Yeah, I'm not an expert it.

2 BY ATTORNEY TRYON:

3 Q. I'm asking for your opinion, sir.

4 ATTORNEY HARTNETT: Same objections.

5 THE WITNESS: Well, my opinion is she's
6 under --- she's under hormone blockers, so I believe
7 that she does not have the advantage that a person that
8 is a male --- doesn't have the same advantage.

9 BY ATTORNEY TRYON:

10 Q. Yeah. So my question though --- I appreciate
11 that answer, but my question is specifically do you
12 personally think that boys on the boys track team or
13 cross-country team should be allowed to compete against
14 the girls on the girls track or cross-country team?

15 ATTORNEY HARTNETT: Same objection.

16 THE WITNESS: Well, that's the rules.

17 BY ATTORNEY TRYON:

18 Q. I'm sorry, what's the rules?

19 A. That males run with males and females run with
20 females.

21 Q. Do you think that boys --- that males should be
22 allowed to run with females?

23 ATTORNEY HARTNETT: Objection. Same

24 objections and asked and answered.

1 THE WITNESS: I'm not sure how to answer
2 that.

3 BY ATTORNEY TRYON:

4 Q. Well, you just said that's the rules.

5 A. Uh-huh (yes).

6 Q. So I'm asking you, do you think it's fair --- it
7 would be fair for boys on the boys --- or strike that.

8 Let's use your wording. Do you think it would be
9 fair for males to compete on the females' cross-country
10 team?

11 ATTORNEY HARTNETT: Same objections as
12 before and calls for speculation.

13 THE WITNESS: I don't know how to answer
14 that.

15 BY ATTORNEY TRYON:

16 Q. Do you think in general that boys can run faster
17 than girls?

18 ATTORNEY HARTNETT: Objection. Vague.
19 Calls for speculation and to the extent it calls for a
20 legal or expert opinion.

21 THE WITNESS: Boys have more muscle mass,
22 but girls can be thinner. Some of the top elite
23 athletes are like skeletons. So I don't know what the
24 real answer is.

1 BY ATTORNEY TRYON:

2 Q. So you don't know if boys can run faster than
3 girls as a general matter. Is that what you are saying?

4 A. True.

5 Q. At any age would that --- so you don't know
6 about any age?

7 A. I would think it would have to depend on the
8 conditioning, the training, the will, the desire.

9 Q. What about on average, have you ever looked at
10 any statistical --- let me start that over. Have you
11 ever looked at any statistical information about whether
12 or not boys are faster than girls?

13 ATTORNEY HARTNETT: Objection. Vague.

14 THE WITNESS: No, I have not.

15 BY ATTORNEY TRYON:

16 Q. And you said that you believe that since BPJ is
17 on puberty blockers, that BPJ does not have any
18 advantage over girls? Did I say your --- was that
19 accurate, what you said?

20 ATTORNEY HARTNETT: Objection. Vague.

21 THE WITNESS: I guess so.

22 BY ATTORNEY TRYON:

23 Q. Would it surprise you to know that statistically
24 an average 11-year-old biological boy is about

1 20 percent faster than an 11-year-old biological girl in
2 the mile run?

3 ATTORNEY HARTNETT: Objection. Vague,
4 lack of foundation.

5 THE WITNESS: I have no knowledge of it.

6 BY ATTORNEY TRYON:

7 Q. Would it surprise you if there were statistics
8 that said that?

9 ATTORNEY HARTNETT: Objection, asked and
10 answered. Vague and lack of foundation.

11 THE WITNESS: That depends on --- in my
12 opinion, it depends on the training.

13 BY ATTORNEY TRYON:

14 Q. And what do you base that on?

15 A. Well, you're not going to make it to the next
16 level if you don't train every day, like any sports.

17 Q. So if boys or an athlete --- let's just say the
18 top level boys and the top level girls, do you think
19 that boys should be able to switch over and compete
20 against girls in the mile run or cross-country?

21 ATTORNEY HARTNETT: Objection. Vague,
22 compound, calls for speculation and to the extent it
23 calls for a legal or an expert opinion.

24 THE WITNESS: Can you rephrase that? I'm

1 not sure I understand.

2 BY ATTORNEY TRYON:

3 Q. Sure.

4 ATTORNEY TRYON: And Counsel, if you'd
5 like, I can just give you a standing objection to all of
6 my questions on this subject. Would you like to do
7 that?

8 ATTORNEY HARTNETT: No. There are
9 different objections depending on the question.

10 BY ATTORNEY TRYON:

11 Q. Let me move to another question. Do you think
12 that any boy who wants to play on a girl's team such as
13 cross-country should be allowed to do so?

14 ATTORNEY HARTNETT: Objection. Asked and
15 answered, vague, argumentative.

16 THE WITNESS: I think it would have to be
17 based on an individual --- individual case. I don't
18 think you can blanket a general race with a general
19 question.

20 BY ATTORNEY TRYON:

21 Q. So what do you think the criteria should be?

22 ATTORNEY HARTNETT: Objection. Vague,
23 calls for speculation and expert or legal opinion.

24 THE WITNESS: I'm no expert, so I don't

1 --- I couldn't say.

2 BY ATTORNEY TRYON:

3 Q. But you did express an opinion that's an
4 individual to individual case by case. So I'm just
5 asking you, in your opinion, what the basis should be.

6 ATTORNEY HARTNETT: Objection, vague,
7 calls for speculation, expert or legal opinion.

8 THE WITNESS: I'm not an expert. I don't
9 --- I don't think I can answer that.

10 BY ATTORNEY TRYON:

11 Q. So would you object to if one of the boys on the
12 boys cross-country team suddenly switched over and
13 started racing against BPJ?

14 ATTORNEY HARTNETT: Objection, calls for
15 speculation, vague, to the extent it calls for legal or
16 expert opinion.

17 THE WITNESS: Would have to be considered
18 on a case-by-case scenario. I mean, I don't know what
19 the scenario is. I don't know ---.

20 BY ATTORNEY TRYON:

21 Q. So if a boy that was on the cross-country team
22 last year wanted to switchover and participate in a
23 cross-country team this year and compete against BPJ,
24 would you have any objection to that?

1 ATTORNEY HARTNETT: Objection. Asked and
2 answered and the same objections that I had previously
3 and vague.

4 THE WITNESS: And I would answer no.

5 BY ATTORNEY TRYON:

6 Q. You have no objections?

7 A. I have no objections.

8 Q. So if a boy wanted to do that, they would not
9 need to even identify as being a female, it would just
10 be okay with you?

11 ATTORNEY HARTNETT: Objection,
12 argumentative. Calls for speculation.

13 THE WITNESS: Like I say, it would have
14 to be a case-by-case scenario. I can only answer for my
15 family and myself. I can't answer for anyone else.

16 BY ATTORNEY TRYON:

17 Q. So right now, after cross-country, do the kids
18 use any locker rooms?

19 ATTORNEY HARTNETT: Objection. Vague,
20 calls for speculation.

21 THE WITNESS: She gets dressed before and
22 after. She does not use a locker room.

23 BY ATTORNEY TRYON:

24 Q. Are you referring to BPJ?

1 A. Yes.

2 Q. Is there a reason that BPJ doesn't use a locker
3 room?

4 ATTORNEY HARTNETT: Objection. Calls for
5 speculation.

6 THE WITNESS: People don't agree with it.

7 BY ATTORNEY TRYON:

8 Q. I'm sorry. They don't agree --- people don't
9 agree with what?

10 A. With her using the female facilities, so she has
11 her own --- like in school, she has her own separate
12 bathroom she uses.

13 Q. I'm sorry to interrupt you. Go ahead.

14 A. That's all right.

15 Q. What people disagree with it?

16 A. Well, certain people in society that just don't
17 have the same views.

18 Q. Do you know of any of those people?

19 A. Not personally, no. I only hear of them.

20 Q. And do you think BPJ should use the girls locker
21 room?

22 ATTORNEY HARTNETT: Objection. Vague, to
23 the extent that you are calling for a legal or expert
24 opinion.

1 THE WITNESS: Do I feel she needs to use
2 the female facilities?

3 BY ATTORNEY TRYON:

4 Q. Well, my word was do you think that BPJ should
5 use the female facilities?

6 ATTORNEY HARTNETT: Same objections.

7 THE WITNESS: No, because they are
8 uncomfortable and that is why she has her own facilities
9 that she uses.

10 BY ATTORNEY TRYON:

11 Q. Okay.

12 So other people are uncomfortable or because
13 BPJ is uncomfortable or both?

14 ATTORNEY HARTNETT: Objection. Vague,
15 compound.

16 THE WITNESS: BPJ is not uncomfortable.
17 She is very independent and she knows what she wants.
18 She does not --- I think it's society just is not
19 accepting of it.

20 BY ATTORNEY TRYON:

21 Q. So right now BPJ would be comfortable using a
22 women's locker room after cross-country.

23 Is that right?

24 A. I ---.

1 ATTORNEY HARTNETT: Objection. Sorry
2 just objection. Vague.

3 THE WITNESS: I don't know. You would
4 have to ask her.

5 BY ATTORNEY TRYON:

6 Q. Fair enough.

7 Has she ever said anything to you about it?

8 ATTORNEY HARTNETT: Objection. Vague.

9 THE WITNESS: I'm sorry?

10 BY ATTORNEY TRYON:

11 Q. Has BPJ ever said anything to you about that
12 issue?

13 ATTORNEY HARTNETT: Same objection.

14 THE WITNESS: No, we --- the only issue
15 was in school and they gave her a separate bathroom to
16 use.

17 BY ATTORNEY TRYON:

18 Q. And that was okay with you?

19 ATTORNEY HARTNETT: Objection. Vague,
20 asked and answered.

21 THE WITNESS: Yes, because it made her
22 comfortable.

23 BY ATTORNEY TRYON:

24 Q. Can you repeat your answer?

1 A. My answer was yes, it's okay with me. I said if
2 she is comfortable with it, I'm comfortable with it.

3 Q. Okay.

4 And you said that she is comfortable with that.

5 Is that right?

6 A. Yes.

7 Q. And did she tell you that or did you just
8 ascertain that from her conduct?

9 ATTORNEY HARTNETT: Objection. Compound.

10 THE WITNESS: I don't know. You would
11 have to ask her.

12 BY ATTORNEY TRYON:

13 Q. Okay.

14 Do you know if --- so BPJ is familiar with the
15 term gender dysphoria.

16 Right?

17 ATTORNEY HARTNETT: Objection. Calls for
18 speculation.

19 BY ATTORNEY TRYON:

20 Q. Let me back up. Have you heard BPJ use the term
21 gender dysphoria?

22 A. I have not.

23 Q. Have you ever heard your wife use the term
24 gender dysphoria?

1 A. Yes, we have talked about it.

2 Q. Okay.

3 But you have not heard BPJ --- well, you
4 already answered that. Never mind.

5 Do you know how your wife first learned the
6 term gender dysphoria?

7 A. No, I don't.

8 Q. Do you know anything about when the term gender
9 dysphoria was first discussed with any doctor?

10 ATTORNEY HARTNETT: Objection. Vague.

11 THE WITNESS: No, I --- the only visit
12 that I was at was a therapist. I wasn't at any doctors'
13 visit, so I don't know what transpired during those
14 visits.

15 BY ATTORNEY TRYON:

16 Q. As far as you know, was there ever a
17 professional diagnosis of gender dysphoria for BPJ?

18 A. Can you repeat the question, please?

19 Q. As far as you know, was there ever a
20 professional diagnosis of gender dysphoria for BPJ?

21 A. I believe so, yes.

22 Q. Do you know when that was?

23 A. No, I don't know the exact date.

24 Q. Do you know who made that diagnosis?

1 A. I believe it was the doctor from Pittsburgh,
2 UPMC.

3 Q. Do you remember who that is?

4 A. At the moment, right now, I couldn't tell you.
5 If you said the name, I would say, yeah, that's him.

6 Q. Would it be Dr. Montano?

7 A. Yup.

8 Q. Do you know how he made that diagnosis?

9 ATTORNEY HARTNETT: Objection. Vague,
10 also speculation.

11 THE WITNESS: He is the doctor. I guess
12 you would have to ask him.

13 BY ATTORNEY TRYON:

14 Q. Well, fair enough. On the other hand, do you
15 have any information on how he made that diagnosis?

16 A. No. I was not there.

17 Q. Have you ever talked to Dr. Montano about that
18 diagnosis?

19 A. I've never spoken with Dr. Montano.

20 Q. Are you aware of what the treatment is for
21 gender dysphoria?

22 A. Yes.

23 ATTORNEY HARTNETT: Objection.

24 BY ATTORNEY TRYON:

1 Q. And how are you aware of it, of the possible
2 treatments?

3 A. Conferring with my wife.

4 Q. And so is the extent of your knowledge on how to
5 treat gender dysphoria, is that all based on what your
6 wife has told you?

7 A. I guess, yes.

8 Q. Have you done any investigation on that?

9 A. I haven't had time to.

10 Q. So the answer would be, no, you have not done
11 any independent investigation of that?

12 ATTORNEY HARTNETT: Objection. Asked and
13 answered.

14 THE WITNESS: No, just speaking with my
15 wife, who is well educated.

16 BY ATTORNEY TRYON:

17 Q. Fair enough.

18 Now, you said you are always working. Tell me
19 what that means when you say you are too busy for all
20 these things because you're always working.

21 ATTORNEY HARTNETT: Objection.
22 Mischaracterizes his testimony.

23 THE WITNESS: Well, I work 12-hour shifts
24 and sometimes it's three days a week, sometimes it's

1 four, sometimes it's five.

2 BY ATTORNEY TRYON:

3 Q. Were you told that there are multiple possible
4 treatments for gender dysphoria?

5 ATTORNEY HARTNETT: Objection.
6 Foundation.

7 THE WITNESS: No.

8 BY ATTORNEY TRYON:

9 Q. And so as far as you know, what is the treatment
10 --- let me start that over again. Is it your
11 understanding there is only one possible treatment for
12 gender dysphoria?

13 ATTORNEY HARTNETT: Objection. Vague.

14 THE WITNESS: That's not my field of
15 expertise. I don't know.

16 BY ATTORNEY TRYON:

17 Q. I'm asking you if you understand.

18 A. Do I understand?

19 Q. Let me try this a different way. Do you
20 understand if there are treatments for gender dysphoria?

21 A. Yes.

22 Q. And what are those treatments, as you understand
23 it?

24 ATTORNEY HARTNETT: Objection. Vague.

1 THE WITNESS: Counseling, medication,
2 therapy, different therapies.

3 BY ATTORNEY TRYON:

4 Q. Do you know what kind of therapy?

5 A. No, I don't.

6 Q. Have you ever been told that something called
7 watchful waiting and waiting to see if a child desists
8 from gender dysphoria?

9 ATTORNEY HARTNETT: Objection, vague,
10 lack of foundation.

11 THE WITNESS: I'm not familiar with it.

12 BY ATTORNEY TRYON:

13 Q. So is this the first time that you are hearing
14 of that concept?

15 ATTORNEY HARTNETT: Objection. Vague,
16 lack of foundation.

17 THE WITNESS: Yes.

18 BY ATTORNEY TRYON:

19 Q. Dr. Montano said --- did a full assessment of
20 BPJ. And as I would understand it, when you do an
21 assessment you also do a written assessment. And so my
22 question for you is have you ever seen an assessment,
23 something you would call an assessment of BPJ with
24 respect to her gender --- with respect to BPJ's gender

1 dysphoria?

2 ATTORNEY HARTNETT: Objection. Vague and
3 foundation to the preamble to the question.

4 THE WITNESS: I saw the papers that you
5 had on the screen. But other than that, no.

6 BY ATTORNEY TRYON:

7 Q. Have you ever heard of the WPATH standards?

8 A. I'm sorry. Repeat that.

9 Q. Have you ever heard of the WPATH standards.
10 WPATH is an organization and they have certain standards
11 that they go by for gender dysphoria, for example.

12 A. No, sir, I've never heard of it.

13 Q. You mentioned that you --- strike that.
14 You mentioned that BPJ went up to Pittsburgh to
15 see Dr. Montano.

16 Is that right?

17 A. Yes, according to my wife.

18 Q. Okay.
19 Do you know why your wife took BPJ to
20 Pittsburgh as opposed to someplace in West Virginia?

21 A. No, I don't.

22 ATTORNEY TRYON: This would be a
23 convenient time to go to lunch. And I don't think I
24 will be as long with this witness as I anticipated.

1 Let's go off the record for just a moment.

2 VIDEOGRAPHER: Going off the record. The
3 current time is 1:03:00 p.m.

4 OFF VIDEOTAPE

5 ---

6 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

7 ---

8 ON VIDEOTAPE

9 VIDEOGRAPHER: Back on the record at
10 1:04:00 p.m.

11 ATTORNEY TRYON: So let's take a half an
12 hour approximately to go to lunch and come back at about
13 1:35. And just pursuant to our prior discussion with
14 Counsel, Mr. Pepper, I agree you are permitted to talk
15 to your Counsel, but I would want to be clear what I'm
16 agreeing to is that things unrelated to your testimony
17 today are appropriate, but as far as them discussing any
18 questions about --- discussing any questions that I have
19 or may have, that it is my belief that that would be
20 improper and I would object to that. Otherwise, I have
21 no objection to you talking to your counsel about just
22 general issues.

23 ATTORNEY HARTNETT: And I would just,
24 again, direct counsel to the Pajak v. Under Armour case,

1 which I sketches out a different framework of what's
2 appropriate. And as I made clear before and will
3 continue to make clear, we are not going to coach the
4 witness on any topic nor are we going to reveal the
5 contents of any of the exhibits that you provided before
6 the deposition because we --- we'll let you use those as
7 you use them, but I am allowed to confer with my client
8 about substance, including potentially a Redirect
9 Examination if one is necessary.

10 ATTORNEY TRYON: Can you give me a
11 citation on that, please?

12 ATTORNEY HARTNETT: Yeah. It's Pajak v.
13 Under Armour. I have a Westlaw cite, which is 2020
14 Westlaw 6803844. And it's from the Northern District of
15 West Virginia. It's the Civil Action No. 119-CV-160.

16 ATTORNEY TRYON: Do you have a page
17 number?

18 ATTORNEY HARTNETT: It is a four-page
19 Westlaw Decision.

20 ATTORNEY TRYON: Okay. All right.

21 ATTORNEY HARTNETT: But just to be very
22 clear, I mean, right now I think we are all going to
23 take lunch and we're not having a discussion. We are
24 not discussing substance right now, but feel free to

1 read that Decision and we can regroup further as
2 needed.

3 ATTORNEY TRYON: Thank you. Okay. We
4 can go off the record now. See you back in a half an
5 hour.

6 ATTORNEY HARTNETT: Thank you.

7 VIDEOGRAPHER: Going off the record. The
8 current time reads 1:06:00 p.m.

9 OFF VIDEOTAPE

10 ---

11 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

12 ---

13 ON VIDEOTAPE

14 VIDEOGRAPHER: We are back on the record.
15 The current time reads 1:44 p.m.

16 BY ATTORNEY TRYON:

17 Q. Mr. Pepper, let me try and bring you back up
18 here. So at lunchtime did you have an opportunity to
19 talk to your counsel at all?

20 A. Yes.

21 Q. Any discussion about the documents or about your
22 testimony?

23 A. No.

24 ATTORNEY HARTNETT: Objection. Okay.

1 Objection to the extent the authority I sent you,
2 including the EBA Model Rules that are cited therein,
3 say that our conversations are protected by
4 attorney/client privilege.

5 ATTORNEY TRYON: Okay.

6 BY ATTORNEY TRYON:

7 Q. Let me turn your attention to Exhibit 3.

8 ---

9 (Whereupon, Exhibit 3, WVU Medical
10 Records, was marked for identification.)

11 ---

12 BY ATTORNEY TRYON:

13 Q. Okay.

14 This is Exhibit 3. This is a document, a
15 medical record of Bridgeport Pediatrics. I will just go
16 through it very quickly, Mr. Pepper, so you can see what
17 it is.

18 A. Uh-huh (yes).

19 ATTORNEY HARTNETT: It looks like this is
20 a ten-page medical record.

21 ATTORNEY TRYON: Right. I am just seeing
22 if there are other pages, so I will scroll down. Okay.
23 It goes up through there.

24 BY ATTORNEY TRYON:

1 Q. If there is any page you want to look at before
2 I ask you questions, let me know, Mr. Pepper.

3 A. Okay.

4 Q. I'm trying to go back up to the top now. I went
5 too far. Sorry. It's something around here --- the
6 screen --- so we can see it better. Here we go. Okay.
7 So this is a visit to --- of BPJ to Bridgeport
8 Pediatrics. [REDACTED]

9 [REDACTED]
10 [REDACTED] I

11 presume that this was a visit that you were in
12 attendance at.

13 Is that correct?

14 ATTORNEY HARTNETT: Objection to the
15 foundation of the birth name still being used.

16 THE WITNESS: I guess so. I'm her
17 father.

18 BY ATTORNEY TRYON:

19 Q. Okay.

20 And do you remember this visit?

21 A. Vaguely. It's been three years ago.

22 Q. Right. It was 2018.

23 Do you remember the purpose of the visit?

24 [REDACTED]

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[REDACTED]

Q. Okay.

Any other --- do you remember anything else about it?

A. No, I don't.

Q. Let me ask you specifically, do you remember any discussion about BPJ's self identification as a female?

A. Repeat that again. I'm not sure I understand what you meant.

Q. Sure. When you visited --- so the doctor here is Bradley Mitchell.

Do you remember him?

A. Yes.

Q. And do you remember in your discussion with Dr. Mitchell if there was any discussion about BPJ's self identification as a female?

A. I don't remember. That's been three years ago. I don't remember that.

Q. Do you remember if BPJ was dressed as a female that day?

A. No, I don't remember.

Q. Do you know if when you introduced BPJ to the doctor what name he used on that day?

A. I'm having trouble hearing you. Say it again,

1 please.

2 Q. Sure. I'll try again. Do you remember what
3 name was used when you introduced BPJ to the doctor that
4 day, what first name?

5 A. I don't. No, sir, I don't.

6 Q. So you don't remember one way or the other if it
7 was BPJ's birth name or the name B [REDACTED], is that a fair
8 statement?

9 A. Yes, I don't recall.

10 Q. Do you remember any diagnosis or anything else
11 from that visit?

12 A. No, I do not.

13 Q. Since it was a well care visit, according to
14 what this has, is there any reason why you would not
15 have brought up to the doctor any concerns you might
16 have about BPJ's identifying as a female and any
17 problems that BPJ was having related to that?

18 ATTORNEY HARTNETT: Objection. Vague.
19 Calls for speculation.

20 THE WITNESS: I don't recall. It's been
21 too long. Too much has transpired.

22 BY ATTORNEY TRYON:

23 Q. Let me go over some doctors' names and see if
24 you recognize them. Amanda Pennington?

1 A. Sounds familiar, but I don't --- I don't
2 remember where she was located.

3 Q. Okay.

4 How about Dr. Montano?

5 A. Montano is in Pittsburgh.

6 Q. Dr. Semashwar?

7 A. I don't have a clue.

8 Q. Mr. Bunner?

9 A. Morgantown.

10 Q. And who is Mr. Bunner?

11 A. I believe a therapist.

12 Q. And refresh my memory, have you had some
13 discussions with Mr. Bunner?

14 A. Very vague before and after her session, the
15 session that I was at.

16 Q. Doctor Bhutt, B-H-U-T-T?

17 A. Uh-uh (no). No, I don't.

18 Q. Dr. Kidd?

19 A. Spell it?

20 Q. K-I-D-D.

21 A. No, I don't.

22 Q. Any other doctors that have treated BPJ that you
23 are aware of?

24 A. No, sir, not to my knowledge.

1 ATTORNEY TRYON: Okay.

2 That may be all the questions that I have
3 at this time. Let me just go off screen for just a
4 moment. You can take down the exhibit. So at this time
5 I have no other questions.

6 And so I have one concern that I would
7 want to express on the record is that we are still going
8 through ongoing document and other discovery, and so to
9 the extent there's additional information or discovery
10 presented by Plaintiff, then we might need to reconvene
11 this deposition. I think it's unlikely, but I would
12 reserve the right to continue the deposition at a future
13 date in that situation.

14 ATTORNEY HARTNETT: And we would object
15 to that. We believe that --- I mean, we're not at the
16 end of the deposition because we have other potential
17 questioners, but there is no other basis for holding
18 open the deposition.

19 ATTORNEY TRYON: I would expect that you
20 would object. But that's our position, so --- that's
21 all I have for this witness at this time.

22 ATTORNEY HARTNETT: Sorry. Is there
23 something specific that you object to not having in your
24 possession right now that you need to question this

1 witness?

2 ATTORNEY TRYON: I noticed that --- one
3 moment. You have indicated in responding to
4 interrogatories from Lainey Armistead that you intend to
5 supplement responses to the Defendant's State of West
6 Virginia First Set of Discovery Requests. So depending
7 on what's in there, that may be something that we may
8 need to reconvene with this witness. And similarly, to
9 the extent that it turns out there's more doctors'
10 records that turn up, then we might need to reconvene
11 with this witness.

12 ATTORNEY HARTNETT: Sorry, what --- I
13 think we're supplementing the Armistead to simply
14 respond to what we've already produced to you. As we've
15 conveyed to you, we've already sought and produced all
16 the medical records. Yesterday you, I believe, sent a
17 follow-up email or your colleague asking some additional
18 questions, none of which indicated they were necessary
19 to resolve before today's deposition. I think the
20 testimony today makes clear that any additional medical
21 records are not something that would require holding
22 this deposition open, and so just on the record I object
23 to any notion of holding this deposition open. Now
24 would be the time to ask questions.

1 ATTORNEY TRYON: I hear you.

2 ATTORNEY HARTNETT: Okay.

3 I believe there will be additional
4 questioners now?

5 ATTORNEY TRYON: Yes. You might be
6 muted.

7 ATTORNEY GREEN: I'll go ahead and go
8 next.

9 ---

10 EXAMINATION

11 ---

12 BY ATTORNEY GREEN:

13 Q. Mr. Pepper, my name is Roberta Green. And we
14 met --- or you heard us all kind of introduce ourselves
15 at the beginning of this process. I'm an attorney here
16 on behalf of West Virginia Secondary School Activities
17 Commission, which is also WVSSAC. Do you know that
18 entity?

19 A. No.

20 Q. All right.

21 I just have a few questions for you.

22 A. Okay.

23 Q. I appreciate your willingness to respond. Do
24 you recall when you first learned about House Bill 3293?

1 A. A couple of years back my wife was talking about
2 it. Like I said, I can't give you the exact date.

3 Q. And do you recall whether at any time prior to
4 hearing about the House bill from your wife, any time
5 prior to that, you notified WVSSAC of BPJ's interest in
6 cross-country?

7 A. I didn't personally, no.

8 Q. Do you recall whether at any time prior to
9 filing the lawsuit or your family filed the lawsuit you
10 notified WVSSAC of BPJ's interest in running
11 cross-country?

12 A. I did not.

13 Q. All right.

14 And do you recall whether any time prior to
15 today, this moment, you notified WVSSAC of BPJ's
16 interest in cross-country?

17 ATTORNEY HARTNETT: Objection to
18 foundation.

19 THE WITNESS: My wife would have that
20 information. I don't --- I don't know that information.
21 I don't have that information.

22 BY ATTORNEY GREEN:

23 Q. All right.

24 And I was asking whether you personally had it.

1 Have you personally had any communications with WVSSAC?

2 A. No.

3 ATTORNEY GREEN: I don't have any other
4 questions. I appreciate your time.

5 THE WITNESS: Thank you.

6 ATTORNEY GREEN: Thank you.

7 ---

8 EXAMINATION

9 ---

10 BY ATTORNEY DENIKER:

11 Q. Mr. Pepper, my name is Susan Deniker. I am
12 counsel for the Harrison County Board of Education and
13 the Harrison County Board of Education's Superintendant
14 Dora Stutler. Thank you for your time today. We
15 appreciate it. I have a few questions for you. Have
16 you been involved in any meetings with any officials,
17 any employees of Harrison County Board of Education
18 relating to BPJ's gender identity and any accommodation
19 of her gender identity in the school system?

20 A. I have not.

21 Q. Okay.

22 Have you had a conversation with any employee
23 of the Harrison County Board of Education at anytime
24 with regard to your daughter's gender identity?

1 A. No.

2 Q. Have you had any communications with anybody
3 employed by the Harrison County Board of Education
4 regarding BPJ's participation in school sports?

5 A. No.

6 Q. I'm going to ask the court reporter to show you
7 one of the State's documents. I'll start with West
8 Virginia Exhibit 17. Mr. Pepper I believe that you saw
9 this document earlier. And we will get it pulled up,
10 but I will represent to you that it is the Gender
11 Support Plan that was done for BPJ through the school
12 system.

13 ATTORNEY DENIKER: And I'm going to ask
14 the videographer quickly, am I able to scroll down so
15 that the witness can see this document in its entirety?

16 VIDEOGRAPHER: Yes. I passed you
17 controls. All you really have to do is click and there
18 you go.

19 BY ATTORNEY DENIKER

20 Q. Mr. Pepper, I would be glad to scroll through
21 this entire document, but I want to confirm whether you
22 were at this meeting and whether you've seen this
23 document before. So I will scroll through it, but those
24 are the questions that I'm going to be asking you.

1 You'll see that this document, Mr. Pepper, on
2 the top right-hand side it says today's date,
3 August 23rd, 2019.

4 Do you see that?

5 A. Yes.

6 Q. We are at the signature page of this document,
7 which is Bates numbered BPJ 011. Is your signature on
8 this document?

9 A. No.

10 Q. Were you in attendance for this meeting?

11 A. No.

12 Q. Have you ever seen this Gender Support Plan,
13 which is dated August 23rd, 2019?

14 A. The lawyer before you had it up.

15 Q. And prior before seeing that today during your
16 deposition, have you seen this Gender Support Plan dated
17 August 23rd, 2019?

18 A. I can't say I have and I can't say that I
19 haven't. I don't recall. I may have seen it briefly,
20 but I don't --- I don't recall.

21 Q. Would you --- do you know whether you would have
22 seen this document at the time that it was created?

23 A. That I'm not sure of. Maybe after. Maybe
24 after, you know, it was all --- yes. I guess your

1 answer is yes.

2 Q. That you think that you likely saw it at the
3 time that the document was executed?

4 A. Yes, it's possible.

5 Q. Okay.

6 And I realize you don't recall whether or not
7 you've seen it, but sitting here today, do you recall
8 any concerns that you had with regard to this document?

9 A. No.

10 Q. And based upon your earlier testimony, is it
11 fair to say that you didn't reach out to anybody at
12 Norwood Elementary School or with the Harrison County
13 schools to address any concerns you had with regard to
14 the Gender Support Plan created for BPJ?

15 A. No, I didn't, but I'm sure my wife did.

16 Q. Do you know what steps specifically that she
17 took?

18 A. No, I don't. You'll have to ask her that.

19 Q. Do you know whether or not she was in agreement
20 with this Gender Support Plan dated August 23rd, 2019?

21 A. I would say by her signature that she was.

22 Q. I'm going to scroll down because the next
23 document I want to show you is marked as West Virginia
24 Exhibit 19.

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(Whereupon, Exhibit 19, Gender Support Plan, was marked for identification.)

BY ATTORNEY DENIKER:

Q. And Mr. Pepper, I'm going to ask the same questions for you. You'll see that this document says --- is also a Gender Support Plan. The date of this is May 18th, 2021?

Do you see that?

A. Yes.

Q. Okay.

And I'll scroll through this document so that you can see it as well. And Mr. Pepper, if we look at the signature page of this document, and we are on Bates number document BPJ 006, is your signature on this document?

A. No, ma'am.

Q. Did you attend this meeting?

A. No, ma'am.

Q. Do you recall whether or not you have seen this Gender Support Plan dated May 18th, 2021?

A. I can't say that I have.

Q. Sitting here today, are you aware of any

1 concerns that you had with regard to the Gender Support
2 Plans that were agreed upon between your wife and BPJ in
3 the school system?

4 A. No.

5 Q. And again, did you reach out to anybody in
6 Harrison County schools, including anybody at Bridgeport
7 Middle School, to address any questions or concerns you
8 had about the Gender Support Plan?

9 A. I did not.

10 Q. Your daughter, I understand, is in the 6th grade
11 at Bridgeport Middle School.

12 Is that correct, Mr. Pepper?

13 A. Yes, I believe so. I believe that's the first
14 year that they attend there, the 6th grade.

15 Q. And before that she attended Norwood Elementary
16 School.

17 Is that correct?

18 A. Yes.

19 Q. Did BPJ have a good experience at Norwood
20 Elementary School?

21 ATTORNEY HARTNETT: Objection, vague.

22 THE WITNESS: As far as I know.

23 BY ATTORNEY DENIKER

24 Q. Was it your understanding that --- I know you

1 were not part of these communications, but that your
2 wife and BPJ had communications with Norwood Elementary
3 School to discuss BPJ's gender identification?

4 A. Yes, my wife took care of that.

5 Q. And was it your understanding that the Board of
6 Education and the folks at Norwood Elementary School
7 satisfactorily addressed and accommodated your
8 daughter's needs there?

9 ATTORNEY HARTNETT: Objection. Vague.

10 THE WITNESS: As far as I know, but like
11 I said, my wife took care of all of that. She has all
12 of the specifics, if you will.

13 BY ATTORNEY DENIKER:

14 Q. Did you personally have any concerns with regard
15 to how BPJ was treated as a result of her gender
16 identity while she was a student at Norwood Elementary
17 School?

18 A. No, my wife took care of all of that.

19 Q. And I'm going to ask you the same thing about
20 the limited time that she's been at Bridgeport Middle
21 School. Sitting here today, do you have any concerns
22 with how the employees of the Harrison County Board of
23 Education and the folks at Bridgeport Middle School have
24 addressed your daughter and handled her needs as a

1 student based upon her gender identification?

2 ATTORNEY HARTNETT: Objection. Vague and
3 compound, but you can answer.

4 THE WITNESS: No, I have no problems.

5 BY ATTORNEY DENIKER:

6 Q. I know that you said that you haven't been part
7 of any communications with any Harrison County school
8 officials with regard to your daughter's participation
9 in school sports. It's my understanding that BPJ did
10 participate in the girls cross-country team this year in
11 6th grade.

12 Is that right, Mr. Pepper?

13 A. Yes.

14 Q. And was that a positive experience for her this
15 year?

16 A. Yes.

17 Q. And I know earlier you testified that BPJ had
18 previously participated in cheerleading. It's my
19 understanding that that cheerleading was not a school
20 affiliated activity or sport.

21 Is that accurate, Mr. Pepper?

22 A. That I don't know.

23 Q. It's also my understanding that BPJ would not
24 have had an opportunity to engage in school sports until

1 she would have gotten to middle school this year.

2 Is that consistent with your understanding?

3 ATTORNEY HARTNETT: Objection. Vague.
4 Calls for speculation.

5 THE WITNESS: I'm not aware of it.

6 BY ATTORNEY DENIKER:

7 Q. Other than running for the Bridgeport Middle
8 School girls cross-country team this fall, has your
9 daughter participated in any other school athletic
10 activities?

11 A. No.

12 Q. Mr. Pepper, are you aware of any Harrison County
13 Board of Education rule or policy that would have
14 prohibited your daughter from participating in girls
15 sports?

16 A. I believe so, I don't --- I can't quote the
17 rule, but yes.

18 Q. It's my understanding, Mr. Pepper, that your
19 daughter's litigation is challenging House Bill 3293,
20 which has been talked a little bit about today in your
21 deposition. Is that consistent with your understanding
22 of the litigation?

23 A. Yes.

24 Q. And is it your understanding that that is a

1 state law that was passed by the West Virginia
2 legislature?

3 A. I know now.

4 Q. Did you know that before today's deposition, Mr.
5 Pepper?

6 A. Yes.

7 Q. Are you --- and so I want to go back to my other
8 question and that is are you aware of any Harrison
9 County Board of Education policy or rule that would have
10 limited your --- would have limited BPJ's ability to
11 participate in girls sports through the school system?

12 ATTORNEY HARTNETT: Objection. Vague and
13 to the extent it calls for a legal conclusion.

14 THE WITNESS: Due to her biological
15 birth, yes.

16 BY ATTORNEY DENIKER:

17 Q. And what policy or rule of the Harrison County
18 Board of Education is that, Mr. Pepper?

19 A. That I don't know, but I know it's out there.

20 Q. And who told you that that was out there?

21 A. My wife did.

22 Q. And did she tell you what the nature of that
23 policy was?

24 ATTORNEY HARTNETT: Objection to the

1 extent it's calling for confidential marital
2 communications.

3 BY ATTORNEY DENIKER:

4 Q. Well, Mr. Pepper, I'm aware of the state law
5 that we're talking about today and that I believe is
6 being challenged through the litigation that has been
7 brought by BPJ. And what I want to know is, is there
8 anything that the Harrison County Board of Education did
9 as a separate body to pass a policy or a rule that would
10 have addressed participation in school sports by
11 transgendered student athletes?

12 ATTORNEY HARTNETT: Objection, vague to
13 the extent it calls for a legal conclusion and calls for
14 speculation.

15 THE WITNESS: Can you rephrase it? I'm
16 not sure I understand the gist of it.

17 BY ATTORNEY DENIKER:

18 Q. Sure. And I'm not trying to trick you.

19 ATTORNEY DENIKER: And Kathleen, I will
20 give you a continuing objection to the question.

21 BY ATTORNEY DENIKER:

22 Q. I'm just trying to see if you are aware of the
23 specific policy or rule that was passed by the Harrison
24 County Board of Education, not the West Virginia State

1 Legislature, not any other entity, but was passed by the
2 Harrison County Board of Education that relates to the
3 participation of transgender students in school
4 athletics.

5 ATTORNEY HARTNETT: Same objections.

6 THE WITNESS: And I don't know the answer
7 to that.

8 BY ATTORNEY DENIKER:

9 Q. Have you ever had any communications --- well,
10 let me strike that and ask you this question.

11 Have you ever met Superintendant Dora Stutler?

12 A. Maybe once or twice. I can't recall.

13 Q. Have you ever had any conversations with Dora
14 Stutler about BPJ's participation in school sports?

15 A. I don't recall.

16 Q. Have you ever had any communications with
17 Superintendent Stutler about BPJ's gender identity?

18 A. That I don't recall either. There's been so
19 many people out there. I don't --- I can't remember. I
20 can't recall.

21 Q. Let's talk about Principal Mazza for a minute,
22 Dave Mazza, who is the principal of Bridgeport Middle
23 School. Have you had any communications with Mr. Mazza
24 directly about BPJ's participation in school sports?

1 A. No.

2 Q. Have you had any communications with Mr. Mazza
3 about BPJ's gender identity and any issues that may
4 relate to her gender identity?

5 A. No.

6 Q. Did you have any communications with the coaches
7 of the Bridgeport Middle School cross-country team about
8 BJP's participation on the girls cross-country team?

9 A. I did not, no.

10 Q. Did you have any interactions at all with the
11 coaches of the girls cross-country team during
12 cross-country season this year?

13 A. Just to say hi and, you know, hey, how is
14 everything going. But other than that, no, no
15 specifics.

16 Q. Did you have any concerns with how BPJ was
17 treated by the cross-country coaches this last
18 cross-country season?

19 ATTORNEY HARTNETT: Objection. Vague.

20 THE WITNESS: I did not.

21 BY ATTORNEY DENIKER:

22 Q. Did BPJ express any concerns to you about her
23 treatment by the cross-country coaches at the Bridgeport
24 Middle School?

1 ATTORNEY HARTNETT: Objection, vague.

2 THE WITNESS: Not to my knowledge.

3 BY ATTORNEY DENIKER:

4 Q. Mr. Pepper, did you have any involvement with
5 any members of the West Virginia Legislature with regard
6 to the passage of House Bill 3293?

7 A. No. I don't understand the --- I don't know
8 what you're saying.

9 Q. Well, thank you for telling me that. And I
10 should have started my questioning by telling you to do
11 just that. If I ask you something that you don't
12 understand or you don't hear my question. Please ask
13 me, and I will be glad to rephrase or repeat my
14 question. So thank you, Mr. Pepper, for doing that.

15 Let me ask you maybe the question --- maybe we
16 can break it down a little bit. Did you communicate in
17 any way with any members of the West Virginia
18 Legislature when House Bill 3293 was being considered?

19 A. I don't know how to answer that. I don't know
20 what to say.

21 Q. Did you write any letters to any members of the
22 West Virginia Legislature saying that you oppose House
23 Bill 3293?

24 A. I didn't.

1 Q. Did you contact --- did you call or visit the
2 offices of any member of the West Virginia Legislature
3 to state your opposition to House Bill 3293?

4 A. No, I did not.

5 Q. Did you communicate with anybody in the West
6 Virginia Legislature in any manner with regard to House
7 Bill 3293?

8 A. No.

9 Q. Did you contact Governor Justice or anyone in
10 the Governor's Office with regard to House Bill 3293?

11 A. No. My wife took care of all of that.

12 Q. Mr. Pepper, sitting here today, do you
13 personally have any concerns with regard to how BPJ has
14 been treated by employees of Harrison County Board of
15 Education?

16 ATTORNEY HARTNETT: Objection. Vague and
17 to the extent that it calls for a legal conclusion.

18 THE WITNESS: Say it again. I'm sorry.

19 BY ATTORNEY DENIKER:

20 Q. Sure. Sitting here today, do you personally
21 have any concerns with regard to how BPJ has been
22 treated by any employee of the Harrison County Board of
23 Education?

24 ATTORNEY HARTNETT: Same objection.

1 THE WITNESS: No, I don't.

2 BY ATTORNEY MORGAN:

3 Q. Do you know --- when I say the West Virginia
4 Board of Education, do you know what that entity is?

5 A. No.

6 Q. Do you have any understanding that the West
7 Virginia Board of Education is over the county Boards of
8 Education?

9 ATTORNEY HARTNETT: Objection to the
10 extent it calls for a legal conclusion.

11 THE WITNESS: I don't have knowledge of
12 it, no.

13 BY ATTORNEY MORGAN:

14 Q. Have you had any discussions with anyone from
15 the West Virginia Board of Education at anytime?

16 A. No.

17 Q. Have you ever personally contacted the West
18 Virginia Board of Education about BPJ?

19 A. I have not, no.

20 Q. Have you ever met Superintendant Burch?

21 A. I can't recall, no.

22 Q. Do you believe you have ever had any discussions
23 with him?

24 A. No.

1 Q. Did you ever try to contact his office for any
2 reason?

3 A. I did not, no.

4 Q. Do you have any reason to believe that the West
5 Virginia Board of Education --- and I'm just asking do
6 you personally, as you sit here today, do you have any
7 reason to believe that the West Virginia Board of
8 Education or State Superintendant Burch had any
9 involvement in the passage of House Bill 3293?

10 ATTORNEY HARTNETT: Objection, compound
11 and to the extent it calls for a legal conclusion.

12 THE WITNESS: I can't answer that. I
13 don't know that answer.

14 BY ATTORNEY MORGAN:

15 Q. Well, you can't answer it. Are you saying that
16 you don't have any reason to believe that they had any
17 involvement?

18 ATTORNEY HARTNETT: Same objections.

19 THE WITNESS: I don't know. I don't know
20 the hierarchy of it all.

21 BY ATTORNEY MORGAN:

22 Q. So then would you agree with me that, as you sit
23 here today, there's nothing you can point to, yourself
24 personally as BPJ's father, that you believe that the

1 West Virginia Board of Education or State Superintendant
2 Burch was specifically involved in with regard to this
3 House Bill 3293?

4 ATTORNEY HARTNETT: Objection, compound,
5 vague and to the extent it calls for a legal conclusion.

6 ATTORNEY MORGAN: And I'll give you a
7 continuing objection, but please I'd ask that you not
8 interrupt my questions to the witness.

9 ATTORNEY HARTNETT: I'm not interrupting
10 your questions. I'm giving question-specific
11 objections. I have one additional objection to the
12 prior question.

13 ATTORNEY MORGAN: Okay.

14 And I'm going to say that, honestly,
15 these objections are inappropriate. You're only to be
16 --- there are not to be any speaking objections. You
17 are giving direction to the witness, so I'm going to ask
18 you not to do that.

19 ATTORNEY HARTNETT: I object to that
20 that. I'm sorry. That's a pretty serious charge.
21 They're not inappropriate. Your question was compound.
22 It asked about two different entities. Your question
23 was potentially calling for a legal conclusion. All my
24 objections are well founded and I stated them simply.

1 I'm allowed to object to each question. You can re-ask
2 him and I will say same objections and he can answer.

3 ATTORNEY MORGAN: And I will give you a
4 continuing objection.

5 BY ATTORNEY MORGAN:

6 Q. Mr. Pepper, is there --- given that you've told
7 me that you have --- that you can't think of anything
8 here today, is that fair to say that you don't have
9 anything specific that you can point to that you believe
10 that the West Virginia Board of Education was involved
11 in the passage of the House Bill 3293?

12 ATTORNEY HARTNETT: Same objections and
13 misstates his testimony.

14 THE WITNESS: Like I said, I don't know
15 how --- I don't know the hierarchy. I don't know the
16 chain of command, if they were involved or not. I
17 cannot say personally, no.

18 BY ATTORNEY MORGAN:

19 Q. And so ---.

20 A. I do not know.

21 Q. I'm sorry to interrupt you. So then there's
22 nothing that you can point to specifically.

23 Is that correct?

24 ATTORNEY HARTNETT: Same objections and

1 asked and answered.

2 THE WITNESS: I can't point to anything.
3 I don't know if they created that bill or not. That's
4 --- that's not my cup of tea, you know. I'm not a
5 lawyer.

6 BY ATTORNEY MORGAN:

7 Q. Do you personally have any concerns as to how
8 BPJ has been treated by the West Virginia Board of
9 Education?

10 ATTORNEY HARTNETT: Objection. Vague and
11 to the extent it calls for a legal conclusion. You can
12 answer.

13 THE WITNESS: I have --- I personally
14 don't have any problems, no.

15 BY ATTORNEY MORGAN:

16 Q. Okay.

17 Is that the same for State Superintendant
18 Burch?

19 ATTORNEY HARTNETT: Same objection.

20 THE WITNESS: I have no problems with
21 him. But like I said, I don't know if they were
22 involved with creating that law or passing that bill. I
23 don't know. That's --- that's beyond my realm.

24 BY ATTORNEY MORGAN:

1 Q. And let me clarify. My question as to State
2 Superintendant Burch was do you have any concerns about
3 how BPJ was treated by State Superintendant Burch?

4 ATTORNEY HARTNETT: Same objections.

5 THE WITNESS: I don't have anything
6 specific.

7 BY ATTORNEY MORGAN:

8 Q. We talked a lot about today this House Bill 3293
9 and I know you were asked some questions about the
10 definitions. Let me ask you, do you ever recall a time
11 you actually sitting down and reading the full House
12 Bill 3293?

13 A. No.

14 ATTORNEY MORGAN: All right. Thank you.
15 Those are all the questions I have for you.

16 THE WITNESS: Thank you.

17 ---

18 EXAMINATION

19 ---

20 BY ATTORNEY DUCAR:

21 Q. Good afternoon, Mr. Pepper. I'm Timothy Ducar
22 and I represent Lainey Armistead. When did BPJ start
23 showing an interest in athletics?

24 A. I can't recall that.

1 Q. Can you estimate?

2 A. What athlete --- what specific entity are we
3 speaking of?

4 Q. Any of them?

5 A. She was interested in sports from a very young
6 age. All my children were.

7 Q. Can you estimate how old that was?

8 A. Two, three, four.

9 Q. And what was she interested in?

10 A. Playing ball.

11 Q. Did BPJ do anything else that evidenced her
12 interest in athletics at a very early age?

13 ATTORNEY HARTNETT: Objection. Vague.

14 THE WITNESS: Just normal kid, likes to
15 run around like any other kid.

16 BY ATTORNEY DUCAR:

17 Q. Did you play ball with BPJ?

18 A. Sure.

19 Q. What type of ball would you play with when you
20 played with BPJ, like what type of sport?

21 A. Passing the ball, just throwing the ball.

22 Q. And can you estimate when --- when that started?

23 A. Well, we do that with my kids at a young age. I
24 was very involved with my children from a young age.

1 Q. From a young age did you encourage BPJ to
2 participate in organized sports?

3 A. No.

4 Q. From a young age did you encourage BPJ to
5 participate in any sports?

6 A. No.

7 Q. So BPJ just decided to like sports on BPJ's own.
8 Is that a fair statement?

9 ATTORNEY HARTNETT: Objection to the
10 extent it calls for speculation.

11 ATTORNEY DUCAR: I'm actually asking what
12 his experience is. I'm not really asking him to
13 speculate about anything.

14 ATTORNEY HARTNETT: You asked whether BPJ
15 decided to like sports on BPJ's own, which is asking for
16 BPJ's opinion, but you can ask the question.

17 BY ATTORNEY DUCAR:

18 Q. Okay.

19 A. Sure. All my kids like sports because I like
20 sports. They kind of follow what their mother and
21 father do.

22 Q. And did you encourage them to participate in
23 sports, all of your children?

24 ATTORNEY HARTNETT: Objection.

1 THE WITNESS: If they wanted to.

2 BY ATTORNEY DUCAR:

3 Q. What was the first sport BPJ competed in?

4 ATTORNEY HARTNETT: Objection. Vague.

5 THE WITNESS: Cheerleading.

6 BY ATTORNEY DUCAR:

7 Q. And when was that?

8 A. Three years ago, yeah, 2016. Maybe five, six
9 years ago. I'm not sure of the exact date.

10 Q. BPJ participated in cheerleading first. What
11 other organized sports has BPJ participated in?

12 A. Cross-country.

13 Q. Anything else?

14 A. No.

15 Q. Has BPJ ever participated in a boys
16 cross-country team?

17 A. No.

18 Q. Has BPJ ever participated in a boys track and
19 field team?

20 A. No.

21 Q. Has BPJ ever participated in any organized
22 sports that was a boys team?

23 A. No.

24 Q. Who decided that BPJ was going to try out for

1 the track team at her current school?

2 A. She did, of course.

3 Q. Did you have a hand in that?

4 ATTORNEY HARTNETT: Objection. Vague.

5 THE WITNESS: No. I'm sure my wife did.

6 BY ATTORNEY DUCAR:

7 Q. So I guess to clarify, you did not assist BPJ in
8 deciding to try out for the track and field team.

9 Is that a fair statement?

10 A. Yes.

11 Q. We are here today because BPJ, in part, wants to
12 be a different gender than her biological birth gender.
13 How did you become aware of BPJ's interest in becoming a
14 different gender?

15 ATTORNEY HARTNETT: Objection to the
16 preamble to your question and to the term your --- as
17 vague to the terms you're using.

18 THE WITNESS: Through my wife and through

19 B [REDACTED]

20 BY ATTORNEY DUCAR:

21 Q. When did that first happen?

22 ATTORNEY HARTNETT: Objection. Vague.

23 THE WITNESS: Years ago.

24 BY ATTORNEY DUCAR:

1 Q. Can you estimate how many years ago it was that
2 either your wife or BPJ gave you an indication that BPJ
3 was interested in becoming a different gender?

4 ATTORNEY HARTNETT: Objection.
5 Foundation and vague.

6 THE WITNESS: Approximately seven, eight
7 years ago.

8 BY ATTORNEY DUCAR:

9 Q. During this seven or eight years was BPJ
10 consistent in desiring to change BPJ's gender?

11 ATTORNEY HARTNETT: Objection to the
12 foundation and the terms and their vagueness.

13 THE WITNESS: Yes, 100 percent.

14 BY ATTORNEY DUCAR:

15 Q. Who was the first person who talked to you about
16 BPJ's desire to change her gender?

17 ATTORNEY HARTNETT: Objection to the
18 terminology being used as vague and lacking foundation.

19 THE WITNESS: I would say my wife.

20 BY ATTORNEY DUCAR:

21 Q. When was that conversation?

22 A. It's been too many years. I couldn't tell you.

23 Q. Can you estimate?

24 A. Seven, eight, I don't know.

1 Q. That conversation was between you and your wife.
2 Is that what you testified?

3 A. Yes.

4 Q. Can you estimate how many times you have talked
5 to your wife about BPJ's desire to change her gender?

6 ATTORNEY HARTNETT: Objection to the
7 terminology you're using in terms of vagueness and
8 foundation. Also we have asserted the marital
9 communications privilege. To the extent you're asking
10 about generalized topics or numbers of conversations,
11 that's one thing, but I've instructed the witness not to
12 divulge the specifics of confidential conversations.

13 ATTORNEY DUCAR: And Ms. Hartnett, I
14 didn't ask him that. And why don't you explain to me
15 what's vague about my question so ---.

16 ATTORNEY HARTNETT: You keep saying the
17 words changed her gender. That's not a recognized
18 concept. That's not an appropriate terminology. That's
19 what I find to be vague.

20 ATTORNEY DUCAR: Do you have a different
21 suggestion on how I would explain what I'm trying to
22 explain, which is somebody who wants to change their
23 gender?

24 ATTORNEY HARTNETT: There's various

1 terminology that we can --- I'm happy to discuss it off
2 the record or on the record, but transition would be ---
3 socially transitioned would be one word that you could
4 use.

5 ATTORNEY DUCAR: That would be great.
6 Thank you.

7 ATTORNEY HARTNETT: Thank you for asking.

8 BY ATTORNEY DUCAR:

9 Q. Over the years can you estimate how many times
10 you have talked to your wife about BPJ's desire to
11 socially transition to a female?

12 A. I can't recall. I don't know.

13 Q. Would you estimate it to be two, five, more,
14 less?

15 A. Probably more.

16 Q. Can you give me any idea?

17 A. No. It had been an ongoing thing.

18 Q. When was the first time that you actually
19 remember talking to BPJ herself about her desire to
20 socially transition?

21 A. I couldn't tell you.

22 Q. Can you estimate?

23 A. Seven, eight years ago.

24 Q. Do you recall what was talked about?

1 A. I do not.

2 Q. Can you estimate how many times you have talked
3 to BPJ in the last seven or eight years with regards to
4 PBJ's desire to socially transition?

5 A. I would say less than a handful because she
6 speaks mainly with her mom.

7 Q. Well, how do you define less than a handful?

8 A. Five.

9 Q. Earlier HB 3293 was talked about when the State
10 was questioning you. One of the provisions indicates
11 that sports teams for biological girls are not open to
12 biological males and you were asked if that was fair and
13 your answer was I guess. Why do you think that's fair?

14 ATTORNEY HARTNETT: Objection. Misstates
15 his testimony and the same objections that I earlier
16 made.

17 THE WITNESS: I'm not sure I understand.
18 I'm not sure I understand the question of what's fair.

19 BY ATTORNEY DUCAR:

20 Q. Do you have a basic idea of what is fair, what's
21 right and wrong?

22 ATTORNEY HARTNETT: Objection. Compound.

23 ATTORNEY DUCAR: I'll withdraw that
24 question.

1 BY ATTORNEY DUCAR:

2 Q. What I'm trying to ask is you had earlier
3 testified that you thought or at least you guessed that
4 it was fair that biological males do not compete on
5 biological girls sports teams. And I wanted to know ---
6 tell me why you think that's fair.

7 ATTORNEY HARTNETT: Objection, misstates
8 his testimony and the earlier objections.

9 THE WITNESS: Females have tried out for
10 male teams. Football. I don't know.

11 BY ATTORNEY DUCAR:

12 Q. I'm talking about males on female teams.

13 A. I'm not sure I understand the definition of
14 male.

15 Q. Well, I guess my question is do you think it's
16 fair that a biological male can compete on a biological
17 girl's sports team?

18 ATTORNEY HARTNETT: Same objections and
19 asked and answered.

20 BY ATTORNEY DUCAR:

21 Q. I believe you said that you think that it is
22 fair that they not be able to do so and I wanted to know
23 why you think that's fair.

24 ATTORNEY HARTNETT: Same objections.

1 THE WITNESS: It's a case by case --- my
2 opinion is it's a case-by-case decision.

3 BY ATTORNEY DUCAR:

4 Q. Can you give me an example of when it would be
5 fair for a biological male to compete on a biological
6 female's sports team?

7 ATTORNEY HARTNETT: Objection to the
8 terminology as vague and lacking, foundation, also calls
9 for speculation and to the extent you're calling for a
10 legal conclusion.

11 THE WITNESS: Well, in the case of B [REDACTED],
12 she has not gone through puberty, so I guess that would
13 be a case.

14 BY ATTORNEY DUCAR:

15 Q. Okay.

16 Puberty. Are there any other factors that you
17 can put your hands on or put your finger on?

18 ATTORNEY HARTNETT: Objection. Sorry,
19 vague to the extent it calls for a legal or expert
20 opinion.

21 THE WITNESS: I'm not a medical doctor.
22 I can't answer that. That's not my expertise.

23 BY ATTORNEY DUCAR:

24 Q. Well, that's true. I'm not asking for your

1 expertise or for medical expertise. Earlier you said
2 that BPJ had female mannerisms, including like ---
3 including talking like a female. Can you describe what
4 it means to talk like a female?

5 ATTORNEY HARTNETT: Objection. I would
6 just note the prior testimony speaks for itself, but you
7 can answer if you can.

8 THE WITNESS: I don't know that I can.

9 BY ATTORNEY DUCAR:

10 Q. Would it be the tone of voice? Would it be the
11 type of words used? Would it be actions during the
12 discussion? Can you narrow it down at all?

13 ATTORNEY HARTNETT: Objection, compound,
14 calls for speculation.

15 THE WITNESS: I don't know how to answer
16 that.

17 BY ATTORNEY DUCAR:

18 Q. You also said that BPJ acted like a female
19 because she did --- BPJ did things that girls like to
20 do. What are things that girls like to do?

21 ATTORNEY HARTNETT: I just would object
22 to the extent that it doesn't fully capture his
23 testimony, but --- and vague.

24 THE WITNESS: Paint her fingernails.

1 BY ATTORNEY DUCAR:

2 Q. Anything else?

3 A. Put her hair up. I mean I don't know, things of
4 that nature.

5 Q. When was the first time she painted her
6 fingernails?

7 A. I don't recall.

8 Q. When was the first time BPJ put BPJ's hair up?

9 A. I don't know.

10 Q. Can you estimate?

11 A. No, I can't. I can't even estimate. I don't
12 know.

13 Q. Earlier you described female attire as including
14 dresses, female shoes, jewelry, makeup. In your view,
15 can an individual be female without liking female shoes,
16 jewelry or makeup?

17 ATTORNEY HARTNETT: I would just object
18 --- sorry, just to the extent that the record speaks for
19 itself on his full prior testimony, but you can answer.

20 THE WITNESS: I guess so.

21 BY ATTORNEY DUCAR:

22 Q. Earlier you testified that you considered BPJ to
23 be male when BPJ was born. Why?

24 ATTORNEY HARTNETT: Objection. Misstates

1 the testimony.

2 THE WITNESS: Well, that is what the
3 doctor said.

4 BY ATTORNEY DUCAR:

5 Q. Is there any other reason?

6 ATTORNEY HARTNETT: Same objection.

7 THE WITNESS: No.

8 BY ATTORNEY DUCAR:

9 Q. It didn't have anything to do with the genitalia
10 of the baby?

11 ATTORNEY HARTNETT: Objection.

12 THE WITNESS: Well, that's how they
13 determine, I guess.

14 BY ATTORNEY DUCAR:

15 Q. Earlier you testified that being a male means
16 being President of the United States or head of your
17 household. Does being male have anything to do with the
18 body that you're born with?

19 ATTORNEY HARTNETT: Objection, misstates
20 his testimony and to the extent it's seeking any expert
21 or legal opinion.

22 THE WITNESS: I guess.

23 BY ATTORNEY DUCAR:

24 Q. I'm sorry. I missed your answer?

1 A. I said, yes, I guess, but I'm no expert.

2 Q. When did BPJ start wearing girls clothing at
3 home?

4 A. I couldn't give you a year.

5 Q. Did BPJ ask anybody prior to beginning to dress
6 up in women's clothing?

7 ATTORNEY HARTNETT: Objection. Vague.
8 Calls for speculation.

9 THE WITNESS: My wife could give you a
10 better answer on that. I don't know.

11 BY ATTORNEY DUCAR:

12 Q. When did BPJ start presenting as a girl in other
13 ways at home?

14 ATTORNEY HARTNETT: Objection. Vague.

15 THE WITNESS: Six, seven, eight years. I
16 really don't know.

17 BY ATTORNEY DUCAR:

18 Q. Do you know if BPJ received any encouragement to
19 do that from somebody?

20 ATTORNEY HARTNETT: Objection, vague.

21 THE WITNESS: No, I don't know the answer
22 to that.

23 BY ATTORNEY DUCAR:

24 Q. Has BPJ consistently presented as a girl at home

1 since BPJ first began doing so?

2 A. Yes.

3 Q. When did BPJ start wearing girl's clothing at
4 school?

5 A. I can't --- I couldn't tell you. My wife could
6 tell you.

7 Q. Did BPJ ask you about wearing girl's clothing at
8 school prior to doing so?

9 A. No.

10 Q. Did it surprise you that BPJ began wearing
11 women's clothing or girl's clothing in school without
12 asking you?

13 ATTORNEY HARTNETT: Objection.
14 Argumentative.

15 THE WITNESS: At first maybe, but that
16 was her choice.

17 BY ATTORNEY DUCAR:

18 Q. Do you know if BPJ asked your wife if BPJ could
19 wear girl's clothing to school prior to doing so?

20 A. I'm sure she did, but I don't know personally.

21 Q. Do you know whether BPJ has ever asked people at
22 school to refer to her as a female or to use the
23 pronouns she or her?

24 A. Yes.

1 Q. Do you know who BPJ asked?

2 A. I believe it was the principal and also the
3 counselors there.

4 Q. Of what school?

5 A. Norwood Elementary.

6 Q. Anybody else?

7 A. Not to my knowledge, no.

8 Q. Has BPJ asked her friends at school to refer to
9 her as a female or to use pronouns she or her?

10 A. You would have to ask her that. I don't know.

11 Q. When did BPJ first start presenting herself as a
12 girl at school?

13 A. I don't know personally. That would be a good
14 question to ask my wife.

15 Q. After BPJ first started presenting as a girl at
16 school, has she done so consistently since then?

17 A. I'm sorry. Say it again, please, the question.

18 Q. After BPJ first presented as a girl at school,
19 has she consistently done so since then?

20 A. Yes.

21 Q. How do you feel about BPJ's transition?

22 A. I support her 100 percent.

23 ATTORNEY HARTNETT: Objection.

24 THE WITNESS: My love for her is

1 unconditional.

2 BY ATTORNEY DUCAR:

3 Q. Do you think BPJ's desire to transition is
4 permanent?

5 ATTORNEY HARTNETT: Objection to the
6 extent that it calls for any kind of expert opinion.

7 THE WITNESS: I believe so, but you would
8 be better off to ask her.

9 BY ATTORNEY DUCAR:

10 Q. Has BPJ's desire to transition caused any stress
11 for you?

12 A. In the beginning maybe a little.

13 Q. Has BPJ's desire to transition caused any stress
14 upon anybody else in your family?

15 A. Not that I know of.

16 Q. Does that also include BPJ?

17 A. Not quite sure --- I'm not following. Say that
18 again. Including BPJ how?

19 Q. Do you think BPJ's desire to transition is
20 causing BPJ anxiety?

21 ATTORNEY HARTNETT: Objection. Vague,
22 calls for speculation.

23 THE WITNESS: It is possible, but I'm no
24 --- I'm no expert in that field. I don't know. I'm not

1 a doctor.

2 BY ATTORNEY DUCAR:

3 Q. You haven't talked to BPJ about anxiety issues.

4 Correct?

5 A. That's correct.

6 Q. Has the publicity that has come with this
7 lawsuit caused any stressors within your family?

8 ATTORNEY HARTNETT: Objection, vague.

9 THE WITNESS: No.

10 BY ATTORNEY DUCAR:

11 Q. Does this lawsuit cause any stressors to the
12 people within your family?

13 ATTORNEY HARTNETT: Same objection.

14 THE WITNESS: Sure. Talking to
15 strangers all day long, absolutely.

16 BY ATTORNEY DUCAR:

17 Q. So depositions are stressful. You just
18 indicated this deposition is stressful. Is this lawsuit
19 stressful on anyone in your family other than the fact
20 that everyone's deposition has to be taken?

21 ATTORNEY HARTNETT: Objection, misstates
22 the testimony. Vague.

23 THE WITNESS: I can only answer for
24 myself.

1 BY ATTORNEY DUCAR:

2 Q. All right.

3 Please do so.

4 A. Well, I'm sitting in a chair for six hours. I'm
5 used to being on my feet for 12 hours a day, so yeah,
6 this is pretty uncomfortable, unnatural for me.

7 Q. Does this lawsuit, other than the deposition,
8 cause you any other stressors?

9 ATTORNEY HARTNETT: Objection.

10 THE WITNESS: No, and I won't let it.

11 BY ATTORNEY DUCAR:

12 Q. Has your wife told you how she feels about BPJ's
13 desire to transition?

14 ATTORNEY HARTNETT: Objection. Just back
15 to the marital communications privilege. I would
16 instruct the witness not to discuss his confidential
17 communications with his spouse.

18 ATTORNEY DUCAR: Okay.

19 I will withdraw the question.

20 BY ATTORNEY DUCAR:

21 Q. Mr. Pepper, how does this lawsuit affect ---
22 from a stressor situation, is this causing --- let me
23 rephrase the question. Does this lawsuit cause your
24 wife ---?

1 A. You were breaking up there. I'm sorry, I didn't
2 hear you towards the end.

3 Q. Does this lawsuit cause your wife any stressors?

4 ATTORNEY HARTNETT: Objection, vague.
5 Calls for speculation.

6 THE WITNESS: Sure, she's been stressed
7 out.

8 BY ATTORNEY DUCAR:

9 Q. Can you give me an example of how it's stressing
10 her out?

11 A. Well, no. You'd have to ask her that.

12 Q. Do you support BPJ's interest in being
13 transgender?

14 A. Yes, 100 percent.

15 Q. Do you encourage BPJ's interest in being
16 transgender?

17 ATTORNEY HARTNETT: Objection. Vague,
18 foundation.

19 THE WITNESS: I encourage her to be
20 herself and I love her no matter what. Like I said, my
21 love is unconditional for her.

22 BY ATTORNEY DUCAR:

23 Q. Have you encouraged her to transition?

24 A. If this is what makes her happy, it makes me

1 happy.

2 Q. Have you encouraged BPJ to transition?

3 ATTORNEY HARTNETT: Objection, asked and
4 answered.

5 ATTORNEY DUCAR: I didn't get the answer.

6 ATTORNEY HARTNETT: He answered your
7 question.

8 THE WITNESS: She's my daughter. I love
9 her. It makes her happy.

10 BY ATTORNEY DUCAR:

11 Q. Mr. Pepper, have you encouraged BPJ to
12 transition?

13 ATTORNEY HARTNETT: Objection. Vague,
14 asked and answered.

15 THE WITNESS: I've encouraged her to be
16 herself. I encourage her to be who she is. And if
17 she's happy, I back her 100 percent.

18 BY ATTORNEY DUCAR:

19 Q. So you have not encouraged her to transition.
20 Correct?

21 ATTORNEY HARTNETT: Objection, misstates
22 the testimony.

23 THE WITNESS: No, I didn't say that.

24 BY ATTORNEY DUCAR:

1 Q. Well, it's a simple question. I don't know why
2 I can't get a simple answer.

3 ATTORNEY HARTNETT: Objection. That's
4 argumentative and he has answered your question three
5 times.

6 THE WITNESS: She's my daughter. I love
7 her. I support her.

8 BY ATTORNEY DUCAR:

9 Q. Was transitioning BPJ's idea?

10 A. Say that again, please.

11 Q. Was transitioning BPJ's idea?

12 ATTORNEY HARTNETT: Objection. Vague.

13 THE WITNESS: I can't answer for her.
14 You would have to ask her that.

15 BY ATTORNEY DUCAR:

16 Q. Do you think it's important that team sports
17 have fair rules?

18 ATTORNEY HARTNETT: Objection. Vague.

19 THE WITNESS: All sports has rules.

20 BY ATTORNEY DUCAR:

21 Q. Do you think it's important that team sports
22 have fair rules?

23 ATTORNEY HARTNETT: Objection. Vague.

24 THE WITNESS: I'm not the one who makes

1 the rules up, so ---.

2 BY ATTORNEY DUCAR:

3 Q. Well, even though you don't make up the rules,
4 do you think it's important that they're fair?

5 ATTORNEY HARTNETT: Objection. Vague,
6 asked and answered.

7 THE WITNESS: I mean, there's right and
8 wrong.

9 BY ATTORNEY DUCAR:

10 Q. Well, do you think that it's important that team
11 sports have fair rules?

12 ATTORNEY HARTNETT: Objection, vague,
13 asked and answered.

14 THE WITNESS: Yeah.

15 BY ATTORNEY DUCAR:

16 Q. Do you have any long-term treatment goals for
17 BPJ?

18 ATTORNEY HARTNETT: Objection, vague.

19 THE WITNESS: I don't.

20 ATTORNEY HARTNETT: I don't want to
21 interrupt your line of questioning, but we've been going
22 for about an hour and a half. So I would like to take a
23 break shortly.

24 ATTORNEY DUCAR: I probably have about

1 maybe six more questions.

2 ATTORNEY HARTNETT: I wasn't sure. I
3 thought you might be getting there. Wes, are you okay
4 going a little bit longer?

5 THE WITNESS: Yeah. I got to --- I got
6 to urinate.

7 ATTORNEY DUCAR: If you want, we can take
8 a break and then --- I'm not sure how long these next
9 six questions are going to take. So we can ---.

10 THE WITNESS: I just need five minutes.

11 ATTORNEY DUCAR: That's fine here.

12 ATTORNEY HARTNETT: Okay.

13 THE WITNESS: Thank you.

14 VIDEOGRAPHER: Going off the record. The
15 current time reads 3:01:00 p.m.

16 OFF VIDEOTAPE

17 ---

18 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

19 ---

20 ON VIDEOTAPE

21 VIDEOGRAPHER: We are back on the record.

22 The current time reads 3:10:00 p.m.

23 BY ATTORNEY DUCAR:

24 Q. Mr. Pepper --- well, let's see. I would like to

1 take a look at West Virginia Exhibit 14 at this time.

2 ATTORNEY DUCAR: And Mr. Court Reporter,
3 if you don't mind scrolling through the whole thing just
4 so we can get an idea what it says? These are progress
5 notes.

6 VIDEOGRAPHER: You mean the whole
7 exhibit.

8 Correct?

9 ATTORNEY DUCAR: Well, I don't need the
10 whole exhibit.

11 ATTORNEY HARTNETT: I think it would be
12 helpful for the witness to refamiliarize himself just
13 with the exhibit to help move this along, but maybe by
14 showing the date of the visit that might help remind him
15 what he saw earlier.

16 THE WITNESS: Okay.

17 BY ATTORNEY DUCAR:

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 [REDACTED] Has BPJ told you that changing
24 her legal name is important to her?

1 A. She has told my wife.

2 Q. Do you have any idea of what the term gender
3 marker changes means?

4 A. No.

5 [REDACTED]
6 [REDACTED]

7 [REDACTED] I'll stop there. Has BPJ
8 indicated any concerns with bathroom --- which bathrooms
9 she will be using?

10 A. They have provided her a separate one. It's
11 exclusive for her at school.

12 Q. Has she verbalized any concerns with regards to
13 changing during gym class?

14 ATTORNEY HARTNETT: Objection, calls for
15 speculation.

16 THE WITNESS: Not to my knowledge.

17 BY ATTORNEY DUCAR:

18 Q. Has BPJ expressed any concerns that her
19 preferred name and pronouns are used by the school?

20 ATTORNEY HARTNETT: Objection, calls for
21 speculation.

22 THE WITNESS: She wants everyone to call
23 her B [REDACTED].

24 BY ATTORNEY DUCAR:

1 Q. The record also notes above that BPJ is
2 interested in starting hormone therapy as soon as
3 medically possible. Has BPJ talked to you about hormone
4 therapy, which I also call puberty blockers?

5 ATTORNEY HARTNETT: I'm sorry. Could you
6 just direct me and the witness to what part of the
7 document you're referring to?

8 ATTORNEY DUCAR: Sure. It's the third
9 paragraph, third sentence, where it says she is also
10 interested in starting hormone therapy as soon as
11 medically possible.

12 ATTORNEY HARTNETT: Thank you.

13 BY ATTORNEY DUCAR:

14 Q. So my question was, have you talked to BPJ about
15 puberty blockers?

16 A. No.

17 Q. Whose idea was it for BPJ to start puberty
18 blockers?

19 ATTORNEY HARTNETT: Objection, calls for
20 speculation.

21 THE WITNESS: That would be a question
22 for B [REDACTED] I'm not sure of the answer.

23 ATTORNEY HARTNETT: Sorry. I also want
24 to object to the foundation of hormone therapy being

1 equivalent to puberty blockers.

2 BY ATTORNEY DUCAR:

3 Q. Do you understand the risks --- or let me
4 rephrase that. What do you understand the risks of
5 puberty blockers to be?

6 ATTORNEY HARTNETT: Objection.
7 Foundation.

8 THE WITNESS: My wife and I have
9 discussed this and there are several. And I cannot tell
10 you off the top of my head what it is, but --- and I'll
11 answer with this question --- or with this statement
12 that, you know, I love my daughter and I will --- this
13 is her choice.

14 BY ATTORNEY DUCAR:

15 Q. So you would agree that there are long-term
16 ramifications for puberty blockers, but you just don't
17 recall them at this time?

18 ATTORNEY HARTNETT: Objection, foundation
19 and misstates his testimony.

20 THE WITNESS: Yes.

21 ATTORNEY DUCAR: Mr. Court Reporter, you
22 can take that document off the screen at this point.
23 Thank you.

24 BY ATTORNEY DUCAR:

1 Q. Have you discussed the long-term ramifications
2 of taking puberty blockers with BPJ?

3 A. No.

4 Q. What do you understand to be the risks of cross
5 sex hormones?

6 ATTORNEY HARTNETT: Objection. Vague and
7 calls for speculation.

8 THE WITNESS: Sterility.

9 BY ATTORNEY DUCAR:

10 Q. Do you know how long one must take cross sex
11 hormones before they becomes sterile?

12 ATTORNEY HARTNETT: Objection,
13 foundation. Calls for speculation.

14 THE WITNESS: I am not an expert on it.
15 I don't know.

16 BY ATTORNEY DUCAR:

17 Q. Have you discussed the long-term ramifications
18 of taking cross sex hormones with BPJ?

19 ATTORNEY HARTNETT: Objection, vague.

20 THE WITNESS: No.

21 BY ATTORNEY DUCAR:

22 Q. Do you know why --- strike that.

23 Do you know that BPJ was selected to be part of
24 the base of BPJ's cheer team pyramids?

1 THE WITNESS: I'm not following you.

2 Please say it another way.

3 BY ATTORNEY DUCAR:

4 Q. Are you aware of when cheerleading teams create
5 pyramids of people?

6 A. Creating pyramids of people?

7 Q. Like a certain number of people would be at the
8 bottom and then a certain number of people would be on
9 top of them and they would create a pyramid?

10 A. I've seen it before, but I'm not --- I'm not
11 following you.

12 Q. So you know what I'm talking about.

13 Correct?

14 A. Yes.

15 Q. Do you know that BPJ was selected to be part of
16 the base of BPJ's cheer team pyramids?

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

18 ATTORNEY DUCAR: Thank you very much, Mr.
19 Pepper. I have no further questions at this time.

20 THE WITNESS: Thank you.

21 ATTORNEY HARTNETT: And the Plaintiff
22 does not have any questions.

23 ATTORNEY TRYON: Okay.

24 This is Dave Tryon. I do have a few

1 follow-up questions based on the line of questions that
2 were asked.

3 ATTORNEY HARTNETT: I don't think that's
4 --- sorry, that wasn't my --- I thought your questioning
5 was done.

6 ATTORNEY DENIKER: I also have just one
7 or two follow-up questions.

8 ATTORNEY TRYON: I think my follow-up
9 questions are based on questions that have been asked
10 after my questions. I've never had anybody object to me
11 doing that before. Are you objecting to me doing that?

12 ATTORNEY HARTNETT: I'm thinking about it
13 because I don't --- I've never had multiple Defense
14 Counsel do multiple rounds of questioning. They usually
15 do their questioning and unless there's a Redirect they
16 don't get to do additional questioning.

17 ATTORNEY TRYON: Well, that's different
18 from my experience, respectfully. I've been on a lot of
19 multi-Defendants questioning and their depositions and
20 it's my experience that, you know, after new things come
21 up during other counsels' questions, that there's not an
22 issue with following up on some of those things.

23 ATTORNEY HARTNETT: Can we go off the
24 record? I would like to confer with my co-counsel.

1 ATTORNEY TRYON: Yes.

2 VIDEOGRAPHER: Going off the record. The
3 current time reads 3:20 p.m.

4 OFF VIDEOTAPE

5 ---

6 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

7 ---

8 ON VIDEOTAPE

9 VIDEOGRAPHER: We're back on the record.
10 The current time reads 3:26 p.m.

11 ATTORNEY HARTNETT: Okay.

12 We can put this on the record or off, but
13 I conferred with my co-counsel. Like I said, this is
14 not what we were expecting in the sense that I think we
15 had discussed having Defendants go kind of in a row and
16 that when you concluded your questioning, it would be
17 concluded, and absent Redirect from the other side, in
18 my experience you don't get to continue your
19 questioning.

20 On the other hand, we like to be
21 practical here, and so if folks have a few additional
22 questions, we're not going to --- I mean, we don't want
23 to hold this deposition open. So I just need to know
24 how much additional questioning you're contemplating.

1 ATTORNEY TRYON: Yes, Kathleen, just to
2 be clear, my understanding of the proper protocol is
3 that additional examination would be based on --- within
4 the scope of what other counsel have raised and --- so
5 that's where I would anticipate, you know, my questions
6 to be. I don't have many, less than a dozen.

7 ATTORNEY HARTNETT: Okay.

8 Again, we don't want to be obstructive
9 here in any way. And to the extent that that is a
10 response to other questioning, we're happy to allow it
11 here briefly. I just think we need to be careful to not
12 retread on things we've done or obviously do anything
13 harassing. But thank you for explaining.

14 ATTORNEY TRYON: Sure.

15 ---

16 RE-EXAMINATION

17 ---

18 BY ATTORNEY TRYON:

19 Q. Mr. Pepper, first of all, thank you again for
20 your time. We appreciate the time, as we know that this
21 is --- well, it's just appreciated. And so the term
22 social --- socially transition came up during Mr.
23 Ducar's questioning. Is today the first time you have
24 heard that term?

1 A. Yes.

2 Q. Let me turn back to Exhibit 17, please.

3 ATTORNEY TRYON: Jacob, can you bring
4 that up? I see you're working on it. Okay. Great.

5 BY ATTORNEY TRYON:

6 Q. So when I was asking you questions about this
7 document, sir, it was my understanding that you had not
8 seen this before. But when Attorney Susan Deniker was
9 asking you about it and I have it written down what was
10 said, at one point you said --- you were asked --- Ms.
11 Deniker asked, did you see Exhibit 17 at the time it was
12 executed. And you said yes, it's possible. So after
13 her questioning did that refresh your recollection that,
14 in fact, you had seen Exhibit 17 before?

15 A. I've seen so many documents that I --- it's
16 very possible. But like I say, I can't tell you, you
17 know, for a fact. I wouldn't take a test on it.

18 Q. Fair enough.

19 Let me ask you then to take a quick look at
20 this first paragraph in the form that says mom is very
21 supportive. Dad has struggled but coming around and
22 seeking outside help through church and paternal side of
23 family's help/support. Let me just ask you to look at
24 that and think back if you, in fact, saw that language

1 on the report before today.

2 ATTORNEY HARTNETT: Objection, asked and
3 answered.

4 THE WITNESS: And I don't recall. It's
5 been three years ago.

6 BY ATTORNEY TRYON:

7 Q. Fair enough. All I want is your --- I want to
8 make sure we have the correct testimony.

9 During the questioning by Mr. Ducar you were
10 asked if BPJ has stressed over this situation. And I
11 don't remember exactly what the question was but asked
12 if BPJ had stress in the context of the gender dysphoria
13 or transition. And I believe you said that BPJ had some
14 stress.

15 Is that right?

16 ATTORNEY HARTNETT: Objection. It
17 doesn't completely state his testimony.

18 ATTORNEY TRYON: Right.

19 THE WITNESS: She has stress, but it's
20 not --- it's not over it with me. It's more over it
21 with my wife. My wife and my daughter have the
22 communication line going.

23 BY ATTORNEY TRYON:

24 Q. Got it. My question is did BPJ's stress ever

1 get to the point where BPJ was suicidal?

2 ATTORNEY HARTNETT: Objection.

3 THE WITNESS: Not to my knowledge.

4 BY ATTORNEY TRYON:

5 Q. Okay.

6 Mr. Ducar asked you a number of questions about
7 encouragement or did you encourage the transition, and
8 you didn't seem to understand that. I just want to know
9 what do you understand the word encourage to mean?

10 ATTORNEY HARTNETT: Objection. Misstates
11 his testimony and he answered the question repeatedly.

12 THE WITNESS: I encourage her to be
13 herself. I encourage her to be the best that she can.
14 I encourage her to be happy. I encourage her to love
15 herself and to love her family, because her family loves
16 her.

17 BY ATTORNEY TRYON:

18 Q. Right. And you made that very clear and I
19 appreciate that. But when you say encourage, what do
20 you mean by encourage?

21 A. Well, she makes straight As. I encourage her to
22 be a good student. So that's some encouragement. She
23 gets a lot of that from her mother. I mean, I'm no
24 dummy, but ---.

1 Q. So then I have maybe one more question about
2 that because --- and I'm just trying to understand, did
3 you actively encourage BPJ in social transition or just
4 to socially transition to a female or were you just
5 neutral on it?

6 ATTORNEY HARTNETT: Objection. Compound
7 and asked and answered.

8 THE WITNESS: I've encouraged B [REDACTED] to be
9 herself. B [REDACTED] has chosen to be --- represent herself
10 as being a female, and that's who she is. I encourage
11 her to be a female, yes, I encourage her, because that's
12 what she loves. That's her life now.

13 BY ATTORNEY TRYON:

14 Q. And when did you start encouraging her to do
15 that?

16 A. Many years ago. I've been onboard many years.

17 ATTORNEY TRYON: I have no other
18 questions.

19 ATTORNEY HARTNETT: Roberta, did you have
20 questions?

21 ATTORNEY GREEN: On behalf of WVSSAC, no
22 further questions. Thank you.

23

24

RE-EXAMINATION

1

2 BY ATTORNEY DENIKER:

3 Q. Mr. Pepper, Susan Deniker. I only have a few
4 questions for you. I asked you before, this is a
5 clarifying question, if you had any communications with
6 any employees of the Harrison County Board of Education
7 regarding BPJ, her gender identity and her participation
8 in school sports, and you told me that you had not. I
9 wanted to ask you and clarify have you had any
10 communications with anybody on the elected Harrison
11 County Board of Education regarding BPJ's gender
12 identity?

13 A. I'm not sure who those elected members would be.

14 Q. Is that a no then?

15 A. Yes. I don't even know who you're talking
16 about.

17 Q. Okay.

18 So the Harrison County Board of Education has
19 an elected board, the citizens and the county elect, and
20 I just want to know if you raised any concerns,
21 complaints or had any communication at all with BPJ's
22 --- any accommodations for her gender identity or her
23 participation in school sports?

24 ATTORNEY HARTNETT: Just objecting to

1 this questioning as not prompted by anything on the
2 other parties' questioning. This just seems to be
3 additional questioning that could have been asked the
4 first round. Also object to his prior testimony speaks
5 for itself, and I'm not sure the summary was entirely
6 accurate. If this is the only question, he's free to
7 answer it, but I just don't think we should be going
8 down this road of questioning that could have been asked
9 previously.

10 BY ATTORNEY DENIKER:

11 Q. Mr. Pepper, do you understand my question?

12 A. No. Would you say it again, please?

13 Q. Sure. And I would agree to give your counsel a
14 continuing objection because I know it gets confusing
15 when we all, you know, talk like this. But I'm just ---
16 have you had any communications with any member of the
17 elected Harrison County Board of Education to discuss in
18 any way accommodation of your daughter's gender
19 identification, issues at school or her participation in
20 school sports?

21 ATTORNEY HARTNETT: Objection that it's
22 beyond the scope of the other testimony and for the
23 other objections.

24 THE WITNESS: Directly, no. Indirectly

1 through my wife, I would say yes.

2 BY ATTORNEY DENIKER:

3 Q. But you personally haven't had any of those
4 communications.

5 Is that correct?

6 A. That's correct.

7 ATTORNEY HARTNETT: Objection, asked and
8 answered.

9 ATTORNEY DENIKER: Thank you, Mr. Pepper.
10 I don't have any further questions.

11 ATTORNEY MORGAN: I don't have any
12 further questions.

13 ATTORNEY DUCAR: Nothing further here.
14 Thank you.

15 ATTORNEY HARTNETT: Okay.

16 And we have nothing further from the
17 Plaintiff. We would reserve, obviously, our right to
18 review. But otherwise, we consider the deposition to
19 now be closed.

20 VIDEOGRAPHER: That concludes today's
21 deposition. The current time reads 3:37 p.m.

22 ATTORNEY TRYON: If I could just say
23 something before we close. First of all, thank you
24 again, Mr. Pepper. But also, to the extent that we

1 receive additional information in discovery that
2 necessitates to ask more questions, we would expect to
3 do so. But I don't anticipate that. But again, I know
4 that Plaintiff's Counsel has already objected to that,
5 so I recognize that, but I want to make sure I preserve
6 that for the record.

7 ATTORNEY HARTNETT: And I would reiterate
8 my objection that there has been absolutely nothing
9 identified that would require a further deposition of
10 Mr. Pepper.

11 ATTORNEY TRYON: Thank you.

12 VIDEOGRAPHER: That concludes the
13 deposition. The current time reads 3:37 p.m.

14 * * * * *

15 VIDEOTAPED DEPOSITION CONCLUDED AT 3:37 P.M.

16 * * * * *

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1 STATE OF WEST VIRGINIA)

2 CERTIFICATE

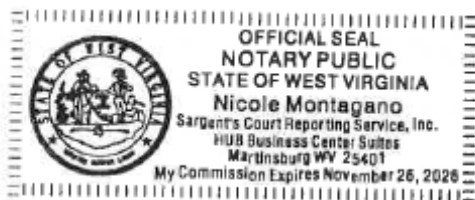
3 I, Nicole Montagano, a Notary Public in
4 and for the State of West Virginia, do hereby
5 certify:

6 That the witness whose testimony appears
7 in the foregoing deposition, was duly sworn by me
8 on said date, and that the transcribed deposition
9 of said witness is a true record of the testimony
10 given by said witness;

11 That the proceeding is herein recorded
12 fully and accurately;

13 That I am neither attorney nor counsel
14 for, nor related to any of the parties to the
15 action in which these depositions were taken, and
16 further that I am not a relative of any attorney
17 or counsel employed by the parties hereto, or
18 financially interested in this action.

19 I certify that the attached transcript
20 meets the requirements set forth within article
21 twenty-seven, chapter forty-seven of the West
22 Virginia.



23 *Nicole Montagano*
24 Nicole Montagano,
25 Court Reporter

Exhibit 16

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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,)

vs.) Case No.

WEST VIRGINIA STATE BOARD OF) 2:21-cv-00316
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.)

-----)

REMOTE VIDEOTAPED DEPOSITION OF

DORA STUTLER

AND

DAVE MAZZA

Tuesday, March 8, 2022

Volume I

Reported by:

ALEXIS KAGAY, CSR No. 13795

Job No. 5079542

PAGES 1 - 240

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
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B.P.J. by her next friend and)
mother, HEATHER JACKSON,)
Plaintiff,)
vs.) Case No.
WEST VIRGINIA STATE BOARD OF) 2:21-cv-00316
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 deposition of DORA STUTLER and DAVE MAZZA, Volume I, taken on behalf of the Plaintiff, B.P.J., with all participants appearing remotely beginning at 12:32 p.m. and ending at 7:18 p.m. on Tuesday, March 8, 2022, before ALEXIS KAGAY, Certified Shorthand Reporter No. 13795.

1 APPEARANCES (via Zoom Videoconference):

2

3 For West Virginia Secondary School Activities

4 Commission:

5 SHUMAN MCCUSKEY & SLICER

6 BY: ROBERTA GREEN

7 Attorney at Law

8 1411 Virginia Street E

9 Suite 200

10 Charleston, West Virginia 25301-3088

11 RGreen@Shumanlaw.com

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 APPEARANCES (Continued):

2

3 For The Plaintiff, B.P.J.:

4 COOLEY

5 BY: ELIZABETH REINHARDT

6 BY: VALERIA M. PELET DEL TORO

7 BY: KATHLEEN HARTNETT

8 BY: ZOE HELSTROM

9 BY: ANDREW BARR

10 Attorneys at Law

11 500 Boylston Street

12 14th Floor

13 Boston, Massachusetts 02116-3740

14 617.937.2305

15 EReinhardt@cooley.com

16 VPeletdeltoro@cooley.com

17 Khartnett@cooley.com

18 ZHelstrom@cooley.com

19

20

21

22

23

24

25

1 APPEARANCES (Continued):

2

3 For West Virginia Board of Education and Superintendent
4 Burch, Heather Hutchens as general counsel for the
5 State Department of Education:

6 BAILEY & WYANT, PLLC

7 BY: KRISTEN HAMMOND

8 BY: KELLY MORGAN

9 Attorneys at Law

10 500 Virginia Street

11 Suite 600

12 Charleston, West Virginia 25301

13 KHammon@Baileywyant.com

14

15

16

17

18

19

20

21

22

23

24

25

1 APPEARANCES (Continued):

2

3 For the Intervenor:

4 ALLIANCE DEFENDING FREEDOM

5 BY: HAL FRAMPTON

6 BY: RACHEL CSUTOROS

7 BY: TIMOTHY DUCAR

8 BY: CHRISTIANA HOLCOMB

9 Attorneys at Law

10 20116 Ashbrook Place

11 Suite 250

12 Ashburn, Virginia 20147

13 HFRampton@adflegal.org

14 RCsutoros@adflegal.org

15 TDucar@adflegal.org

16

17

18 For the State of West Virginia:

19 WEST VIRGINIA ATTORNEY GENERAL

20 BY: DAVID TRYON

21 Attorney at Law

22 112 California Avenue

23 Charleston West Virginia 25305-0220

24 681.313.4570

25 David.C.Tryon@wvago.gov

Page 6

1 APPEARANCES (Continued):

2

3 For defendants Harrison County Board of Education and
4 Superintendent Dora Stutler:

5 STEPTOE & JOHNSON PLLC

6 BY: SUSAN L. DENIKER

7 BY: JEFFREY CROPP

8 Attorney at Law

9 400 White Oaks Boulevard

10 Bridgeport, West Virginia 26330

11 304.933.8154

12 Susan.Deniker@Steptoe-Johnson.com

13

14 For Plaintiff:

15 LAMBDA LEGAL

16 BY: SRUTI SWAMINATHAN

17 Attorney at Law

18 120 Wall Street

19 Floor 19

20 New York, New York 10005-3919

21 SSwaminathan@lambdalegal.org

22

23 Also Present:

24 MITCH REISBORD - CONCIERGE

25 HEATHER HUTCHENS

Page 7

1 APPEARANCES (Continued):

2 Videographer:

3 DAVE HALVORSON

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INDEX

WITNESS	EXAMINATION
DORA STUTLER	15
DAVE MAZZA	197
Volume I	
BY MS. REINHARDT	15
BY MS. GREEN	150
BY MS. MORGAN	153
BY MR. TRYON	155
BY MR. FRAMPTON	166
BY MS. REINHARDT	187
BY MS. DENIKER	189
BY MR. FRAMPTON	193
BY MS. REINHARDT	197
BY MS. GREEN	223
BY MR. TRYON	225
BY MS. DENIKER	235

EXHIBITS

NUMBER	DESCRIPTION	PAGE
Exhibit 24	Plaintiff's Amended Notice of 30(b)(6) Deposition	21

1		Plaintiff's Amended Notice of	203
2		30(b)(6) Deposition	
3			
4	Exhibit 25	E-mail Chain	63
5			
6	Exhibit 26	E-mail Chain	84
7			
8	Exhibit 27	E-mail Chain	97
9			
10	Exhibit 28	Defendants Harrison County Board	101
11		of Education and Dora Stutler's	
12		Answers to Plaintiff's Second Set	
13		of Interrogatories to Defendant's	
14		Harrison County Board of	
15		Education and Dora Stutler	
16			
17	Exhibit 29	Handwritten Copy	130
18			
19	Exhibit 30	E-mail Chain	135
20			
21	Exhibit 31	E-mail Chain	137
22			
23	Exhibit 32	E-mail Chain	139
24			
25	Exhibit 33	E-mail Chain	169

1
2
3
4
5
6
7
8
9
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12
13
14
15
16
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18
19
20
21
22
23
24
25

Exhibit 34	Excel Spreadsheet	171
Exhibit 35	Intervenor Exhibit	172
Exhibit 36	Intervenor Exhibit, E-mail Chain	174
Exhibit 37	Excel Spreadsheet	177
Exhibit 38	Intervenor Exhibit, WVSAC Eligibility Certificate	179
Exhibit 39	E-mail Chain	180
Exhibit 40	Intervenor Exhibit	183
Exhibit 41	Stipulation of Uncontested Facts	188
Exhibit 42	Regional Principals' Meeting	207

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
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PREVIOUSLY MARKED EXHIBITS

NUMBER	PAGE
Exhibit WV-17	110
Exhibit WV-18	134
Exhibit WV-19	118

1
2
3
4
5
6
7
8
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Tuesday, March 8, 2022

12:33 p.m.

THE VIDEOGRAPHER: Okay. Good afternoon.

We are on the record at 12:33 p.m. on 12:32:54
March 8th, 2022. This is media unit 1 in the
video-recorded deposition of Dora Stutler in the
matter of B.P.J. by Heather Jackson versus the West
Virginia State Board of Education, et al. It's
filed in the U.S. District Court for the Southern 12:33:16
District of West Virginia, in the Charleston
Division. The case number is 2:21-cv-00316.

This deposition is being held virtually.

My name is Dave Halvorson. I'm the
videographer here from Veritext. And I'm here with 12:33:37
the court reporter, Alexis Kagay, also from
Veritext.

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

MS. REINHARDT: Good afternoon. This is 12:33:47
Elizabeth Reinhardt. I'm in the room with
Andrew Barr from Cooley, LLP, and we're here on
behalf of the plaintiff, B.P.J.

MS. HARTNETT: Hi. This is Kathleen Hartnett
from Cooley, also on behalf of Plaintiff, B.P.J. 12:34:02

1 MS. PELET DEL TORO: Hi. This is Valeria
2 Pelet del Toro, also on behalf of Plaintiff, for
3 Cooley, LLP.

4 MS. HELSTROM: Hi. This is Zoe Helstrom from
5 Cooley, LLP, on behalf of Plaintiff. 12:34:11

6 MR. TRYON: This is David Tryon. I'm -- I'm
7 with the Attorney General's Office of West Virginia
8 on behalf of the State of West Virginia.

9 MS. MORGAN: This is Kelly Morgan on behalf
10 of the West Virginia Board of Education and 12:34:39
11 Superintendent Burch, along with Heather Hutchens as
12 general counsel for the State Department of
13 Education.

14 MS. DENIKER: Good afternoon. This is Susan
15 Deniker, and with me is Jeff Cropp. We are counsel 12:34:51
16 for defendants Harrison County Board of Education
17 and Superintendent Dora Stutler.

18 MS. GREEN: This is Roberta Green, Shuman,
19 McCuskey Slicer, here on behalf of West Virginia
20 Secondary School Activities Commission. 12:34:57

21 MS. MORGAN: This is Kelly Morgan again. I
22 also have Kristen Hammond from my office as well.

23 MR. FRAMPTON: This is Hal Frampton at
24 Alliance Defending Freedom on behalf of the
25 Intervenor. And we also have on the call, for the 12:35:19

1 Intervenor, Timothy Ducar, Christiana Holcomb and
2 Rachel Csutoros.

3 THE VIDEOGRAPHER: And I believe somebody
4 just logged in.

5 MS. SWAMINATHAN: Hi there. This is 12:35:35
6 Sruti Swaminathan from Lambda Legal on behalf of
7 Plaintiff.

8 THE VIDEOGRAPHER: Okay. I believe that's
9 everyone, so can we please swear in the witness.

10 (Witness sworn.) 12:35:50

11 THE VIDEOGRAPHER: Please begin.

12 MS. REINHARDT: For the sake of the record,
13 we were just off record, and we agreed that
14 objections to form would -- would reserve all
15 rights, except as to privilege. 12:36:22

16
17 DORA STUTLER,
18 having been administered an oath, was examined and
19 testified as follows:

20
21 EXAMINATION

22 BY MS. REINHARDT:

23 Q How are you this afternoon, Mrs. Stutler?

24 A I'm just fine. How are you?

25 Q I'm doing well. 12:36:32

1 A Yes.

2 Q And, unfortunately, the court reporter will
3 not be able to transcribe any gestures, such as
4 nodding, so we'll need to speak verbally.

5 Is that okay with you? 12:37:41

6 A Yes.

7 Q Wonderful. Thank you.

8 And I will try to take a break every hour,
9 and we'll take a somewhat longer break, around
10 12:00, Mountain Time, or -- but if I'm in the middle 12:37:52
11 of a question and you need to take a break, please
12 let me finish my question or a series of questions
13 in order to get your answer before we take the
14 break, if that's okay with you.

15 A Sure. 12:38:06

16 Q Wonderful. And do you understand that you're
17 testifying under oath today just as if you were
18 testifying in a court of law?

19 A I do.

20 Q And without disclosing any communications you 12:38:18
21 had with your counsel, what did you do to prepare
22 for today's deposition?

23 A Met with counsel.

24 Q How long ago did you meet with your counsel?

25 A Yesterday. We spent a day. 12:38:34

1 MS. DENIKER: You don't need to -- I'm just
2 going to -- just to clarify for the witness, the
3 substance of our communications is protected here,
4 so you don't need to talk about what we talked
5 about. 12:38:48

6 To the extent that you talked to other people
7 to prepare for your deposition today, you can also
8 disclose that.

9 THE WITNESS: When we spoke -- we spoke with
10 witnesses yesterday. 12:39:02

11 BY MS. REINHARDT:

12 Q Which witnesses did you speak with?

13 A We spoke with -- I spoke with Tarra Shields,
14 principal at Norwood Elementary; Jasmine Lowther.
15 She's a fourth grade teacher at Norwood Elementary. 12:39:12
16 Dave Mazza was in the room during the preparation.
17 He's a principal at Bridgeport Middle School. And
18 spoke with Natalie McBrayer, an assistant -- she's a
19 volunteer coach for the cross-country team at
20 Bridgeport Middle School. 12:39:37

21 Q Did you review any documents during that
22 meeting?

23 A I did.

24 I also am remembering Amber Davis. She's the
25 current counselor at Norwood Elementary School. I 12:39:52

1 had a conversation with her as well.

2 Q And which documents did you review?

3 A We looked at the transgender support plans
4 that were created at Norwood and at Bridgeport
5 Middle. We looked at rostering information from 12:40:10
6 cross-country that was submitted to the SSAC. We
7 looked at the statute in question. We looked at
8 some articles that were on West Virginia News and
9 other news organizations.

10 It was a lot of material. 12:40:36

11 Q I understand. I understand. I appreciate
12 you listing those.

13 Were all of those documents provided to you
14 by your attorney?

15 A Yes. 12:40:47

16 Q And did you bring any document to that
17 meeting that were not provided by your attorney?

18 A I did not.

19 Q And do you have any documents with you today?

20 A I do not. 12:41:03

21 Q Is there anything that would prevent you from
22 answering my questions truthfully today?

23 A No.

24 Q Did you discuss the case with anyone other
25 than the folks you listed at the meeting yesterday 12:41:14

1 and your attorneys?

2 A No.

3 Q Were you asked to provide any documents to
4 anyone in preparation for this deposition?

5 A No. 12:41:29

6 Q B.P.J. filed a lawsuit against the County
7 Board of Education; correct?

8 A Yes.

9 Q You're here today in connection to that
10 lawsuit; correct? 12:41:42

11 A Yes.

12 Q Wonderful. And now I'm just going to ask a
13 few foundational questions, just in order to get my
14 bearings and so that you can see kind of where I'm
15 planning on going today. 12:41:54

16 So do you understand that you're here in
17 response to a 30(b)(6) Deposition Notice?

18 A Yes.

19 Q Do you know what a 30(b)(6) Deposition Notice
20 is? 12:42:06

21 A Yes.

22 Q Did you review the 30(b)(6) Deposition
23 Notice?

24 A I did.

25 Q If you could go into the "Marked Exhibits" 12:42:16

1 folder, I'm going to introduce to you a document
2 that's been marked as Exhibit 24. Please let me
3 know when you have it.

4 (Exhibit 24 was marked for identification
5 by the court reporter and is attached hereto.) 12:42:27

6 THE WITNESS: It's there. I have that.

7 BY MS. REINHARDT:

8 Q Is this -- I'll let you flip through it for a
9 moment, if you would like to, but my question is, is
10 this the document that you reviewed yesterday? 12:42:43

11 A Yes.

12 Q Have you prepared to testify regarding the
13 topics listed on the 30(b)(6) notice?

14 A Yes.

15 Q Do you understand -- 12:42:59

16 MS. DENIKER: Excuse me, Ms. Reinhardt, just
17 to -- just to clarify, we had a discussion off the
18 record, Ms. Stutler will be testifying with regard
19 to topics except those topics the plaintiff has
20 agreed to withdraw, which were topics 3, 6, 9, 12 12:43:16
21 and 15. And she also will not be testifying with
22 regard to topics 10 and 11, as another witness will
23 be testifying on those topics.

24 MS. REINHARDT: Understood. Thank you for
25 putting that on the record. 12:43:36

1 BY MS. REINHARDT:

2 Q I'll only be asking you about the topics your
3 attorney has just confirmed, but I'd like to go
4 through them now to make sure that you understand
5 each of these topics, if that's okay with you, Mrs. 12:43:46
6 Stutler.

7 A Yes.

8 Q Wonderful. So let's look at topic 1.
9 Do you understand this topic?

10 A I do. 12:44:03

11 Q Did you review any documents related to this
12 topic?

13 A We had a discussion about --

14 MS. DENIKER: I'm going to -- so, again, I'm
15 going to instruct you not to answer and provide any 12:44:11
16 information about communications you had with
17 counsel about --

18 THE WITNESS: Okay.

19 MS. DENIKER: -- this matter.

20 BY MS. REINHARDT: 12:44:24

21 Q As I understand it, you reviewed several
22 documents yesterday with your counsel, as well as a
23 few other folks related to this case.

24 Were there any documents or conversations not
25 with your counsel that helped you prepare for this 12:44:34

1 topic?

2 A No.

3 Q And do you understand topic 2?

4 A I do.

5 Q Without disclosing any conversations you had 12:44:49
6 with your attorney, did you review any documents
7 pertaining to topic 2?

8 A I did.

9 Q And do -- which documents were those?

10 A It was any policies that we would have had 12:45:03
11 regarding the authority of school-sponsored
12 athletics. We looked at that. We also looked at
13 SSAC rules.

14 Q How about topic 4, do you understand that
15 topic? 12:45:26

16 A Yes.

17 Q And did you review any documents pertaining
18 to that topic?

19 A I did. I reviewed documents pertaining to
20 gender support plans dating back to 2019. 12:45:46

21 Q And topic 5, do you understand that topic?

22 A I do. It was the same -- the same documents
23 for the gender support plans.

24 Q And for topics 7 and 8, did you review those
25 topics? 12:46:11

1 A Yes.

2 Q Do you understand them?

3 A I do.

4 Q And did you review any documents you have not
5 already listed relating to those topics? 12:46:27

6 A We have no documents specific to that topic.

7 Q Both topic 7 and topic 8; is that correct?

8 A Yeah, at Harrison County schools, we have no
9 documents specific to that topic.

10 Q Thank you. And we're almost done. I'm going 12:46:56
11 to ask you about topics 13 and 14.

12 Do you understand what those topics say?

13 A Yes.

14 Q And did you review any documents pertaining
15 to those topics? 12:47:11

16 A The statute, the House Bill 3293.

17 Q Did you review your discovery responses
18 listed under topic 14?

19 A I did.

20 Q Thank you. Throughout the deposition, if I 12:47:34
21 use a term that you're unfamiliar with, please let
22 me know. Just so you're aware, there may be a few
23 terms that I'd like to define now, and there may
24 also be a few terms as we go that I will ask if it's
25 okay if I use the abbreviated version. 12:47:50

1 If it's okay with you, do you mind if I go
2 over two terms now?

3 A No, please do. Thank you.

4 Q No, thank you.

5 So I'm going to use the word "transgender." 12:48:00
6 When I use the term "transgender," I'm referring to
7 someone whose gender identity does not match the sex
8 they were assigned at birth.

9 So, for example, if someone was assigned male
10 at birth, but they identify as female, that person 12:48:14
11 would be a transgender girl or woman.

12 Do you understand my reference of
13 transgender?

14 MR. TRYON: Objection to form.

15 David Tryon. 12:48:28

16 THE WITNESS: Yes.

17 BY MS. REINHARDT:

18 Q I'll also be using the word "cisgender."
19 When I use the word "cisgender," I am referring to
20 someone whose gender identity matches the sex they 12:48:44
21 were assigned at birth.

22 So as an example, if someone was assigned
23 male at birth and they also identify as male, that
24 person is a cisgender boy or male.

25 Do you understand my reference to cisgender? 12:48:54

1 MR. TRYON: Same objection.

2 This is David Tryon.

3 THE WITNESS: Yes.

4 BY MS. REINHARDT:

5 Q Thank you. And when I refer to the County 12:49:06
6 Board of Education, is it okay with you if I just
7 say "county board"?

8 A Yeah, that's fine.

9 Q Wonderful. And unless I state otherwise,
10 when I use the word "you," I'm referring to the 12:49:21
11 county board, not you as an individual.

12 Understood?

13 A Yes.

14 Q Are you aware of any issues under the -- are
15 you aware of any issues underlining this lawsuit? 12:49:31

16 MS. DENIKER: Objection to the form.

17 If you do not understand, you can -- you can
18 advise her that you do not understand.

19 THE WITNESS: I am -- I do not understand
20 that, those terms. 12:49:50

21 BY MS. REINHARDT:

22 Q Thank you. And as I said, as I continue to
23 go along, if there's something that you don't
24 understand, please let me know. Otherwise, if you
25 answer, I'll assume that you do understand. 12:49:58

1 So I'll put it slightly differently.

2 Does the county board have a position
3 regarding the validity of the underlying lawsuit?

4 MS. DENIKER: Objection to the form of the
5 question. 12:50:13

6 It also calls for a legal conclusion.

7 THE WITNESS: I can't comment. I have no
8 comment on that.

9 BY MS. REINHARDT:

10 Q No problem. I am now going to ask you a 12:50:28
11 series of questions as you, Superintendent Dora
12 Stutler. So for the purpose of the next following
13 questions, when I use the term "you," I do mean you,
14 Superintendent Stutler, and this is just for
15 background purposes. 12:50:43

16 Do you understand?

17 A Yes.

18 Q Can you please let me know what your
19 education level is?

20 A I have a Master's in educational leadership. 12:50:50

21 Q And did you receive that Master's after
22 obtaining your Bachelor's degree?

23 A I did.

24 Q And what was your Bachelor's degree in?

25 A Elementary education. 12:51:02

1 Q Was that a four-year program?

2 A It was.

3 Q And how long was your Master's program?

4 A I did it quickly. It was a

5 two-and-a-half-year program. 12:51:19

6 I also have a Master's in special education.

7 Q And how long did it take for you to obtain
8 your Master's in special education?

9 A I worked on them concurrently, so -- it's
10 been a long time ago. Two and a half -- two and a 12:51:38
11 half years.

12 Q Understood. And did you obtain those
13 Master's degree immediately after obtaining your
14 Bachelor's?

15 A I did not. 12:51:50

16 Q What did you do in between your Bachelor's
17 and your Master's?

18 A Substitute taught. And then I actually
19 stayed home with my children for six years, worked
20 on my Master's at that time and then immediately 12:52:06
21 went back into the field.

22 Q When you were teaching during this time, was
23 it in Harrison County?

24 A I was a substitute in Harrison and Taylor
25 County, which is an adjoining county. 12:52:23

1 Q Thank you. Where do you currently work?

2 A Harrison County schools.

3 Q How long have you worked for the Harrison
4 County schools?

5 A 24 years as a regular employee. I had seven 12:52:36
6 years as a substitute employee.

7 Q And when you say "regular employee," what do
8 you mean by that?

9 A It means regular employee with full benefits,
10 hired, not in a substitute capacity, regular 12:52:52
11 schedule.

12 Q Understood. And when you say "Harrison
13 County schools," is that the County Board of
14 Education, or are you referring to a broader
15 umbrella term? 12:53:06

16 A No. It's Harrison county schools.

17 Q Wonderful. And what's your current role?

18 A Superintendent.

19 Q Do you report to anyone?

20 A I do. I have four -- five elected board 12:53:18
21 members.

22 Q Who are those elected board members?

23 A Frank Devono, Junior. He's my -- he's a
24 vice president. Gary Hamrick is the president of
25 the board. Michael Daugherty, member. 12:53:38

1 Kristin Messenger, member. And Doug Hogue, member.

2 Q How are these members selected?

3 A They are elected for four-year terms.

4 Q What do the county board members do?

5 A They oversee the -- I oversee day-to-day 12:54:00
6 operations. They're there overseeing what I do and
7 the County.

8 Q And what are your day-to-day
9 responsibilities?

10 A Operations of the schools every day, my 12:54:17
11 county office, everything from personnel -- I have
12 several divisions that report to me. We're a large
13 organization. We have 1500 employees, close to
14 10,000 students. And ultimately, they report to me.

15 Q And the -- Bridgeport Middle School falls 12:54:49
16 under your jurisdiction?

17 A Yes.

18 Q What is your role as it relates to Bridgeport
19 Middle School?

20 A I'm their supervisor. I have 26 12:54:58
21 administrators, full-time administrators, that
22 report to an administrative assistant over the
23 schools, and that administrative assistant reports
24 to me. But ultimately, the schools are my
25 responsibility. 12:55:19

1 Q How often does the administrative assistant
2 report to you?

3 A Daily.

4 Q And how is it reported to you?

5 A We do an official Monday meeting. We meet as 12:55:30
6 a group every -- at least once a week. And
7 throughout the day, my supervisors are reporting to
8 me or contacting me.

9 Q You said you meet as a group on Mondays.

10 Who attends that meeting? Who is this group? 12:55:52

11 A My department heads.

12 Q How many department heads are there?

13 A I have ten.

14 Q And if you wouldn't mind, can you please list
15 those departments. 12:56:05

16 A Sure. I have an administrative assistant
17 over secondary education. I have an administrative
18 assistant over elementary education. I have a -- an
19 assistant superintendent over facilities and
20 transportation. I have a supervisor over special 12:56:21
21 education, a supervisor over federal programs, a
22 chief financial officer, a supervisor over
23 technology.

24 And then we kind of drop down. They still
25 come to these meetings. They -- I go down to a 12:56:42

1 director of student support and safety and a
2 director of school attendance.

3 Q Is your role similar as it pertains to
4 Norwood Elementary School?

5 A I -- yes. I mean, I would oversee 12:56:57
6 Norwood Elementary School.

7 Q And those --

8 A I was -- I was the principal there for a lot
9 of years, so...

10 Q Understood. And do those same ten department 12:57:20
11 heads also report to you as it pertains to
12 Norwood Elementary School?

13 A Yes.

14 Q And you mentioned you were the principal of
15 Norwood Elementary School. 12:57:32

16 When were you principal?

17 A 2009 till 2018.

18 Q And what did you do starting in 2018?

19 MS. MORGAN: Can I stop you guys for a
20 second? 12:57:55

21 I just got a message from Dave Tryon that his
22 computer crashed.

23 Can you hold a moment so he can get back on?

24 MS. REINHARDT: No problem. Let's go off the
25 record while we wait. 12:58:01

1 THE VIDEOGRAPHER: All right.

2 MR. TRYON: Yeah, I -- I just got back.

3 THE VIDEOGRAPHER: Oh.

4 MR. TRYON: It crashed right as you were

5 talking about education and the Master's degree and 12:58:07

6 Bachelor's degrees (sic), so that's -- just for the

7 record, that's when my computer crashed, and I got

8 back on as fast as I could.

9 So we can go on. Thank you.

10 This is David Tryon speaking, by the way. 12:58:23

11 MS. REINHARDT: Thank you.

12 BY MS. REINHARDT:

13 Q Superintendent Stutler, what did you do

14 starting in 2018?

15 A I moved to the central office as the 12:58:33

16 personnel director.

17 Q And what does that role -- what -- what do

18 you do in that role?

19 A Well, it was technically supervisor, but --

20 you just oversee all personnel in the county, as far 12:58:44

21 as hiring, processing information for the

22 superintendent to make recommendations to the board,

23 dealing with employee attendance. Any matter as it

24 related to school personnel.

25 Q And did you do that role until you became 12:59:01

1 superintendent in 2020?

2 A Yes.

3 Q Thank you. Do you understand what
4 interscholastic sports are?

5 A No. 12:59:19

6 Q So it refers to sports where students compete
7 against students at other schools.

8 Does that make sense?

9 A Yes.

10 Q So for the purposes of today, I might refer 12:59:29
11 to it as sports or athletics, but I'm really only
12 referring to interscholastic sports and athletics
13 when I say that.

14 A Okay. Thank you.

15 Q Do you know if there are any sports in 12:59:46
16 Harrison County?

17 A Yes. Many.

18 Q What is your role as it relates to sports in
19 Harrison County?

20 A It would fall under the same role as any 12:59:58
21 of -- any of my other responsibilities. I do have
22 supervisors that are the immediate contact for that.
23 But if this is an issue or problem, generally it
24 gets to me.

25 Q And -- 01:00:19

1 A And it would be handled as any other -- yeah.

2 Q I apologize for interrupting you. Please go
3 ahead.

4 A I said it would be handled as any other piece
5 of my role. 01:00:30

6 Q So these supervisors would report to you if
7 there was anything they felt you needed to know?

8 A Yes.

9 Q And what is your role as it relates to
10 policies in Bridgeport Middle School? 01:00:45

11 A Policies in our county are -- really come
12 from our board, and we only have a policy if the
13 board agrees and enacts that policy.

14 Q What does it take for the board to agree to a
15 policy? 01:01:11

16 A I would never know what it would take. I
17 offer a policy or we -- if a policy is generated --
18 and I will tell you, generally our policies are
19 generated from things coming from state statute or
20 things that we need to cover, and the stakeholders 01:01:32
21 in my organization would get -- would get together
22 and we create a policy, work, generally, with
23 counsel on a policy. That goes to a -- goes to the
24 board, and the five board members will look at that
25 policy, make changes to that policy, discuss that 01:01:47

1 policy. It could be put out on a 30-day comment,
2 for public comment and policy.

3 And then it would come back to the board and
4 that does not become policy unless the board acts on
5 that, takes action, and then it becomes a policy. 01:02:03

6 Q So am I understanding correctly that you
7 would present a policy to the board?

8 A Sometimes it would occur that way.

9 Q In cases where it does not occur that way,
10 how are policies presented to the board? 01:02:28

11 A Generally, it's a policy that -- it's already
12 in state statute, and we've just added some local
13 language that would be specific to Harrison County,
14 adopting what's already in state language. That's a
15 lot of times how policies get there. 01:02:49

16 We're just either -- we're adapting our local
17 policy to match state policy. And that has to be
18 board acted on as well because sometimes there's
19 something, maybe, in our county that might be
20 county-specific or, you know, we need to address. 01:03:04

21 Q And does the board vote on those -- in order
22 to implement those policies?

23 A All policies are voted and acted on by the
24 five board members.

25 Q Does it take a majority vote consensus, do 01:03:22

1 you know?

2 A It's a majority vote, yes. We have a
3 five-member board.

4 Q You mentioned that -- and please correct me
5 if I'm misrepresenting your statement. 01:03:43

6 As I understand it, you would revise policies
7 from the State in order to make them applicable to
8 the County; is that correct?

9 MS. DENIKER: Objection to the form.

10 THE WITNESS: I can't state what's in state 01:04:02
11 policy. I can only -- I can do what's in state
12 policy, and I -- I'm trying to think of a good
13 example.

14 But I can't change what's in state policy.
15 I -- and a lot of times we just adopt its straight 01:04:16
16 language. We use the language directly from the
17 state policy.

18 And occasionally there's something at the
19 State that we find out that we do not have a local
20 policy on, and we will adopt the State language and 01:04:30
21 create a policy that mirrors the State.

22 BY MS. REINHARDT:

23 Q I can give you a real example.

24 Is this what happened for H.B. 3293?

25 A No. 01:04:47

1 Q Did you or anyone at the county board present
2 the county board members with the -- with the bill
3 H.B. 3293?

4 A No.

5 Q Has the board voted in any way relating to 01:05:04
6 policies around H.B. 3293?

7 A No.

8 Q What is the county board's relationship with
9 the Department of Education?

10 A I believe, as the superintendent, I am the 01:05:21
11 conduit from the County Board of Education to my
12 board. So information that comes from the state
13 board is usually a conduit through me to the board,
14 although my board has -- our state boards have their
15 own association that also has a relationship with 01:05:50
16 the state board, and they do have a fall meeting and
17 a winter meeting to update board members. So
18 they -- they have a relationship outside of my
19 relationship with the state board through that
20 organization. 01:06:08

21 Q When you say "they," who are you referring
22 to?

23 A My board members. My five board members are
24 part of a state -- it's just an association. Like I
25 have an association for superintendents, there's an 01:06:23

1 association for state board members, and they meet a
2 couple of times of the -- a year, and they are given
3 information that's coming down from our State Board
4 of Education and the Department of Ed.

5 Q And does the county superintendent attend 01:06:41
6 those meetings?

7 A I am allowed to attend those meetings with my
8 board members.

9 Q Do you regularly attend those meetings as
10 they're held? 01:06:57

11 A I attend if my board members are attending.
12 They're optional meetings. If -- a board member in
13 our county or in our state has to have so many hours
14 to remain on a board. It's kind of like a
15 professional development-type thing, they have to 01:07:13
16 have so many hours. And so I'm not going to say
17 that my board attends every meeting. If they have
18 their hours, they don't always attend.

19 Q Does the county board have any rulemaking
20 power? 01:07:27

21 A We can adopt a policy, and then it becomes a
22 rule for our county.

23 Q Do you -- do you make those policies? Does
24 the county board make those policies?

25 A We can adopt the policy. 01:07:53

1 Q Just so I understand, you've said "adopt a
2 policy." What I'm asking is, are there instances
3 where the policy comes directly from the county
4 board?

5 A No. As far as creating the policy, like 01:08:07
6 writing it, the actual making of the policy, I
7 don't --

8 Q No problem. Thank you.

9 If the county board disagrees with a policy
10 that's been presented by the state board, will it 01:08:40
11 still adopt that policy?

12 A We have no choice but to follow state board
13 policy.

14 Q So what is the purpose of having votes as it
15 relates to policies? 01:08:56

16 A They're -- I guess it's -- we adopt state
17 policy. We use the language for state policy. And
18 that is our guidance.

19 If we have a local policy, and it would be
20 something like our local discipline policy, we have 01:09:08
21 an overarching state policy for safe and supportive
22 schools, policy 4373, and it gives you examples of
23 how you would discipline, if this occurs.

24 A local policy would take that policy, adopt
25 all the same language as the state policy, but we 01:09:31

1 may add in a third progressive discipline.

2 Like, if -- we may not want to go strictly
3 to -- now, there are things in that behavior policy
4 that we have to do, if there's a weapon, if
5 there's -- there are things that you have to do, but 01:09:50
6 when it is a -- something where two children are
7 arguing and we want to say, you know what, we want
8 to do ISS, put them in an in-school suspension,
9 instead of an out-of-school suspension.

10 That's what I mean by adding things that are 01:10:05
11 specific to a county that we feel that would be good
12 for our students, and I think that's -- anytime we
13 make a policy change, it's based on, you know, our
14 students and what our administrators are seeing in
15 the schools. 01:10:18

16 Q I really --

17 A The overarching policy would be state policy.
18 We would just add things like that. That's just an
19 example.

20 Q I really appreciate that example, as I 01:10:31
21 haven't had the privilege of being a part of this
22 process. So thank you.

23 I'll move on and ask you, how many schools
24 are in the county board's jurisdiction?

25 A We have five high schools, five middle 01:10:43

1 schools and 13 elementary schools and one
2 alternative education high school/middle school.
3 It's a combination. It's one building.

4 Q And of those schools, is Bridgeport Middle
5 School part of the County Board of Education's 01:11:05
6 jurisdiction?

7 A Yes.

8 Q Norwood Elementary School as well?

9 A Yes.

10 Q Do rules and regulations between schools ever 01:11:18
11 vary?

12 A Schools follow our policies, our county
13 policies. It's their guidance.

14 Q And schools are allowed to implement their
15 own policies on top of those; is that correct? 01:11:34

16 A Not -- not a policy. But a school could
17 have -- if you wanted to have different rules for
18 the kids, like, you know, raise your hand and -- I
19 mean, they do things like that.

20 You know, as a school administrator, we give 01:11:51
21 them some autonomy to run their schools with
22 scheduling. You know, how they're going to run
23 their lunches, we don't have that in policy. But
24 our policy is what -- that governs all of our
25 schools. 01:12:10

1 Q So these rules that a school may choose to
2 implement, does the county board review them?

3 A Not always. If there -- if it's a rule --
4 if -- if a -- a principal has had something
5 happening in their building and they want to change 01:12:34
6 a lunch schedule or a master schedule or -- we would
7 not review that. But our policy would say, you need
8 to have 350 minutes of instruction. That's what our
9 policy would say.

10 Now, within that school, they could have the 01:12:50
11 autonomy to -- to make that 350-minute schedule,
12 what works for their building and their staffing.

13 Q Understood. I'm going to ask you a few
14 questions about superintendents.

15 I first want to know, who employs the county 01:13:08
16 board superintendent?

17 A I am hired by the five elected board members.

18 Q And are you a state official?

19 MS. DENIKER: Objection to the form.

20 THE WITNESS: I believe I'm considered a 01:13:26
21 state employee. I have all the rights and benefits
22 of a state employee.

23 BY MS. REINHARDT:

24 Q Are you responsible for executing educational
25 policies? 01:13:38

1 A That's been approved by my board, by my
2 five-member board.

3 Q Understood. Is the county board
4 superintendent responsible for monitoring H.B. 3293?

5 MS. DENIKER: Objection to the form. 01:14:04

6 THE WITNESS: That -- there is a current
7 injunction with that rule, so we're...

8 BY MS. REINHARDT:

9 Q Is the county board superintendent
10 responsible for monitoring state policies that are 01:14:30
11 adopted by the county board?

12 MS. DENIKER: Objection to form.

13 THE WITNESS: Would you repeat that question.

14 BY MS. REINHARDT:

15 Q Is the county board superintendent 01:14:41
16 responsible for monitoring policies, let's say state
17 policies, that are adopted by the county board?

18 MS. DENIKER: Same objection.

19 THE WITNESS: Our -- our county board
20 policies are following state board policy. 01:15:01

21 BY MS. REINHARDT:

22 Q And is the county board superintendent
23 responsible for monitoring those?

24 MS. DENIKER: Same objection.

25 THE WITNESS: We enforce the policy as it 01:15:13

1 comes down from the State and our local board
2 because we're required to enforce state policy.

3 BY MS. REINHARDT:

4 Q And how do you enforce it, state policy?

5 A We follow what the rule says. 01:15:40

6 Q Does the rule describe how it should be
7 enforced?

8 MS. DENIKER: Objection to the form.

9 THE WITNESS: Generally, we know how to
10 enforce the rule. And if we had questions about a 01:16:02
11 state board policy, we would contact the state board
12 to make clarification.

13 BY MS. REINHARDT:

14 Q Understood. And what is your relationship
15 with the county board superintendent -- I'm sorry, 01:16:14
16 let -- let me rephrase that.

17 What is your relationship with the state
18 board superintendent?

19 A I contact him when I need to. He's -- he is
20 available, and our state board is available, our 01:16:32
21 state department.

22 Q In what instances would you need to -- in
23 what instances would you need to discuss things with
24 the state board superintendent?

25 A I've had contact with our state board 01:16:49

1 superintendent when I wanted to have something
2 clarified that was said, possibly, at a meeting with
3 us. They do meet with us regularly. They are great
4 to give us -- great to keep us informed in
5 information. So we -- we see them often. 01:17:19

6 So it's -- it's not like I call him every day
7 , but if I needed something, I -- I have called to
8 verify something that one of his departments maybe
9 have said to us and I wanted to talk with him. It's
10 not often, but he is available and there when we 01:17:42
11 have questions.

12 Q Who is the state board superintendent?

13 A Clayton Burch.

14 Q And did you discuss H.B. 3293 with
15 Clayton Burch? 01:18:00

16 A No.

17 Q Does the county board superintendent defer to
18 the state board superintendent?

19 MS. DENIKER: Objection to the form.

20 THE WITNESS: No. 01:18:14

21 BY MS. REINHARDT:

22 Q Have you heard of the West Virginia Education
23 Information System?

24 A I believe we call that WVEIS, West Virginia
25 EIS. We -- we refer to it as WVEIS, so I'm sure 01:18:32

1 that -- I haven't heard it called that for a long
2 time.

3 Q Wonderful. So it's an acronym --

4 A Thanks for the memory.

5 Q Is it okay with you if I also call it WVEIS? 01:18:40

6 A Yes. You can also call it an antiquated
7 system, but that's okay.

8 Q And why do you call it an antiquated system?

9 A It's been around as long as I have, so...

10 Q What is WVEIS, if you could please explain it 01:18:57
11 to me?

12 A WVEIS is just the state database that we use.
13 All counties are connected to WVEIS. And it's a --
14 just a student information database. It also holds
15 financial -- our county financial menus as well. 01:19:12
16 It's a large -- it's a large database.

17 Q So the county board superintendent has access
18 to WVEIS?

19 A I do.

20 Q Do the county board members have access to 01:19:30
21 WVEIS?

22 A No.

23 Q Who controls WVEIS?

24 MS. DENIKER: Objection to the form.

25 THE WITNESS: I believe it would be the state 01:19:47

1 department. It's just a database. So there's a lot
2 of people involved with WVEIS in different
3 departments. There's a lot of sides to it. There's
4 a student information side. There's, like I said,
5 the finance side. That's where we keep our student 01:19:59
6 attendance. It's just a recordkeeping large
7 database.

8 BY MS. REINHARDT:

9 Q Does the county board -- I'll rephrase.

10 Is the county board able to enter information 01:20:12
11 into WVEIS?

12 A Are you referring to county board members, in
13 that sense, or are you speaking about just --

14 Q I'll take it from a high level first.

15 So can you, as county superintendent, enter 01:20:30
16 information into WVEIS?

17 A I can.

18 Q And are the various departments -- and when I
19 say "departments," I'm referring to the ten
20 departments that report to you. Are they able to 01:20:47
21 enter information into WVEIS?

22 A For their specific department. My attendance
23 director has access to attendance menus. My school
24 supervisors have access to menus that involve their
25 schools. 01:21:04

1 So it depends on what their need is. We
2 don't just allow anybody WVEIS access.

3 Q Understood. And I am -- I have just a few
4 more questions for you, and then we can take a
5 break, if you would like. 01:21:19

6 My first question is if you've ever heard of
7 the county board superintendent's advisory council?

8 A Repeat that.

9 Q The county board superintendent's advisory
10 council. 01:21:43

11 A I am not familiar with that. And I could
12 be -- I just maybe have not -- maybe it's like the
13 WVEIS thing. I'm just not --

14 Q As I --

15 A Is it -- 01:22:07

16 Q Sorry, I did not mean to interrupt you.

17 Go ahead.

18 A I was going to ask, as it relates to just our
19 county superintendents?

20 Q As I understand it -- and again, I don't know 01:22:17
21 if it exists, but as I understand it, it's a council
22 to promote collaboration among the county districts
23 and to provide input to the State Board of
24 Education.

25 Is there a council similar to that that 01:22:35

1 you're aware of?

2 A I am not a member of that council.

3 Q Do you know if there's an annual report that
4 goes to the state superintendents regarding concerns
5 the county board may have? 01:22:56

6 A I am not aware.

7 Q Thank you. And similarly, have you heard of
8 the West Virginia education advisory team?

9 A I'm not sure that's what it's titled. I know
10 we have some superintendents that are involved in 01:23:27
11 different things from the state superintendent. I
12 am not on that team.

13 Q Understood. And those are all the questions
14 I have pertaining to this topic, if you would like
15 to take a break at this time. 01:23:44

16 MS. DENIKER: Is that topic 1 that we have
17 concluded, Ms. Reinhardt?

18 MS. REINHARDT: It is the conclusion of
19 topic 1. I may have some questions later that kind
20 of inter- -- that cross with topic 1, but for now, 01:23:58
21 that's the conclusion of topic 1.

22 THE WITNESS: Do we need a break?

23 MS. DENIKER: We do not need a break, if you
24 want to continue, but if you would like to take a
25 break, that is fine. 01:24:15

1 MS. REINHARDT: One second.

2 Let's take a five-minute break for now. If
3 folks are able to return at 11:30, we'll go off the
4 record.

5 THE VIDEOGRAPHER: We are going off the 01:24:33
6 record at 1:24 p.m., and this is the end of Media
7 Unit No. 1.

8 (Recess.)

9 THE VIDEOGRAPHER: All right. We are back on
10 the record at 1:36 p.m., and this is the beginning 01:35:51
11 of Media Unit No. 2.

12 Go ahead.

13 BY MS. REINHARDT:

14 Q Does the county board have a role as it
15 relates to sports in Harrison County? 01:35:59

16 A The same as they would with any policy, as it
17 relates to sports or any other topic.

18 Q Can you speak a little bit more to that?
19 What role would they have?

20 A Are you asking specific to sports? 01:36:36

21 Q I am.

22 A The understanding is, is that our board, when
23 they have policies in place -- like I said, I am
24 there for the day-to-day operations. So I think the
25 questions are, is the board, everyday, in the 01:36:59

1 day-to-day operations. They are not, until we have
2 a board meeting and they're in as a group. They --
3 they take no action. They -- they really have no
4 authority as single board members.

5 So I guess my -- my thing is, is they -- 01:37:17
6 they've got me for day-to-day operations, and I --
7 they adopt policy to support that as a group.

8 But as far -- are you speaking of day-to-day
9 operations of athletics in the county?

10 Q I am not. But let me ask you another 01:37:38
11 question first.

12 Is the county -- when I'm referring to the
13 county board, are you answering only as it relates
14 to the county board members?

15 A Well, I believe my role here is in the -- I 01:37:52
16 am in that capacity as representing the -- the
17 board, but they -- they are my supervisors or they
18 are over my --

19 MS. DENIKER: Ms. Reinhardt, this is Susan
20 Deniker. Could we go off the record for a minute 01:38:21
21 and I think that we can maybe make some
22 clarifications that would be helpful moving forward?

23 MS. REINHARDT: Thank you. Yes, let's go off
24 the record, please.

25 THE VIDEOGRAPHER: All right. We're going 01:38:31

1 off the record. The time is 1:38 p.m.

2 (Recess.)

3 THE VIDEOGRAPHER: All right. We are back on
4 the record at 1:41 p.m.

5 Go ahead.

01:40:46

6 MS. REINHARDT: While off the record, we
7 discussed the definition of county board, as I refer
8 to it here.

9 BY MS. REINHARDT:

10 Q So Superintendent Stutler, when I refer to
11 "county board," I'm talking about the entire County
12 Board of Education, not just the elected members.
13 I'll clarify, going forward, when I'm talking about
14 the county board's elected members. Is that clear?

01:40:54

15 A Yes. Thank you.

01:41:14

16 Q Wonderful. And as I go through this line of
17 questioning, if there's anything that you don't
18 believe you reviewed while reviewing the topics in
19 the 30(b)(6) notice, just let me know, but I will
20 try to stick to only topics that you've noted as
21 reviewed.

01:41:30

22 A Thank you.

23 Q I'm going to ask my previous question again.

24 Does the county board have a role as it
25 relates to athletics or sports?

01:41:44

1 A Yes.

2 Q And what is that role?

3 A We -- well, it's under my jurisdiction.

4 Each -- each school has an athletic director that

5 would be under the administrator in that building. 01:42:01

6 So each athletic program has its own athletic

7 director that oversees the programs in that

8 building. And that athletic director reports to the

9 school principal, and, of course, the school

10 principal reports to the county board. 01:42:19

11 Q Are the coaches at Bridgeport Middle School

12 employees of the county board?

13 A Not all. We have volunteer coaches that are

14 vetted by the school board, but they are not

15 employees; they are unpaid volunteer coaches. 01:42:51

16 Q Are they required to sign a contract as

17 volunteer coaches?

18 A No. We are -- we do vet them. They have

19 background checks, and we vet them, but they're not

20 under contract. 01:43:06

21 Q And when you say "we," do you mean the county

22 board?

23 A Yes.

24 Q Thank you.

25 A Thank you. 01:43:13

1 Q Does the county board have a role -- and I
2 know we discussed this briefly -- as it pertains to
3 policies regarding sports in Harrison County?

4 A Yes.

5 Q What is that role? 01:43:32

6 A It would be the same role as other policies
7 that we would have -- that we -- that my board would
8 adopt.

9 Q Does the county --

10 A It would follow -- 01:43:47

11 Q Oh, I -- I apologize. Go ahead.

12 A It would follow that same process.

13 Q Would you bother reminding me what the
14 process is?

15 A If -- if there's a state policy and we want 01:43:59
16 to adopt the processes for our county, we would
17 adopt the local policy, with those processes, and it
18 would go to the board, and they would adopt an
19 official policy, and it would be enacted.

20 Q And when you say it would go to the board, do 01:44:18
21 you mean the elected board members?

22 A The elected board. I'm sorry, I will say
23 elected board as well.

24 Q No problem. I know --

25 A They're such a big part of our world. 01:44:28

1 Q Understood. Does the county board have any
2 policies pertaining to sports?

3 A We have minimal. We have two.

4 Q And what are those two policies?

5 A We have a policy on extracurricular 01:44:45
6 activities for 6 to 12, just defining what
7 extracurricular would be for 6 to 12th grade. And
8 the other policy that we have is on how you obtain a
9 letter, how are you a lettermen, as far as sports is
10 concerned. 01:45:07

11 Q When were those policies developed?

12 A I believe 2008 was one. I don't remember the
13 date on the other. They were early. They're --
14 they're older policies.

15 Q So as it relates to the lettermen policy, 01:45:20
16 I'll use that as an example, who is responsible for
17 enforcing it?

18 A That would be the school AD and the athletic
19 program at the school. That would be really
20 pertaining to the high school athletic directors. 01:45:40

21 Q And does the county board ever need to step
22 in, as far as enforcing those policies?

23 A Only if there would be a disagreement. I
24 would assume that if a child thought they were
25 supposed to get a letter, and they didn't, then I 01:46:00

1 would probably be -- it would be brought to my
2 attention.

3 Q Understood. And just for clarity, does the
4 county board have any policies related to sex
5 separation in sports? 01:46:12

6 A No, we do not have an adopted policy for
7 that. We follow SSAC guidelines on what teams are
8 coed.

9 Q Does the County have any policies pertaining
10 to transgender students? 01:46:40

11 A No.

12 Q What do you know about H.B. 3293?

13 MS. DENIKER: Objection to the form.

14 THE WITNESS: It -- it was a state law passed
15 in July of '21. 01:47:05

16 BY MS. REINHARDT:

17 Q What does H.B. 3293 do?

18 MS. DENIKER: Objection to the form.

19 THE WITNESS: I can really only tell you what
20 I know when I read the statute. It's a -- it makes 01:47:24

21 a distinction between -- it begins by saying that
22 there is an inherent difference between a male and a
23 female. It talks about safety during sporting
24 activities or doing -- during athletics. And it
25 also addresses the equity or displacement of female 01:47:46

1 athletes.

2 I can only speak to the statute and what it
3 says.

4 BY MS. REINHARDT:

5 Q How did you come to know about H.B. 3293? 01:48:03

6 MS. DENIKER: I'm going to object to the form
7 and ask if you're asking her -- are you asking her
8 this as the superintendent?

9 I mean, this is a little bit of a
10 complicating factor as it relates to a 30(b)(6) 01:48:19
11 deposition.

12 Are you asking Superintendent Stutler how she
13 became aware of that as the superintendent?

14 MS. REINHARDT: I'm asking
15 Superintendent Stutler to speak to it as the county 01:48:30
16 board designee.

17 When I'm referring to Superintendent Stutler,
18 I'll be sure to reference you and make it clear when
19 I'm asking. I apologize if that wasn't clear.

20 MS. DENIKER: Well, I'm not sure how she can 01:48:47
21 answer how an entity became aware of something.

22 MS. REINHARDT: Can we go off the record for
23 just one moment, please?

24 MS. DENIKER: Sure.

25 THE VIDEOGRAPHER: Okay. We are going off 01:48:55

1 the record. The time is 1:49 p.m.

2 (Recess.)

3 THE VIDEOGRAPHER: All right. We are back on
4 the record at 1:55 p.m.

5 Go ahead. 01:55:19

6 BY MS. REINHARDT:

7 Q Superintendent Stutler, when did you, in your
8 individual capacity, become aware of H.B. 3293?

9 A I cannot give a specific date or time. I can
10 tell you the process with any legislative updates 01:55:36
11 that I received, and it involves all of them.

12 Generally, when our legislative group in
13 Charleston convene, they are always, you know,
14 putting forth new bills. You never know where
15 they're at and what process. 01:55:54

16 And we have multiple organizations, one being
17 my superintendent's organization, that gives us
18 usually a weekly update on where the bills are.
19 There's not commentary on those. It's just a
20 snippet of what the bill is and kind of an overview 01:56:07
21 of what the bill is, and I get those -- a list of
22 all of them that's been introduced, and then they'll
23 update us occasionally. And those come from
24 different directions.

25 We have a superintendent's organization. Our 01:56:25

1 school board, I'm talking about the elected members,
2 and their association will send out legislative
3 updates on everything coming out of the legislation
4 for the legislative body in -- in our Charleston
5 legislature. 01:56:42

6 So I can't give you a specific time, but I
7 did receive updates in general from -- from those
8 sources.

9 Q And how often are those updates provided?

10 A It depends on how busy Charleston is. If 01:56:56
11 there's a lot going on, we get them frequently. No
12 more than once a week during the session.

13 Q And if the superintendent of the county board
14 has questions related to legislation, who does the
15 county superintendent go to? 01:57:15

16 MS. DENIKER: Objection to the form.

17 Are you speaking about Dora Stutler as county
18 superintendent?

19 MS. REINHARDT: I'm generally speaking to a
20 superintendent in this role. 01:57:29

21 BY MS. REINHARDT:

22 Q Is there a specific person who has been
23 designated or is in a position to answer questions
24 about legislation?

25 A When there is a legislative update, I -- I 01:57:42

1 guess I'm in a different role. In my role as
2 superintendent here, I -- I am not one that's making
3 decisions on legislation. I'm watching it. I'm
4 being updated on it. I am not in that role.

5 Now, whether other superintendents are, I am 01:58:00
6 unaware. But I am not in that role. But I am
7 paying attention and reading the updates that are
8 coming to me.

9 Q Do you recall who updated you about H.B.
10 3293? 01:58:13

11 A It came specifically from our superintendent
12 organization. They do -- like I said, it's that
13 same -- it's the same group. We -- we have an
14 association of all the superintendents, 55 counties.

15 Q Who is the superintendent -- and I 01:58:35
16 apologize -- superintendent of organizations, is
17 that what you've said?

18 A Yeah, it's an association of superintendents.
19 It's just our -- all -- all 55 counties. There's an
20 executive director of that group, and they inform us 01:58:51
21 of anything that's -- of anything that's going to
22 affect school systems or legislation or rules,
23 anything.

24 Q Are you a member of this association?

25 A I am. 01:59:09

1 Q And once the association made you aware of
2 H.B. 3293, did you report -- did you report anything
3 related to H.B. 3293 to someone you report to?

4 And I can rephrase that if that was not
5 clear. 01:59:29

6 A No.

7 Q Did you discuss H.B. 3293 with anyone who
8 reports to you?

9 A No.

10 Q Was the County Board of Education -- did the 01:59:45
11 County Board of Education have a role in drafting
12 H.B. 3293?

13 A No.

14 Q Did the county board provide any comments or
15 thoughts to the legislature regarding H.B. 3293 that 02:00:01
16 you are aware of as Superintendent Stutler?

17 A Are you speaking about my county-elected
18 board or --

19 Q The County Board of Education, generally.

20 A No. 02:00:22

21 Q How was H.B. 3293 described to you as
22 Superintendent Stutler?

23 MS. DENIKER: Objection to the form.

24 THE WITNESS: I truly just read the

25 administrative updates, and I will tell you that we 02:00:42

1 had someone that presented to my board, but he did
2 all the legislative updates, like we would with any
3 legislative session, to inform my board.

4 (Exhibit 25 was marked for identification
5 by the court reporter and is attached hereto.) 02:01:04

6 BY MS. REINHARDT:

7 Q Understood. If you could go into the "Marked
8 Exhibits" folder, I'm going to introduce a document
9 that's been marked as Exhibit 25.

10 Please let me know when you have that up. 02:01:18

11 A I see that.

12 Q And for now, we're just going to be looking
13 at that first page.

14 Have you seen this e-mail before?

15 A I had not seen that e-mail until counsel 02:01:58
16 shared that.

17 Q What is WVASA?

18 A That is the West Virginia association of
19 superintendents.

20 Q And are you a member of that Listserv? 02:02:12

21 A I am.

22 Q Thank you. Now, if you wouldn't mind, I
23 would also like to ask you who Sarah Starkey is.

24 A She's our county Title IX investigator.

25 Q And who is Kenneth Winkie? 02:02:36

1 A He's our safety and support director.

2 Q And, finally, who is Donna Hage, if I'm
3 pronouncing that correctly?

4 A Donna Hage, at that time, in 2021, the date
5 of that, she was an assistant superintendent for 02:02:56
6 Harrison County schools.

7 Q Thank you. Now, attached to this e-mail is a
8 Title IX presentation.

9 Have you seen this before?

10 A I -- yesterday, I saw that. I don't recall 02:03:10
11 seeing that previous, prior to yesterday, when I
12 did -- met with counsel.

13 Q Understood. I will give you an opportunity,
14 if you would like it, to flip through the PowerPoint
15 presentation, or I can just direct you to the pages 02:03:41
16 that I'll be asking about. What do you prefer?

17 A Just direct me to the pages.

18 Q Wonderful. I'm going to direct you to the
19 page that's Bate-numbered HCBOE 00343.

20 Are you there? Let me -- please let me know 02:04:20
21 when you're there.

22 A Yes.

23 Q So on this page, at the top, it says,
24 "Title IX and Current Issues." And on the following
25 page, it says, "Recent Cases of Note." 02:04:38

1 Do you see that?

2 A Yes.

3 Q Then on the following page, which is
4 HCBOE 00345, it says, "WV House Bill 3293."

5 Do you see that? 02:04:54

6 A Yes.

7 Q And is it correct that you, as Dora Stutler,
8 were not present for this presentation?

9 A I do not attend all of those association
10 meetings. So I do not recall that particular 02:05:12
11 presentation. These attorneys do present often at
12 these organization meetings.

13 Q After this presentation, did any of the --
14 other superintendents that are members of this
15 associations speak with you about a presentation? 02:05:33

16 A No.

17 Q Has the county board had any conversations
18 with the State Board of Education, prior to the
19 enactment of H.B. 3293, about students who are
20 transgender participating in sports? 02:05:54

21 A No.

22 Q Now, looking at this page, which I believe is
23 345, is that the same page you're currently on?

24 A Yes.

25 Q Can you just review it and let me know if 02:06:07

1 this is how you recall H.B. 3293 being summarized to
2 you?

3 MS. DENIKER: Objection to the form of the
4 question.

5 I'm unclear about -- summarized by who? 02:06:24

6 BY MS. REINHARDT:

7 Q As I understand it, Superintendent Stutler,
8 you received various e-mails about upcoming
9 legislation.

10 Did any of those e-mails categorize H.B. 3293 02:06:32
11 similarly to the page before you Bates-Stamped
12 numbered HCBOE 00345?

13 A I could not speak to that.

14 MS. DENIKER: Objection to the form.

15 BY MS. REINHARDT: 02:06:52

16 Q Can you please go to the page Bates-Stamped
17 HCBOE 00347?

18 A Yes, I see that.

19 Q And it says (as read):

20 "Cause of Action. Any student 02:07:18

21 aggrieved by a violation of this

22 section may bring an action against

23 a county board of education or state

24 institution of higher education

25 alleged to be responsible for the 02:07:29

1 alleged violation."

2 Have you seen this cause of action prior to
3 now?

4 MS. DENIKER: Objection to the form.

5 THE WITNESS: This document, during prep, was 02:07:41
6 shown to me.

7 BY MS. REINHARDT:

8 Q Okay. And has any student brought an action
9 against the county board under H.B. 3293?

10 MR. TRYON: Objection. 02:08:03

11 THE WITNESS: We have been named, with
12 several other entities.

13 BY MS. REINHARDT:

14 Q In what action?

15 A It's a lawsuit against multiple entities, and 02:08:14
16 we are included in that for B.P.J.

17 Q Have there been any actions related to
18 H.B. 3293 other than this case?

19 A No.

20 Q Has the county board taken any steps in 02:08:41
21 addressing this Cause of Action section?

22 MS. DENIKER: Objection to the form.

23 THE WITNESS: No. I mean...

24 BY MS. REINHARDT:

25 Q Has the county board taken any steps in 02:09:04

1 preparation for actions brought under this section?

2 A We have retained counsel for the current
3 lawsuit that we've been named in.

4 Q Other than this action, has there been any
5 other preparation as to this Cause of Action section 02:09:30
6 from House Bill 3293?

7 A No.

8 Q Did the county board have any conversations
9 with employees at Bridgeport Middle School prior to
10 the enactment of H.B. 3293? 02:09:47

11 MS. DENIKER: Objection to the form.

12 Are you asking about --

13 MR. TRYON: Objection.

14 MS. DENIKER: -- 3293?

15 MS. REINHARDT: Can you please repeat that, 02:10:01
16 Ms. Deniker?

17 MS. DENIKER: Yes, I'm sorry, I objected to
18 the form. And then I was asking for clarification.

19 Why don't I just let you re-ask the question.

20 I apologize. 02:10:11

21 MS. REINHARDT: No problem.

22 BY MS. REINHARDT:

23 Q Did the county board have any conversations
24 with employees at Bridgeport Middle School prior to
25 the enactment of H.B. 3293 related to transgender 02:10:18

1 students participating in sports?

2 A There was a gender support plan being created
3 at Norwood Elementary for B.P.J. She was going to
4 attend Bridgeport Middle School.

5 Q So -- 02:10:49

6 A And there's a section -- there's a section on
7 that plan, Are you an athlete?

8 Q Other than the gender support plan that
9 you're speaking of, were there any other
10 conversations with Bridgeport Middle School 02:11:04
11 employees about transgender students
12 participations -- participation in sports?

13 A No.

14 Q Did the county board have any conversations
15 with employees at Norwood Elementary School prior to 02:11:18
16 the enactment of H.B. 3293 about students who are
17 transgender participating in sports?

18 A No.

19 Q What is the county board's rule as it relates
20 to H.B. 3293? 02:11:45

21 MS. DENIKER: Objection to the form.

22 THE WITNESS: It's like any other state law.
23 But there's an injunction, so that was never
24 enacted.

25 BY MS. REINHARDT: 02:11:58

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Q Has H.B. 3293 been enforced against any other student other than B.P.J.? I apologize.

A There's an injunction against it. We take -- we've taken no action. 02:12:17

MS. REINHARDT: Susan, I believe the rest of my questions relate to topic 10, so if it suits the parties, we'll take a break now for about 20 minutes, and then I would ask the county board to have David Mazza present. 02:12:39

MS. DENIKER: And then are done with all other topics upon which Ms. Stutler will be testifying on?

MS. REINHARDT: I am not.

MS. DENIKER: Okay. 02:12:51

THE VIDEOGRAPHER: So -- okay.

MS. REINHARDT: We can also go off the record.

THE VIDEOGRAPHER: Yeah, let's discuss -- okay. We're -- we're going off the record. The time is 2:13 p.m., and this is the end of Media Unit No. 2. 02:13:00

One moment.

(Recess.)

THE VIDEOGRAPHER: All right. We are back on 02:53:32

1 the record at 2:54 p.m., and this is the beginning
2 of Media Unit No. 3.

3 Go ahead.

4 BY MS. REINHARDT:

5 Q Have you heard -- I'll rephrase. 02:53:57

6 Have you, as Dora Stutler, heard of
7 West Virginia Secondary School Activities
8 Commission?

9 A Yes.

10 Q Can you tell me what it is? 02:54:06

11 MS. GREEN: Object to the form.

12 This is Roberta Green on behalf of WVSSAC.

13 THE WITNESS: It's -- it's a governing body,
14 but it's made up of member -- members of the -- of
15 the schools. It's a principals organization with 02:54:26
16 the governing body of the SSAC.

17 BY MS. REINHARDT:

18 Q Is it okay if I refer to it as "WVSSAC" going
19 forward?

20 A Yes. 02:54:42

21 Q Is the county board able to delegate powers
22 to another body?

23 A Can you rephrase that or ask that in another
24 way?

25 Q Of course. I can ask a more direct question. 02:54:55

1 Has the county board delegated any of its
2 powers, as it relates to sports, to WVSSAC?

3 MS. DENIKER: Object to the form.

4 MS. GREEN: Also object to the form.

5 THE WITNESS: No. 02:55:13

6 BY MS. REINHARDT:

7 Q Has the county board delegated any of its
8 powers, as it relates to sports, to any other entity
9 other than the County itself?

10 MS. DENIKER: Objection to the form. 02:55:31

11 MS. GREEN: Object to the form.

12 THE WITNESS: Can we talk about what the
13 SSAC -- I mean, how it -- the oversight of the SSAC
14 for counties in general? Because the confusion is,
15 is we don't -- my board, delegating authority -- I 02:55:53

16 mean, my board, we're following state policy and
17 guideline. That's what we do.

18 The West Virginia SSAC is an oversight board
19 and provides guidance for our schools and our
20 athletic programs. It's a guiding body. 02:56:11

21 So I don't know that my board, if you're --
22 well, see, I'm thinking elected members. You're --
23 you're thinking of the board in general.

24 I'm trying to just explain the relationship.

25 I mean, we -- we have members of the SSAC. 02:56:28

1 They're -- it's a member body. It's our principals.

2 MS. DENIKER: This is Susan Deniker. I just
3 want to also state that to the extent we're talking
4 about the relationship between the Harrison County
5 board and the WVSSAC, I believe that that is topic 02:56:43
6 10, and we've designated a different witness for
7 that.

8 MS. REINHARDT: Understood. I am asking
9 Superintendent Stutler questions as it relates to
10 topic 8 at this moment. 02:56:54

11 BY MS. REINHARDT:

12 Q Does WVSSAC have any powers as it relates to
13 sports?

14 MS. GREEN: Object to the form.

15 MS. DENIKER: Same objection. 02:57:09

16 THE WITNESS: Yes. They set guidelines for
17 us to follow.

18 BY MS. REINHARDT:

19 Q When you say "us," they set guidelines for
20 the County Board of Education to follow? 02:57:18

21 MS. GREEN: Object to the form.

22 THE WITNESS: There are athletic -- yes, for
23 our athletics, in each -- our programs need to
24 follow. There's certain examples. Transfer of a --
25 of a student from one school to another. There's 02:57:34

1 guidelines. They have to follow that. There's
2 eligibility requirements. Those are all -- but
3 those are all rules that were voted on as the -- the
4 principals vote on that as members of the West
5 Virginia SSAC. But there is a governing body that 02:57:53
6 govern all of our sport programs.

7 BY MS. REINHARDT:

8 Q I apologize if I'm not quite understanding.
9 So if I can just have a little bit of clarity, I'm
10 wondering -- so I'll ask several questions and maybe 02:58:06
11 that will help get me to the point of understanding.

12 WVSSAC provides guidelines, and those are
13 presented to the county board, and the county board
14 must follow those guidelines.

15 Is that a correct summary of what you've 02:58:26
16 said?

17 MS. DENIKER: Object to the form.

18 MS. GREEN: Objection to the form.

19 THE WITNESS: I guess my frustration is I'm
20 not sure what you're asking me. I know how the 02:58:40
21 West Virginia SSAC works. I know how it governs our
22 sporting events. And they work with our
23 administrators and our ADs to put programs together
24 for our kids and their athletics. It's -- it's a --
25 it's a guide. They provide guidelines for them. 02:58:59

Page 74

1 And there are -- if we do not follow certain
2 things, and there is a -- someone says, hey, I don't
3 agree with that, yes, there are ways to appeal that,
4 and there could be hearings for athletes.

5 BY MS. REINHARDT: 02:59:17

6 Q So --

7 A But there are rules that we have to follow
8 for our athletic programs.

9 Q And those rules are provided by WVSSAC?

10 MS. GREEN: Object to the form. 02:59:31

11 MS. DENIKER: Objection to the form.

12 THE WITNESS: Yes.

13 BY MS. REINHARDT:

14 Q And can you please describe the process to me
15 if the county board doesn't agree with a guideline 02:59:40
16 or a rule set by WVSSAC?

17 MS. GREEN: Object to the form.

18 THE WITNESS: Well, I -- I think you have to
19 go back to what the -- how their -- their rules come
20 to us. You have your administrators all as a 02:59:56

21 part -- they're members of this. So they're the
22 ones creating these rules, voting on these rules.

23 So we -- once those rules are passed by a
24 majority of those members, we follow the rules.

25 ///

1 BY MS. REINHARDT:

2 Q And what happens if there's a dispute about
3 implementing a certain rule?

4 MS. GREEN: Object to the form.

5 MS. DENIKER: Objection to the form. 03:00:25

6 I also believe that this is a topic 10 issue.

7 MS. REINHARDT: I'm going to ask the witness
8 to continue to answer, as I believe this falls under
9 topic 8.

10 MS. DENIKER: And I will permit her to answer 03:00:37

11 with the understanding that I will not permit
12 multiple witnesses to be asked the same questions
13 with regards to the same issues.

14 MS. REINHARDT: Understood. Thank you.

15 BY MS. REINHARDT: 03:00:53

16 Q Would you like me to repeat my question?

17 A Yes, please.

18 MS. REINHARDT: Could the court reporter
19 please read back my last question?

20 THE REPORTER: Yes. 03:01:11

21 (Record read.)

22 MS. GREEN: Object to the form.

23 MS. DENIKER: Same objections I've already
24 raised.

25 THE WITNESS: I can tell you, in Harrison 03:01:23

1 County, our ADs and our administrators are following
2 those rules.

3 BY MS. REINHARDT:

4 Q So all of the rules set by WVSSAC are
5 currently being followed by the County Board of 03:01:38
6 Education?

7 MS. GREEN: Object to the form.

8 MS. REINHARDT: I can also --

9 THE WITNESS: That I'm aware of.

10 MS. REINHARDT: Oh, I apologize. 03:01:51

11 Would Mrs. Deniker and Mrs. Green make a
12 standing objection to these topics?

13 MS. GREEN: I'm perfectly fine to keep
14 objecting. It's possible some of them would be,
15 yeah. But my -- my objections go to foundation and 03:02:05
16 scope, and I'm not sure what else, so...

17 MS. DENIKER: At this point, I don't see a
18 need for a continuing objection, but if we get to a
19 place where I think that that is appropriate, I will
20 -- we can discuss that. Thank you for that offer. 03:02:25

21 MS. REINHARDT: No problem.

22 BY MS. REINHARDT:

23 Q You may answer, Superintendent Stutler.

24 A Are you asking if a -- an administrator has
25 an objection to the rule or the athlete has an 03:02:36

1 objection to the rule?

2 Q I'm asking about the County Board of
3 Education. So if -- if it makes more sense, an
4 administrator.

5 MS. DENIKER: Objection to the form. 03:02:54

6 THE WITNESS: I am unaware of any objections
7 to the SSAC rules in Harrison County from our
8 administrators.

9 BY MS. REINHARDT:

10 Q Thank you. Does the County determine player 03:03:05
11 eligibility?

12 MS. GREEN: Object to the form.

13 MS. DENIKER: Also object to the form.

14 And again, I'm going to object that this is
15 beyond the scope of topic 9, and I believe that it 03:03:27
16 clearly falls within -- within topic 10.

17 BY MS. REINHARDT:

18 Q I'm going to ask you to go into the "Marked
19 Exhibit" folder and please pull up Exhibit 24.

20 Please let me know once you have it up. 03:03:56

21 A Yes, it's there.

22 Q So if you look at topic 8, which I believe,
23 at the bottom, is page 7, it states (as read):

24 "The Harrison County Board and the

25 County Superintendent's current 03:04:15

1 and/or expected role in
2 implementing, monitoring,
3 supervising, regulating, and
4 enforcing H.B. 3293, including any
5 delegation of authority to or
6 supervision over the West Virginia
7 Secondary School Activities
8 Commission."

03:04:24

9 Did you prepare for this topic?

10 A I did.

03:04:34

11 Q And can you please remind us what you did in
12 preparation of topic 8?

13 MS. DENIKER: And again, I will instruct you
14 not to answer about any communications you had with
15 counsel.

03:04:49

16 THE WITNESS: Reading over documents in -- in
17 prep for this meeting today.

18 BY MS. REINHARDT:

19 Q And --

20 A And House Bill 3293.

03:05:00

21 Q And which documents were those?

22 A I read the house bill, 3293.

23 Q That was the only document you read related
24 to this topic?

25 MS. DENIKER: Objection to the extent that

03:05:16

Page 79

1 this has been asked and answered.

2 MR. TRYON: Objection.

3 David Tryon.

4 BY MS. REINHARDT:

5 Q Were there any additional documents that you 03:05:25
6 reviewed?

7 MS. DENIKER: Same objection.

8 THE WITNESS: Information on the secondary
9 school activities commission.

10 BY MS. REINHARDT: 03:05:37

11 Q What information on the West Virginia
12 Secondary School Activities Commission?

13 A When they're governing body and how they
14 interact with counsels in their role.

15 MS. REINHARDT: So, Susan, I believe these 03:05:54
16 fall directly under the questions that I'm asking,
17 and it sounds like Superintendent Stutler is
18 prepared to answer these questions.

19 MS. DENIKER: Well, I object to that because
20 I believe that topic 8 is in the context of House 03:06:06
21 Bill 3293. You're asking general questions with
22 regard to the relationship between Harrison County
23 Board of Education and the WVSSAC, which I believe
24 are within the scope of topic 10. I -- I understand
25 topic 8 to be in the context solely of House Bill 03:06:23

Page 80

1 3293.

2 MS. REINHARDT: I will continue to set a
3 foundation, and I will allow you to have a standing
4 objection, if you would like, or you can continue to
5 object.

03:06:36

6 BY MS. REINHARDT:

7 Q But I would ask you, Superintendent Stutler,
8 if the county board determines player eligibility.

9 MS. GREEN: Object to the form.

10 MS. DENIKER: I object to the form, too.

03:06:48

11 And I just want to say one more time that I
12 will object to you asking these general questions of
13 a different witness if you get -- if you have these
14 questions asked and answered of this witness.

15 MS. REINHARDT: Understood.

03:07:01

16 MS. DENIKER: And to the extent you do not
17 know the answers to the question --

18 THE WITNESS: Just say "I don't know"?

19 MS. DENIKER: -- you may answer accordingly.

20 THE WITNESS: Eligibility is -- there's a
21 guideline for what eligibility -- the requirements
22 for eligibility for a student athlete.

03:07:13

23 BY MS. REINHARDT:

24 Q And is that guideline through the County
25 Board of Education?

03:07:23

Page 81

1 MS. DENIKER: Objection to form.

2 THE WITNESS: No. It's SSAC rules.

3 BY MS. REINHARDT:

4 Q What happens if there's a dispute between the
5 county board and WVSSAC as it pertains to player 03:07:32
6 eligibility?

7 MS. GREEN: Object to the form.

8 MS. DENIKER: Objection to the form.

9 THE WITNESS: I am unaware of any objections
10 with my ADs, my school administrators, with SSAC 03:07:49
11 rules.

12 BY MS. REINHARDT:

13 Q Is there a process in place for a dispute
14 between the county board and WVSSAC regarding their
15 guidelines? 03:08:06

16 MS. GREEN: Object to the form.

17 A There is a process for a student
18 athlete or -- yeah, an athlete. If they disagree
19 with something that the AD or the coach or the
20 administrator has said, they can ask for a hearing. 03:08:28

21 BY MS. REINHARDT:

22 Q And would this also be true for H.B. 3293?

23 MS. GREEN: Object to the form.

24 MS. DENIKER: Objection to the form.

25 MR. TRYON: I'm going to join the objection. 03:08:48

1 THE WITNESS: No. Because we are not
2 operating under House B. -- House Bill 3293.

3 BY MS. REINHARDT:

4 Q Despite the injunction, if one was not put in
5 place, would the process that you've described be 03:09:05
6 the same for H.B. 3293?

7 MS. DENIKER: Object to the form.

8 THE WITNESS: If a student -- if a student
9 athlete is objecting to something, according to SSAC
10 rules, they could follow that process. 03:09:20

11 BY MS. REINHARDT:

12 Q Thank you. Did the county board have any
13 conversations with WVSSAC prior to the enactment of
14 H.B. 3293 about students who are transgender
15 participating in sports? 03:09:40

16 A No.

17 Q Do you know who Bernie Dolan is?

18 A Yes.

19 Q Who is Bernie Dolan?

20 A He's the executive director of the SSAC. 03:09:52

21 Q Did the county board have any conversations
22 with Mr. Dolan, prior to the enactment of H.B. 3293,
23 about students who are transgender participating in
24 sports?

25 A No. 03:10:11

1 Q Did you, Superintendent Stutler, have any
2 conversations with Mr. Dolan regarding transgender
3 students participation in sports?

4 A No.

5 MS. REINHARDT: I am now going to move tab 7 03:10:27
6 into the exhibit folder, if you could please just
7 give me one second. That will be marked as
8 Exhibit 26.

9 I'll let you know once I've placed it in the
10 folder. 03:10:47

11 Okay. You may refresh. And please let me
12 know once you see Exhibit 26.

13 (Exhibit 26 was marked for identification
14 by the court reporter and is attached hereto.)

15 THE WITNESS: I see that. 03:11:16

16 BY MS. REINHARDT:

17 Q Have you, Superintendent Stutler, seen this
18 document before?

19 A I don't recall seeing that.

20 Q Now, I know there are quite a few people 03:11:23
21 listed on this e-mail. I'm wondering if these are
22 all employees of the county board?

23 MS. DENIKER: Objection to the form.

24 And, also, I don't believe that there's a
25 question. 03:11:41

1 BY MS. REINHARDT:

2 Q Are any of these e-mails in the "To" column
3 employees of the county board?

4 A I'm looking at the names. I do not --
5 there's a -- it looks like David that's under the 03:12:11
6 exhibit, Exhibit 26. What's that? I don't know
7 that name.

8 There is one AD on there for Harrison County,
9 high school principal, high school assistant. It
10 looks like this may have went to high school 03:12:21
11 principals, ADs.

12 Q So there are -- great.

13 A Okay.

14 Q You're seeing several employees of the County
15 Board of Education in the "To" column; correct? 03:12:39

16 A Yes.

17 Q And so in this e-mail, it reads "Dear
18 Principals and ADs."

19 Does ADs stand for administrators?

20 A No. That's athletic director. 03:12:51

21 Q Thank you for clarifying.

22 It goes on to say (as read):

23 "Below are a couple of bills that
24 will impact your school."

25 Am I reading that correctly? 03:13:09

1 A Yes.

2 Q On the next page, it says (as read):

3 "HB 3293 - Transgender bill. Please

4 read."

5 Am I reading that correctly?

03:13:16

6 A Yes.

7 Q Do you, Superintendent Stutler, agree that

8 H.B. 3293 is properly characterized as a transgender

9 bill?

10 MS. DENIKER: Objection --

03:13:34

11 MS. GREEN: Object to the --

12 MS. DENIKER: -- to the form.

13 MS. GREEN: Object to the form.

14 MR. TRYON: Objection.

15 THE WITNESS: I'm reading that. I think that

03:13:53

16 was sent as just a small piece of information. I --

17 I take nothing from that, really.

18 BY MS. REINHARDT:

19 Q Do you know --

20 A I think that was sent to AEs (sic) -- ADs and

03:14:03

21 the -- and the administrators.

22 Q I apologize. Can you please just repeat the

23 last portion?

24 A I said that was sent to some ADs and

25 administrators. I don't know what the intent of

03:14:16

1 that was.

2 Q Do you know why Mr. Dolan would characterize
3 H.B. 3293 as a transgender bill?

4 MS. GREEN: Object to the form.

5 MS. DENIKER: Objection to the form. 03:14:28

6 MR. TRYON: Speculation.

7 THE WITNESS: No.

8 BY MS. REINHARDT:

9 Q Do you agree with the characterization that
10 H.B. 3293 is a transgender bill? 03:14:37

11 MS. DENIKER: Objection to the form.

12 MS. GREEN: And I'll object to the form.

13 MR. TRYON: Objection. Asked and answered.

14 (Simultaneous speaking.)

15 THE REPORTER: I can't get all of your
16 objections at the same time. I know it's hard being
17 on Zoom. If you don't mind going off the record --
18 it's hard, with the cameras off, to see who is
19 speaking and objecting, so maybe to make it easier,
20 we either turn them on or try and take our time and
21 answer one at a time. Thank you.

22 MR. TRYON: This is Dave Tryon. My objection
23 is asked and answered.

24 THE REPORTER: Thank you.

25 MS. DENIKER: This is Susan Deniker. I 03:15:13

1 objected to form and then also objected that it had
2 been asked and answered.

3 MS. GREEN: This is Roberta Green on behalf
4 of SSAC. I objected to the form.

5 BY MS. REINHARDT: 03:15:33

6 Q Unless your counsel directs you otherwise,
7 you may answer.

8 A I don't know what the intent is with that.

9 Q I'm asking if you agree with the
10 characterization. 03:15:47

11 MS. GREEN: Same objection.

12 MS. DENIKER: Same objection.

13 MR. TRYON: Objection.

14 THE WITNESS: I would not be able to speak
15 whether I agree or disagree for the board. 03:15:59

16 BY MS. REINHARDT:

17 Q Do you know why Mr. Dolan would send this
18 e-mail to the principals and -- and athletic
19 directors?

20 MS. GREEN: I'm going to object to the form, 03:16:13
21 foundation, scope and speculative.

22 MS. DENIKER: Object to form.

23 THE WITNESS: I would have no idea.

24 BY MS. REINHARDT:

25 Q Thank you. And just to expedite my next few 03:16:23

1 questions, I want to see if I can confirm what you
2 previously stated.

3 Can you confirm whether or not the county
4 board had any conversations with anyone outside of
5 the County Board of Education about H.B. 3293 as it 03:16:44
6 relates to students who are transgender
7 participating in school sports?

8 MS. DENIKER: Objection on the basis it's
9 been asked and answered.

10 You can answer. 03:16:59

11 THE WITNESS: I am unaware of any
12 conversations.

13 BY MS. REINHARDT:

14 Q If the preliminary injunction was not in
15 place, what would be required of the county board as 03:17:07
16 it relates to H.B. 3293?

17 MS. DENIKER: Objection to the form.

18 THE WITNESS: We -- we have not acted or
19 changed the way that we would continue with sports
20 in our athletic programs and -- 03:17:39

21 BY MS. REINHARDT:

22 Q And that -- and that's true even if the
23 injunction was not in place?

24 MS. DENIKER: Objection to the form.

25 THE WITNESS: The board has taken no action 03:17:52

1 as it relates to this house bill.

2 BY MS. REINHARDT:

3 Q I'm asking what that'd be required to do.

4 MS. DENIKER: Objection to the form.

5 THE WITNESS: We receive the house bill. 03:18:14

6 It's not enacted. We've made no action on that.

7 And I could not speak on what actions would be

8 taken. We have not had to address that.

9 BY MS. REINHARDT:

10 Q Who will be responsible for promulgating 03:18:36

11 rules to implement H.B. 3293?

12 MS. GREEN: Object to the form.

13 MS. DENIKER: Objection to the form.

14 THE WITNESS: It would be the same process we
15 would with any new house bill or rule that we have. 03:18:49

16 BY MS. REINHARDT:

17 Q And that's in line with how you characterized
18 the process earlier in this deposition; is that
19 correct?

20 MS. DENIKER: Objection to the form. 03:19:04

21 THE WITNESS: I believe so.

22 BY MS. REINHARDT:

23 Q I am just trying to not make you reiterate
24 the -- your process for implementing policies, but
25 if you prefer, I am happy to hear that. 03:19:20

1 A I think I have been asked that. It's a --
2 it's a complicated question. When you're talking
3 about board policies, our board can only enact
4 policies that they vote on and it becomes the
5 policy. We have adopted state board policy, and we 03:19:43
6 will mirror the language of the state board policy.

7 Can the County adopt their own policy? We
8 can. If it's presented to the board, it's acted on,
9 they vote on it.

10 I don't -- I guess I'm not sure what you're 03:20:03
11 asking me.

12 Q That answers my question. Thank you.

13 Could the county board issue any rules in
14 conflict with H.B. 3293?

15 A No. 03:20:26

16 Q To your knowledge, has the county board ever
17 violated any rules promulgated by the State Board of
18 Education?

19 MS. DENIKER: Objection to the form.

20 THE WITNESS: Not that I'm aware of. 03:20:43

21 BY MS. REINHARDT:

22 Q Thank you. I'm going to move on to topics as
23 they relate to topic 4.

24 I want to talk a little bit about
25 Plaintiff B.P.J. in this case and her experience in 03:20:59

1 Harrison County schools. Is that okay?

2 A Yes.

3 Q Do you, Superintendent Stutler, know who
4 B.P.J. is?

5 A Yes. 03:21:11

6 Q Have you ever met B.P.J.?

7 A I have.

8 Q How would you describe her?

9 A Energetic, pleasant, athletic.

10 Q Have you ever seen her be distressed? 03:21:37

11 MS. DENIKER: Objection to the form.

12 THE WITNESS: I believe the questions were
13 prior to 2019, so are you speaking about --

14 I think she's going back into possibly
15 when -- I can't speak to that. 03:22:07

16 BY MS. REINHARDT:

17 Q I can clarify.

18 A In this case -- in this case.

19 Q I can clarify.

20 A I was a -- I was a principal in the building 03:22:16
21 with her when she was younger.

22 Q I can clarify. I'm only asking about your
23 interactions since January 1st, 2019, to present.

24 So in that time, have you ever seen B.P.J. be
25 stressed -- distressed? 03:22:31

1 A No.

2 MS. DENIKER: Objection.

3 THE WITNESS: No.

4 BY MS. REINHARDT:

5 Q Have you -- have you, Superintendent Stutler, 03:22:38
6 interacted with any of B.P.J.'s family members?

7 A I have not.

8 Q When was the county board informed that
9 B.P.J. is a girl who is transgender?

10 MR. TRYON: Objection. 03:22:58

11 David Tryon.

12 THE WITNESS: Our county board gets
13 involved -- or my Title IX investigator gets
14 involved when a school reaches out to her to provide
15 assistance for a gender support plan. 03:23:12

16 BY MS. REINHARDT:

17 Q Great. And I'll have some questions about
18 the gender support plan in a moment.

19 I'm wondering, was the county board informed
20 that B.P.J. is a girl who is transgender only at the 03:23:24
21 time of the gender support plan?

22 MR. TRYON: Objection.

23 THE WITNESS: I am unaware of any time prior
24 to that.

25 ///

1 BY MS. REINHARDT:

2 Q Thank you. Was Norwood Elementary School
3 informed that B.P.J. is a girl?

4 MS. DENIKER: Objection to the form.

5 MR. TRYON: Objection. 03:23:52

6 THE WITNESS: Speaking with Tarra Shields,
7 the administrator of Norwood Elementary, she was
8 informed by her mother prior to going into her
9 fourth-grade year.

10 BY MS. REINHARDT: 03:24:13

11 Q Was anyone else informed that B.P.J. is a
12 girl, at Norwood Elementary School?

13 MR. TRYON: Objection.

14 THE WITNESS: I believe when the mother
15 reached out to the administrator, that is what set 03:24:25

16 in motion the gender support plan, and that's when
17 our Title IX director was brought into the process.

18 BY MS. REINHARDT:

19 Q Are you familiar with the counselors at
20 Norwood Elementary School during B.P.J.'s time there 03:24:44
21 as a student?

22 A Yes. Amber Davis.

23 Q Do you know who James Thorton is?

24 A No. There was a previous counselor there,
25 Josh Thorton. 03:25:07

1 Q Thank you. And Josh Thorton, you said, was a
2 counselor.

3 Are the counselors at Norwood Elementary
4 School employed by the county board?

5 A Yes. 03:25:20

6 Q What qualifications are required to become a
7 counselor in the county board -- in the county?

8 A They -- they have to be certified counselors
9 through the national school counseling association
10 and through our state. 03:25:39

11 Q Was Mr. Thorton made aware of B.P.J.'s status
12 as a girl who is transgender?

13 MS. DENIKER: Objection to form.

14 MR. TRYON: Objection.

15 THE WITNESS: I am unaware of that. 03:25:49

16 BY MS. REINHARDT:

17 Q Was Principal Mazza informed that B.P.J. is a
18 girl?

19 MS. DENIKER: Objection to the form.

20 THE WITNESS: I believe he was contacted when 03:26:05

21 she was going to go there as a sixth grader and
22 there was an update to the gender support plan.

23 That would be when Mr. Mazza was informed.

24 BY MS. REINHARDT:

25 Q Are you aware of any conversation between 03:26:19

1 Principal Mazza and Heather Jackson regarding
2 B.P.J. playing on girls' sports teams?

3 A I am only aware of the gender support plan
4 that took place between Heather Jackson, the mother;
5 and Mr. Mazza, and there were a few in that meeting, 03:26:39
6 at that gender support plan meeting.

7 Q Were you in attendance at that meeting?

8 A I was not.

9 Q So how did you become aware that
10 Principal Mazza and Heather Jackson had a meeting 03:26:58
11 regarding the gender support plan?

12 And please do not inform us of -- of any
13 conversations you may have had with counsel.

14 A I reviewed the gender support plan as it
15 related to this case. 03:27:10

16 Q And in preparation for this case, did you
17 speak with Principal Mazza?

18 A I did.

19 Q And did you -- did he inform you of any
20 conversation between him and Heather Jackson 03:27:26
21 regarding B.P.J.'s ability to play on girls' sports
22 teams?

23 MS. DENIKER: I'm going to object to the
24 extent that it -- that the question calls for
25 information that she learned as part of 03:27:38

1 attorney-client privileged communications.

2 To the extent that you have had
3 communications with Mr. Mazza that were not part of
4 the attorney-client privilege, you may answer, but
5 I'm going to instruct you not to answer with regard 03:27:51
6 to any attorney-client privileged communications.

7 THE WITNESS: The gender support plan
8 involved multiple people, and all the items on that
9 gender support plan were discussed, and she checked
10 that she would be an athlete at Bridgeport Middle. 03:28:05

11 (Exhibit 27 was marked for identification
12 by the court reporter and is attached hereto.)

13 BY MS. REINHARDT:

14 Q Thank you. I am now going to move tab 9 into
15 the "Marked Exhibits" folder. I'll let you know 03:28:20
16 once it's there. It will be marked as Exhibit 27.

17 You may refresh. And please let me know once
18 you see Exhibit 27.

19 A I see that.

20 Q Are you familiar with this e-mail? 03:29:05

21 And please take your time to review it, if
22 necessary.

23 A I am.

24 Q And are how are you familiar with this
25 e-mail? 03:29:16

Page 97

1 A It was between the -- my board president and
2 myself.

3 Q Is Gary Hamrick the board president you're
4 referring to?

5 A Yes. 03:29:26

6 Q And what is his role?

7 A He's the -- I guess you want to say the
8 president of my board. He leads the meetings and...

9 Q Thank you. And if you look at the e-mail, he
10 writes (as read): 03:29:49

11 "Even though it is a new state law,

12 Mazza should have informed you that

13 he denied a transgender student."

14 Am I reading that correctly?

15 A You are. 03:30:01

16 Q And you respond (as read):

17 "Agree. First I heard."

18 Am I reading that correctly?

19 A I was agreeing that it was a new state law.

20 Q And were you saying -- and what did you mean 03:30:12
21 by "first I heard"?

22 A It's the first I heard that we had a -- a
23 lawsuit. I believe he's referring to the MetroNews
24 article. And I think that's where he got his
25 information, possibly. 03:30:36

1 Q Did you speak with Principal Mazza upon
2 learning about the incidents alleged in the
3 complaint, which I believe was attached to this
4 e-mail?

5 MS. DENIKER: And again, I will just instruct 03:30:47
6 you that to the extent that -- you're not to answer
7 with regard to any attorney-client privileged
8 communications, but if you had other communications,
9 you can answer with regard to those.

10 THE WITNESS: Would you ask me that again. 03:31:06

11 BY MS. REINHARDT:

12 Q Did you speak with --

13 MS. DENIKER: If you just give me a
14 continuing -- I'll just continue that same
15 instruction, but I won't interrupt you, if that's 03:31:16
16 okay, so the witness can hear the question.

17 MS. REINHARDT: Thank you, Mrs. Deniker.

18 BY MS. REINHARDT:

19 Q I'm wondering if you spoke with Mr. Mazza
20 upon learning about the allegations in the 03:31:28
21 complaint.

22 A I did not.

23 Q Did any employees of the county board raise
24 concerns about B.P.J. being a girl who is
25 transgender? 03:31:48

1 A No.

2 Q Under H.B. 3293, can cisgender girls play on
3 girls' sports teams?

4 MS. DENIKER: Objection to the form.

5 MR. TRYON: Objection. 03:32:07

6 THE WITNESS: Yes.

7 BY MS. REINHARDT:

8 Q Under H.B. 3293, can girls who are
9 transgender play on the girls' sports teams?

10 MS. DENIKER: Object to the form. 03:32:20

11 MR. TRYON: Same objection.

12 (Simultaneous speaking.)

13 MS. DENIKER: And I'm so sorry to interrupt
14 here, but I heard the same question you just asked,
15 which makes me believe that I didn't hear it 03:32:31
16 correctly.

17 So if you would preserve all of our
18 objections, could you ask that again, please?

19 MS. REINHARDT: Yes.

20 BY MS. REINHARDT: 03:32:41

21 Q Under H.B. 3293, can girls who are
22 transgender play on girls' sports teams?

23 A If it's a -- no, but they can on coed teams.

24 Q And what -- what's your --

25 (Simultaneous speaking.) 03:33:00

1 BY MS. REINHARDT:

2 Q Oh, I apologize. Please go ahead.

3 A I -- I was going to say, it says no. That's
4 what -- that's what the house bill is.

5 Q And you mentioned coed. Are you referring to 03:33:12
6 coed sports?

7 A Yes.

8 MS. GREEN: Object to the form.

9 BY MS. REINHARDT:

10 Q Can you please tell me what your 03:33:25
11 understanding of -- what your understanding is of
12 coed sports?

13 MS. GREEN: Object to the form.

14 THE WITNESS: That the team is available to
15 either male or female athletes. 03:33:37

16 (Exhibit 28 was marked for identification
17 by the court reporter and is attached hereto.)

18 BY MS. REINHARDT:

19 Q I'm going to move tab 20 into the "Marked
20 Exhibits" folder. It will be Exhibit 28. I'll let 03:33:55
21 you know when you can refresh.

22 You may refresh. Please let me know once you
23 have reviewed Exhibit 28.

24 A I see it.

25 Q It says on page 2, under "Bridgeport High 03:34:34

1 School," where it lists "Football," it says,
2 "Co-Ed."

3 Can you explain to me why football is -- why
4 it says football is coed?

5 MS. GREEN: Object to the form. 03:34:53

6 THE WITNESS: I believe there's not a -- a
7 football -- female football team, so they created a
8 coed team because there's not a counterpart for a
9 female athlete to participate.

10 BY MS. REINHARDT: 03:35:10

11 Q Can you please explain that to me a little
12 bit further?

13 So it's marked as coed because there's not a
14 girls team; is that correct?

15 A Correct. 03:35:19

16 MS. DENIKER: Object to the form.

17 BY MS. REINHARDT:

18 Q So why would it be marked co- -- I'll
19 rephrase.

20 Generally, if I'm understanding correctly, 03:35:29
21 the football team would be a boys' team, and it is
22 marked "Co-Ed" because there is no girls' team; is
23 that correct?

24 MS. GREEN: Object to the form.

25 A I have no idea. We've -- we've had girls 03:35:55

1 play on football teams for a long time. They could
2 be kickers. They've -- they've been on football
3 teams for quite a while.

4 BY MS. REINHARDT:

5 Q And is that true of the wrestling team as 03:36:06
6 well?

7 MS. GREEN: Object to the form.

8 A Yes, we do have -- yes, we have female
9 wrestlers.

10 BY MS. REINHARDT: 03:36:19

11 Q Okay. Great. You can take down that exhibit
12 for now.

13 Prior to H.B. 3293, what team would B.P.J. be
14 required to play on?

15 MS. DENIKER: Objection to the form. 03:36:32

16 THE WITNESS: She chose to run cross-country.
17 It's a coed sport.

18 BY MS. REINHARDT:

19 Q Sorry, I'm going to ask you to please re-pull
20 up Exhibit 28. 03:36:50

21 And if you look at page 4, under "Bridgeport
22 Middle School," it says (as read):

23 "Boys Cross-Country, Boys.

24 "Girls Cross-Country, Girls."

25 So what do you mean by it is a coed sport? 03:37:13

1 column and "Girls" in the second column.

2 So would that mean that girls would be the
3 winners on the girls' cross-country team?

4 A I would assume so.

5 Q Prior to H.B. 3293, what team would 03:39:11
6 B.P.J. play on?

7 MS. DENIKER: Objection to the form.

8 MS. GREEN: Object to the form.

9 THE WITNESS: Prior to that rule, she would
10 have been rostered as what her birth certificate 03:39:34
11 said.

12 BY MS. REINHARDT:

13 Q Are you aware of what her birth certificate
14 says?

15 A It's whatever is in WVEIS. 03:39:48

16 Q Are you aware of what is in WVEIS?

17 A I'm not aware of that. I'm not sure what --
18 where she's at.

19 Q Prior to H.B. 3293, what team would
20 transgender boys play on? 03:40:09

21 MS. DENIKER: Objection to the form.

22 MR. TRYON: Objection.

23 MS. GREEN: Objection.

24 THE WITNESS: You said transgender boys prior
25 to? 03:40:31

1 BY MS. REINHARDT:

2 Q Correct.

3 A They would be rostered the same as their --
4 whatever they are on WVEIS. We would be required to
5 roster them male or female. 03:40:49

6 Q Why are you required?

7 MS. GREEN: Object to the form.

8 THE WITNESS: That's the rules we have from
9 the WVSSAC say.

10 BY MS. REINHARDT: 03:41:15

11 Q You said the rules from WSSAC (sic)? Did I
12 hear that properly?

13 MS. GREEN: Object to the form.

14 A Yes. And we do go by what is in WVEIS.

15 BY MS. REINHARDT: 03:41:33

16 Q Is there a benefit to playing on sports
17 teams?

18 MS. DENIKER: Objection to the form.

19 THE WITNESS: Absolutely.

20 BY MS. REINHARDT: 03:41:45

21 Q What are those benefits?

22 A Cooperation, teamwork, watching out for your
23 fellow players. There's a lot of benefit to having
24 a team sport.

25 Q Would you say B.P.J. benefited from 03:41:59

1 participating in sports?

2 MS. DENIKER: Objection to the form.

3 MR. TRYON: Objection.

4 THE WITNESS: I can't speak for her, but I
5 hope she did. I hope she had a great experience. 03:42:09

6 BY MS. REINHARDT:

7 Q And I'm just trying to further understand how
8 WVEIS works.

9 What rule requires you to follow the gender
10 listed in WVEIS? 03:42:24

11 MS. GREEN: Objection to the form.

12 THE WITNESS: WVEIS allows us to put -- when
13 we have -- when we have a student ask for a certain
14 name, we're allowed to put that in there so that
15 during the course of the day, they can use their 03:42:42
16 name that they choose to be called by, but because
17 WVEIS is a database that generates legal documents,
18 graduation transcripts, is -- is the big thing. I
19 mean, it is -- it's a legal -- it's what generates
20 the legal documents later. It's a record of their 03:43:09
21 school. It's a -- it's a legal record.

22 So we only make changes in WVEIS if we have a
23 court order or a birth certificate that tells us
24 gender, their sex, male or female.

25 BY MS. REINHARDT: 03:43:29

1 Q For sports specifically, what rule requires
2 you to follow the gender/sex listed in WVEIS?

3 MS. GREEN: Object to the form.

4 MS. DENIKER: Same objection.

5 THE WITNESS: It's the -- it's the same. 03:43:45

6 It's -- it's a guideline for us. We -- we do not
7 have -- I do not have the legal authority and I sure
8 wouldn't want my AD or my administrator to have that
9 legal authority to make that change. We ask for
10 either a judge or someone above us to tell us that. 03:44:03

11 BY MS. REINHARDT:

12 Q Do you know where this rule comes from?

13 MS. DENIKER: Object to the form.

14 THE WITNESS: I do not.

15 BY MS. REINHARDT: 03:44:30

16 Q Are you aware of whether the County has
17 followed this rule across the board for all
18 students?

19 A I can speak to cases. We've -- we have
20 previous cases. When we get a court order or a 03:44:46
21 document with a new birth certificate and a name
22 change, we take care of that at the county level in
23 WVEIS, and we change that.

24 Q Thank you. Do you know where we might be
25 able to find the rule you are referring to? 03:45:08

1 MS. GREEN: Object to the form.

2 MS. DENIKER: Object to the form.

3 THE WITNESS: We -- we clarified that, there
4 was a call to our West Virginia Department of Ed --
5 I can't even recall when it was. It was under -- 03:45:22
6 when I was working for the previous
7 superintendent -- that we cannot change the legal
8 record in WVEIS without a court order or a new birth
9 certificate.

10 MS. REINHARDT: Court reporter, would you 03:45:46
11 please mind rereading my last question.

12 (Record read.)

13 BY MS. REINHARDT:

14 Q I just want clarity. If you could please
15 answer that question directly. 03:46:06

16 A I would direct you to the State Department of
17 Education.

18 Q Thank you. Did you ever receive any
19 complaints about any transgender students
20 participating in sports at Bridgeport Middle School? 03:46:25

21 A I did not.

22 Q Are you aware of any complaints about a
23 transgender student participating in sports at
24 Bridgeport Middle School?

25 A I am unaware of any complaints. 03:46:47

1 Q Are you aware if any transgender students,
2 other than B.P.J., have played sports in West
3 Virginia?

4 MR. TRYON: Objection.

5 THE WITNESS: I would -- I would not have 03:47:02
6 that knowledge.

7 MS. REINHARDT: So before I move on to the
8 next set of topics, we've been going for about an
9 hour, I'm happy to continue, but I wanted to see if
10 anyone needed a break. 03:47:18

11 THE WITNESS: I'm fine.

12 MS. REINHARDT: Great.

13 BY MS. REINHARDT:

14 Q So my next line of questioning pertains to
15 topics 4 and 5. I'm going to move tab 12 into the 03:47:27
16 "Marked Exhibits" folder. It's been previously
17 marked as Exhibit WV-17.

18 You may refresh. It should be there.

19 A We have it.

20 Q Have you seen this document before? 03:48:31

21 A I have.

22 Q And without disclosing any information you
23 may have had with counsel, when did you see this
24 document?

25 A In prep for this deposition. 03:48:45

1 Q And on the first page, do you see where it
2 says "Today's Date"?

3 A Yes.

4 Q And it says "8-23-19"; is that correct.

5 A Yes. 03:49:06

6 Q Do you know what the purpose of the gender
7 support plan is?

8 A Yes. It's the -- to bring everybody together
9 that's working with the -- the student and come up
10 with a plan. 03:49:21

11 Q Has the gender support plan ever been
12 requested other than for B.P.J.?

13 A Yes.

14 Q When was it requested?

15 MS. DENIKER: Objection to the form. 03:49:38

16 THE WITNESS: I could not give you specifics
17 on that. I know it has been requested throughout
18 Harrison County.

19 BY MS. REINHARDT:

20 Q Who created this document? 03:49:48

21 A This document was initially created with
22 support from Dr. Cris Mayo at WVU and with our
23 Title IX investigator. She was kind of given the
24 role to develop a plan. And we have an adolescent
25 coordinator that works for seven counties that had 03:50:15

1 been involved in some of this.

2 But it was with -- with Dr. Cris Mayo and my
3 Title IX director and just -- information, and they
4 put this together.

5 Q Do you recall when that was? 03:50:33

6 And I apologize if you said it and I did not
7 hear you.

8 A I'm trying to think of the year. '18 -- I'm
9 trying to think of the year. It would have been --
10 we had -- we had an issue a -- a few years ago, and 03:50:55
11 it generated this -- a need for it. As we
12 discovered, we had a need for this. So that's where
13 it came from.

14 I'm thinking 2018, the prior year. Might
15 have been '19. 03:51:13

16 Q And when you say there was a need for this,
17 can you -- can you explain what you mean by there
18 was a need for this?

19 MS. DENIKER: I'm going to object to the
20 form. I'm also going to object to any discussion 03:51:27
21 that is student-specific so we can avoid any HIPAA
22 issues.

23 THE WITNESS: Well, we have -- when our
24 administrators reach out and ask questions and we
25 had more students requesting to be called by other 03:51:46

1 names and -- you know, of course, it was new for us.
2 We're trying to understand it. So it generated a
3 need to have a -- a protocol in place or guidelines
4 for our schools to follows so we're all working in
5 the same direction and focused. 03:52:03

6 BY MS. REINHARDT:

7 Q Does the county board -- and again, when I
8 refer to the county board, I mean the entire County
9 Board of Education.

10 Does the county board provide the gender 03:52:15
11 support plan to the schools?

12 A The gender support plan was generated in our
13 county office and provided to the schools, yes.

14 Q Thank you. And does the county board receive
15 a copy of completed gender support plans? 03:52:37

16 A We do not. They're kept at the school level,
17 in the student file.

18 Q Are they kept in WVEIS at all?

19 A No. The only thing in WVEIS is a name that
20 the student uses, in parentheses, that they would 03:52:55
21 prefer to be called.

22 Q Do you know why it isn't stored in WVEIS?

23 A That's not the role of WVEIS. We have other
24 documents that we prepare at the school level that
25 take care of our kids. We have multiple plans that 03:53:11

1 we use, and -- and they're kept in the school file.

2 You have to understand that the kids that are
3 interacting -- or the people and -- and faculty that
4 are interacting with those children at the school
5 are the frontline people that need to know and -- so 03:53:30
6 it's kept there so the school has access to it and
7 input into it. They know the people involved.

8 Q Does sex change in WVEIS as a result of the
9 gender support plan?

10 A No. 03:53:55

11 Q I want to look at this first page where it
12 says "Meeting Participants."

13 Who is Sarah -- oh, I apologize, you've
14 already explained.

15 Sarah Starkey is the Title IX director; is 03:54:09
16 that correct?

17 A Yes, she is.

18 Q And why was she in attendance?

19 A When we began doing the gender support plans,
20 we put that under her purview, in her department. 03:54:24

21 So she is the one that's been with this from the
22 ground up. She's a great support for our -- our
23 administrators and our families. She also is a
24 social worker. She has an excellent background, a
25 Title IX investigator. She's the right person to be 03:54:40

1 involved in this.

2 Q Does she attend all gender support plan
3 meetings?

4 A She is invited to all of them, and she tries
5 to. But we're a large county. Sometimes she is 03:54:53
6 not.

7 Q And again, I apologize if you've already
8 said, but who is Tarra Shields?

9 A Tarra Shields is the principal at
10 Norwood Elementary. 03:55:08

11 Q And who is Jasmine Lowther?

12 A Jasmine Lowther is the fourth-grade teacher
13 at Norwood Elementary.

14 Q And why was she at the gender support plan
15 meeting? 03:55:24

16 A Jasmine Lowther was the fourth-grade teacher.
17 This would have been done in August when school was
18 starting, and B [REDACTED] would have been going into the
19 fourth grade. So that would have been her classroom
20 teacher. 03:55:36

21 Q And, finally, why was Nurse Tina at the
22 gender support plan meeting?

23 A When we do a comprehensive plan at the
24 school, we generally bring in any health support
25 people. They're just usually part of the school 03:55:54

1 planning team. We have, you know, of course,
2 anybody related to counseling, and nursing is a big
3 part of that school, and so she was part of the
4 plan.

5 Q Thank you. I'm going to ask you to turn to 03:56:06
6 the next page. It's Bates-Stamped number, at the
7 bottom, BPJ 008.

8 And at the top, it states (as read):

9 How will teach --

10 "How will a teacher/staff member 03:56:21
11 respond to any questions about the
12 student's gender from:"

13 And then it lists three different incidents.

14 Do you see that?

15 A Yes, I see that. 03:56:39

16 Q And it lists "Other students? Staff members?
17 Parents/community?"

18 Is that correct?

19 A Yes.

20 Q For each group, it states (as read): 03:56:46

21 "Be open and honest - she is E [REDACTED]."

22 Do you see that?

23 A Yes.

24 Q What does it mean by "be open and honest"?

25 MS. DENIKER: Objection to the form. 03:57:00

1 THE WITNESS: I think with any student, we --
2 we want to be open and honest and just -- we want
3 them to be -- be in a happy place.

4 BY MS. REINHARDT:

5 Q So is your understanding that when it states 03:57:18
6 "be open and honest," that they're directing the --
7 they're directing the teachers or staff members to
8 be open and honest?

9 MR. TRYON: Objection.

10 MS. DENIKER: Objection to form. 03:57:29

11 THE WITNESS: Well, it's talking about other
12 students, staff members. You've got to look at this
13 plan in -- in its entirety. You're looking at a
14 school and a group of individuals that's dealing
15 with B [REDACTED] every day, and they're trying to make 03:57:44
16 this plan, and I want to say as open and honest and
17 as real as possible for her so that when she comes
18 to school every day, she feels safe and secure and
19 she belongs there.

20 So if you go back to the front page, every 03:58:00
21 person that's involved with B [REDACTED] at that school is
22 listed. And including B [REDACTED]. B [REDACTED] was there.

23 So the language on here was developed as a
24 group so they could make it a great environment for
25 her. They wanted her to be successful. 03:58:12

1 BY MS. REINHARDT:

2 Q I'm simply trying to understand what "open
3 and honest" means.

4 MS. DENIKER: Same objection.

5 BY MS. REINHARDT: 03:58:27

6 Q So in this context, what does "open and
7 honest" mean?

8 A I --

9 MR. TRYON: Objection.

10 THE WITNESS: I was not in that meeting. 03:58:32

11 I was not in that meeting. It means what it
12 means, that you're open and honest. I -- I don't
13 know. I would not be able to speak to what that
14 meaning is --

15 BY MS. REINHARDT: 03:58:42

16 Q I'm going to --

17 A -- other than they -- they wanted her to be
18 in a safe, secure environment.

19 Q I'm going to move tab 13 into the "Marked
20 Exhibits" folder. And it was previously marked as 03:58:53
21 Exhibit WV-19.

22 Do you see that?

23 A I do.

24 Q And were you in attendance for this gender
25 support plan meeting? 03:59:15

1 A I was not. The participants are listed.

2 Q And if you go to that second page, where it
3 says "BPJ 003," similarly, under "How will a
4 teacher/staff member respond to any questions about
5 a student's gender from:" and lists those three 03:59:34
6 categories, it says (as read):

7 "Be open and honest – she is B [REDACTED],
8 and that makes her happy."

9 Did you speak to anyone about either of these
10 gender support plans? 03:59:49

11 A When we were preparing for today's
12 deposition.

13 Q And not including your attorney, did anyone
14 provide clarity on what it means to be "open and
15 honest – she is B [REDACTED]"? 04:00:09

16 A No, not specifically.

17 Q Thank you. If you could please go back to
18 that previously marked exhibit, WV-17.

19 A Yes.

20 Q And on that second page, BPJ 008, closer to 04:00:33
21 the bottom of the page, it says (as read):

22 "Gender will be male, but B [REDACTED] will
23 be in () next to birth name."

24 Do you see that?

25 A I do. 04:00:50

1 Q What does the -- what does the double
2 parentheses mean?

3 A That means in WVEIS, in the -- in the WVEIS
4 system, outside of her official given name, it will
5 be in parentheses what her preferred name is. 04:01:05

6 Q So this -- what's written here is pertaining
7 to B.P.J.'s name; correct?

8 A Yes.

9 Q So the --

10 A How she would have identified in WVEIS. 04:01:23

11 Q So are the double brackets in WVEIS empty, or
12 is there somebody in -- I'll just ask that first.

13 Is the -- are the double brackets in WVEIS empty?

14 A No. It has "B [REDACTED]."

15 Q So if I'm understanding correctly, it says 04:01:38
16 gender will be male, but in WVEIS, next to "male,"
17 it will say "B [REDACTED]"; is that correct?

18 MS. DENIKER: Objection to the form.

19 THE WITNESS: It's by her name. It's her --
20 her -- her official name is there, and "B [REDACTED]" is in 04:02:00
21 parentheses on that line.

22 BY MS. REINHARDT:

23 Q Thank you for clarifying.

24 I'm going to ask you to turn to what's page 4
25 that says BPJ 010, and near the bottom, it says (as 04:02:09

1 read):

2 "What training(s) will the school
3 engage in to build capacity for
4 working with gender-expansive
5 students? How will the school work
6 to create more gender inclusive
7 conditions for all students?"

04:02:26

8 Did I read that correct?

9 A Yes.

10 Q And the answer says (as read):

04:02:34

11 Norwood staff receives (sic)
12 training on tolerance and cultural
13 diversity and LGBTQ + AI (sic) on
14 8/23 -- sorry -- 8/21 and -- and
15 provided protocol and multiple
16 resource -- resources (sic) sources.

04:02:52

17 Did I read that correctly?

18 A Yes.

19 Q The date of the gender support plan, as we
20 noted earlier, is 8/23/19.

04:03:07

21 Are you aware if the training did in fact
22 occur two days prior to the gender support plan?

23 A I would not be able to speak specifically. I
24 know countywide we did multiple trainings. I do not
25 have those dates.

04:03:30

1 Q Did you, Superintendent Stutler, attend any
2 of these trainings?

3 A I did.

4 Q And what did the trainings entail?

5 A The trainings were provided by Dr. Cris Mayo. 04:03:41
6 We originally brought her in to meet with several
7 school staff, and then she did a training with all
8 of our school administrators and county office
9 administrators, and it was about how to make our
10 school environments inviting for -- and it really 04:04:03
11 was all-encompassing. The children -- children are
12 children. Students are students. Athletes are
13 athletes.

14 It really was -- it was a great training
15 because it made you focus on, you know, you're there 04:04:22
16 for kids and we need to make them comfortable and
17 out of the line of fooling or intimidation in any
18 manner. She -- she framed it in the sense this is
19 for all of our kids.

20 Q And did Dr. Cris Mayo provide any guidance on 04:04:37
21 how to make students more comfortable?

22 A She gave specifics, and I cannot recall
23 those. She gave us a lot of information.

24 Q Did staff receive resources?

25 A They did, provided by her and the department 04:04:58

1 at WVU, the diversity department.

2 Q Do you have a copy of those resources?

3 A I do in my office.

4 Q And did these trainings occur prior to 2019?

5 A We've had diversity trainings prior, not -- 04:05:21
6 not involving Cris Mayo. But that's been part of
7 the county for quite a while.

8 Q And did those trainings always include LGBTQ
9 plus IA?

10 A All -- 04:05:42

11 MS. DENIKER: Objection to the form.

12 THE WITNESS: Specifically, I don't know that
13 it said that, but we did provide diversity training.
14 That's all-encompassing. So I would say yes, it
15 addressed that. 04:06:06

16 We tried to identify -- everybody -- our
17 children aren't all the same. It's difficult to put
18 them in categories. Their needs are different, and
19 we meet those needs as they come to us.

20 BY MS. REINHARDT: 04:06:16

21 Q On the same page, it says (as read):

22 "Plan will be reviewed at least
23 yearly."

24 Do you see that?

25 A Yes. 04:06:25

1 Q What does it mean by "plan"?

2 A This plan, this written plan that's developed
3 by -- in this case, B [REDACTED] was there. Her mother was
4 there. School staff was there. So we look at it
5 annually and sooner, if it needs to be. 04:06:44

6 Q Do you know if the plan was reviewed the
7 following year?

8 A Are you speaking about the plan I'm looking
9 at now?

10 What's the date on this one? 04:07:00

11 It will be on the second -- wait. I'm moving
12 it.

13 She -- this was from fourth grade -- when she
14 was going into fourth grade.

15 They could have reviewed it and not made 04:07:18
16 changes to it. I don't know that.

17 Q Thank you.

18 A I don't know that.

19 Q And on the last page, page 5, where it says
20 "BPJ 001 (sic) at the bottom, it says (as read): 04:07:34

21 "Will schedule at end of school year
22 for next school year."

23 And I reading that correctly?

24 A Yes.

25 Q Was that stating the plan would be reviewed 04:07:41

1 for the fifth-grade year?

2 A Tarra Shields -- in conversation with
3 Tarra Shields, they put this plan into place, her
4 going into fourth grade. And, now, this is from
5 Tarra Shields. There were -- they -- she had a -- 04:08:05
6 I'm talking from Tarra, that she had a good
7 fourth-grade year. They were going -- she was going
8 into the fifth grade, and they felt there was really
9 no need to change anything.

10 At any time, a parent can request that the 04:08:20
11 plan be reviewed. So I would take that if there's
12 not another plan dated, that they felt that, you
13 know, she was having a good two years.

14 Q And who are you referring to when you say
15 "they"? 04:08:35

16 A I -- I would say Tarra Shields, this team
17 that was with her at Norwood. And you've also got
18 to understand the parent is involved in this.
19 And -- and B [REDACTED].

20 Q Did the county board implement any policies 04:08:46
21 related to transgender students after implementing
22 B [REDACTED]'s gender support plan?

23 A No.

24 Q Now I'm going to ask you to go back to what
25 was previously marked as WV-19. 04:09:05

1 A Okay.

2 Q Did you see -- have you seen this document
3 before?

4 A In preparing for this deposition.

5 Q In looking at this first page, we've already 04:09:27
6 been over a few of these meeting participants, but
7 I'm hoping you can tell me who Amber Davis is.

8 A Amber Davis is the counselor at Norwood.

9 Q And who is David Mazza?

10 A The principal at Bridgeport Middle School. 04:09:46

11 Q And who is Lauren Muro, if I'm pronouncing
12 her name right?

13 A Laura -- Lauren is the counselor at
14 Bridgeport Middle.

15 Q Thank you. And on the same first page, it 04:09:59
16 says (as read):

17 "How public or private will
18 information about this student's
19 gender be?"

20 And there's an X next to "Teachers and/or 04:10:16
21 other school staff will know."

22 And then it says "Specify the adult staff
23 members," and it states "All teachers."

24 Am I reading that correctly?

25 A Yes. 04:10:29

1 Q Who did -- were all teachers, in fact,
2 informed about B [REDACTED]'s gender?

3 A Mr. Mazza informed her teachers, yes.

4 Q Are you aware of what the teachers were
5 informed? 04:10:50

6 A No, I do not know exactly what they were
7 told.

8 Q Thank you. And now I'd like to turn to
9 page 4, which is listed as BPJ 005. And at the top,
10 it indicates that B.P.J. would be participating in 04:11:11
11 cross-country and track.

12 Do you see that?

13 A I do.

14 Q And underneath, it says (as read):
15 "Coaches would need to be aware of 04:11:22
16 B [REDACTED]'s transition. If teammates
17 have questions, they could approach
18 the coaches or administration."

19 Do you see that?

20 A Yes. 04:11:31

21 Q Were the coaches informed of B.P.J.'s gender?

22 MS. DENIKER: Objection to the form.

23 THE WITNESS: I don't know. I really --
24 that, I don't know.

25 ///

1 BY MS. REINHARDT:

2 Q Do you know if the teachers were informed
3 about B.P.J.'s transition?

4 MS. DENIKER: Objection to the form.

5 And are you asking about coaches -- 04:12:00

6 MS. REINHARDT: Yes.

7 MS. DENIKER: -- or teachers?

8 MS. REINHARDT: I'm asking about coaches, as
9 it states on that second question on page BPJ 005.

10 MS. DENIKER: Thank you. Same objection. 04:12:13

11 THE WITNESS: I'm not aware of that.

12 BY MS. REINHARDT:

13 Q And near the bottom, it says (as read):

14 "What training(s) will the school
15 engage in to build capacity for 04:12:29

16 working with gender-expansive
17 students? How will the school work
18 to create more gender inclusive
19 conditions for all students?"

20 Did I read that correctly? 04:12:36

21 A Yes.

22 Q It states further (as read):

23 "BMS will receive training on
24 tolerance and culture diversity and
25 LGBTQ as arranged by Mr. Mazza 04:12:51

1 during upcoming school year."

2 Is that -- am I reading that correctly?

3 A Yes.

4 Q What is BMS?

5 A Bridgeport Middle School. 04:13:01

6 Q So who would that training be for?

7 A His staff, his teachers.

8 Q Are you aware if that training occurred?

9 A It did. I don't know the date. I spoke with
10 him, and he did do that training. 04:13:22

11 Q Did you attend that training?

12 A I did not.

13 Q Are -- are sports team coaches in attendance
14 for those trainings?

15 A When it talks about being -- you have to 04:13:36

16 understand, our sports coaches are not always

17 employees in the buildings where they are coaching.

18 So they could have been in training maybe in the

19 building where they were at. It would not have been
20 specific to any -- it would have just been general 04:13:54

21 diversity training.

22 Our coaches come from all over. We have -- a

23 coach might live on one side of the county and work

24 in one side of the county but coach at another high

25 school. So they would not always be there during 04:14:11

1 that school day when that training would be taking
2 place.

3 MS. REINHARDT: Thank you. I'm now going to
4 put tab 14 into the "Marked Exhibits" folder. I
5 believe we are at Exhibit 28. Oh, sorry, let me 04:14:26
6 see. 29. It will be marked as Exhibit 29. I'll
7 let you know once the page is refreshed.

8 And it should be in the folder now.

9 (Exhibit 29 was marked for identification
10 by the court reporter and is attached hereto.) 04:14:58

11 BY MS. REINHARDT:

12 Q Do you see it?

13 A I do.

14 Q And Amber Davis attended the gender support
15 plan meeting at Bridgeport Middle School; correct? 04:15:15

16 A Yes.

17 Q Are you aware if Davis and B.P.J. interacted
18 often?

19 MS. DENIKER: Objection to the form.

20 THE WITNESS: I don't know how often. She's 04:15:36
21 a school counselor there. I know that that
22 counselor goes into every classroom at least once a
23 week for 40 minutes, so I know they interact in that
24 general sense, and then as individual counseling is
25 required. 04:15:52

1 BY MS. REINHARDT:

2 Q Did Davis ever report any problems regarding
3 B.P.J. to the county board?

4 A No.

5 Q Are you aware of any problems Davis may have 04:16:06
6 reported to Bridgeport Middle School?

7 MS. DENIKER: Objection to the form.

8 THE WITNESS: No.

9 BY MS. REINHARDT:

10 Q Have you seen this exhibit before? 04:16:26

11 A When I was preparing for the deposition.

12 Q Let's review the top portion of this
13 document, which appears to not be dated.

14 Do you know if these are Amber Davis's
15 personal opinions of B.P.J.? 04:16:39

16 MS. DENIKER: Objection to the form.

17 THE WITNESS: I spoke with Amber about these
18 notes.

19 BY MS. REINHARDT:

20 Q Did Amber indicate whether these were her 04:16:53
21 personal opinions?

22 A They were not her personal opinions.

23 Q Did Amber state to you whose opinions they
24 were?

25 A She could not recall. She had had a 04:17:08

1 conversation with someone she could not recall. I
2 asked her that specifically. She said she was an --
3 you have to understand, she was a brand-new
4 counselor in that school, had only just been there,
5 and she was trying to learn names of people. And 04:17:24
6 she said, I just do not recall.

7 Q Let's look at the notes that appear to be
8 dated 3/22.

9 Did Davis state whether these were her
10 personal opinions? 04:17:43

11 A They are not her personal opinions.

12 Q Whose opinions are they?

13 A These were --

14 MS. DENIKER: Objection to form.

15 THE WITNESS: It was just a note that she 04:17:53
16 made. [REDACTED]

[REDACTED]

23 BY MS. REINHARDT:

24 Q And now let's look at the note that appears
25 to be dated 3/23. 04:18:26

1 You should be able to refresh.

2 I apologize. This was previously marked as
3 WV-18.

4 A I have that.

5 Q Have you seen this form before? 04:20:26

6 A I have.

7 Q And when did you see it?

8 A It was developed in -- with our protocol.

9 Q Which protocol are you referring to?

10 A When we did the gender support plan, this was 04:20:39
11 part of that process.

12 Q How long has the county board been using the
13 gender support -- I apologize -- the preferred name
14 request form?

15 A I believe when we started using the protocol. 04:20:54

16 Q To your knowledge, when would students fill
17 this form out?

18 A If a -- if a child in -- in any school
19 chooses to have a different preferred name, they
20 would -- most of the time, kids go to the teacher. 04:21:25

21 They go to their teacher. If that's not a safe
22 place for them to go, they would hopefully go to the
23 counselor, and they are provided this form, and then
24 the process begins.

25 Q How are students made aware of the preferred 04:21:41

1 name request form?

2 A That's done within the schools.

3 Q Do you know how the schools introduce
4 students to the preferred name request form?

5 A It would be available through the school 04:22:02
6 counselors. And, fortunately, in Harrison County,
7 we do have a counselor in every building.

8 Q Do you know if any students other than B [REDACTED]
9 have used the preferred name request form?

10 A We -- we have others. 04:22:21

11 Q Did you discuss this form with anyone at
12 Bridgeport Middle School?

13 A No.

14 Q Have you, Superintendent Stutler, spoken with
15 B.P.J. about her name? 04:22:42

16 A No.

17 (Exhibit 30 was marked for identification
18 by the court reporter and is attached hereto.)

19 BY MS. REINHARDT:

20 Q Thank you. I'm now going to move tab 16 into 04:22:52
21 the "Marked Exhibits" folder. And now I will
22 correct that this will be Exhibit 30?

23 Feel free to refresh.

24 A Okay.

25 Q If you could please review this e-mail, and, 04:23:32

1 once it's been reviewed, if you could please let me
2 know if you've seen it before.

3 A Yes.

4 Q Who is Barbara Tucker?

5 A Barbara Tucker is a region 7 athletic health 04:24:01
6 initiative coordinator. She works under grant
7 funding and provides services to seven counties.

8 Q And at the bottom of the first page, it says
9 (as read):

10 "After reviewing your in-house 04:24:19
11 training options for our staff, I
12 think that Mr. Mazza would like to
13 do your half day (preferably 2 hours
14 if possible) session on strategies
15 and resources for diversity and 04:24:30
16 inclusion (sic) classrooms with you
17 and Selina Vickers on the morning of
18 October 29th."

19 Do you see that?

20 A Yes. 04:24:43

21 Q Do you know why Laura (sic) Merrill and
22 Barbara Tucker would be e-mailing?

23 A Lauren Merrill was the counselor at
24 Bridgeport Middle, and they were looking for
25 additional training and resources for their staff. 04:24:58

1 This would not be unusual --

2 Q Do you know --

3 A -- for any topic.

4 Q Do you know if this training occurred?

5 A I do not. I could not tell you for sure. 04:25:09

6 MS. REINHARDT: I'm going to now put in tab
7 17 into the exhibit folder. It will be marked as
8 Exhibit 31.

9 (Exhibit 31 was marked for identification
10 by the court reporter and is attached hereto.) 04:25:27

11 BY MS. REINHARDT:

12 Q It should be in the folder now.

13 A I see that.

14 Q At the top, it says (as read):

15 "I have linked a few resources that 04:26:01
16 could be helpful for our session
17 tomorrow."

18 Do you see that?

19 A Yes.

20 Q I'm going to ask you to now turn to the page 04:26:09
21 with HCBOE 01178 Bates-Stamped on the bottom.

22 A I have that up.

23 Q If you could just take a look at these
24 materials.

25 A Okay. 04:26:54

1 Q Do you recognize these materials?

2 A Not these specifically. She provides us with
3 a lot of different resources, but not -- I can't say
4 that I've looked at these specifically.

5 "Welcoming Schools," I have. 04:27:16

6 Q In what context does Barbara Tucker provide
7 resources?

8 A Like I said, she is -- works with -- with
9 seven counties. She provides resources on all types
10 of adolescent health, any kind of health 04:27:39
11 initiatives. She does smoking cessation, not -- not
12 just this. I mean, diversity training. And she
13 provides that to seven counties. And we
14 occasionally reach out to her for resources.

15 Q And when you say "we," who are you referring 04:27:58
16 to?

17 A The County, our county administrators, if
18 they find something that they need specifically for
19 their building. It's not unusual for them to look
20 for resources for their staff, and she is one 04:28:10
21 resource.

22 Q Are you aware if Barbara Tucker provides
23 resources to students?

24 A I'm sure she has student handouts, but I -- I
25 don't have them specifically. 04:28:30

1 MS. REINHARDT: Okay. No problem.

2 If you could go into the "Marked Exhibits"
3 folder, I'm going to introduce you to a document
4 that's been marked as Exhibit 31 -- no -- 32.

5 If you could please review this document. 04:29:09

6 (Exhibit 32 was marked for identification
7 by the court reporter and is attached hereto.)

8 THE WITNESS: I have that.

9 BY MS. REINHARDT:

10 Q Have you seen this e-mail before? 04:29:18

11 A I have.

12 Q And are you familiar with this e-mail because
13 you are cc'd on it?

14 A Yes.

15 Q And it says (as read): 04:29:37

16 "Please see attached forms for the
17 2020-2021 school year."

18 Do you see that?

19 A Yes.

20 Q Did Sarah Starkey provide new forms for every 04:29:50
21 school year?

22 A She generally -- that's like an August thing.
23 She will update forms and send them out.

24 Q Wonderful. And if you turn to the first
25 attachment, which is marked HCBOE 01132 at the 04:30:11

1 bottom, it says "Teacher/Staff Protocol for
2 Transgender and Gender Non-conforming Students."

3 Do you see that?

4 A Yes.

5 Q Was this form approved by the county board? 04:30:27

6 A No. This was a -- just a protocol developed
7 from our office to support our administrators and
8 our teachers.

9 Q So the county board has documents that are
10 not officially approved; is that correct? 04:30:50

11 MS. DENIKER: Object to the form.

12 THE WITNESS: The county board generates a
13 lot of documents that do not go to a board meeting
14 for action.

15 BY MS. REINHARDT: 04:31:09

16 Q So when you referred to "our office," who
17 were you referring to?

18 A That would be myself and my department heads.

19 Q Before the teacher/staff protocol for
20 transgender and gender non-conforming students is 04:31:22
21 provided, does the county board review it?

22 A That would have -- that would fall under the
23 purview of day-to-day operations for my building,
24 and they would allow me to make that decision.

25 Q And on the page marked HCBOE 01133, it lists 04:31:43

1 Sarah Starkey, Cris Mayo, Barbara Tucker,
2 Trans Lifeline.

3 Does Cris Mayo work for the county board?

4 A No.

5 Q Who created this document? 04:32:11

6 A Sarah Starkey.

7 Q Why was the document created?

8 A It was part of our gender support plan and
9 the processes we would use when we had a child that
10 wanted to identify as transgender. 04:32:29

11 Q Thank you.

12 MS. REINHARDT: Before I move on to the next
13 topic, I just want to see if anybody needs a break.

14 THE WITNESS: I'm good.

15 THE VIDEOGRAPHER: This is -- 04:32:46

16 MS. REINHARDT: I believe our --

17 THE VIDEOGRAPHER: Sorry, this --

18 MS. REINHARDT: -- co-counsel --

19 THE VIDEOGRAPHER: This is the videographer.

20 I would like to switch the tape, the volume, so -- 04:32:51
21 we've been going about an hour and 40, so if we
22 could do five minutes, that would be great.

23 MS. REINHARDT: No problem. Let's actually
24 just take a ten-minute break so folks can get some
25 water. 04:33:02

1 If we can go off the record for a ten-minute
2 break.

3 THE VIDEOGRAPHER: Sure. We're going off the
4 record. The time is 1:39 p.m., and this is the end
5 of Media Unit No. 2 (sic). 04:33:10

6 (Recess.)

7 THE VIDEOGRAPHER: All right. We are back on
8 the record at 4:46 p.m., and this is the beginning
9 of Media Unit No. 4.

10 Go ahead. 04:46:38

11 BY MS. REINHARDT:

12 Q I just wanted to circle back and get a little
13 bit of clarity on WVEIS. As you can understand, I'm
14 still trying to wrap my head around it.

15 Earlier, it seemed like you stated that there 04:46:47
16 might be a rule that requires a person to check
17 WVEIS in order to see what sports team a student
18 should be on; is that correct?

19 MS. DENIKER: Object to the form.

20 THE WITNESS: I don't -- I ask for guidance 04:47:13
21 from our state department. I don't know that that's
22 an official rule, so I probably misspoke.

23 BY MS. REINHARDT:

24 Q When did you ask for guidance?

25 A I said that earlier in testimony, when we 04:47:24

1 were asking when can we change a permanent record in
2 WVEIS, and we reached out to our state department.

3 Q And can you remind me what the state
4 department's answer was, if you recall?

5 A That we -- that we could not make an official 04:47:39
6 name change or change in WVEIS unless we had
7 something from a court or we had a -- a new birth
8 certificate.

9 Q And when did you speak to the State
10 Department of Education? 04:47:57

11 A It would have been when I was a personnel
12 director, reaching out on behalf of the
13 superintendent at that time. It would have been a
14 few years ago.

15 Q And why do you think WVEIS's gender controls 04:48:07
16 which sports students can play on?

17 MS. DENIKER: Object to the form.

18 THE WITNESS: My -- my understanding is, is
19 that there -- there's an automatic pull from WVEIS
20 into a roster, and I am not as familiar with it as 04:48:26
21 another witness may be on that, as far as rostering
22 for sports in SSAC. And I have my understanding
23 that there's an automatic pull and all of that goes
24 over into that roster.

25 Q And does the roster, if you know, go to the 04:48:43

1 coaches?

2 MS. DENIKER: Object to the form.

3 THE WITNESS: I believe the ADs help roster
4 those students.

5 BY MS. REINHARDT: 04:48:58

6 Q And are you aware of any instance where the
7 roster has been reviewed in order to determine which
8 sports team a student is required to play on?

9 MS. DENIKER: Object to the form.

10 THE WITNESS: I -- I'm not aware, until this 04:49:13
11 deposition, of a case. It's the first time I've
12 seen, actually, rosters.

13 BY MS. REINHARDT:

14 Q Understood. Did the county board support
15 H.B. 3293 when it was being considered? 04:49:26

16 MS. DENIKER: Objection to the form.

17 THE WITNESS: I really could not comment on
18 that. I would have no way of knowing that.

19 MS. DENIKER: I'm going to -- can you reread
20 that -- can you repeat the question or have it read 04:49:46
21 back, please?

22 MS. REINHARDT: Yes.

23 If the court reporter could please read back
24 my question.

25 (Record read.) 04:50:10

1 THE WITNESS: I think I've said this. When
2 the county board gets a new law, we -- we have to
3 abide by that rule. It was not our rule. And the
4 county board is given those rules; we have to abide
5 by those, period.

04:50:27

6 BY MS. REINHARDT:

7 Q I'm wondering if the county board supported
8 H.B. 3293 when it was being considered by the
9 legislation.

10 MS. DENIKER: Same objection to the form.

04:50:43

11 THE WITNESS: I'm not going to -- I don't
12 know how to really answer that other than we support
13 all of our students in the sense that we need to
14 make them comfortable and aware and -- and support
15 them in their surroundings.

04:50:58

16 BY MS. REINHARDT:

17 Q So you are not aware of any rule prior to
18 H.B. 3293 in West -- where a school in West Virginia
19 had to follow the gender in WVEIS in order for a
20 student to participate on a sports team?

04:51:14

21 MR. TRYON: Objection.

22 MS. GREEN: Object to the form.

23 THE WITNESS: I'm not aware of any other
24 school in West Virginia.

25 ///

Page 145

1 BY MS. REINHARDT:

2 Q Is there a school in West Virginia that you
3 know had to review WVEIS in order to determine which
4 sports team a student would play on?

5 MS. DENIKER: Objection to form. 04:51:39

6 THE WITNESS: I -- I believe you're asking
7 if -- and I'm -- tell me if I'm wrong -- if all
8 schools follow the same rules when they're
9 rostering. I'm -- I'm unaware of anything that
10 would be different. We're -- we're given guidelines 04:51:55
11 when we roster students.

12 BY MS. REINHARDT:

13 Q And --

14 A And I would believe that ADs and
15 administrators would be following those rules. 04:52:05

16 Q And so in accordance with those rules,
17 rosters are reviewed before students are designated
18 to a specific sports team?

19 MS. GREEN: Object to the form.

20 THE WITNESS: I -- I just -- I -- I think I 04:52:19
21 just want to say, I -- the only thing I know about
22 rostering is that there's a bulk of information
23 that's pulled over to that roster from that student,
24 for student information. I am not an expert on
25 rostering and sports by no means. 04:52:32

1 MS. DENIKER: I'll object to the form
2 belatedly because I didn't get it in in time and
3 also state that to the extent that this relates to a
4 topic to be covered by another witness, that it's
5 more appropriate to be asked of that witness. 04:52:51

6 MS. REINHARDT: Understood. I'll save that
7 line of questioning for another witness. Thank you.

8 MS. DENIKER: Thank you.

9 BY MS. REINHARDT:

10 Q Are you familiar with Title IX? 04:53:02

11 A I am.

12 Q Does the county board have a Title IX policy?

13 A It's included in our -- we have a -- a policy
14 that's a safe and supportive schools policy, and
15 it's all included in there. 04:53:22

16 Q And without disclosing any identities of any
17 students, has the county board received any Title IX
18 complaints from a transgender student?

19 MS. DENIKER: I'm going to object to the
20 extent that I believe that this is beyond the scope 04:53:43
21 of the topics set forth for the 30(b)(6) deposition.

22 If you know, I'm going to allow you to answer
23 this question, but I may object to any further
24 questioning on those.

25 MS. REINHARDT: Understood. 04:53:58

1 THE WITNESS: Yes.

2 BY MS. REINHARDT:

3 Q Does -- did any of those complaints relate to
4 student sports?

5 MS. DENIKER: Same objection. I'll -- 04:54:20
6 (Simultaneous speaking.)

7 MS. GREEN: Object to the form.

8 THE WITNESS: No.

9 BY MS. REINHARDT:

10 Q Has the county board ever been investigated 04:54:29
11 by the Department of Education for Title IX
12 violations?

13 MS. DENIKER: Objection to the form. And I
14 do believe that you are now well beyond the scope of
15 the topic. So if you can show me where this would 04:54:37
16 fall under a topic, I will reconsider my objection.

17 MS. REINHARDT: Yes, I believe it falls under
18 two topics. One second.

19 So I'm asking in connection, for background
20 information, as we discussed under topic 1, 04:55:04
21 Sarah Starkey was discussed, and I'm trying to get
22 more background information on the Title IX office,
23 their role and her role and what would be involved
24 of Sarah Starkey and her roles.

25 I'm also asking as it relates to topic 7, 04:55:23

1 "participation of transgender students in
2 school-sponsored sports in Harrison County."

3 MS. DENIKER: Well, I believe that that
4 question is beyond the scope of both of those
5 topics; and, therefore, I object to the line of 04:55:35
6 questioning about other Title IX complaints that may
7 have been received.

8 MS. REINHARDT: I'm going to --

9 MS. DENIKER: For this witness to answer a
10 question related to Title IX complaints about -- 04:55:48
11 from transgender students involving school sports,
12 the witness has answered that there are not any.

13 I do not believe that further questioning on
14 other Title IX complaints is appropriate or within
15 the topics presented. 04:56:01

16 MS. REINHARDT: That is my final question, if
17 the witness could please answer.

18 MS. DENIKER: Is the question just that has
19 the County ever --

20 Please read the back the question. I need to 04:56:17
21 hear what it is again.

22 MS. REINHARDT: If the court reporter
23 wouldn't mind, please.

24 THE REPORTER: Yes. Give me one second.

25 (Record read.) 04:56:55

1 MS. DENIKER: And I'm going to ask for --
2 this is Susan Deniker again.

3 What is the scope of timing on your question,
4 Ms. Reinhardt?

5 MS. REINHARDT: It will be from January 1st, 04:57:03
6 2019, to present.

7 THE WITNESS: No.

8 BY MS. REINHARDT:

9 Q Thank you. And just as one last final
10 follow-up question, has the county board implemented 04:57:12
11 any Title IX policies pertaining to transgender
12 students' participation in sports?

13 A No.

14 MS. REINHARDT: Thank you very much,
15 Superintendent Stutler. I believe that opposing 04:57:26
16 counsel may have a few questions for you.

17 THE WITNESS: Thank you.

18

19 EXAMINATION

20 BY MS. GREEN: 04:57:34

21 Q Hello, Superintendent Stutler. This is
22 Roberta Green with WVSSAC --

23 MS. GREEN: Kelly, did -- were you guys
24 hopping on to go first? Okay. I'll just leap to
25 the front of the line, then. 04:58:02

1 BY MS. GREEN:

2 Q -- and I'm here on behalf of WVSSAC, and I
3 recollect that you had testified to some issues
4 relative to their eligibility rules, their processes
5 and any processes they have in place relative to 04:58:15
6 3293.

7 Do you recollect that testimony?

8 A Yes.

9 Q And as you sit here, do you actually defer to
10 WVSSAC as probably more informed and knowledgeable 04:58:31
11 as to their processes?

12 A Repeat that question.

13 Q Would you defer to WVSSAC as being more
14 knowledgeable about WVSSAC policies --

15 MS. REINHARDT: Objection. 04:58:48

16 MS. DENIKER: Objection to the form.

17 BY MS. GREEN:

18 Q -- than you would be?

19 A Yes.

20 Q Okay. I -- I was like uh-oh. Okay. 04:58:56

21 In terms of eligibility rules and the scope
22 of those rules, if there are some -- or even one
23 state rule embedded in WVSSAC's policies -- it's a
24 state rule, not an SSAC or other policy -- is that
25 information that you know as you sit here today? 04:59:17

1 MS. REINHARDT: Objection to form.

2 MR. TRYON: Roberta, I'm going to object
3 because I didn't understand it, to be honest.

4 THE WITNESS: Yeah.

5 BY MS. GREEN: 04:59:38

6 Q All right. Well, you know, would you
7 defer -- Superintendent, would you defer to WVSSAC
8 as being potentially more knowledgeable about their
9 rules, how their rules work and --

10 MS. REINHARDT: Same objection. 04:59:48

11 BY MS. GREEN:

12 Q -- the preparations are pursuant to 3293, if
13 any?

14 MS. REINHARDT: Same objection.

15 MS. DENIKER: Objection to the form. 05:00:00

16 THE WITNESS: If you're saying they're more
17 knowledgeable, yes.

18 BY MS. GREEN:

19 Q Well --

20 A If you're -- 05:00:04

21 Q -- I don't know if I am, but hopefully --

22 A Yes.

23 Q -- WVSSAC is.

24 A Well, and they're in the room, yes.

25 Q There -- 05:00:08

1 A Yes.

2 Q All right. And -- and in -- in preparing for
3 your testimony today, you did not speak to Bernie
4 Dolan relative to WVSSAC's policies or its
5 preparations, did you? 05:00:31

6 MS. REINHARDT: Objection to form.

7 THE WITNESS: I did not.

8 MS. GREEN: Okay. I don't think I have any
9 other questions. Thank you very much,
10 Superintendent. I appreciate it. 05:00:44

11 THE WITNESS: Thank you.

12

13

14

15 EXAMINATION

16 BY MS. MORGAN:

17 Q Hi, Superintendent Stutler. My name is
18 Kelly Morgan, and I represent the West Virginia
19 Board of Education and superintendent Burch.

20 Can you hear me okay? 05:00:50

21 A I can.

22 Q I just want to ask you a couple of clarifying
23 questions about some testimony earlier about, as I
24 understand it, someone called the West Virginia
25 Board of Education for some guidance as to a -- a 05:01:11

1 request to change a student's name.

2 Did I understand that correctly?

3 A Yes. And I can't tell you -- it was a few
4 years ago. We reached out on what we could do in
5 WVEIS when it came to name changes. 05:01:30

6 Q You said "we." Was it -- did you make the
7 phone call?

8 A It was actually -- I was in the room with
9 the -- with Dr. Hage. She was the assistant
10 superintendent at the time. And the superintendent 05:01:41
11 at that time had requested that we find that
12 information, so we reached out to the Department of
13 Ed.

14 Q Do you remember who it was you spoke to?

15 A I do not. I -- I do not. 05:01:55

16 Q And then you were asked whether that was
17 based on some sort of policy.

18 Are you aware of any specific policy by those
19 State Department of Education or Board of Education
20 as to when a student can change their name? 05:02:09

21 A We --

22 (Simultaneous speaking.)

23 A We were not -- we were not aware of any
24 policy. We needed guidance, so we -- we reached
25 out. 05:02:21

1 Q Okay. So then would you also defer to the
2 West Virginia Department of Education and/or the
3 West Virginia Board of Education as to their
4 specific policies that would be applicable?

5 MS. REINHARDT: Objection. 05:02:35

6 THE WITNESS: Yes.

7 MS. MORGAN: Very good. Thank you. I don't
8 have any other questions.

9 THE WITNESS: Thank you.

10 05:02:45

11

12 EXAMINATION

13 BY MR. TRYON:

14 Q Hello, Superintendent. It's been a --

15 A Hi. 05:02:53

16 Q -- a long day. I'm David Tryon. I represent
17 the State of West Virginia, and I'm an attorney with
18 the attorney -- in the attorney's general office.

19 So I have a few questions, and hopefully I
20 won't be duplicative of what has already been 05:03:05

21 discussed, but I would like to follow up on the
22 gender support plan, which I believe is Exhibit 17.

23 So if you could pull that up, that would be helpful.

24 I'm going to try and do the same here.

25 A I see that. 05:03:39

1 Q Okay. So as I understand it, Sarah Starkey
2 and Cris Mayo were the primary drafters or preparers
3 of this document; is that right?

4 MS. REINHARDT: Objection to form.

5 THE WITNESS: Well, with help from the 05:03:52
6 adolescent coordinator, Barbara Tucker.

7 BY MR. TRYON:

8 Q Was this form created from scratch, or do you
9 know if it was taken from a form that someone else
10 had already come up with and just adopted by the 05:04:26
11 Harrison County Board of Education?

12 A I believe that Barbara Tucker and
13 Sarah Starkey were working -- I believe Barbara had
14 a form, and then it was created for Harrison County
15 schools and -- and what we felt we needed, and then 05:04:45
16 it was sent to Cris Mayo for review and changes were
17 made. And it went through that process several
18 times before we had the final document.

19 Q So this just wasn't a form taken from
20 someplace else, it may have started that way, but it 05:05:02
21 was customized; is that --

22 A I would not know the original -- yeah, I do
23 not know the original origins. I'm sure they looked
24 at something, and I believe that it was Barbara
25 Tucker that had some background, and that's where it 05:05:14

1 originated or the -- the beginnings of it.

2 Q And who made the final approval of this form?

3 A This form was actually brought back to the --

4 kind of the heads of the departments, and at the

5 time, it was Dr. Manchin, and we reviewed that 05:05:32

6 collectively together with Sarah before it was

7 rolled out to the principals and the schools.

8 Q So this was before you were the

9 superintendent?

10 A The initial gender support plan, yes. 05:05:46

11 Q Just to be clear, as I understand it, the

12 Board of Education never approved this; is that

13 right?

14 A No. It is just an internal, like, protocol.

15 It's guidelines for our schools. 05:06:03

16 Q And it applies to all schools within

17 Harrison County?

18 A Yes, we use this document in all of our

19 schools.

20 Q Was there a formal approval process? 05:06:14

21 A No.

22 Q Is -- at that time, was the Board of

23 Education made aware of this form?

24 MS. DENIKER: Objection to the form.

25 Are you speaking as to the elected board, 05:06:36

1 Mr. Tryon?

2 BY MR. TRYON:

3 Q Yeah, let me go back to that. Tell me -- I
4 guess I missed that. Maybe when I was cut off on
5 the phone call -- what's the difference between the 05:06:48
6 elected board and the nonelected board?

7 A Well, I think we made the distinction that
8 when we were talking about the elected board, it
9 would be, like, my five people, my -- my actual
10 board members, and then the board in general would 05:06:59
11 just be myself and my office.

12 Q Ah.

13 A So you're --

14 Q Yes.

15 A -- speaking of five elected board members. 05:07:10

16 Q Yes. Did the five elected board members ever
17 become aware of this form?

18 A It was never brought to a meeting for
19 official action, no.

20 Q Do you know if they are aware of it as of 05:07:26
21 today?

22 A I really could not say.

23 Q Fair enough. Do you know if this form has
24 been adopted with any other -- by any other counties
25 or by the state school board? 05:07:47

1 A I am not aware of that. I do know that
2 Sarah Starkey has had another county reach out for
3 examples. We tend to do that in education.

4 Q Have you looked through this form, and do you
5 feel like you understand it? 05:08:26

6 A I do.

7 Q Okay. When it -- in the very first part,
8 where it talks about the purpose of this document,
9 it says (as read):

10 "...is to create shared 05:08:38
11 understandings about the ways in
12 which the student's authentic gender
13 will be accounted for..."

14 What's your understanding of what that means,
15 specifically to student's authentic gender? 05:08:47

16 A Just an understanding of what the -- the
17 child's desire and the parents' desire is. It's
18 really a document to, I believe, collectively get
19 people all on the same page with where a child is
20 at, regardless of where they're at in the process 05:09:08
21 or -- I -- I -- I believe it is just a focus. It's
22 just a focus, the building and to provide support
23 for the child.

24 Q Did any lawyers take a look at this form?

25 MS. DENIKER: I'm going to object to the 05:09:30

1 extent it calls for any attorney-client
2 communications.

3 I'm instructing you to not testify about the
4 substance of any communications you had with counsel
5 about this form. 05:09:40

6 THE WITNESS: I am not aware of that.

7 BY MR. TRYON:

8 Q If you go to page 4.

9 A Okay.

10 Q And the first part of that is "Extra 05:10:13
11 Curricular Activities," and specifically it's asking
12 about, among other things, sports.

13 Do you see that?

14 A Yes.

15 Q So you -- or whoever prepared this, at the 05:10:24
16 time, understood that sports would be an issue that
17 would be impacted by biological males who wanted to
18 participate in -- in -- on girls' teams; right?

19 MS. REINHARDT: Objection.

20 MS. DENIKER: Objection to the form. 05:10:44

21 THE WITNESS: I -- I feel that this is just a
22 reflection of where the student is and what their
23 interests are. If you look, it's asking them lots
24 of other questions as well, just finding out what
25 they are interested in so that they could feel like 05:11:01

1 they are part of a school.

2 BY MR. TRYON:

3 Q And part of it was to find out about
4 children's interest in sports and what sports they
5 would participate in; right?

05:11:16

6 MS. REINHARDT: Objection to form.

7 MS. DENIKER: Objection to form.

8 THE WITNESS: Yes, I think that's all part of
9 knowing the child.

10 BY MR. TRYON:

05:11:32

11 Q And once you know the child, then you would
12 need to address issues that are -- that arise;
13 right?

14 MS. REINHARDT: Objection to form.

15 THE WITNESS: We -- we would do that with any
16 child.

05:11:42

17 BY MR. TRYON:

18 Q Correct.

19 A At least I would hope we would do that.

20 Q When you learned that B.P.J. was going to
21 participate in -- well, strike that.

05:11:58

22 We've talked a little bit about who sets
23 policies for sports, and as I understand it, the
24 County -- the County's policies for sports follow
25 what the state policies are, the state board's

05:13:19

1 policies; is that right?

2 MS. DENIKER: Objection to the form.

3 BY MR. TRYON:

4 Q Yeah, I -- I didn't really say that right.

5 Let me just ask you an open-ended question. 05:13:29

6 What policies -- where -- who sets the
7 policies for sports for the County?

8 A I testified earlier, we just have two,
9 really, policies that are written or acted and board
10 acted on, and it deals with extracurriculars. 05:13:43

11 As far as the sports programs in our middle
12 and high schools, which that's really what we're
13 talking about, competitive sports, there is
14 oversight by the West Virginia SSAC, which are
15 board -- the members are our principals, so there 05:13:58
16 are a set of guidelines that they follow for the
17 sports programs in those buildings.

18 Q You were asked about -- if there are benefits
19 to sports, and I might -- I'd like to follow up on
20 that just a little bit, but if you believe that Mr. 05:14:19
21 Mazza would be better suited to answer these
22 questions, just tell me, as long as your counsel is
23 okay with that.

24 A I'm okay talking about the general --

25 MS. DENIKER: Let him ask a -- let him ask a 05:14:36

1 question.

2 BY MR. TRYON:

3 Q Yeah, let me ask you a question first.

4 THE WITNESS: I thought he was asking if I

5 was okay with the question. 05:14:40

6 That was you?

7 BY MR. TRYON:

8 Q Would you agree -- sorry.

9 Would you agree that the most important thing

10 for kids in your school system is their safety -- 05:14:47

11 MS. REINHARDT: Objection --

12 BY MR. TRYON:

13 Q -- as far --

14 MS. REINHARDT: -- to the form.

15 BY MR. TRYON: 05:14:54

16 Q -- as far as sports is concerned?

17 MS. REINHARDT: Objection to form.

18 MS. DENIKER: Susan Deniker. I also object

19 to form.

20 THE WITNESS: Safety in all areas is 05:15:03

21 important in our school system, and it is at the top

22 of the list.

23 BY MR. TRYON:

24 Q Yeah, and I'm asking in particular with

25 respect to athletics. Is safety the most important 05:15:10

1 thing for consideration for kids in sports?

2 A Safety is important in sports.

3 Q Are you of any rules -- aware of any rules
4 that are set up for safety to prevent injuries in
5 sports? 05:15:27

6 MS. REINHARDT: Objection to form.

7 THE WITNESS: There's a lot of rules,
8 probably rules that I don't know since I'm not
9 involved in that on a daily basis, but a lot of
10 training for our coaches, proper equipment for the 05:15:42
11 children or the students and the athletes, from --
12 really everything, having an athletic trainer at the
13 games and available for the students, if there is an
14 injury, that would properly handle that.

15 BY MR. TRYON: 05:16:01

16 Q Do you know if that's one of the reasons
17 that -- that sports are separated by sex?

18 MS. REINHARDT: Objection.

19 MS. DENIKER: Objection to the form.

20 THE WITNESS: Going back to the house bill 05:16:13
21 that was passed, that is stated in there, that it is
22 a safety concern.

23 BY MR. TRYON:

24 Q Aside from the house bill, would you agree
25 that, from your perspective, that we separate sports 05:16:21

1 in schools by sex in order -- for -- for safety
2 purposes, especially with respect to contact sports?

3 MS. REINHARDT: Objection to form.

4 And I would also remind Mr. Tryon that
5 Superintendent Stutler is a 30(b)(6) witness. 05:16:42

6 MR. TRYON: Thank you for the reminder.

7 BY MR. TRYON:

8 Q Can you answer the question, please?

9 MS. DENIKER: I'm also going to put an
10 objection on the record as to form. 05:16:52

11 And to the extent that you can answer as a
12 representative of the Harrison County Board of
13 Education, you may do so.

14 THE WITNESS: I would agree that there are --
15 that there could be physical differences that could 05:17:03
16 produce a safety risk in a contact sport.

17 BY MR. TRYON:

18 Q Let me look at one other exhibit I may want
19 to ask you a question about. Yeah, let me ask
20 you on Exhibit 19. Let me know when you have that. 05:18:37

21 A Okay. I see that.

22 Q At the top of page 4, on that one, can you
23 turn there?

24 A Okay. I am there.

25 Q Sure. The -- so the very first thing says 05:18:57

1 (as read):

2 "In what extra-curricular programs
3 or activities" -- excuse me -- "will
4 the student be -- student be
5 participating (sports, theater, 05:19:04
6 clubs, etc)?"

7 A Yes.

8 Q And then it's filled in "cross country and
9 track." And this was filled in on May 18, 2021.

10 At that time, was there any concern about 05:19:19
11 whether B.P.J. would be permitted to participate on
12 the girls' cross -- cross-country team or the boys'
13 cross-country team?

14 MS. REINHARDT: Objection to form.

15 MS. DENIKER: Objection to the form. 05:19:36

16 THE WITNESS: I was not aware of any concern.

17 BY MR. TRYON:

18 Q Do you know if anybody -- okay. Fine.

19 MR. TRYON: That's all -- that's all the
20 questions I have. Thank you. 05:19:47

21

22 EXAMINATION

23 BY MR. FRAMPTON:

24 Q And, Superintendent Stutler, this is
25 Hal Frampton for the intervenor. I've got just a 05:20:00

1 few questions for you. I know it's been a -- a long
2 afternoon so far.

3 A Thank you.

4 Q If you would -- no worries.

5 If you would, please, pull up Exhibit 28, and 05:20:11
6 when you've got it up, go ahead and scroll down to
7 page 4, the listings for Bridgeport Middle School.

8 A I have that.

9 Q Thank you, Superintendent. And I just want
10 to make sure -- I know you testified a little bit 05:20:33
11 about this earlier, but I -- I wasn't totally clear
12 on what you were saying.

13 So it is your understanding that there is a
14 separate boys' cross-country team and girls'
15 cross-country team at Bridgeport Middle School; 05:20:46
16 correct?

17 A Yes.

18 Q And so the winners of their meets, there
19 would be a boys' winner and a girls' winner; is that
20 correct? 05:20:58

21 A Yes.

22 Q Okay. And they're further separated into
23 varsity and junior varsity; is that right?

24 A Correct.

25 Q And who decides whether a student is 05:21:07

1 competing at the varsity level or junior varsity
2 level?

3 A I believe that would be the coach.

4 Q Okay. The -- the coach at the individual
5 middle school? 05:21:25

6 A Yes.

7 Q Do you know how that decision is made?

8 A No. I would assume it would be by their
9 time.

10 Q A competitive decision? 05:21:38

11 A Yeah, their -- yes.

12 Q Are there limits as to how many people can be
13 designated varsity or junior varsity?

14 A I would not know that.

15 Q Who -- who would make the decision as to 05:21:52
16 whether there are limits on that?

17 A That would be the AD at that school and the
18 coach. And I would say that -- how many would be
19 out for the team. There's a lot of factors in that.

20 Q Okay. Would those same people decide the -- 05:22:11
21 the number of students who can be on the team,
22 period?

23 A I believe so, with the administrator, the
24 school administrator. It would become a staffing --
25 just staffing and what they can do. 05:22:36

1 Q Right. And are there in fact limits on the
2 number of students who can be on a given athletic
3 team?

4 MS. REINHARDT: Objection to form.

5 THE WITNESS: I do not know that. That is 05:22:46
6 not my wheelhouse.

7 BY MR. FRAMPTON:

8 Q And -- and who would know that?

9 A The AD at the school, the coach and the
10 school administrator. 05:23:01

11 MR. FRAMPTON: All right. Give me one second
12 while I mark an exhibit.

13 (Exhibit 33 was marked for identification
14 by the court reporter and is attached hereto.)

15 BY MR. FRAMPTON: 05:23:12

16 Q All right. Superintendent, what I've marked
17 as Exhibit 33 ought to be available to you now.
18 Could you check?

19 A I have that.

20 Q Have you seen this e-mail before? 05:23:49

21 A During prep for this deposition.

22 Q Yes, ma'am. Can you tell me who
23 Danyelle Schoonmaker is?

24 A She is the cross-country coach at
25 Bridgeport Middle School. 05:24:07

1 Q Is she the head coach?

2 A Yes.

3 Q And who is Meghan Flesher?

4 A She is a volunteer assistant.

5 Q For the cross-country team? 05:24:22

6 A Yes.

7 Q And did you say earlier Natalie McBrayer is
8 also a volunteer assistant?

9 A Natalie McBrayer is an assistant coach that
10 is -- yes, she is also a volunteer assistant coach, 05:24:41
11 sorry.

12 Q Does she have any other role with the -- with
13 the Board of Education, the county board?

14 A Natalie does not.

15 Q Okay. She's not a teacher as well? 05:24:55

16 A No, she's not.

17 Q And of these, the three people on these
18 messages, is Natalie the only one that you spoke to
19 in preparation for this deposition?

20 A Yes. 05:25:10

21 Q Do you agree this e-mail says "Attached is
22 the excel spreadsheet with our athletes' times and
23 attendance (could be off a bit-I haven't updated
24 from our sheet yet)"? Did I read that correctly?

25 A Yes. 05:25:32

1 MR. FRAMPTON: All right. And hang on. I'm
2 going to try to mark separately, unfortunately,
3 because they're different file types, the
4 spreadsheet that was attached to this. Give me one
5 second. 05:25:46

6 All right. What I've marked as Exhibit 34
7 ought to be available to you now.

8 (Exhibit 34 was marked for identification
9 by the court reporter and is attached hereto.)

10 THE WITNESS: I have that. 05:26:21

11 BY MR. FRAMPTON:

12 Q Okay. Do you agree this is a spreadsheet
13 with three tabs at the bottom?

14 A Yes.

15 Q And was this also something you reviewed in 05:26:38
16 preparation for this deposition?

17 A Yes.

18 Q And tell me what you understand this document
19 to be.

20 A This was the Excel sheet on -- it had the 05:26:48
21 attendance on the -- I think the first two
22 practices. It had the -- the student names and
23 their grade levels.

24 Q Got it. And --

25 A And then their lap times, yeah. 05:27:02

1 Q Thank you. The -- on the Athlete Info tab,
2 are -- are all of the -- obviously, everyone is
3 blacked out except for B.P.J., which I -- I
4 certainly understand.

5 My question is, are all of the blacked-out 05:27:16
6 folks Bridgeport Middle School students?

7 A Yes, they would be.

8 Q Okay. And these are all students who are
9 interested in running cross-country in the fall of
10 2021? 05:27:32

11 A Yes.

12 Q And there are 41 students on this list; is
13 that right?

14 A Yes.

15 Q What do you understand the purpose of this 05:27:52
16 document being, tracking their attendance and lap
17 times?

18 MS. REINHARDT: Objection to form.

19 THE WITNESS: I believe that that would be
20 for the coach's information. 05:28:12

21 (Exhibit 35 was marked for identification
22 by the court reporter and is attached hereto.)

23 BY MR. FRAMPTON:

24 Q Thank you. All right. Hang on. I'll mark
25 another one. 05:28:22

1 All right. You should have available now
2 what I've marked as Exhibit 35.

3 A I have that.

4 Q And is this also a document you reviewed in
5 your preparation? 05:29:15

6 A Yes.

7 Q And tell me what you understand this document
8 to be.

9 A These were the students that were -- that
10 participated, I believe, in a week -- that early 05:29:25
11 summer conditioning week with the coaches.

12 Q In -- in preparation for running
13 cross-country in the fall?

14 A For the season, yes.

15 Q If you could go to that second page, do you 05:29:42
16 agree that it's got 18 people listed under the
17 cross-country girls' team?

18 A Yes, I see that.

19 Q And then 18 listed under the boys' team?

20 A Yes. 05:30:08

21 Q And 18 plus 18 is 36, would you agree?

22 A Yes, uh-huh.

23 Q How did we get from 41 people on that last
24 spreadsheet to 36 on this spreadsheet?

25 A It could be that -- 05:30:21

1 MS. DENIKER: Object to the form.

2 THE WITNESS: Was that a question?

3 MS. DENIKER: He's asking that question, and
4 I'm objecting to the --

5 THE WITNESS: Okay. 05:30:42

6 MS. DENIKER: -- form of the question.

7 THE WITNESS: It could be that less students
8 came out. It could be. I don't know. I don't
9 know.

10 BY MR. FRAMPTON: 05:30:59

11 Q Okay. You're not -- it sounds like you're
12 not sure how those, essentially, fiveish people
13 were -- were on one spreadsheet and not on the next
14 one; is that right?

15 A I would not -- yeah, I would not know that. 05:31:13

16 MR. FRAMPTON: All right. Give me one second
17 to get my next one.

18 (Exhibit 36 was marked for identification
19 by the court reporter and is attached hereto.)

20 BY MR. FRAMPTON: 05:31:54

21 Q All right. You should now have available to
22 you what I have marked as Exhibit 36.

23 A I have that.

24 Q Okay. And was this also a document you
25 reviewed in your preparation? 05:32:14

1 A Yes.

2 Q And it is an e-mail from Natalie McBrayer to
3 Danyelle Schoonmaker and Meghan Flesher dated
4 August 9th, 2021; is that correct?

5 A Yes. 05:32:39

6 Q Do you see in that first sentence the -- a
7 reference to lap counts?

8 A I do.

9 Q What's your understanding of what lap counts
10 are? 05:32:48

11 A How many -- I'm assuming it's how many laps
12 they went.

13 Q Okay. So the next sentence says (as read):

14 "I highlighted the ones Meghan and I
15 talked about taking for at least 1 05:33:04
16 loop to see how they do."

17 Did I read that correctly?

18 A Yes.

19 Q Can you tell me what that means, "taking for
20 at least 1 loop to see how they do"? 05:33:15

21 A My thoughts are they're going to run them one
22 lap and check their time.

23 Q And then it says (as read):

24 "We might want to drop some after
25 the first loop." 05:33:32

1 Did I read that correctly?

2 A I see that.

3 Q What does it mean -- what do they mean by
4 "drop some"? Do you know what that means?

5 MS. DENIKER: Objection to the form. 05:33:44

6 And I would just like to have an objection as
7 to form on all of these, about what it means.

8 But you can answer, to the extent that you
9 can.

10 THE WITNESS: I'm guessing -- I -- I don't 05:33:55
11 want to guess. I'm not allowed to guess.

12 It's -- it's hard to know what the coach was
13 thinking. They're trying to use times to accurately
14 judge who would make the varsity team compared to
15 the junior varsity. 05:34:12

16 BY MR. FRAMPTON:

17 Q Okay. So there's some -- your understanding
18 is that "drop some" would have some competitive
19 meaning; correct?

20 MS. DENIKER: Objection to the form. 05:34:24

21 THE WITNESS: Based on times.

22 BY MR. FRAMPTON:

23 Q And then if you look at that next page in
24 this, you would agree that we've got B.P.J. listed
25 with a -- the number 5 beside the name; is that 05:34:46

1 right?

2 A Yes.

3 Q But no yellow highlight; is that correct?

4 A Correct.

5 Q Any understanding of why B.P.J. did not 05:35:03
6 receive a yellow highlight?

7 MS. DENIKER: Objection to the form.

8 MS. REINHARDT: I'll join that objection.

9 THE WITNESS: I do not know.

10 BY MR. FRAMPTON: 05:35:20

11 Q You would agree that, at least the way that
12 this spreadsheet is presented, B.P.J. is the first
13 person not to receive a yellow highlight; is that
14 correct?

15 MS. REINHARDT: Objection. 05:35:29

16 THE WITNESS: Looking at the form, as it is,
17 she does not have a yellow highlight.

18 BY MR. FRAMPTON:

19 Q And in terms of the order in which the
20 students are presented, B.P.J. is the first person 05:35:44
21 presented without a yellow highlight; is that right?

22 MS. REINHARDT: Objection to form and also
23 outside the scope of the deposition.

24 THE WITNESS: Would you repeat that question?

25 (Exhibit 37 was marked for identification 05:36:01

1 by the court reporter and is attached hereto.)

2 BY MR. FRAMPTON:

3 Q I'll just strike it.

4 Let's see.

5 All right. What I've marked as Exhibit 37 05:36:40
6 should now be available to you.

7 A I have that.

8 Q All right. Was this also a document that you
9 reviewed in preparation for your deposition?

10 A Yes. 05:37:06

11 Q Go to the Meet Info tab.

12 A Okay.

13 Q What's your understanding of this -- what
14 this tab is presenting?

15 MS. DENIKER: Objection to the form. 05:37:32

16 THE WITNESS: This is a schedule of the
17 upcoming meets and where they'll be held.

18 BY MR. FRAMPTON:

19 Q These are the meets that the cross-country
20 teams at Bridgeport Middle School were going to 05:37:43
21 participate in in the fall of 2021?

22 MS. REINHARDT: Objection to form and also
23 outside the scope of the deposition.

24 MS. DENIKER: Objection to the form.

25 THE WITNESS: Yes, I believe that's the 05:37:56

1 schedule of the dates and where Bridgeport Middle
2 would be participating in events.

3 MR. FRAMPTON: Hold on for a second. I've
4 just got two or three more. I'll be very quick.

5 (Exhibit 38 was marked for identification 05:38:26
6 by the court reporter and is attached hereto.)

7 BY MR. FRAMPTON:

8 Q All right. What I've marked as Exhibit 38
9 should now be available to you.

10 A I have that. 05:38:58

11 Q All right. Was this also a document that you
12 reviewed in preparation for your deposition?

13 A Yes.

14 Q What do you understand it to be?

15 MS. DENIKER: Objection to form. 05:39:12

16 THE WITNESS: It's looking at the
17 participants of the team and whether they meet
18 eligibility requirements.

19 BY MR. FRAMPTON:

20 Q Who prepares this document? 05:39:22

21 A The AD at the school.

22 Q And is this a listing of everyone who is
23 going to be on the team for that year?

24 MS. REINHARDT: Objection. And outside the
25 scope of the deposition. 05:39:44

1 MS. DENIKER: Objection to form of the
2 question.

3 THE WITNESS: I really don't know that.

4 And when I said with the AD, I'm sure the
5 coach had something to do with this as well. 05:39:55

6 (Exhibit 39 was marked for identification
7 by the court reporter and is attached hereto.)

8 BY MR. FRAMPTON:

9 Q All right. What I've marked as Exhibit 39
10 should be available to you. 05:40:24

11 A I have that.

12 Q All right. Is this also a document that you
13 reviewed in preparation for your deposition today?

14 A Yes.

15 Q Is it a listing of how the Bridgeport Middle 05:40:51
16 school's cross-country players did at the
17 Doddridge Invitational?

18 MS. REINHARDT: Objection.

19 And I also want to note that this line of
20 questioning pertains to a topic that's been removed 05:41:11
21 from the Deposition Notice.

22 MR. FRAMPTON: It pertains to topic 14, which
23 has not been removed. It is a document produced by
24 the deponent, and this particular witness has
25 already testified that she reviewed it in 05:41:25

1 preparation.

2 MS. REINHARDT: It's -- I'm going to hold my
3 objection that it's still outside the scope of the
4 deposition.

5 MR. FRAMPTON: Your objection is noted. 05:41:38

6 If the witness would please answer the
7 question.

8 MS. DENIKER: Susan Deniker. Object to the
9 form.

10 THE WITNESS: Would you please repeat the 05:41:46
11 question?

12 MR. FRAMPTON: Absolutely.

13 Madame Court Reporter, could you please
14 repeat my question?

15 MS. DENIKER: Mr. Frampton, if you're 05:41:54
16 agreeable, I will not restate my objection if you'll
17 agree to continue to note my objection.

18 MR. FRAMPTON: Absolutely. That's -- that's
19 totally fine with me.

20 (Record read.) 05:42:03

21 MS. REINHARDT: Same objections.

22 THE WITNESS: Yes.

23 BY MR. FRAMPTON:

24 Q Okay. Looking at page 2 of the document,

25 would all of the blacked-out students on this page 05:42:25

1 be Bridgeport Middle School students?

2 A Yes.

3 Q Okay. So this document is not telling us how
4 the Bridgeport Middle School students did as against
5 the -- the participants from other schools in that 05:42:41
6 meet; is that correct?

7 MS. REINHARDT: Objection to form.

8 MS. DENIKER: Objection to the form.

9 THE WITNESS: Yes.

10 BY MR. FRAMPTON: 05:42:54

11 Q Okay. And you would agree that B.P.J. had a
12 time that was faster than three of the girls listed
13 on the spreadsheet; is that right?

14 MS. REINHARDT: Objection to form.

15 MS. DENIKER: Objection to form. 05:43:09

16 THE WITNESS: There were three names listed
17 below her.

18 BY MR. FRAMPTON:

19 Q Okay. The two names at the bottom that, of
20 course, I can't see, the N/As, would those have been 05:43:24
21 people who were permitted to participate in the meet
22 and just didn't?

23 MS. REINHARDT: Objection to form.

24 MS. DENIKER: Objection to form.

25 THE WITNESS: I would not know that. 05:43:35

1 (Exhibit 40 was marked for identification
2 by the court reporter and is attached hereto.)

3 BY MR. FRAMPTON:

4 Q All right. What I have listed as -- marked
5 as Exhibit 40 should be -- should be available to 05:44:22
6 you now.

7 And this is my last exhibit, so you're almost
8 done with me.

9 A I have it.

10 Q All right. Is this document also something 05:45:03
11 that you reviewed in preparation for your
12 deposition?

13 A Yes.

14 Q Okay. The first page, is this a listing of
15 how the Bridgeport Middle School cross-country 05:45:16
16 athletes did in the Ritchie County meet on Saturday,
17 October 1st?

18 MS. REINHARDT: Objection to form.

19 And I'll put a standing objection that these
20 questions are outside of the scope. 05:45:29

21 MR. FRAMPTON: Yes, happy to grant you a
22 standing objection.

23 THE WITNESS: Yes.

24 BY MR. FRAMPTON:

25 Q And so as with the last one we looked at, all 05:45:35

1 of the students on this page would be

2 Bridgeport Middle School students; right?

3 A Yes.

4 Q And you would agree that B.P.J. has a time

5 that is faster than three of the girls listed on 05:45:49

6 this spreadsheet; correct?

7 MS. REINHARDT: Objection to form.

8 THE WITNESS: Yes, there are three names

9 below hers.

10 BY MR. FRAMPTON: 05:46:02

11 Q Do you have any idea what the yellow

12 highlighting means?

13 A I do not.

14 Q It was worth a try.

15 A I do not. 05:46:18

16 Q The next two pages, are these just a -- a --

17 sort of compilation of how the Bridgeport Middle

18 School cross-country athletes did across a number of

19 meets in the fall 2021 season?

20 MS. REINHARDT: Objection to form. 05:46:38

21 MS. DENIKER: This is Susan Deniker.

22 Objection to form.

23 THE WITNESS: It looks like it is a

24 compilation of meets and times.

25 BY MR. FRAMPTON: 05:46:58

1 Q Look at the third page.

2 A Okay.

3 Q You would agree that there are no names
4 listed next to these various times; right?

5 A Yes. 05:47:25

6 Q Okay. Is this just a -- a sort of horizontal
7 continuation of the previous page?

8 MS. REINHARDT: Objection to form.

9 MS. DENIKER: Objection to form.

10 THE WITNESS: I do not know. 05:47:41

11 BY MR. FRAMPTON:

12 Q And then the last page of the exhibit, would
13 you agree this is a compilation of how the various
14 Bridgeport Middle School cross-country athletes did
15 in two time trial competitions? 05:47:59

16 MS. REINHARDT: Objection to form.

17 MS. DENIKER: This is Susan Deniker.

18 Objection to form.

19 THE WITNESS: Yes, it says "Time
20 Trial-Bridgeport City Park" and the time trial for 05:48:17
21 the Bridgeport city park course on two different
22 dates.

23 Q And you would agree, with respect to the
24 October 7, 2021, date, it's got B.P.J. listed in
25 24th place; is that right? 05:48:33

1 MS. REINHARDT: Objection to form.

2 MS. DENIKER: Objection to form.

3 THE WITNESS: She is by the number 24.

4 BY MR. FRAMPTON:

5 Q Okay. And the heading for that column is 05:48:46
6 TT Place; correct?

7 A Yes.

8 Q And it's got B.P.J. in 30th place in the
9 August 24th time trial; is that right?

10 MS. REINHARDT: Objection to form. 05:49:08

11 MS. DENIKER: Objection to form.

12 THE WITNESS: Yes, she is by number 30.

13 BY MR. FRAMPTON:

14 Q And the heading for that column is "Place"?

15 A The heading for that column is "Place," yes. 05:49:21

16 MR. FRAMPTON: All right. Those were my
17 questions for you, Superintendent Stutler. Thank
18 you so much.

19 MS. REINHARDT: Superintendent Stutler, I
20 apologize, I have a few redirect questions, but I'll 05:49:37
21 be very brief.

22 If you could please turn to Exhibit 28.

23 MS. DENIKER: Ms. Reinhardt, while we do
24 that, this is Susan Deniker, I will have a couple of
25 questions for this witness. It's fine with me if 05:49:59

1 you want to proceed, but I did want to let you know
2 that.

3 MS. REINHARDT: Thank you.

4

5 FURTHER EXAMINATION 05:50:05

6 BY MS. REINHARDT:

7 Q Please let me know when you're at Exhibit 28.

8 A Okay.

9 Q If you could please turn to page 4, under
10 Bridgeport Middle School. 05:50:20

11 Do you, Superintendent Stutler, know if
12 football is a contact sport?

13 A Yes.

14 Q And on this sheet here, it says football is
15 coed; is that correct? 05:50:51

16 A Yes.

17 Q And do you understand that to mean that girls
18 can play on the football team?

19 A Yes.

20 Q And would you also say that wrestling is a
21 contact sport? 05:51:03

22 A Yes.

23 Q And is it also listed here as coed?

24 A Yes.

25 Q And does that mean that girls are able to 05:51:18

1 participate?

2 A Yes, in wrestling.

3 MS. REINHARDT: Thank you. And I am going to
4 put what will be marked as Exhibit 41 into the
5 "Marked Exhibit" folder. I'll let you know once 05:51:28
6 it's -- once you can refresh.

7 MR. REISBORD: Counsel, what's -- what's the
8 exhibit number?

9 MS. REINHARDT: It will be Exhibit 41.

10 And you should be able to refresh now. 05:51:47

11 (Exhibit 41 was marked for identification
12 by the court reporter and is attached hereto.)

13 BY MS. REINHARDT:

14 Q Have you seen this form?

15 A I have. 05:52:00

16 Q Could you please read paragraph 6.

17 A (As read):

18 "No other Bridgeport Middle School
19 student was displaced by B.P.J.'s
20 participation on the girls' 05:52:13
21 cross-country team."

22 MS. REINHARDT: Thank you. I have no further
23 questions.

24 MS. DENIKER: This is Susan Deniker.

25 Superintendent Stutler, I have a few questions for 05:52:25

1 you.

2

3

EXAMINATION

4 BY MS. DENIKER:

5 Q You testified earlier today about policies 05:52:29

6 that are passed by the Harrison County Board of

7 Education, which is made up of elected board

8 members.

9 Do you recall that testimony?

10 A I do. 05:52:44

11 Q And it's my recollection of your testimony

12 that you testified that some of the policies passed

13 by the Harrison County Board of Education are to

14 implement state board policies but on a local board

15 level, with local county board processes in place; 05:52:58

16 is that correct?

17 A Yes.

18 Q Does the Harrison County Board of Education

19 ever pass other policies that are not -- that do not

20 originate from state board policy? 05:53:10

21 A Yes.

22 Q And does the county board adopt and pass as a

23 policy every West Virginia State Board of Education

24 policy?

25 A No. 05:53:25

1 Q Does it only pass policies for the County
2 where there's some type of local process or
3 implementation that is necessary for Harrison County
4 schools?

5 MS. REINHARDT: Objection to form. 05:53:36

6 THE WITNESS: That would be correct.

7 BY MS. DENIKER:

8 Q I'm sorry, I didn't hear your answer.

9 A That would be correct.

10 Q You were also asked some questions today 05:53:40
11 about rostering for school sports for Harrison
12 County schools; is that correct?

13 A Yes.

14 Q Have you ever held the position of being a
15 middle school or high school administrator? 05:53:54

16 A No.

17 Q Have you ever been an athletic director in
18 any -- in any school, in any county, in West
19 Virginia?

20 A No. 05:54:04

21 Q Have you ever personally been responsible for
22 either directly or overseeing the rostering that
23 goes on at either middle schools or high schools in
24 Harrison County?

25 A No. 05:54:14

1 Q Do you know how that process is done?

2 A Not from beginning to end. I know parts.

3 Q Is it fair to say that you will defer

4 testimony on behalf of the Harrison County Board of

5 Education about rostering for school sports in 05:54:29

6 Harrison County to the other designee for today's

7 30(b)(6) deposition?

8 A Yes.

9 Q You were also asked questions today about

10 House Bill 3293. 05:54:44

11 Superintendent Stutler, are you familiar with

12 that house bill that was passed by the West Virginia

13 legislature?

14 A Yes.

15 Q And you would have reviewed that bill; is 05:54:55

16 that correct?

17 A Yes.

18 Q You were asked some questions about whether

19 the Harrison County Board of Education supported

20 that bill, and I want to ask you more specific 05:55:03

21 questions about that.

22 Did the Harrison County Board of Education as

23 an entity do anything officially to advocate or

24 support that bill?

25 MS. REINHARDT: Objection to form. 05:55:15

1 THE WITNESS: No.

2 BY MS. DENIKER:

3 Q Did any employee or agent of Harrison County,
4 in their official capacities, take any action to
5 advocate for the passage of that bill? 05:55:25

6 MS. REINHARDT: Objection.

7 THE WITNESS: No.

8 BY MS. DENIKER:

9 Q Did any employee or agent of the
10 Harrison County Board of Education in any way 05:55:34
11 contribute to the passage of that bill by providing
12 testimony or information to support passage of
13 House Bill 3293?

14 MS. REINHARDT: Objection to form.

15 THE WITNESS: No. 05:55:48

16 BY MS. DENIKER:

17 Q Did the Harrison County Board of Education,
18 through the elected board, pass any policy
19 proclamation or other statement that related to
20 House Bill 3293 in any way? 05:56:00

21 A No.

22 Q Has the Harrison County Board of Education
23 taken any action to implement the provisions of
24 House Bill 3293 as you sit here today?

25 A No. 05:56:13

1 MS. DENIKER: Give me one minute and let me
2 just see if I have any other questions.

3 Superintendent Stutler, I have no further
4 questions. Thank you.

5 THE WITNESS: Thank you. 05:56:36

6 MR. FRAMPTON: I have some additional
7 questions based on plaintiff's redirect.

8

9 FURTHER EXAMINATION

10 BY MR. FRAMPTON: 05:56:42

11 Q All right. Superintendent Stutler, do you --
12 do you still have Exhibit 41 up?

13 MS. DENIKER: We are pulling it up for the
14 witness.

15 MR. FRAMPTON: Thank you. 05:56:59

16 THE WITNESS: I have it.

17 BY MR. FRAMPTON:

18 Q All right. And scroll down to paragraph 6
19 which plaintiff's counsel had you read into the
20 record. 05:57:11

21 A Okay.

22 Q What does this statement mean by "displaced"?

23 MS. DENIKER: Objection to the form.

24 MS. REINHARDT: Join the objection.

25 THE WITNESS: That someone did not get to 05:57:31

1 participate because of B.P.J.

2 BY MR. FRAMPTON:

3 Q Participate as in join the team?

4 A Yes, as part of the cross-country team.

5 Q Does "participate" have any -- any other 05:57:45
6 meaning other than just join the team?

7 MS. REINHARDT: Objection to form.

8 MS. DENIKER: This is Susan Deniker. I also
9 object to the form of the question.

10 THE WITNESS: Participation. If you're on 05:58:01
11 the team, you're participating.

12 BY MR. FRAMPTON:

13 Q Okay. You would agree B.P.J. did beat some
14 girls in cross-country meets; correct?

15 MS. REINHARDT: Objection to form. 05:58:11

16 MS. DENIKER: I also object to the form. And
17 I believe that that is also beyond the scope of the
18 notice.

19 MR. FRAMPTON: Well, so is the stipulation.

20 And -- and it -- and it actually does relate 05:58:26
21 to the documents we looked at earlier that are part
22 of the -- the -- the board's document production.

23 THE WITNESS: Looking at the documents that
24 were -- that I reviewed yesterday for -- in prep for
25 this, there were students below her on the time 05:58:39

1 trials.

2 BY MR. FRAMPTON:

3 Q And students below her at cross-country
4 meets; correct?

5 A Yes. 05:58:49

6 MS. REINHARDT: Objection.

7 BY MR. FRAMPTON:

8 Q And -- and not just students, but girls below
9 her at the cross-country meets; correct?

10 MS. REINHARDT: Objection to form. 05:58:59

11 THE WITNESS: Yes.

12 MS. REINHARDT: And also outside the scope.

13 MR. FRAMPTON: Just so we are clear, the
14 court reporter got it, you answered that question
15 "yes"; correct? 05:59:08

16 THE WITNESS: Yes.

17 MS. DENIKER: And I would also like to place
18 a belated objection to form on the record.

19 BY MR. FRAMPTON:

20 Q Do you know whether B.P.J.'s participation 05:59:14
21 prevented any girls at -- on the cross-country team
22 from going to any meets?

23 MS. REINHARDT: Outside the scope of the
24 redirect and objection to form.

25 MS. DENIKER: Objection to form. 05:59:32

1 THE WITNESS: I am not aware of any student
2 that was displaced due to her participating on the
3 team.

4 BY MR. FRAMPTON:

5 Q And again, by "displaced," you simply mean 05:59:43
6 allowed to participate on the team; correct?

7 A Yes, yes.

8 MR. FRAMPTON: Okay. That's all I've got.

9 MS. MORGAN: This is Kelly Morgan. So are we
10 concluded with Superintendent Stutler and moving 06:00:11
11 straight on to Mr. Mazza?

12 MS. REINHARDT: We can continue with Mr.
13 Mazza at this time, yes.

14 MS. MORGAN: Do we have any anticipation as
15 to how much longer this is going to go? We started 06:00:26
16 here at noon for us, and it's 6 o'clock. Some of us
17 have, you know, family obligations here.

18 Are we talking two, three, four more hours?

19 MS. REINHARDT: I --

20 THE VIDEOGRAPHER: Off the record? 06:00:38

21 MS. REINHARDT: I don't believe that -- oh,
22 yes, can we please go off the record.

23 THE VIDEOGRAPHER: Yeah. Okay. Thanks.

24 I -- we're going off the record. The time is
25 6:00 p.m., and this is the end of Media Unit No. 4. 06:00:44

1 (Recess.)

2 THE VIDEOGRAPHER: All right. We are back on
3 the record at 6:19 p.m., and this is the beginning
4 of Media Unit No. 5.

5 Can we please swear in the witness. 06:19:02

6 (Witness sworn.)

7 THE VIDEOGRAPHER: And I'll just mention,
8 this is the beginning of David Mazza's testimony.

9 Go ahead. Thank you.

10

11 DAVE MAZZA,

12 having been administered an oath, was examined and
13 testified as follows:

14 EXAMINATION

15 BY MS. REINHARDT:

16 Q Hi, Mr. Mazza. How are you doing today?

17 A Good. How are you doing?

18 Q I'm doing well.

19 Is it okay if I call you "Principal Mazza"

20 for the point of this deposition? 06:19:39

21 A Yes, you can call me "Principal Mazza," yes.

22 Q Great. And have you ever been deposed
23 before?

24 A I have not.

25 Q Have you ever testified in a court of law 06:19:46

Page 197

1 before?

2 A I have.

3 Q What is your current title?

4 A I am principal at Bridgeport Middle School,

5 Harrison County schools. 06:20:02

6 Q And how long have you been the principal?

7 A I'm in my fifth year.

8 Q Wonderful. And what did you do before that?

9 A I was the assistant at Bridgeport Middle for
10 eight years. Prior to that, I was a teacher for 06:20:11

11 20 years. I'm in my 33rd year in education.

12 Q That's wonderful. And I'm sorry, I want to
13 make sure that I didn't mishear you. Did you say
14 you have or have not testified in court before?

15 A I have testified in court before. 06:20:29

16 Q Thank you for clarifying.

17 And what was the nature of that case?

18 A It's when I was -- I had just turned 18, and
19 I witnessed a fight. One of the participants in the
20 fight used brass knuckles. I'm going way back to 06:20:45

21 the '70s here, so -- and I just had to be a witness
22 of what I did see and how the fight went down.

23 Q I appreciate that. So you have never
24 testified in court as it relates to your current
25 role; is that correct? 06:21:01

1 A That is true.

2 Q Thank you. So going back, you have been in
3 this field for quite some time.

4 Did you study education in college?

5 A I did. I went to Fairmont State College from 06:21:13
6 1985 to 1989. I went on to West Virginia University
7 and received my Master's degree in special
8 education. Then I went to Salem International
9 University and -- and got my administration
10 certificate. 06:21:31

11 Q You're extremely credentialed. I appreciate
12 you walking me through that.

13 And is there a reason you're aware of today
14 that you won't be able to answer my questions
15 truthfully and accurately? 06:21:47

16 A Can you repeat that? I'm sorry.

17 Q Is there a reason that you're aware of that
18 would prevent you from answering my questions
19 truthfully and accurately today?

20 A No. 06:21:59

21 Q Thank you. And I would like to set a couple
22 of ground rules so there aren't any surprises for
23 you today.

24 A Okay.

25 Q If I ask you a question, please answer it 06:22:07

1 unless your attorney states otherwise. Is that
2 understood?

3 A That is understood.

4 Q And so that the court reporter can get
5 everything we're saying, please use only verbal 06:22:20
6 responses. Unfortunately, we cannot transcribe
7 nodding or hand gestures. Is that understood?

8 A That is understood.

9 Q And if I ask a question that you don't
10 understand, please let me know. If you answer my 06:22:36
11 question, I'll assume that you understand what I'm
12 asking. Is that okay?

13 A Yes. Thank you for that.

14 Q No problem. And my last just housekeeping
15 rule is if you'd like to take a break at any point, 06:22:48
16 please let us know. I'll need to finish my line of
17 questioning, but we'd be happy to accommodate any
18 breaks.

19 A Thank you very much.

20 Q Did you review any documents in preparation 06:22:59
21 of today's deposition?

22 A Yes, I did.

23 Q And without disclosing any communications you
24 may have had with your attorney, can you please let
25 me know which documents you reviewed. 06:23:13

1 A We reviewed what the litigation is about
2 today.

3 Q And were there any other documents in
4 connection to this litigation you reviewed?

5 A Just what was over in the litigation. I 06:23:26
6 mean, we looked at several different things. We did
7 a review of the gender support plan that was -- that
8 had taken place last May, just the basic documents
9 that go on with this litigation.

10 Q And if you know, were all of the documents 06:23:44
11 provided by counsel?

12 A Yes.

13 Q And did you bring any documents with you
14 today?

15 A I did not. 06:24:01

16 Q Great. And did you provide your counsel with
17 any documentation?

18 A I did.

19 Q And what was it?

20 MS. DENIKER: This is Susan Deniker. I would 06:24:12
21 like to clarify something here. Are you asking in
22 preparation for the deposition, or do you mean with
23 regard to this litigation, generally, in terms of
24 discovery?

25 MS. REINHARDT: Thank you for that clarifying 06:24:26

1 question. I mean in preparation for today.

2 THE WITNESS: No.

3 BY MS. REINHARDT:

4 Q Thank you. And did you speak with anyone in
5 preparation for today's deposition? 06:24:38

6 A Just counsel.

7 Q Did you --

8 MS. DENIKER: Let me -- Ms. Reinhardt, excuse
9 me, this is Susan Deniker again.

10 Mr. Mazza, to the extent that you had 06:24:49
11 conversations with other Harrison County Board of
12 Education employees --

13 THE WITNESS: Right.

14 MS. DENIKER: -- to prepare for your
15 deposition, you may disclose the names of those 06:24:59
16 persons that you spoke with.

17 THE WITNESS: Okay. Other than counsel here,
18 we did -- of course, Dora Stutler, superintendent;
19 Amber Davis; Tarra Shields, principal of Norwood
20 Elementary -- Amber Davis was -- is the counselor -- 06:25:17
21 and fifth-grade teacher -- I can't remember her
22 name, I'm sorry. I can cannot remember the
23 fifth-grade teacher's name, I'm sorry. I apologize.

24 BY MS. REINHARDT:

25 Q By any chance, was it a fourth-grade teacher 06:25:30

1 by the first name of Jasmine?

2 A Yes, it was a fourth-grade teacher. I
3 apologize for that. I thought it was the
4 fifth-grade teacher.

5 Q No problem at all. 06:25:41

6 And do you understand that B.P.J. filed a
7 lawsuit against the County Board of Education?

8 A Yes.

9 Q And do you understand that that is why you're
10 here testifying today? 06:25:56

11 A Correct, yes.

12 MS. REINHARDT: Wonderful. And I just want
13 to review, briefly, with you Exhibit 24. It should
14 be in the "Marked Exhibit" folder.

15 (Exhibit 24 was marked for identification 06:26:09
16 by the court reporter and is attached hereto.)

17 BY MS. REINHARDT:

18 Q Please let me know once you've reviewed it.

19 A I have reviewed it.

20 Q Have you seen this document before? 06:26:47

21 A I have.

22 Q And I'll ask you to turn to what's numbered
23 page 8. Did you review topics 10 and 11 for today's
24 deposition?

25 A I did. 06:26:59

1 Q And did you review any documentation related
2 to topics 10 and 11 in preparation for today's
3 deposition?

4 A I did.

5 Q And were those the same documents that you've 06:27:15
6 already -- you've already disclosed?

7 A I believe so, yes.

8 Q Wonderful. And looking at this exhibit, can
9 you please review topics 1 through 15 and let me
10 know if you've already viewed these -- reviewed 06:27:35
11 these topics with counsel.

12 MS. DENIKER: I'm going to object to -- that
13 question calls for attorney-client privileged
14 communications. You can ask him if he -- if he's
15 reviewed the Notice of Deposition, but I'm going to 06:28:00
16 instruct him not to answer as to whether or not he
17 reviewed topics with counsel.

18 MS. REINHARDT: Understood.

19 BY MS. REINHARDT:

20 Q Did you review these topics in preparation 06:28:07
21 for today's deposition?

22 A I've looked them over.

23 Q Thank you. And for purposes of the record,
24 we have previously spoken with
25 Superintendent Stutler and asked her a number of 06:28:22

1 questions related to these topics. Today, we'll
2 only be asking you about topics 10 and 11. Is that
3 understood?

4 A That is understood.

5 Q And I'm just briefly going to go over two 06:28:34
6 terms with you. So the first one is the word
7 "transgender." When I use the word "transgender,"
8 I'm referring to someone whose gender identity does
9 not match the sex they were assigned at birth.

10 So, for example, if someone was assigned male 06:28:51
11 at birth, but they identify as female, that person
12 would be a transgender girl or woman.

13 Do you understand how I am referring to that
14 term?

15 MR. TRYON: Objection. 06:29:04

16 THE WITNESS: I do.

17 BY MS. REINHARDT:

18 Q Thank you. And, likewise, I'll be asking the
19 term "cisgender." When I use the term "cisgender,"
20 I am referring to someone whose gender identity 06:29:14
21 matches the sex they were assigned at birth.

22 So as an example, if someone was assigned
23 male at birth and they identify as male, that person
24 would be a cisgender boy or man.

25 Do you understand how I'm referring to that 06:29:28

1 term?

2 MR. TRYON: Objection.

3 THE WITNESS: I do -- I do understand.

4 MR. TRYON: Elizabeth, can I just have a

5 standing objection to terminology? 06:29:38

6 MS. REINHARDT: Yes, I will see that standing
7 objection. Thank you.

8 MR. TRYON: Thank you.

9 BY MS. REINHARDT:

10 Q And when I say the word "you," unless I 06:29:43

11 specifically say "Principal Mazza as an individual"

12 or something similar, I'm asking for you to answer

13 my question as a representative of the County Board

14 of Education. Is that understood?

15 A That is understood. 06:30:00

16 Q And when I -- if it's okay with you, I'd like

17 to use the term "county board" rather than "County

18 Board of Education." Is that okay?

19 A That is okay.

20 Q Wonderful. And also, when I'm referring to 06:30:14

21 the county board, I am talking about the entire

22 entity of the county board, not just its elected

23 members. Is that understood?

24 A That is understood.

25 Q Thank you. So I am going to -- I am going to 06:30:27

1 put tab 5 into the "Marked Exhibit" folder. I
2 believe --

3 MS. REINHARDT: And please correct me if I'm
4 wrong, Mrs. Court Reporter. I believe we're at
5 Exhibit 41 -- 42. Apologies. 06:30:50

6 I'll let you know once you can refresh.

7 You may refresh. And please let me know once
8 you have that document open.

9 (Exhibit 42 was marked for identification
10 by the court reporter and is attached hereto.) 06:31:13

11 BY MS. REINHARDT:

12 Q Do you have that document open?

13 A Yes.

14 Q Great. Are you familiar with WVSSAC, or the
15 West Virginia Secondary School Activities 06:31:58
16 Commission?

17 A I am familiar with the WVSSAC, correct.

18 Q And are you okay with me using the acronym
19 WVSSAC in reference to the West Virginia School --
20 Secondary School Activities Commission? 06:32:16

21 A Yes.

22 Q Wonderful. And if you look at the front page
23 here, it says "Regional Principals' Meeting."

24 Are you familiar with the regional
25 principals' meeting? 06:32:24

1 A I am.

2 Q Can you please tell me what that is?

3 MS. DENIKER: Object to the form.

4 THE WITNESS: Yes. We attend -- member

5 school principals attend a regional principals' 06:32:41

6 meeting every fall before school starts. This

7 year -- it typically takes place the first week in

8 August. We meet at East Fairmont High School in

9 Marion County. That's where the region is set up

10 for Harrison, and surrounding counties. We meet 06:33:01

11 from noon to 3:00. And they go over information of

12 previous proposals that pass at the board of

13 controls meeting in April.

14 BY MS. REINHARDT:

15 Q Thank you. It sounds like you are used to 06:33:20

16 sitting in long meetings, so I appreciate you being

17 here today.

18 Did -- were you in attendance for the 2021 to

19 2022 regional principals' meeting?

20 A I was not. 06:33:32

21 Q Have you seen this PowerPoint before?

22 A I have.

23 Q And when did you first see this PowerPoint?

24 A I believe from my athletic director.

25 Q And when did your athletic director show you 06:33:49

1 this document?

2 A I would say shortly after. He is part of the
3 SSAC. He's actually a director. And he gets this
4 information sent to him via e-mail, I believe.

5 Q And what is the name of this individual? 06:34:09

6 A Mr. Arthur Petitto.

7 Q Thank you. And do you know why WVSSAC holds
8 the principals' meeting?

9 MS. GREEN: Object to the form.

10 MS. DENIKER: Objection to the form as well. 06:34:40

11 You can answer.

12 THE WITNESS: In the spring, we have controls
13 where there are proposals that are passed by the
14 member schools. Once these proposals pass, they go
15 to the State Board of Education who then approve 06:34:49
16 them. And this regional principals' meeting is an
17 update, typically, of what passed and what has
18 changed with anything athletic in the state of West
19 Virginia.

20 BY MS. REINHARDT: 06:35:03

21 Q Thank you. And other than your conversation
22 with Mr. Petitto -- is that correct? -- have you
23 seen --

24 A That is correct.

25 Q Wonderful. 06:35:12

1 -- have you seen this PowerPoint?

2 A Have I seen it, is that -- was that your
3 question?

4 Q Yes. Other than with Mr. Petitto -- or from
5 Mr. Petitto. 06:35:23

6 A I have not. I have not.

7 Q And you should feel free to review this
8 document in its entirety, but I'll only be asking
9 you questions as it relates to what is
10 Bates-numbered WVSSAC 000346. So you should feel 06:35:35
11 free to go to that page, if it's convenient for you,
12 or you may look through the entire PowerPoint.

13 Please let me know once you're at
14 WVSSAC 00346. It's slide 60.

15 A We are there. 06:36:29

16 Q Great. And did you -- do you know what this
17 slide is in reference to?

18 MS. GREEN: Object to the form.

19 MS. DENIKER: You can answer, if you know.

20 THE WITNESS: I believe it's for the current 06:36:47
21 law -- the bill and law that was passed in the state
22 of West Virginia that went into effect in July.

23 BY MS. REINHARDT:

24 Q And is what you're referring to H.B. 3293?

25 A Correct. 06:37:02

1 Q Thank you. And did you discuss this slide in
2 particular with Mr. Petitto?

3 A I did not.

4 Q Have you reviewed this slide before today?

5 A I have not. 06:37:18

6 Q So on the slide, it says -- the heading is
7 "Transgender," and the first bullet point is
8 "Current law being challenged in court." The second
9 bullet says "WVSSAC's current position in that
10 gender is identified in WVEIS for athletic 06:37:33
11 participation purposes."

12 Did I read that correctly?

13 A You did.

14 Q So for WVEIS, is it okay if I refer to that
15 as "WVEIS"? 06:37:53

16 A Yes, you can.

17 Q And do you know what WVEIS is?

18 A Yes, I do.

19 Q What is it?

20 A It's our identification system for every 06:38:01
21 student that is in the state of West Virginia. That
22 number stays with them. They're assigned a number.
23 Each county is different, as far as assigning the
24 number. But if the student transfers to a different
25 county, that same number stays with them. 06:38:18

1 Q Thank you. And do you have access to WVEIS
2 as the principal of Bridgeport Middle School?

3 A Yes, I do.

4 Q Does the athletic director have access to
5 WVEIS? 06:38:34

6 A No, he doesn't.

7 Q Does anyone at Bridgeport Middle School have
8 the ability to change information in WVEIS?

9 A The -- the people that can change information
10 are myself, my assistant and my counselor. 06:38:52

11 Q And do --

12 A Also, both of my secretaries.

13 Q And does anyone you've just listed need
14 permission to change information in WVEIS?

15 A No. 06:39:06

16 Q Thank you.

17 A Can I add something to that?

18 Q Of course.

19 A WVEIS, the way it's set up, only certain
20 things that are part of WVEIS, like, for example, 06:39:25
21 discipline, my secretaries do not access to that,
22 nor my counselor. Just the assistant principal and
23 myself. There's -- there's just certain items, like
24 health, if a student has a health issue, I would
25 have to put that in. There are -- there are certain 06:39:44

1 items that only go to certain people.

2 The secretaries have, usually, residency
3 information, scheduling, the schedules, things like
4 that, but some of the stuff that is put in the
5 WVEIS, it's mostly my counselor, myself and my
6 assistant.

06:40:03

7 Q In WVEIS, are students' names listed and
8 other -- so I'm asking, are student names listed,
9 including their ID number?

10 A That is correct.

06:40:16

11 Q And are students' genders listed in WVEIS?

12 A Yes, they are.

13 Q And if a student were to participate in a
14 school athletic program, would the athletic director
15 need to check WVEIS to know which team the student
16 needed to be on?

06:40:39

17 A No.

18 Q How is it -- how are students designated
19 between teams?

20 A They are given an information sheet that is
21 filled out by them or the -- the student or the
22 parent. That information goes back to the athletic
23 director who then puts it in a portal that would be
24 seen by the WVSSAC.

06:40:48

25 Q Does that portal have a name?

06:41:03

1 follow any other policies related to gender
2 separation in sports?

3 MS. GREEN: Object to the form.

4 MS. DENIKER: I also object to the form.

5 THE WITNESS: Bridgeport Middle follows the 06:42:53
6 guidelines set by the WVSSAC.

7 BY MS. REINHARDT:

8 Q And what are those guidelines as it relates
9 to gender separation in sports?

10 MS. GREEN: Object to the form. 06:43:06

11 MS. DENIKER: Object to the form.

12 THE WITNESS: Those guidelines come in the
13 form of rostering, where -- for example, my athletic
14 director receives from the track coach, who is the
15 boys track coach, he would roster them on the WVEIS 06:43:23
16 system as a B, goes into the B portal. And if my
17 athletic director receives the information from the
18 girls' coach, it would go on the G side, which is --
19 would be the girl.

20 BY MS. REINHARDT: 06:43:44

21 Q So the athletic director implements a
22 student's gender into WVEIS; is that correct?

23 MS. DENIKER: Objection to the form and also
24 asked and answered.

25 MS. GREEN: I'll object to the form as well. 06:43:56

1 Thank you.

2 MS. DENIKER: Do you need to have -- if
3 you'll give me a standing objection on that. Maybe
4 we should have the court reporter read back the
5 question so that the witness could hear it, if 06:44:09
6 that's okay, Ms. Reinhardt.

7 MS. REINHARDT: That would be great. I'll
8 give you a standing objection.

9 If the court reporter could please read my
10 question back. 06:44:18

11 (Record read.)

12 MS. DENIKER: If you need to hear it again,
13 you can ask for it to be repeated.

14 THE WITNESS: Repeat that again, please, I'm
15 sorry. 06:44:46

16 MS. REINHARDT: If the court reporter could
17 please read that again.

18 And I believe it should be "input." I
19 apologize if I wasn't clear.

20 (Record read.) 06:45:08

21 THE WITNESS: The athletic director puts the
22 information on the boy roster or the girl roster.

23 BY MS. REINHARDT:

24 Q And where -- okay. I think I understand.

25 And are B and G the only options for the -- 06:45:33

1 putting a student's gender on the roster?

2 A I believe so.

3 Q And does Bridgeport Middle School have any
4 coed sports?

5 A We do. 06:45:48

6 Q And for those rosters, for the rosters for
7 coed sports, do they still list B or G?

8 A I believe so.

9 Q Thank you. And are you familiar with the
10 roster that's used for football? 06:46:13

11 A I am.

12 Q Can you please describe to me what that
13 roster would include?

14 MS. GREEN: Object to the form.

15 THE WITNESS: It's -- the roster would 06:46:31
16 include a student's name, the place of birth. I
17 believe, residence.

18 BY MS. REINHARDT:

19 Q And does it say they're a B or a G as well?

20 A I'm honestly not sure. 06:46:57

21 Q Understood. And -- but it's your
22 understanding that generally these rosters contain a
23 B or a G?

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

25 THE WITNESS: That is correct. 06:47:12

1 BY MS. REINHARDT:

2 Q And if a -- if a student is gender
3 nonconforming, does the school have a policy on what
4 would be put as their gender for school sports?

5 A Can you repeat that again, please? 06:47:27

6 Q If a student is gender nonconforming -- and
7 what I mean by that is they neither identify as just
8 a boy or a girl -- does the school have a policy for
9 how they're listed on a sports team's roster?

10 A We do not. 06:47:43

11 Q Does the school have a policy related to what
12 transgender students are listed as for the purposes
13 of sports teams' rosters?

14 A We do not.

15 Q I'm just going to make sure I have -- I've 06:47:59
16 asked all my questions on this topic. One second.

17 Other than school policies, does WVSSAC have
18 any policies that you would follow related to
19 students' genders listed on school sports?

20 MS. GREEN: Object to the form. 06:48:33

21 MS. DENIKER: Object to the form.

22 THE WITNESS: I have never seen any
23 information like that from the SSAC.

24 BY MS. REINHARDT:

25 Q Thank you. And I want to ask if you've ever 06:48:42

1 discussed gender separation in school sports with
2 Heather Jackson.

3 MS. DENIKER: I'm going to ask you identify
4 where -- which topic that falls under.

5 MS. REINHARDT: I'm referring to topic 11 06:49:03
6 where it says policies, documents, communications of
7 the Harrison County board and the county board
8 superintendent concerning the separation of boys and
9 girls in school-sponsored sports.

10 MS. DENIKER: Thank you. 06:49:19

11 Do you need to have the question repeated
12 Mr. Mazza?

13 THE WITNESS: Just the name again.

14 BY MS. REINHARDT:

15 Q Are you familiar with B.P.J.'s mother? 06:49:28

16 A Oh, I'm -- yes, absolutely.

17 Q No problem. It's been a long day, I'm sure.

18 Have you --

19 A It has. [REDACTED]

[REDACTED]

[REDACTED]

22 Q Makes sense. Have you had any conversation
23 with B.P.J.'s mother related to the separation of
24 boys and girls in school-sponsored sports?

25 A The only conversation was at the gender 06:49:53

1 support meeting back in May of '21.

2 Q And what was the conversation about?

3 A As we were going through the gender support
4 plan, and we were finishing up, she was -- Heather
5 was asking specific questions about band. I said 06:50:15

6 that would not be a problem. You know, we do offer
7 related art classes other than our five core
8 classes, which is reading, English, science, math,
9 social studies. So we were pretty much asking B [REDACTED]

10 what other related art classes she would be 06:50:33
11 interested in other than band. She -- B [REDACTED] said,
12 art. And we do offer STEAM, etcetera.

13 And then Heather asked me, B [REDACTED] wants to
14 participate in cross-country. I said, No problem.
15 And then Heather asked me, B [REDACTED] wants to run with 06:50:48

16 the girls. And I -- I know -- I've known Heather --
17 I've had both of her -- I had her oldest son go
18 through, and she has another son that is an
19 eighth-grader in our building. And I looked at

20 Heather, and I said, You did hear about the bill 06:51:07
21 that was signed into law, that's going into effect
22 in July.

23 And she said, We know all about that.

24 And that was the only discussion we had with
25 this law that went into effect in the state of 06:51:17

1 West Virginia.

2 Q And if you know, did Mrs. Jackson take that
3 to mean that B [REDACTED] would have to participate on the
4 boys' sports team?

5 MS. DENIKER: Objection to the form of the 06:51:30
6 question, calls for speculation.

7 THE WITNESS: I honestly don't know.

8 BY MS. REINHARDT:

9 Q And what was the purpose in raising H.B. 3293
10 with Mrs. Jackson? 06:51:48

11 A Her question was pretty forward, and I just
12 wondered if she knew that that bill was going to
13 turn into a law in July.

14 Q Understood. I'm just checking my notes. One
15 moment. 06:52:13

16 And just for background information, do
17 you -- have you ever coached any sports?

18 A I have.

19 Q Which sports have you coached?

20 A I've coached football and track. 06:52:26

21 Q And were those in Harrison County?

22 A Football was in Monongalia County, 1989, and
23 track was in Harrison County, 1991, Lincoln High
24 School. Football was the -- what was then
25 Westover Junior High, which is now Westwood Middle. 06:52:51

1 Q Thank you. And do you see a benefit in
2 participating in school sports?

3 A Absolutely.

4 Q And what are those benefits as you know them
5 as Principal Mazza? 06:53:01

6 MR. TRYON: Objection.

7 THE WITNESS: I --

8 MS. DENIKER: Objection to the form.

9 THE WITNESS: My benefits of having two
10 children of my own, I believe it develops 06:53:11

11 discipline, teamwork. There's nothing better than

12 teamwork. I truly believe once you do graduate

13 college and go into the workforce, you will always

14 be working as a team with someone. Trust. I see a

15 lot of trust with sports. And it's just great 06:53:31

16 conditioning just to be part of something, just to

17 be part of a team.

18 BY MS. REINHARDT:

19 Q I understand that. I played basketball and
20 volleyball, so I can appreciate those. 06:53:42

21 Do you think B.P.J. gained any benefits from
22 participating on a sports team?

23 MS. DENIKER: Objection to the form.

24 MR. TRYON: Objection.

25 THE WITNESS: I believe so. I believe so. 06:54:03

1 MS. REINHARDT: Could we please go off the
2 record for one moment?

3 THE VIDEOGRAPHER: Sorry. Oop, I was on
4 mute.

5 Yep. We're going off the record. The time 06:54:23
6 is 6:54 p.m.

7 (Recess.)

8 THE VIDEOGRAPHER: All right. We are back on
9 the record. It's 7:00 p.m.

10 Go ahead. 07:00:30

11 MS. REINHARDT: Principal Mazza, we have no
12 further questions for you, unless there will be
13 questions on redirect.

14

15 07:00:36

16 EXAMINATION

17 BY MS. GREEN:

18 Q Principal Mazza, my name is Roberta Green,
19 and I'm an attorney here on behalf of WVSSAC. I
20 appreciate your patience today. I know it's been a 07:00:47
21 long day.

22 In terms of your knowledge of WVSSAC's rules
23 and policies, their rationale with the slideshow,
24 would you defer to WVSSAC as to the interpretation
25 of all of that? 07:01:08

1 MS. REINHARDT: Objection.

2 MS. DENIKER: Objection to form.

3 THE WITNESS: Can you repeat that question,
4 please?

5 MS. GREEN: Sure. 07:01:17

6 MS. DENIKER: And, Ms. Green, if you'll just
7 give me a standing objection, I won't repeat my
8 objection to form.

9 MS. GREEN: Thank you. Absolutely.

10 BY MS. GREEN: 07:01:24

11 Q Mr. Mazza, in terms of WVSSAC's policies,
12 you've commented on a couple this evening, I
13 wondered if -- I'm asking you on behalf of WVSSAC --
14 would you defer to WVSSAC to speak to its own
15 policies? 07:01:40

16 MS. REINHARDT: Same objection.

17 THE WITNESS: Yes, I would.

18 BY MS. GREEN:

19 Q Okay. And in terms of WVSSAC's thinking in
20 assembling the principals' slideshow or whoever 07:01:49
21 assembled the slideshow, would you defer to WVSSAC
22 to explain the slides in that slideshow?

23 MS. REINHARDT: Object to form.

24 MS. DENIKER: This is Susan Deniker. I also
25 object to the form. 07:02:05

1 THE WITNESS: Yes, I would.

2 BY MS. GREEN:

3 Q And in terms of the rules and regulations
4 that WVSSAC has in place, would you defer to WVSSAC
5 to take a position on their rules and how they're 07:02:18
6 interpreted and applied?

7 MS. REINHARDT: Objection to form.

8 MS. DENIKER: Same objection.

9 THE WITNESS: Yes, I would.

10 MS. GREEN: Thank you. No further questions, 07:02:33
11 Principal Mazza. Thank you very much.

12 THE WITNESS: Thank you.

13 MR. TRYON: Kelly, do you have any questions?

14 MS. MORGAN: This is Kelly Morgan. I don't
15 have any questions. Thank you. 07:02:51

16

17

18

19

EXAMINATION

20 BY MR. TRYON: 07:02:53

21 Q Mr. Mazza, I do have a few questions. My
22 name is David Tryon, and I'm an attorney
23 representing the State of West Virginia, and I'm
24 with the attorney general's office.

25 I would like to -- let me start off with 07:03:08

1 Exhibit 28. Let me know when you see it, when you
2 have that.

3 A Yes.

4 Q Have you seen this document before?

5 A I've seen so many documents, sir, I'm not 07:04:00
6 sure.

7 Q Right. Well, take a look at page 4. I want
8 to ask you some questions about information on
9 page 4.

10 A I am on page 4. 07:04:13

11 Q Under "Bridgeport Middle School," do you see
12 those various teams listed?

13 A I do.

14 Q And as far as the -- the -- the list of
15 teams, just the list itself, does that seem to be 07:04:29
16 accurate?

17 A Let me look through that real quick, sir.
18 It does look correct.

19 Q On the football team, to your knowledge, are
20 there any biological girls on the football team? 07:04:53

21 MS. REINHARDT: Objection to terminology.

22 BY MR. TRYON:

23 Q Go ahead, you may answer.

24 A We do not have any biological girls on our
25 football team. 07:05:10

1 Q So it's my understanding that football is
2 generally considered to be a boy's sport, and so I'm
3 interested to see that that is characterized as a
4 coed sport.

5 Can you explain why it's characterized as a 07:05:21
6 coed sport?

7 MS. REINHARDT: Objection to form and also
8 outside the scope of the deposition.

9 BY MR. TRYON:

10 Q You may answer. 07:05:31

11 A Sir, I'm assuming because girls can play
12 football.

13 Q Okay. And -- and why can girls play
14 football?

15 MS. GREEN: I'll object to the form. 07:05:42

16 MS. REINHARDT: Same objection.

17 THE WITNESS: I believe there's not an equal
18 sport for females in the fall.

19 BY MR. TRYON:

20 Q And so is there some reason that you then 07:05:55
21 have to characterize this as coed?

22 A I believe if we had a female on the team, it
23 would be coed.

24 Q And if it -- it does not have a female on the
25 team, is it still considered coed? 07:06:12

1 MS. REINHARDT: Objection to form.

2 MS. DENIKER: Objection to form.

3 THE WITNESS: I believe --

4 MS. GREEN: And I'll object to form.

5 THE WITNESS: I believe that if it leaves the 07:06:26

6 door open, that a female can go out for

7 Bridgeport Middle School football.

8 BY MR. TRYON:

9 Q Is it the same rationale for wrestling?

10 MS. REINHARDT: Objection to form. 07:06:38

11 THE WITNESS: Yes, sir, it is the same

12 rationale.

13 BY MR. TRYON:

14 Q Are there any safety concerns involved for

15 girls joining the football team? 07:06:47

16 MS. GREEN: Object to the form.

17 MS. REINHARDT: Same objection.

18 MS. DENIKER: This is Susan Deniker.

19 Objection to the form.

20 THE WITNESS: We would all -- the female 07:06:55

21 students would be suited up just as equally as the

22 male student, helmet, shoulder pads, etcetera.

23 BY MR. TRYON:

24 Q So -- strike that.

25 Is there a reason that girls' soccer and 07:07:23

1 boys' soccer are separated by sex?

2 MS. REINHARDT: Objection.

3 MS. DENIKER: Objection to the form.

4 MS. GREEN: I'll object to the form.

5 THE WITNESS: We have -- we have enough 07:07:37
6 students to support both boys and girls' soccer.

7 BY MR. TRYON:

8 Q Well, why not just have them both be coed?

9 MS. REINHARDT: Objection --

10 MS. DENIKER: Objection to the form. 07:07:51

11 MS. REINHARDT: -- to the form.

12 Oh, I apologize, also objection to the form.

13 MS. GREEN: And I'll join.

14 THE WITNESS: Once again -- once again, sir,
15 we have a number of students that can do both, and 07:07:57
16 our understanding is if we just did coed, it would
17 be playing just boys' teams.

18 BY MR. TRYON:

19 Q Why is that?

20 MS. DENIKER: Objection to the form. 07:08:09

21 MS. REINHARDT: Same objection.

22 THE WITNESS: My -- my belief is at -- at
23 middle school or high school, if you support a coed
24 team, that coed team must play a boys' team.

25 BY MR. TRYON: 07:08:25

1 Q Okay. What's the problem with doing that?

2 MS. REINHARDT: Object to --

3 MS. GREEN: Object to the form.

4 MS. REINHARDT: I'll join that objection.

5 THE WITNESS: We have the -- we have the 07:08:33
6 numbers for both a boys and a girls' soccer team.

7 BY MR. TRYON:

8 Q Well, why not just let the girls play against
9 the boys, then?

10 MS. REINHARDT: Objection to the form. 07:08:42

11 MS. DENIKER: This is Susan Deniker.

12 Objection to the form.

13 THE WITNESS: Because we have a girls' team
14 and we have a boys' team, sir.

15 MR. TRYON: And I'll just stipulate to a 07:08:54
16 standing objection on this.

17 BY MR. TRYON:

18 Q But I still don't understand why you separate
19 the boys from the girls.

20 MS. REINHARDT: Same objection. 07:09:02

21 BY MR. TRYON:

22 Q Can you please explain that? You haven't
23 really explained that, I don't think.

24 A The SSAC allows us to have a girls' team and
25 a boys' team, if we can support both numbers for 07:09:11

1 each.

2 Q Does it require it?

3 MS. GREEN: Object to the form.

4 MS. REINHARDT: I'll join that objection.

5 MS. DENIKER: And this is Susan Deniker. 07:09:25

6 Mr. Tryon, if you'll give me a standing objection to
7 this line of questioning, I will not continue to
8 object to form.

9 MR. TRYON: Right. And that's what I just
10 said a minute ago, that I would give all three of 07:09:34
11 you --

12 MS. DENIKER: Yes.

13 MR. TRYON: -- a standing objection on that.

14 MS. GREEN: Okay.

15 THE WITNESS: I'm not sure, sir, about that 07:09:42
16 question, if it requires that.

17 BY MR. TRYON:

18 Q When you mix boys and girls on soccer teams,
19 is that creating a safety issue, as far as you're
20 concerned? 07:09:59

21 MS. REINHARDT: Objection to form.

22 BY MR. TRYON:

23 Q As far as you're concerned as the
24 representative of the -- of the -- of the board?

25 A I believe in every sport there are safety 07:10:08

1 issues. I think in this particular case, since it
2 is allowed, I -- I don't think the safety factor is
3 an issue.

4 Q Wait, I'm sorry, since what is allowed?

5 A To have a coed team. 07:10:29

6 Q Having a coed -- I was talking about -- about
7 soccer.

8 A Yeah, if you said you mixed the -- didn't you
9 say if you mix the boys and the girls together, does
10 it create a safety issue? That was your question, 07:10:40
11 sir?

12 Q Yes. So if in soccer, if you mixed all the
13 boys and girls together, does that create any safety
14 issues for the girls, competing against -- against
15 the boys? 07:10:51

16 MS. REINHARDT: Objection to form.

17 THE WITNESS: I believe there's always safety
18 issues with any sport, sir.

19 BY MR. TRYON:

20 Q Are biological boys allowed on girls' teams, 07:11:32
21 other than B.P.J.?

22 MS. REINHARDT: Objection to form and also
23 objection to terminology.

24 THE WITNESS: Can you repeat the question,
25 sir? 07:11:44

1 BY MR. TRYON:

2 Q Other than B.P.J., are any biological boys
3 allowed on the girls' teams?

4 MS. REINHARDT: Same objections.

5 MS. DENIKER: This is Susan Deniker. 07:11:56
6 Objection to the form.

7 THE WITNESS: The particular B [REDACTED] situation,
8 because we are in an injunction, B [REDACTED] was allowed
9 to run on the girls' cross-country team.

10 BY MR. TRYON: 07:12:15

11 Q Understood. Other than B.P.J., are any
12 biological boys allowed on girls' team?

13 MS. REINHARDT: Same objection.

14 THE WITNESS: We have -- we have never come
15 to that situation, sir, up until this year. 07:12:24

16 BY MR. TRYON:

17 Q Is fairness an important value in sports?

18 MS. REINHARDT: Objection.

19 MS. DENIKER: Objection to form.

20 THE WITNESS: I have two children that played 07:13:17
21 sports, and I always just believe that, you know,
22 fairness is part of it. You know, you just go out
23 and do your best.

24 BY MR. TRYON:

25 Q I understand that on a personal level. I was 07:13:28

1 asking, I guess, more on behalf of the board, does
2 the board consider fairness to be important in
3 sports?

4 MS. REINHARDT: Objection to form.

5 MS. DENIKER: I'm going to raise an objection 07:13:42
6 to form here and also state that to the extent that
7 you're seeking an opinion, that the -- the entity
8 here cannot have an opinion about something that's
9 not reflected in some official policy or other
10 determination by the board. 07:14:00

11 BY MR. TRYON:

12 Q Well --

13 A I will say this --

14 Q -- can you answer --

15 A The -- 07:14:16

16 Q Can you answer the question?

17 A I -- I would just say that, like you said,
18 like I just believe as representing the board, that
19 that question just cannot be answered.

20 Q Okay. So the -- the board has no position on 07:14:26
21 fairness?

22 MS. DENIKER: Objection to the form of the
23 question.

24 To the extent that you can answer about
25 fairness and sports, you can answer that. 07:14:37

1 THE WITNESS: I believe -- I believe any
2 board would want fairness in sports, any Board of
3 Education that has athletic programs would want
4 fairness.

5 MS. REINHARDT: And I wasn't able to 07:14:51
6 interject with an objection. I'm going to say also
7 outside the scope of the deposition.

8 MR. TRYON: I don't have any other questions.
9 Thank you.

10 Hal -- 07:15:33

11 MS. REINHARDT: Does anyone else --

12 MR. TRYON: -- are you there?

13 MS. REINHARDT: -- have any --

14 MR. FRAMPTON: Yeah, I don't have any
15 questions. 07:15:39

16 MS. DENIKER: This is Susan Deniker.
17 Mr. Mazza, I do have a couple of questions for you
18 to clarify your earlier testimony.

19

20

21

22 EXAMINATION

23 BY MS. DENIKER:

24 Q You talked earlier about the athletic
25 director putting information onto a roster for a 07:15:53

1 sports team.

2 Do you recall that testimony?

3 A I do.

4 Q Does the athletic director input any
5 information into WVEIS relating to a student's 07:16:04
6 athletic participation?

7 A It does not. It goes into the WVSSAC portal
8 to put that information in for eligibility.

9 Q And I think you also testified about whether
10 the athletic -- about the information the athletic 07:16:20
11 director uses as a source of information to input
12 information into the WVSSAC portal.

13 Does the athletic director pull information
14 from WVEIS to put into that WVSSAC portal?

15 A It does not. It uses an informational sheet. 07:16:41
16 I want to say I believe it's an WVSSAC sheet that's
17 standard to all the schools. The information is
18 filled out on that sheet. He uploads it into the
19 portal. And if -- for example, if that child is a
20 sixth-grader, that information will stay in there 07:16:59
21 and each year it -- it transfers over.

22 MS. DENIKER: Okay. Thank you, Mr. Mazza. I
23 do not have any further questions.

24 MS. REINHARDT: Mr. Mazza, we don't have any
25 redirect questions. 07:17:10

1 We would ask that this deposition stay open.
2 We previously discussed offline that we're waiting
3 for documents from another custodian. We don't
4 anticipate having to reopen the deposition, but we'd
5 like to hold that position. 07:17:24

6 MS. DENIKER: Thank you, Ms. Reinhardt.
7 On behalf of the Harrison County Board of
8 Education and Superintendent Stutler, I am not
9 agreeable to leaving the deposition open based upon
10 the information that is -- is remaining out there, 07:17:36
11 and so I'm placing an objection to that request on
12 the record.

13 THE VIDEOGRAPHER: Should we go off the
14 record for the day? Are we done?

15 MS. REINHARDT: We're finished. Thank you. 07:17:59

16 THE VIDEOGRAPHER: Okay. All right. We are
17 off the record at 7:18 p.m. This ends today's
18 testimony given by Ms. Stutler and Mr. Mazza.

19 The total number of media was used was five
20 and will be retained by Veritext Legal Solutions. 07:18:12

21 (TIME NOTED: 7:18 P.M.)

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I, DORA STUTLER, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this ____ day of _____,
20____, at _____, _____.
(City) (State)

DORA STUTLER
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I, DAVE MAZZA, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this ____ day of _____,
20____, at _____, _____.
(City) (State)

DAVE MAZZA
VOLUME I

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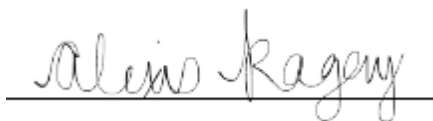
I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: March 22, 2022



ALEXIS KAGAY

CSR NO. 13795

Exhibit 17

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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.

9
10 APPEARANCES OF COUNSEL:

11 FOR PLAINTIFF B.P.J., BY HER NEXT FRIEND AND MOTHER,
12 HEATHER JACKSON:

COOLEY, LLP

13 BY: KATELYN KANG, ESQ.

(PRESENT VIA ZOOM VIDEOCONFERENCE)

14 BY: VALERIA M. PELET DEL TORO, ESQ.

(PRESENT VIA ZOOM VIDEOCONFERENCE)

15 55 HUDSON YARDS

NEW YORK, NEW YORK 10001-2157

16 (212) 479-6849

KKANG@COOLEY.COM

17 VPELETDELTORO@COOLEY.COM

18 COOLEY, LLP

BY: KATHLEEN R. HARTNETT, ESQ.

(PRESENT VIA ZOOM VIDEOCONFERENCE)

19 BY: JULIE VEROFF, ESQ.

(PRESENT VIA ZOOM VIDEOCONFERENCE)

20 BY: ZOË HELSTROM, ESQ.

(PRESENT VIA ZOOM VIDEOCONFERENCE)

21 3 EMBARCADERO CENTER, 20TH FLOOR

22 SAN FRANCISCO, CALIFORNIA 94111-4004

(415) 693-2000

23 KHARTNETT@COOLEY.COM

JVEROFF@COOLEY.COM

24 ZHELSTROM@COOLEY.COM

25 -- APPEARANCES CONTINUED ON NEXT PAGE --

1 APPEARANCES OF COUNSEL (CONTINUED):
2 PLAINTIFF B.P.J., BY HER NEXT FRIEND AND MOTHER, HEATHER
3 JACKSON (CONT'D):

4 COOLEY, LLP
5 BY: ANDREW BARR, ESQ.
6 (PRESENT VIA ZOOM VIDEOCONFERENCE)
7 1144 15TH STREET, SUITE 2300
8 DENVER, COLORADO 80202-2686
9 (720) 566-4121
10 ABARR@COOLEY.COM

11 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
12 BY: JOSHUA BLOCK, SENIOR STAFF ATTORNEY
13 (PRESENT VIA ZOOM VIDEOCONFERENCE)
14 125 BROAD STREET
15 NEW YORK, NEW YORK 10004
16 (212) 549-2569
17 JBLOCK@ACLU.ORG
18 AMERICAN CIVIL LIBERTIES UNION OF WEST VIRGINIA
19 FOUNDATION

20 BY: NICHOLAS WARD, STAFF ATTORNEY
21 (PRESENT VIA ZOOM VIDEOCONFERENCE)
22 BY: LOREE STARK, LEGAL DIRECTOR
23 (PRESENT VIA ZOOM VIDEOCONFERENCE)
24 P.O. BOX 3952
25 CHARLESTON, WEST VIRGINIA 25339-3952
(914) 393-4614
NWARD@ACLUWV.ORG
LSTARK@ACLUWV.ORG

LAMBDA LEGAL
BY: SRUTI SWAMINATHAN, STAFF ATTORNEY
YOUTH NATIONAL HEADQUARTERS
(PRESENT VIA ZOOM VIDEOCONFERENCE)
120 WALL STREET, 19TH FLOOR,
NEW YORK, NEW YORK 10005-3919
(212) 809-8585
SWAMINATHAN@LAMBDALEGAL.ORG

-- APPEARANCES CONTINUED ON NEXT PAGE --

1 APPEARANCES OF COUNSEL (CONTINUED):
2 FOR DEFENDANT WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES
3 COMMISSION:

4 SHUMAN MCCUSKEY SLICER PLLC
5 BY: ROBERTA F. GREEN, ESQ.
6 (PRESENT VIA ZOOM VIDEOCONFERENCE WITH WITNESS)
7 BY: KIMBERLY M. BANDY, ESQ.
8 (PRESENT VIA ZOOM VIDEOCONFERENCE)
9 1411 VIRGINIA STREET EAST, SUITE 200
10 CHARLESTON, WEST VIRGINIA 25301
11 (304) 345-1400
12 RGREEN@SHUMANLAW.COM
13 KBANDY@SHUMANLAW.COM

14 FOR DEFENDANT WEST VIRGINIA STATE BOARD OF EDUCATION,
15 W. CLAYTON BURCH IN HIS OFFICIAL CAPACITY AS STATE
16 SUPERINTENDENT:

17 BAILEY & SLOTNICK P.L.L.C.
18 BY: KELLY C. MORGAN, ESQ.
19 (PRESENT VIA ZOOM VIDEOCONFERENCE)
20 BY: KRISTEN V. HAMMOND, OF COUNSEL
21 (PRESENT VIA ZOOM VIDEOCONFERENCE)
22 500 VIRGINIA STREET EAST, SUITE 600
23 CHARLESTON, WEST VIRGINIA 25301
24 (304) 720-0711
25 KMORGAN@BAILEYWYANT.COM
KHAMMOND@BAILEYWYANT.COM

FOR DEFENDANT THE STATE OF WEST VIRGINIA:

OFFICE OF THE WEST VIRGINIA ATTORNEY GENERAL
BY: CURTIS CAPEHART, DEPUTY ATTORNEY GENERAL
(PRESENT VIA ZOOM VIDEOCONFERENCE)
BY: JESSECA RENEE CHURCH, DEPUTY ATTORNEY GENERAL
1900 KANAWHA BOULEVARD EAST
CHARLESTON, WEST VIRGINIA 25305
(304) 558-2021
CURTIS.R.A.CAPEHART@WVAGO.GOV
JESSECA.R.CHURCH@WVAGO.GOV

-- APPEARANCES CONTINUED ON NEXT PAGE --

1 APPEARANCES OF COUNSEL (CONTINUED):
2 FOR DEFENDANT HARRISON COUNTY BOARD OF EDUCATION, DORA
3 STUTLER IN HER OFFICIAL CAPACITY AS HARRISON COUNTY
4 SUPERINTENDENT:

5 STEPTOE & JOHNSON PLLC
6 BY: JEFFREY M. CROPP, OF COUNSEL
7 (PRESENT VIA ZOOM VIDEOCONFERENCE)
8 400 WHITE OAKS BOULEVARD
9 BRIDGEPORT, WEST VIRGINIA 26330
10 (304) 933-8145
11 JEFFREY.CROPP@STEPTOE-JOHNSON.COM

12 FOR DEFENDANT-INTERVENOR LAINNEY ARMISTEAD:

13 ALLIANCE DEFENDING FREEDOM
14 BY: JONATHAN SCRUGGS, SENIOR COUNSEL
15 (PRESENT VIA ZOOM VIDEOCONFERENCE)
16 BY: HAL FRAMPTON, SENIOR COUNSEL
17 (PRESENT VIA ZOOM VIDEOCONFERENCE)
18 BY: CATIE BYRD KELLEY, LEGAL COUNSEL
19 (PRESENT VIA ZOOM VIDEOCONFERENCE)
20 BY: CHRISTIANA HOLCOMB, LEGAL COUNSEL
21 (PRESENT VIA ZOOM VIDEOCONFERENCE)
22 15100 NORTH 90TH STREET
23 SCOTTSDALE, ARIZONA 85260
24 (480) 444-0020
25 JSCRUGGS@ADFLEGAL.ORG
HFRAMPTON@ADFLEGAL.ORG
CKELLEY@ADFLEGAL.ORG
HOLCOMB@ADFLEGAL.ORG

LAW OFFICES OF TIMOTHY D. DUCAR, P.L.C
BY: TIMOTHY DANIEL DUCAR, ESQ.
(PRESENT VIA ZOOM VIDEOCONFERENCE)
9280 EAST RAINTREE DRIVE, SUITE 104
SCOTTSDALE, ARIZONA 85260
(480) 502-2119
ORDERS@AZLAWYERS.COM

-- APPEARANCES CONTINUED ON NEXT PAGE --

1 APPEARANCES (CONTINUED):

2 ALSO PRESENT:

3 HEATHER HUTCHENS, GENERAL COUNSEL
WEST VIRGINIA DEPARTMENT OF EDUCATION
4 (PRESENT VIA ZOOM VIDEOCONFERENCE)

5 MICHELE BLATT, DEPUTY SUPERINTENDENT
WEST VIRGINIA DEPARTMENT OF EDUCATION
6 (PRESENT VIA ZOOM VIDEOCONFERENCE)

7 SHAWNA HYNES, VIDEOGRAPHER
(PRESENT VIA ZOOM VIDEOCONFERENCE)

8
LINDSAY DUPHILY, VERITEXT CONCIERGE
9 (PRESENT VIA ZOOM VIDEOCONFERENCE)

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I N D E X

DEPONENT	EXAMINATION	PAGE
BERNARD DOLAN	BY MS. KANG	14
	BY MR. CROPP	158

QUESTIONS INSTRUCTED BY COUNSEL NOT TO ANSWER
(NONE.)

E X H I B I T S

EXHIBIT NO.	PAGE	DESCRIPTION
EXHIBIT 1	18	FILE TITLED "EXHIBIT 0001 - TAB 14.PDF"
EXHIBIT 2	33	FILE TITLED "EXHIBIT 0002 - TAB 19.PDF"
EXHIBIT 3	47	FILE TITLED "EXHIBIT 0003 - TAB 09.PDF"
EXHIBIT 4	91	FILE TITLED "EXHIBIT 0004 - TAB 11.PDF"
EXHIBIT 5	103	FILE TITLED "EXHIBIT 0005 - TAB 18.PDF"
EXHIBIT 6	121	FILE TITLED "EXHIBIT 0006 - TAB 15.PDF"
EXHIBIT 7	126	FILE TITLED "EXHIBIT 0007 - TAB .02.PDF"
EXHIBIT 8	128	FILE TITLED "EXHIBIT 0008 - TAB 07.PDF"

-- EXHIBITS CONTINUED ON NEXT PAGE --

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E X H I B I T S (CONTINUED)

EXHIBIT NO.	PAGE	DESCRIPTION
EXHIBIT 9	140	FILE TITLED "EXHIBIT 0009 - TAB 01.PDF"
EXHIBIT 10	142	FILE TITLED "EXHIBIT 0010 - TAB 06.PDF"
EXHIBIT 11	146	FILE TITLED "EXHIBIT 0011 - TAB 03.PDF"
EXHIBIT 12	148	FILE TITLED "EXHIBIT 0012 - TAB 04.PDF"
EXHIBIT 13	151	FILE TITLED "EXHIBIT 0013 - TAB 17.PDF"
EXHIBIT 14	152	FILE TITLED "EXHIBIT 0014 - TAB 08.PDF"

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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 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. 12:36

2 Q. And is there any reason you cannot give 12:36

3 full and complete answers on behalf of the 12:36

4 Commission? 12:36

5 A. I -- I did consult -- I probably -- I had 12:37

6 a communication with Melissa White from House 12:37

7 Education. She had sent me documents -- or a 12:37

8 document. So I would say I communicated with 12:37

9 Melissa White about House Bill 3293. 12:37

10 Q. Was this in preparation for this 12:37

11 deposition? 12:37

12 A. No. I'm sorry. 12:37

13 Q. No need to apologize. 12:37

14 All right. Last -- last topic. What did 12:37

15 you do to prepare for Topic 14? 12:37

16 A. Primarily reviewed the rules and 12:37

17 regulations handbook and the transgender Board 12:37

18 policy and look at emails and text messages. 12:37

19 Q. Anything else? 12:38

20 A. No. 12:38

21 Q. Did you consult with anyone other than 12:38

22 your attorney? 12:38

23 A. No. 12:38

24 Q. Is there any reason you cannot give full 12:38

25 and complete answers on behalf of the Commission? 12:38

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

Page 70

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 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 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

Exhibit 18

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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,)	
)	
vs.)	Civil Action No.
)	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)	
)	
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)
mother, HEATHER JACKSON,)

6 Plaintiff,)

7 vs.) Civil Action No.
8) 2:21-cv-00316

9 WEST VIRGINIA STATE BOARD OF)
EDUCATION, HARRISON COUNTY BOARD)
10 OF EDUCATION, WEST VIRGINIA)
SECONDARY SCHOOL ACTIVITIES)
COMMISSION, W. CLAYTON BURCH in)
11 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.

1 REMOTE VIDEOCONFERENCE APPEARANCES OF COUNSEL:

2
3 For Plaintiff B.P.J.:

4 COOLEY LLP

5 BY: JULIE VEROFF, ESQ.

6 BY: KATHLEEN HARTNETT, ESQ.

7 BY: ANDREW BARR, ESQ.

8 BY: KATELYN KANG, ESQ.

9 BY: ELIZABETH REINHARDT, ESQ.

10 BY: ZOE HELSTROM, ESQ.

11 3 Embarcadero Center, 20th Floor

12 San Francisco, California 94111

13 415.693.2000

14 khartnett@cooley.com

15 -and-

16 AMERICAN CIVIL LIBERTIES UNION OF WEST

17 VIRGINIA FOUNDATION

18 BY: LOREE STARK, ESQ.

19 BY: NICHOLAS WARD, ESQ.

20 BY: JOSH BLOCK, ESQ.

21 P.O. Box 3952

22 Charleston, West Virginia 25339-3952

23 914.393.4614

24 lstark@acluwv.org

25

1 REMOTE VIDEOCONFERENCE APPEARANCES OF COUNSEL:

2 (CONTINUED)

3 For Plaintiff, B.P.J.: (Continued)

4 LAMBDA LEGAL

5 BY: SRUTI SWAMINATHAN, ESQ.

6 BY: AVATARA SMITH-CARRINGTON, ESQ.

7 120 Wall Street, 19th Floor

8 New York, New York 10005

9 212.809.8585

10 sswaminathan@lambdalegal.org

11
12 For Defendant West Virginia Board of Education and
13 Superintendent Clayton Burch;

14 BAILEY & WYANT P.L.L.C.

15 BY: KELLY C. MORGAN, ESQ.

16 BY: KRISTEN V. HAMMOND, ESQ.

17 500 Virginia Street, East

18 Suite 600

19 Charleston, West Virginia 25301

20 304.720.0711

21 kmorgan@baileywyant.com

22

23

24

25

1 REMOTE VIDEOCONFERENCE APPEARANCES OF COUNSEL:

2 (CONTINUED)

3 For Defendant State of West Virginia:

4 SPECIAL ASSISTANT TO THE ATTORNEY

5 BY: DAVID C. TRYON, ESQ.

6 BY: CURTIS CAPEHART, ESQ.

7 State Capitol Complex

8 112 California Avenue, Bldg. 6, Room 430

9 Charleston, West Virginia 25305-0220

10 304.558.2021

11 david.c.tryon@WVAGO.gov

12
13 For Defendant Harrison County Board of Education
14 and Superintendent Dora Stutler:

15 STEPTOE & JOHNSON PLLC

16 BY: SUSAN DENIKER, ESQ.

17 400 White Oaks Blvd.

18 Bridgeport, West Virginia 26330

19 304.933.8154

20 susan.deniker@steptoe-johnson.com

21
22
23
24
25

Page 5

1 REMOTE VIDEOCONFERENCE APPEARANCES OF COUNSEL:

2 (CONTINUED)

3 For Defendant West Virginia Secondary School

4 Activities Commission:

5 SHUMAN McCUSKEY SLICER PLLC

6 BY: ROBERTA GREEN, ESQ.

7 1411 Virginia Street, E., Suite 200

8 Charleston, West Virginia 25301

9 304.345.1400

10 rgreen@shumanlaw.com

11
12 For the Defendant-Intervenor Lainey Armistead:

13 ALLIANCE DEFENDING FREEDOM

14 BY: HAL FRAMPTON, ESQ.

15 BY: KATIE KELLY, ESQ.

16 BY: TIMOTHY DUCAR, ESQ.

17 15100 N. 90th Street

18 Scottsdale, Arizona 85260

19 480.444.0020

20
21 Also Present:

22 MITCH REISBORD, Concierge

23 DAVE HALVORSON, Videographer

24

25

Page 6

1
2
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4
5
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7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF EXAMINATION

WITNESS: MICHELE BLATT

EXAMINATION	PAGE
BY MS. VEROFF:	13
BY MS. GREEN:	129
BY MS. MORGAN:	134

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF EXHIBITS

BLATT DEPOSITION EXHIBITS	PAGE
Exhibit 15 "Plaintiff's Notice of 30(b)(6) Deposition"; 9 pages	17
Exhibit 16 Printout from web page from West Virginia Department of Education's website titled "State Board of Education"; 3 pages	46
Exhibit 17 "Defendants West Virginia State Board of Education and Superintendent W. Clayton Burch's Responses to Plaintiff's First Set of Requests for Production to Defendant State Board of West Virginia and W. Clayton Burch"; 57 pages	50
Exhibit 18 "Defendants West Virginia State Board of Education and Superintendent W. Clayton Burch's Responses to Plaintiff's First Set of Interrogatories to Defendants State Board of West Virginia and W. Clayton Burch"; 12 pages	68

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF EXHIBITS (CONTINUED)

	BLATT DEPOSITION EXHIBITS	PAGE
Exhibit 19	E-mail set, with top e-mail from Heather Hutchens, March 15, 2021; Bates nos. WVSBOE 000006 through '000009	75
Exhibit 20	E-mail from Melissa White, dated March 17, 2021, and attachment; Bates nos. WVSBOE 000002 through '000005	102
Exhibit 21	"2021 Green Book Summary of Public Education Bills Enacted During the 2021 Regular Session"; 24 pages	105
Exhibit 22	"Enrolled Bill Review Form 2021 Regular Session"; 2 pages	110
Exhibit 23	E-mail from Sarah Stewart to Heather Hutchens, subject: "Fyi," dated July 1, 2021; Bates nos. WVSBOE 000001	120

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1 Remotely Testifying from Charleston, West Virginia

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

3 --o0o--

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, 12:29:04

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

Page 75

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

Exhibit 19

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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 * Case 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 * CONFIDENTIAL
Capacity as State Superintendent, * VIDEOTAPED
DORA STUTLER in her official * VIDEOCONFERENCE
Capacity as Harrison County * DEPOSITION
Superintendent, PATRICK MORRISEY * OF
In his official capacity as * KACIE KIDD, M.D.
Attorney General, and THE STATE * February 21, 2022
OF WEST VIRGINIA, *
Defendants *

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CONFIDENTIAL VIDEOTAPED VIDEOCONFERENCE DEPOSITION
OF
KACIE KIDD, M.D., taken on behalf of the Defendant,
State of West Virginia herein, pursuant to the Rules of
Civil Procedure, taken before me, the undersigned,
Nicole Montagano, a Court Reporter and Notary Public in
and for the State of West Virginia, on Monday, February
21, 2022, beginning at 10:16 a.m.

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A P P E A R A N C E S

JOSHUA BLOCK, ESQUIRE

American Civil Liberties Union Foundation

125 Broad Street

New York, NY 10004

COUNSEL FOR PLAINTIFF

KATHLEEN R. HARTNETT, ESQUIRE

ANDREW BARR, ESQUIRE

KATELYN KANG, ESQUIRE

ZOE HELSTROM, ESQUIRE

ELIZABETH REINHARDT, ESQUIRE

Cooley, LLP

3 Embarcadero Center

20th Floor

San Francisco, CA 94111-4004

COUNSELS FOR PLAINTIFF

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A P P E A R A N C E S (cont'd)

SRUTI SWAMINATHAN, ESQUIRE

Lambda Legal

120 Wall Street

19th Floor

New York, NY 10005-3919

COUNSEL FOR PLAINTIFF

DAVID TRYON, ESQUIRE

CURTIS R.A. CAPEHART, ESQUIRE

State Capitol Complex

Building 1, Room E-26

Charleston, WV 25305

COUNSEL FOR STATE OF WEST VIRGINIA

ROBERTA F. GREEN, ESQUIRE

Shuman McCuskey Slicer, PLLC

1411 Virginia Street East

Suite 200

Charleston, WV 25301

COUNSEL FOR WEST VIRGINIA SECONDARY SCHOOL

ACTIVITIES COMMISSION

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A P P E A R A N C E S (cont'd)

SUSAN DENIKER, ESQUIRE

JEFFREY M. CROPP, ESQUIRE

Steptoe & Johnson

400 White Oaks Boulevard

Bridgeport, WV 26330

COUNSEL FOR HARRISON COUNTY BOARD OF EDUCATION and

HARRISON COUNTY SUPERINTENDENT DORA STUTLER

KELLY C. MORGAN, ESQUIRE

MICHAEL W. TAYLOR, ESQUIRE

Bailey Wyant

500 Virginia Street East

Suite 600

Charleston, WV 25301

COUNSEL FOR WEST VIRGINIA BOARD OF EDUCATION and

SUPERINTENDANT W. CLAYTON BURCH

CHRISTIANA HOLCOMB, ESQUIRE

Alliance Defending Freedom

15100 North 90th Street

Scottsdale, AZ 85260

COUNSEL FOR INTERVENOR, LAINEY ARMISTEAD

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A P P E A R A N C E S (cont'd)

TIMOTHY D. DUCAR, ESQUIRE

Law Office of Timothy D. Ducar

7430 East Butherus Drive, Suite E

Scottsdale, AZ 85260

COUNSEL FOR INTERVENOR, LAINEY ARMISTEAD

TIMOTHY R. LINKOUS, ESQUIRE

Lindous Law, PLLC

10 Cheat Landing

Suite 200

Morgantown, WV 26508

COUNSEL FOR KACIE KIDD, M.D.

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I N D E X

DISCUSSION AMONG PARTIES	10 - 15
<u>WITNESS</u> : KACIE KIDD, M.D.	
EXAMINATION	
By Attorney Tryon	16 - 134
DISCUSSION AMONG PARTIES	134 - 136
CERTIFICATE	137

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EXHIBIT PAGE

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE IDENTIFIED</u>
16	Doctor's Note	--
33	Standards of Care for the Health of Transsexual, Transgender, And Gender Nonconforming People	--
35	Doctor's Note	--

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OBJECTION PAGE

ATTORNEY

PAGE

Hartnett 19, 30, 44, 44, 46, 54, 54, 54, 63, 64, 77,
77, 77, 86, 86, 87, 87, 88, 92, 94, 95, 95, 96, 97, 99,
103, 103, 104, 114, 117, 117, 118, 118, 119, 119, 120,
120, 120, 121, 122, 122, 123, 123, 123, 124, 124, 124,
128, 128, 128, 130, 130, 130, 131, 131, 132, 132, 133

Linkous 23

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S T I P U L A T I O N

(It is hereby stipulated and agreed by and between counsel for the respective parties that reading, signing, sealing, certification and filing are not waived.)

P R O C E E D I N G S

VIDEOGRAPHER: We are now on the record.

My name is Jacob Stock. I'm a Certified Legal Video Specialist employed by Sargent's Court Reporting Services. The date today is February 21st, 2022, and the current time is 10:16 a.m. Eastern Standard Time. This deposition is being taken remotely by videoconferencing. The caption of this case in the United States District Court for the Southern District of West Virginia, Charleston Division. BPJ by her next friend and mother, Heather Jackson v. West Virginia State Board of Education, et al. Case number 2:21-CV-00316. The name of the witness is Kacie Kidd, M.D. Will the attorneys present state their names and the parties they represent?

ATTORNEY LINKOUS: This is Tim Linkous on

1 behalf of Kacie Kidd, M.D.

2 ATTORNEY TRYON: This is David Tryon on
3 behalf of the State of West Virginia.

4 ATTORNEY DENIKER: This is Susan Deniker
5 on behalf of Defendants Harrison County Board of
6 Education and Superintendant Dora Stutler.

7 ATTORNEY GREEN: This is Roberta Green on
8 behalf of West Virginia Secondary School Activities
9 Commission.

10 ATTORNEY MORGAN: This is Kelly Morgan on
11 behalf of West Virginia Board of Education and
12 Superintendant Burch.

13 ATTORNEY HOLCOMB: This is Christiana
14 Holcomb on behalf of Intervenor, Lainey Armistead.

15 ATTORNEY HARTNETT: And sorry, I think I
16 was on mute before. This is Kathleen Hartnett from
17 Cooley for Plaintiff. And there are several others on
18 the line for Plaintiff from Cooley.

19 ATTORNEY BARR: Yes. Good morning. This
20 is Andrew Barr from Cooley on behalf of Plaintiff.

21 ATTORNEY KANG: Good morning. This is
22 Katelyn Kang from Cooley on behalf of the Plaintiff.

23 ATTORNEY REINHARDT: Good morning. This
24 is Elizabeth Reinhardt on behalf of Plaintiff.

1 ATTORNEY HELSTROM: Good morning. This
2 is Zoe Helstrom from Cooley on behalf of Plaintiff.

3 ATTORNEY SWAMINATHAN: Good morning.
4 This is Sruti Swaminathan from Lambda Legal on behalf of
5 Plaintiff.

6 ATTORNEY BLOCK: Good morning. This is
7 Josh Block from the ACLU on behalf of Plaintiff.

8 VIDEOGRAPHER: If that's everybody, the
9 court reporter can swear in the witness, and we can
10 begin.

11 ATTORNEY TRYON: Two things. So first of
12 all, I went to mention that my colleague, Curtis
13 Capehart, is on this call. And I wanted to take care of
14 a housekeeping matter before we get started. I wonder
15 if we could do that, if we could exclude Dr. Kidd for
16 just a moment.

17 VIDEOGRAPHER:
18 Yes, give me one second.

19 ATTORNEY TRYON:
20 Thank you. So I just wanted to --- we
21 had previously in other depositions we've talked about
22 how we're going to handle objections. And Mr. Linkous,
23 in some other depositions, we've said that we are going
24 to handle by stating objection for form of the question

1 or directing the witness not to answer for privilege
2 issues. And Kathleen, are you going to be handling this
3 deposition?

4 ATTORNEY HARTNETT: Yes, David. And
5 would you like to discuss this off the record first and
6 then we can put our agreements on the record?

7 ATTORNEY TRYON: Okay.

8 ATTORNEY HARTNETT: Can we go off the
9 record?

10 VIDEOGRAPHER: Yes. Going off the
11 record. The current time is 10:20 a.m.

12 OFF VIDEOTAPE

13 ---

14 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

15 ---

16 ON VIDEOTAPE

17 VIDEOGRAPHER: Back on the record. The
18 current time is 10:24 a.m.

19 ATTORNEY TRYON: Thank you. So while we
20 were off the record we had a discussion and we've come
21 to an agreement on how to handle objections, that
22 primarily we would be handling objections by stating one
23 of three things, either objection to form, objection as
24 to technology --- or terminology, excuse me, or

1 objection to any privileges or scope. So I guess that's
2 four. And Mr. Linkous has said he will strive for that,
3 but has not specifically addressed --- agreed to that.
4 And finally, the counsel for Defendants have indicated
5 that they will --- if there is an objection by counsel
6 for Dr. Kidd, then they will be included within that
7 objection. So they don't have to object as well. Is
8 that a fair summary of our discussion?

9 ATTORNEY HARTNETT: Just on the last
10 point, it was objections by the witness to Counsel.

11 ATTORNEY TRYON: Thank you for correcting
12 me.

13 ATTORNEY LINKOUS: Hey, Dave, can I ask a
14 quick question?

15 ATTORNEY TRYON: Yes.

16 ATTORNEY LINKOUS: Ms. Holcomb, who was
17 on just a second ago, I heard her say she represents an
18 intervenor, and I didn't know there was an intervenor,
19 so who intervened and what's the story there?

20 ATTORNEY TRYON: The intervenor is Lainey
21 Armistead, I think that's how you say her last name, who
22 is a colleague student, a female college student who has
23 intervened.

24 ATTORNEY LINKOUS:

1 CALLED AS A WITNESS IN THE FOLLOWING PROCEEDINGS, HAVING
2 FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS FOLLOWS:

3 - - -

4 EXAMINATION

5 ---

6 BY ATTORNEY TRYON:

7 Q. Dr. Kidd, my name is David Tryon. I represent
8 the State of West Virginia. Can you, first of all, tell
9 me how you would prefer that I address you?

10 A. Hi, I'm Kacie Kidd. I use she/her pronouns.
11 You're welcome to address me as Kacie or Dr. Kidd.

12 Q. Very good. So Kacie --- well, let me call you
13 Dr. Kidd. Dr. Kidd, are you represented by counsel
14 today?

15 A. I am.

16 Q. And who is that?

17 A. Mr. Linkous.

18 Q. And how long has he represented you?

19 A. Well, I can't recall our exact first email
20 exchange. I think it's been over a month.

21 Q. Okay.

22 Have you ever been deposed before?

23 A. I have not.

24 Q. Have you ever testified at trial before?

1 A. I have not.

2 Q. Excuse me. Sorry about that. Have you ever
3 been sued before?

4 A. I have not.

5 Q. Have you ever been retained as an expert either
6 as a testifying or consulting expert in any litigation
7 or otherwise?

8 A. I have not.

9 Q. We are in Federal Court, so the Federal Rules of
10 Procedure apply here. And under the Federal Rules of
11 Procedures 30(c)(2) it provides for objections by your
12 counsel or other counsel. And while we were off the
13 record or before --- we have agreed to certain ways to
14 make objections. And then even if there are objections,
15 you'll still need to answer questions unless your
16 counsel directs you to not do so.

17 Understand?

18 A. Yes.

19 Q. Do you have any questions about that?

20 A. No.

21 Q. Okay.

22 So when you answer, as you're doing now, please
23 answer verbally rather than a nod or a shake. The court
24 reporter, especially since she is not currently watching

1 us, will not be able to detect anything other than your
2 actual words.

3 Okay?

4 A. Yes.

5 Q. Now, if you don't understand my questions,
6 please say so, and I will try to reframe them or say it
7 in a different way.

8 All right?

9 A. Okay.

10 Q. And if you need a break, let us know and we'll
11 make --- we'll try and accommodate that. The only thing
12 you can't do is take a break after I've asked a
13 question. So we need to do it before I ask a question.
14 And I'll also note that this deposition is being
15 conducted as upon Cross Examination.

16 Now, are you familiar with the lawsuit that's
17 involved here?

18 A. I know of the lawsuit loosely. I don't know
19 significant details.

20 Q. Okay.

21 Just briefly, the Plaintiff in the case is BPJ.
22 Are you aware of who BPJ is?

23 A. I am.

24 Q. And BPJ is suing various Defendants asserting

1 that a law known as HB-3293 is invalid at least as it
2 pertains to BPJ. Were you aware of that much?

3 A. Not the numbers and name of that law, but
4 loosely, yes.

5 Q. Okay.

6 Have you heard of the law, loosely known ---
7 well, it is known as HB-3293, sometimes called the
8 Women's Sports --- Save Women's Sports Act, and maybe
9 there's other names for it, too. Have you heard of the
10 law?

11 ATTORNEY HARTNETT: Objection to the
12 form.

13 THE WITNESS: In lay media, yes.

14 BY ATTORNEY TRYON:

15 Q. You haven't actually seen the lawsuit.

16 Is that right?

17 A. That's correct.

18 Q. Have you read that law?

19 A. I can't recall if I read the actual law that
20 passed.

21 Q. Okay.

22 Have you brought any documents to the
23 deposition with you today?

24 A. I was told to have the two --- I think they're

1 called exhibits, the WPATH Guidelines and my clinical
2 record.

3 Q. Okay.

4 And do you have those in hard copy or just
5 electronically?

6 A. Both.

7 Q. Okay.

8 And have you reviewed any documents in
9 preparation for this deposition?

10 A. Yes.

11 Q. Which documents are those?

12 A. They were documents provided by my lawyer
13 telling me about depositions because I add ---.

14 ATTORNEY LINKOUS: Stop right there, Dr.
15 Kidd. Communications from me to you and the substance
16 of those communications are privileged. You don't have
17 to talk about the substance of those.

18 BY ATTORNEY TRYON:

19 Q. Yes. All I need to know and I don't want to
20 know what you and your lawyer talked about. I just want
21 to know what documents you've looked at in preparation
22 for your deposition today.

23 A. Sure. So those documents certainly.

24 Q. Okay.

1 So those are the medical records you mentioned,
2 as well as the WPATH standards?

3 A. Yes.

4 Q. Anything else?

5 A. I've certainly reviewed the medical literature
6 in this case but that is an ongoing process that I'm
7 always engaged in.

8 Q. Okay.

9 Now, on Saturday we received some additional
10 documents from your office, which appear to be similar
11 to what's previously been marked as Exhibit 16. Do you
12 have those in front of you as well?

13 A. I'm not familiar with what Exhibit 16 includes.

14 ATTORNEY LINKOUS: Mr. Tryon, I will just
15 interrupt and say that those records didn't really come
16 from her office, they came from me. And I sent them to
17 Plaintiff's Counsel, who then provided them to you.

18 ATTORNEY TRYON: Got it. And do you know
19 if Dr. Kidd has those in front of her as well?

20 ATTORNEY LINKOUS: She should, yes.

21 ATTORNEY TRYON: Okay.

22 BY ATTORNEY TRYON:

23 Q. So having gone through those --- excuse me one
24 moment. So just some quick background. Can you give me

1 your full name and address, please?

2 A. My home address or my work address?

3 Q. Both, please.

4 A. My full name is Kacie Marie Kidd. My work
5 address is --- depends on if you're looking at my office
6 or clinical practice, but my office is 1 Medical Center
7 Drive, Morgantown, West Virginia, 26506, I believe. And
8 my home address ---.

9 Q. Can you slow down just a little bit, please?

10 A. Sure.

11 Q. Go ahead.

12 A. Do you need me to repeat? My home address is
13 106 Canyon Ridge Drive, Morgantown, West Virginia,
14 26508.

15 Q. And can you give me your work phone number,
16 please?

17 A. I would need to check my business card. Is it
18 okay if I do that?

19 Q. Yes.

20 A. My work phone (304) 293-6307.

21 Q. And I would also like to ask you for your
22 personal phone number, which I would use only in the
23 event that for some reason you were no longer
24 represented by counsel. Otherwise, I would contact you

1 through counsel.

2 ATTORNEY LINKOUS: I would --- I just
3 object and instruct her not to answer on that. I will
4 accept subpoenas and you can contact me through her. I
5 will continue representing her. And if not, there will
6 be new counsel assigned and you will be informed of
7 that.

8 ATTORNEY TRYON: Well, I've never had
9 anyone instruct a witness not to do that before, but
10 I'll move on.

11 BY ATTORNEY TRYON:

12 Q. Can you tell me where you went to --- about your
13 education, your undergraduate education first, please?

14 A. Sure. I received my Bachelor's Degree in
15 biology and women's studies from West Virginia
16 University. I then went to medical school at West
17 Virginia University School of Medicine. After that I
18 completed a four-year residency in internal medicine and
19 pediatrics at West Virginia University School of
20 Medicine. I then completed a three-year fellowship in
21 adolescent medicine at the University of Pittsburgh.

22 Q. What was your major in your pre-Bachelor's
23 Degree?

24 A. It was biology and women's studies.

1 Q. And when did you get your Bachelor's Degree?

2 A. I graduated with my Bachelor's in 2010.

3 Q. And medical school, when did you graduate there?

4 A. 2014.

5 Q. Did you have any particular emphasis at the West
6 Virginia School of Medicine?

7 A. It's not customary for people to have emphasis
8 in medical school but instead in residency.

9 Q. Okay.

10 And in your residency what was your specialty
11 or emphasis?

12 A. I did a dual residency in internal medicine and
13 pediatrics.

14 Q. And when did you get that? When did you
15 complete your residency?

16 A. In 2018.

17 Q. And then your fellowship, what was that in?

18 A. Adolescent medicine.

19 Q. And when did you complete that?

20 A. In 2021.

21 Q. Any particular reason that you chose adolescent
22 medicine?

23 A. Supporting adolescents and young adults is my
24 favorite part of medicine.

1 Q. Have you had any other specialized training
2 other than what you just discussed?

3 A. Within adolescent medicine there are several
4 ways to have additional training and I did pursue one of
5 those ways.

6 Q. And what was that?

7 A. Gender affirming care.

8 Q. And in what way did you pursue that?

9 A. I dedicated much of my clinical training to
10 learning under experts in this space. I also dedicated
11 my research training in a similar vein, and I engaged in
12 organizations and groups and additional educational
13 opportunities to round out that training.

14 Q. What experts are you referring to?

15 A. Doctor Gerald Montano, Doctor Selma Witchell
16 among others.

17 Q. I'm sorry. Montano and who is the other one?

18 A. Selma Witchell.

19 Q. Can you spell that, please?

20 A. W-I-T-C-H-E-L-L.

21 Q. And what was the first name?

22 A. Selma, S-E-L-M-A.

23 Q. And where is Selma Witchell?

24 A. The University of Pittsburgh.

1 Q. Do you have a license to practice medicine?

2 A. I do.

3 Q. Where?

4 A. In the State of West Virginia.

5 Q. Any others?

6 A. I previously held a training license in the
7 State of Pennsylvania when I was a trainee there.

8 Q. But currently you do not?

9 A. I do not.

10 Q. And do you have any --- you may have answered
11 this, but do you have any specific specialties?

12 A. My specialties are pediatrics, internal
13 medicine, adolescent medicine and gender affirming care.

14 Q. I was wondering if that was my computer dinging
15 or someone else's.

16 A. I think it may be mine. Give me a second. I'll
17 sign out of my email.

18 Q. Okay.

19 A. Okay.

20 Q. Do you have Board Certifications?

21 A. I do.

22 Q. What are those?

23 A. I'm Board Certified in Internal Medicine and
24 Pediatrics.

1 Q. What was necessary to get Board Certification
2 for internal medicine?

3 A. I was trained in internal medication and many of
4 my patients are adults by legal definition.

5 Q. I'm sorry. You broke up. Can you repeat that
6 please?

7 A. Sure. I was trained in internal medicine and
8 eligible to sit that Board Examination. Additionally, a
9 lot of my patients are over the age of 18.

10 Q. So you had to sit for a Board Examination.
11 Is that right?

12 A. I sat for two Board Examinations in Pediatrics
13 and Internal Medicine as well as numerous Board
14 Examinations to be allowed to get to that point.

15 Q. Okay.

16 And you passed those boards?

17 A. I did.

18 Q. Are you a member of any medical societies?

19 A. I am.

20 Q. What are those?

21 A. I am currently a member of the American Academy
22 of Pediatrics. I'm a member of the Society for
23 Adolescent Health and Medicine. I am also a member of
24 the World Professional Association for Transgender

1 Health.

2 Q. Any others?

3 A. Not that I can recall.

4 Q. When you said the Society for Adolescent
5 Medicine, did I hear that right?

6 A. The Society for Adolescent Health and Medicine,
7 abbreviated SAHM, S-A-H-M.

8 Q. And what do you need to be a member of that,
9 what do you need to do?

10 A. Most of these organizations have membership
11 tiers for a variety of persons and you need to pay a
12 fee. But for the purpose of my membership, it's as a
13 physician. And for the American Academy of Pediatrics I
14 have a special notation in my membership as someone who
15 has passed the board exam for that field.

16 Q. For WPATH, what do you need to do to be a member
17 there?

18 A. You need to sign up and pay a fee and check your
19 membership category. Mine, again, is physician and
20 although I think I may be still listed as a student
21 member based on my training time at the University of
22 Pittsburgh for that membership, but I am also part of
23 their global education initiative, which is an
24 additional training on top of being a member.

1 Q. I'm sorry, global what initiative?

2 A. Education initiative.

3 Q. Are you a member of the ---?

4 A. I am not.

5 Q. Are you a member or on the board of any
6 educational organizations?

7 A. I think it depends on what you mean by
8 educational organization.

9 Q. Any organizations that try and educate on any
10 issues?

11 A. Well, broadly, I'm faculty at West Virginia
12 School of Medicine and I routinely educate a variety of
13 learners at a variety of levels. I'm also part of
14 something called the Tri-State Gender Collaborative,
15 which is a community-based organization that does
16 provide education.

17 Q. And do you have privileges at any hospitals?

18 A. I do have privileges at Ruby Memorial Hospital
19 in Morgantown, West Virginia.

20 Q. Any others?

21 A. No.

22 Q. So tell me of your work experience, your
23 professional work experience.

24 A. Can you restate your question?

1 Q. Yes. So I'm interested to learn your work
2 experience, where you have worked and what you have done
3 starting --- I'm not sure exactly --- you've told me
4 about your internship and then I know that you are doing
5 some other things. So after your internship, did you
6 have any professional --- did you start working right
7 away or did you just do the fellowship or is fellowship
8 considered work? Help me out, understand your work
9 history.

10 ATTORNEY HARTNETT: Objection to the
11 form.

12 THE WITNESS: Medicine training is
13 complicated, and so the internship is part of residency.
14 That was part of the four years that I spent in internal
15 medicine and pediatrics training. During that time I
16 was working in a variety of settings to obtain training
17 in both of those fields.

18 After that was completed I was also doing
19 training at the University of Pittsburgh. One could
20 consider all of those work. And I was a paid employee
21 during that time when I was a trainee as well.

22 BY ATTORNEY TRYON:

23 Q. What's the first job in which you were actually
24 treating patients?

1 A. I have been treating patients since I was a
2 medical student.

3 Q. Okay.

4 And your first paid job where you were treating
5 patients?

6 A. That would have been the beginning of my
7 residency, which is often called an internship in
8 internal medicine and pediatrics.

9 Q. And then how about your fellowship, were you
10 treating patients during your fellowship?

11 A. Yes.

12 Q. What is your current --- I don't know what the
13 right term would be profession --- excuse me, profession
14 or your work status?

15 A. I am currently an assistant professor in the
16 Department of Pediatrics at the WVU School of Medicine.
17 I am also the Medical Director of the WVU Medicine
18 Children's Gender and Sexual Development Clinic.

19 Q. And then do you have a separate practice where
20 you diagnose and treat patients?

21 A. Under those titles, yes.

22 Q. Okay.

23 So it's not separate from those?

24 A. No.

1 Q. Do you get paid directly by the patients or just
2 only get paid by the West Virginia University?

3 A. I am dual employed as is the customary practice
4 for physicians who are working at the WV School of
5 Medicine, and so my dual employment goes both through
6 West Virginia University as well as --- I believe it's
7 called UHA, the University Health Associates, but I may
8 need to clarify that.

9 Q. Okay.

10 As assistant professor what do you do?

11 A. Assistant professor is my title in my tenure
12 track of employment, and so it's fairly traditional for
13 assistant professors to be the entry point of tenure
14 track position, if that makes sense. And my role in
15 that is to provide medical care as well as to conduct
16 research and to provide teaching.

17 Q. So I understood conduct research and also
18 teaching. What was the first thing you said?

19 A. To provide clinical care.

20 Q. What do you teach?

21 A. I teach a variety of learner types and topics,
22 but they typically center adolescent medicine and gender
23 affirming care or both.

24 Q. Are there classes specifically on those topics

1 or is it part of a more general class?

2 A. Most often my teaching is as a guest lecturer
3 for a medical student class or a residency training
4 program or something called grand rounds, which is a
5 teaching opportunity for faculty-level positions.

6 Q. What types of research do you do?

7 A. I conduct mix methods research, including
8 qualitative and quantitative analyses, centering gender
9 adversity in people and their experiences as well as the
10 experiences of their family.

11 Q. How many papers have you published?

12 A. I don't know that I could give you a complete
13 answer to that question. I suspect --- I know that it
14 is more than 12. I suspect less than 20. It also
15 depends on what you mean by paper.

16 Q. Okay.

17 When you say provide clinical care --- well,
18 let me come back to that in a minute. As Medical
19 Director of the West Virginia University --- excuse me,
20 West Virginia University Medicine Children's Gender and
21 Sexual Development --- do I have that title right?

22 A. Almost. It's the WVU Medicine Children's Gender
23 and Sexual Development Clinic.

24 Q. And what is your role? What do you do in that

1 role?

2 A. I direct the clinical care of gender diverse
3 intersex and questioning youth, ages approximately 3
4 through 26 in our multi-disciplinary team.

5 Q. So how is that different then from where you
6 provide clinical care as an assistant professor?

7 A. Those two jobs descriptions overlap quite a bit.

8 Q. Are there any parts that do not overlap?

9 A. I would argue that it's outside of my role as an
10 assistant professor but definitely in my role as the
11 Medical Director of the clinic to have meetings where we
12 discuss the care we provide, to meet with our DEI head
13 more promptly, diversity, equity and inclusion, those
14 sorts of things.

15 Q. Do you supervise anyone in either of your roles?

16 A. I often precept trainees, residents and medical
17 students.

18 Q. Could you repeat that?

19 A. I often precept trainees, including residents
20 and medical students.

21 Q. You said precept?

22 A. Precept, P-R-E-C-E-P-T. It's a word used in
23 medical care to discuss supervision of trainees. I'm
24 their preceptor.

1 Q. And do you supervise them as they are giving
2 medical care?

3 A. Yes.

4 Q. Would it be fair to say that you are currently a
5 treating physician?

6 A. Yes.

7 Q. And just so I have it right rather than me
8 trying to restate it, in what areas do you treat
9 patients?

10 A. I provide care for adolescents and young adults.

11 Q. In what areas?

12 A. In adolescent medicine, in gender affirming
13 care.

14 Q. Do you provide general --- are you a
15 pediatrician as well?

16 A. It's complicated. Adolescent medicine is a
17 complicated --- and there are many adolescent
18 specialists who do provide well child care for young
19 people. I do that infrequently. And so for example, if
20 a young person wishes for me to be their primary care
21 provider, I can do that on a limited basis, but the
22 majority of my care is subspecialty care and
23 consultation.

24 Q. When patients need to come to you do they come

1 to you directly or through the University?

2 A. Can you restate the question?

3 Q. So it's my understanding that you do treat
4 patients. And so my question is do they come to you
5 directly or do they go through the University?

6 A. I'm not understanding what you mean by coming
7 through the University.

8 Q. How do you --- how do patients come to you?

9 A. They can call our scheduling line that is
10 available on our website or they can be referred from
11 another physician or provider.

12 Q. How much of your time is spent with patients
13 versus your time in doing research and teaching and
14 other things?

15 A. I am 20 percent clinical and 80 percent
16 research.

17 Q. So when a new patient comes in what is the ---
18 let me back up for a second. Have you been --- one
19 second. When you have a new patient come in --- I'm
20 sorry, let me go back to my other question. Have you
21 been asked to be an expert witness in this case?

22 A. No.

23 Q. Tell me about the intake process for a new
24 patient.

1 A. Well, depending on how a new patient finds us,
2 either through direct scheduling or referral, once they
3 have the visit they usually meet with us for a longer
4 than perhaps expected visit to compare to other
5 pediatric practices. New patients visit with my team
6 are usually between two and two and a half hours. An
7 hour of that is typically spent with me and we have a
8 fairly long conversation with the young person, with
9 family members together and separately and then we work
10 together to help support that young person together.

11 Q. When you say your team, who is on your team?

12 A. Our team, from my practice, currently includes
13 myself, a child and adolescent psychiatrist, whose name
14 is Dr. Deci, and a clinical therapist, whose name is Ms.
15 Brianna Hayes.

16 Q. Doctor Steven --- what is his last name?

17 A. Deci, D-E-C-I.

18 Q. And Brianna Hayes, what is ---?

19 A. H-A-Y-E-S.

20 Q. What's her practice?

21 A. She is a clinical therapist.

22 Q. And Doctor Deci, what's the practice?

23 A. He is a child and adolescent psychiatrist.

24 Q. When the patient first is coming in --- let me

1 back up just a little bit for some more nuts and bolts
2 in my question. Do they first meet with a secretary or
3 nurse or fill out papers online? How does that process
4 --- let's start with someone who is just direct
5 scheduling.

6 A. And so if someone calls our scheduling line,
7 they are scheduled for a visit. And they would arrive
8 at their visit time, they would check in. They would
9 sit in the waiting room. A nurse would call them back,
10 take their vital signs and they would be put in an exam
11 room with their family. They arrive with family. And
12 then our team would see them.

13 Q. As far as the initial record, setting up the
14 initial record of who this person is and what they're
15 coming in for, who does that?

16 A. The family when they call when to make a visit
17 will ask for a gender visit, and that's the only
18 questioning that happens at that time.

19 Q. And then everything else that is input into the
20 patient's records would either be from the nurse or from
21 you or your team?

22 A. For those who are directly scheduling. If
23 someone has been referred, it may be that they're
24 referring provider or a scheduler from their referral

1 team put additional documentation in.

2 Q. Is there any --- okay.

3 So when you meet with the patients, is it
4 initially just you or is it with the entire team first?

5 A. So it depends. We like to do a greeting where
6 we all pile in these exam rooms and say hello and
7 introduce ourselves so young people and families know
8 our names and faces. Sometimes that is not possible for
9 a variety of reasons. And also sometimes families don't
10 need all of us and may or may not be interested in
11 seeing all of us. Sometimes families just want to see
12 me or sometimes they just want to see the mental health
13 providers, and we try to accommodate that where we can.

14 Q. Do you gather their past medical history?

15 A. Yes.

16 Q. And is their medical history important?

17 A. I think that every patient's medical history,
18 medication list, allergies, things like that can be
19 important to their care.

20 Q. Can you explain to me why? I mean it may seem
21 obvious to you, but I would like to just understand it.

22 A. Okay.

23 And so, someone's past medical history could
24 certainly impact their present health, and so part of my

1 routine practice is to ask young people and their
2 families what kind of diagnoses they have had in the
3 past, including things like asthma, allergies, if
4 they've broken their arm before, a whole host of
5 questions.

6 Q. Are those things relevant to gender care?

7 A. They could be.

8 Q. How would allergies be related to gender care?

9 A. If you had an allergy to a medication that was
10 related or the same as a medication that I could
11 provide, that would be a concern to me.

12 Q. And do you typically take the history just from
13 the patient or do you reach out to other healthcare
14 providers?

15 A. I take my history from the patient and parent or
16 guardian in front of me, but I also have access to our
17 electronic health record and I review that as well for
18 meeting new patients.

19 Q. Tell me about the electronic health record.

20 A. Our health system uses an electronic health
21 record called Epic.

22 Q. And what is located in the Epic system?

23 A. A variety of things, including vital signs from
24 previous visits, notes from prior visits and prior

1 providers, information about the family address and
2 phone number, should we need to mail anything or call
3 them, things like that.

4 Q. Does the Epic system --- let me back up. So the
5 Epic system is a system used by West Virginia
6 University.

7 Is that right?

8 A. WV Medicine specifically and UHA uses Epic I
9 believe in most, if not all, of their hospitals. I
10 think a couple hospitals are going live with Epic soon.
11 I think it's an incredibly common electronic health
12 record in this country and others I believe.

13 Q. I've heard of it. I don't know a lot about it.
14 So tell me, would Epic system that WVU Medicine is
15 using, does it just have information from within the WVU
16 Medicine medical system or does it expand out to all
17 providers in the country, for example?

18 A. It would be wonderful if it did that if an
19 effective way. There's a bit of capitalism involved
20 there I suspect, but we do have something called Care
21 Everywhere, which is a tab that you can select and for
22 some circumstances it allows you to see notes from other
23 Epics systems outside of WVU Medicine.

24 Q. So what is the WVU medical system? Where else

1 are they tied into?

2 A. Can you restate your question?

3 Q. First of all, let me make sure I get my
4 terminology correct. It's WVU Medical?

5 A. WVU Medicine. I think that's the brand name for
6 the UHA health family of hospitals and clinics and that
7 sort of thing.

8 Q. So WVU Medicine uses the Epic system and also
9 you can utilize Care Everywhere. So my question is,
10 Care Everywhere ties you into what other systems?

11 A. I don't know the comprehensive list. It's kind
12 of a bit of luck I think sometimes navigating Care
13 Everywhere. It's a little bit of what I would consider
14 a clunky system, but Care Everywhere is within Epic. It
15 is not itself a separate system.

16 Q. Understood. But can you recall any other
17 organizations that you can access through Care
18 Everywhere?

19 A. I know that I can access the University of
20 Pittsburgh in some capacity. I previously worked in
21 that system, and so I wasn't seeing exactly what it
22 looked like if I was in their system, but I can't really
23 speak to other systems that are connected.

24 Q. And if a patient comes in and they've had prior

1 medical providers, do they typically bring in any copies
2 of medical records?

3 A. That would be wonderful, but it doesn't happen
4 very often.

5 Q. Is the intake process any different for when
6 someone comes in as a referral patient?

7 A. It depends on how they've been referred. So for
8 example, sometimes providers will reach out to me
9 through secure communication within Epic and say they
10 have a patient they wish to refer and they might have
11 questions about how to make that happen. So there may
12 be an additional layer of communication there. I often
13 ask questions about urgency of need. Sometimes patients
14 are needing to see me sooner for a variety of reasons,
15 maybe mental health concerns, that may be just stress
16 about getting a visit, and so I can accommodate those
17 things.

18 Q. So if the referred physician had information,
19 they can send that to you through the Epic system?

20 A. They can send me a communication and that may
21 include information that they feel is relevant for me to
22 know about the patient they're sending me.

23 Q. When they send that communication, what does
24 that look like? Is that email, texting?

1 A. It's --- it's neither. It's actually a
2 communication system within Epic. It's called Inbasket.

3 Q. And does Inbasket provide for just
4 communications or also sending documents?

5 A. I believe you can attach documents within those,
6 but I have very intermittent luck of doing so and most
7 folks do not use that feature.

8 Q. Anything else different about when you receive a
9 referral as opposed to a direct contact?

10 ATTORNEY HARTNETT: Objection to form.

11 THE WITNESS: Not that I can think of.

12 BY ATTORNEY TRYON:

13 Q. Let me ask you generally what types of
14 information do you need to diagnose a problem?

15 ATTORNEY HARTNETT: Objection to form.

16 THE WITNESS: Can you restate the
17 question?

18 BY ATTORNEY TRYON:

19 Q. Yes. So in your field, are you --- do you
20 diagnose patients?

21 A. If it is within my scope of practice, yes.

22 Q. And what type of --- what information do you
23 need to make a diagnosis of your patients?

24 A. It depends on the patient and the diagnoses I'm

1 considering.

2 Q. Is there something called objective versus
3 subjective symptoms?

4 A. Yes.

5 Q. Can you explain what those are and the
6 difference?

7 A. Objective tends to refer to things like vital
8 signs or labs, things that we measure. Subjective tends
9 to refer to things that patients tell us, like that they
10 have headaches or the severity of their headaches.

11 Q. How do you measure subjective symptoms?

12 A. You talk with your patient.

13 Q. Anything else?

14 A. That's the primary way to diagnose most things
15 is to have a conversation with your patient.

16 Q. Is there a --- an objective way to measure the
17 subjective symptoms?

18 A. We have a lot of scales for a lot of things. We
19 have a lot of diagnostic criteria for a lot of things,
20 but most of medicine would not exist in my opinion if we
21 didn't talk with our patients.

22 Q. I understand that. So it sounds like there's
23 not a good way to actually put a measurement on
24 subjective symptoms.

1 Is that a fair statement?

2 ATTORNEY HARTNETT: Object to form.

3 THE WITNESS: They are by nature
4 subjective.

5 BY ATTORNEY TRYON:

6 Q. So when someone comes to you for gender
7 dysphoria issues as opposed to other types of medical
8 issues --- actually, let me start that all over again.
9 Do you ever treat patients or diagnose patients for
10 things other than gender dysphoria issues?

11 A. Yes.

12 Q. What other medical issues do you diagnose or
13 treat?

14 A. It's a very extensive list.

15 Q. Okay.

16 Then I won't make you go through it, but can
17 you give me some just general ideas?

18 A. Dysmenorrhea is an incredibly common thing that
19 I treat and diagnose.

20 Q. Can you repeat that or spell that, please?

21 A. Dysmenorrhea, D-Y-S-M-E-N-O-R-R-H-E-A.
22 Dysmenorrhea.

23 Q. What is that?

24 A. Dysmenorrhea is difficult periods. It's a whole

1 host of things that lead to heavy bleeding,
2 uncomfortable bleeding, pain with bleeding, and can
3 really impact live experience with young people.

4 Q. Okay.

5 Anything else?

6 A. As I said, there are many things that I diagnose
7 and treat.

8 Q. Give me a few examples just so I sort of
9 understand your practice.

10 A. Okay.

11 Sexually transmitted infections. I'm an
12 adolescent medicine doctor, so really anything in the
13 pubertal period or young period is in my practice. But
14 I often screen and treat for sexually-transmitted
15 infections. I also manage contraception. I also talk
16 about mood, anxiety, depression. Would you like more?

17 Q. I think I'm getting the sense of it. So let me
18 ask you about gender dysphoria. Can you give me your
19 definition for what gender dysphoria is?

20 A. My definition is loosely based on the DSM-V,
21 which has criteria for the diagnosis of gender
22 dysphoria, but it is stress, significant distress often
23 associated with the inconference between one's sex
24 assigned at birth and gender identity lasting longer

1 than six months with accompanying things like seeking to
2 present one's self gender expression in line with one's
3 affirmed gender and in opposition to one's sex assigned
4 at birth as well as some other criteria.

5 Q. Is the actual intake process that we have
6 discussed for someone coming to you for gender dysphoria
7 different than some of these other issues that you've
8 mentioned to me?

9 A. Can you restate the question?

10 Q. Sure.

11 When someone comes to you, you have given me
12 sort of the --- explained to me how the intake process
13 works in general. And my question is, is it any
14 different in general than with respect to someone coming
15 to you with gender dysphoria specifically?

16 A. In some ways. I ask a whole lot more questions
17 about gender when we are talking about gender dysphoria,
18 although I ask all of my patients about gender identity.

19 Q. Why do you ask all of your patients about gender
20 identity?

21 A. It's important that I'm respectful of them and
22 their name and pronouns, and also we know that gender
23 diverse young people, and by my definition that is
24 anyone who's sex assigned at birth and gender identity

1 do not fully align, we know that those young people face
2 health disparities and inequities associated with mental
3 health, and I want to make sure I can address those if
4 they are present.

5 ATTORNEY TRYON: Let me just ask the
6 court reporter if you're able to keep up with this?

7 COURT REPORTER: Attorney Tryon, if the
8 doctor could speak a little bit slower because I'm ---
9 yeah, a little bit slower, Doctor, please.

10 THE WITNESS: Absolutely.

11 ATTORNEY HARTNETT: She is doing a great
12 time on the real time, though, but appreciate the point.

13 BY ATTORNEY TRYON:

14 Q. What is --- what percentage of your practice
15 involves gender dysphoria or gender identity issues?

16 A. I couldn't give you an exact number, but my
17 guess would be 80 percent.

18 Q. Now, you mention there's --- this may not be
19 your word, but there's a process for diagnosing gender
20 dysphoria.

21 Is that right?

22 A. There are diagnostic criteria, yes.

23 Q. And can you list those for me again? You
24 started to go through that a little bit, but if you

1 could go through that I would appreciate it.

2 A. These are located in the DSM-V, and I cannot
3 recite them by memory.

4 Q. Well, as best as you can, can you tell me what
5 they are?

6 A. Loosely, the definition of gender dysphoria by
7 my interpretation is that there is distress, often
8 significant distress, associated with an incongruent
9 between one's sex assigned at birth and one's gender
10 identity lasting for at least six months and also
11 inclusive of some other criteria, which include things
12 like desiring to align one's gender expression with
13 one's affirmed gender and in opposition to one's
14 assigned sex.

15 Q. About how many people have come to you to get an
16 initial diagnosis of gender dysphoria?

17 A. I want to clarify that most folks, at least a
18 substantial portion of folks don't come to me asking for
19 that diagnosis specifically, but more broadly to have
20 conversations about means of support, although I am able
21 to provide that diagnosis.

22 Q. Okay.

23 And about how many people have you given that
24 diagnosis to?

1 A. I couldn't give you an exact number. I can
2 approximate and say that I have seen well over a hundred
3 patients in my clinic.

4 Q. And in which or for which you've given a
5 diagnosis or gone through that --- let me start that
6 over. Of those hundreds, those are the --- those you've
7 actually gone through the process to make a diagnosis of
8 gender dysphoria?

9 A. I've certainly asked all of the relevant
10 questions. Sometimes young people and their families
11 don't desire to have that diagnosis listed in their
12 chart due to fear of discrimination.

13 Q. But you would say you've given that diagnosis
14 for over a hundred patients?

15 A. I've certainly asked the questions associated
16 with that diagnosis, yes.

17 Q. Okay.

18 But I'm asking where you've done the actual
19 initial diagnose --- given actual diagnosis of that
20 gender dysphoria, would you say over a hundred or not?

21 A. It's really hard to say because there is no ---
22 there is no way that one gives a formal diagnosis kind
23 of as a here it is. It's more of a you meet these
24 criteria. Let's explore what that means. Does that

1 feel in line with your life experience. Sometimes I
2 have to write it in the chart for the purpose of
3 insurance coverage, for medication for example. But
4 it's a bit more complicated than just saying you checked
5 the boxes, here is your diagnosis.

6 Q. Okay.

7 Have you ever had a patient that came to you
8 and you discussed gender dysphoria with that patient and
9 ultimately you concluded that the patient did not have
10 gender dysphoria?

11 A. I have.

12 Q. Are those patients who initially thought they
13 had gender dysphoria and you concluded they did not?

14 A. Not usually, no. Those are more often patients
15 who are questioning this part of themselves and
16 exploring their identities as a normal part of
17 adolescent development.

18 Q. For any of the patients that have come to you
19 and said they thought they had gender dysphoria, have
20 you arrived at a different diagnosis of what was causing
21 their concerns?

22 A. I can't recall an occasion like that.

23 Q. Are you familiar with the concept of watchful
24 waiting?

1 A. I am.

2 Q. Have you ever recommended that to a patient?

3 A. I have not because it is not recommended by the
4 American Academy of Pediatrics.

5 Q. Tell me how you are familiar with that.

6 A. I'm familiar with it through the policy
7 statement on the care of this population of young people
8 from the American Academy of Pediatrics by Rafferty, et
9 al., 2018.

10 Q. Have you --- tell me that citation again.

11 A. Sure. Rafferty, et al., 2018, the American
12 Academy of Pediatrics.

13 ATTORNEY LINKOUS: Mr. Tryon, I know
14 we've been going about an hour-and-a-half. When you get
15 to a logical breaking point, I could use three minutes.

16 ATTORNEY TRYON: Okay.

17 Give me just another couple of minutes
18 and then we will break.

19 BY ATTORNEY TRYON:

20 Q. Have you read any literature other than that
21 about watchful waiting?

22 A. That is the literature that most specifically
23 sticks out in my mind. I'm sure I've read countless
24 articles that discuss this in one form or another.

1 Q. Are you aware that there are other articles that
2 do recommend watchful waiting?

3 ATTORNEY HARTNETT: Objection to form.

4 THE WITNESS: I am not familiar with
5 articles like that from highly-respected medical
6 organizations.

7 BY ATTORNEY TRYON:

8 Q. Are you aware of any, whether or not they are
9 from highly-respected medical organizations?

10 A. Not off the top of my head, no.

11 Q. Have you read their studies? I mean, this is a
12 Dutch concept.

13 Right?

14 ATTORNEY HARTNETT: Objection to form.

15 THE WITNESS: I'm not familiar with what
16 you're talking about.

17 BY ATTORNEY TRYON:

18 Q. It's called the Dutch Approach, and you're not
19 --- you haven't heard that?

20 ATTORNEY HARTNETT: Objection to form.

21 THE WITNESS: I certainly am familiar
22 about the Netherlands and the Dutch and the work they've
23 been doing in this space for more than a decade.

24 BY ATTORNEY TRYON:

1 Q. And over there watchful waiting is considered an
2 appropriate recommendation.

3 Right?

4 A. I can't speak to that. I know from their
5 literature they've demonstrated that the approach we
6 take here in this country when done in their country was
7 very helpful and reduced mental health concerns in their
8 young people. I believe that's a DeVry study from more
9 than ten years ago.

10 Q. What is the difference between gender dysphoria
11 and gender nonconformity?

12 ATTORNEY TRYON: You know what, I will
13 withdraw that question. We can take a break right now.
14 When we come back we can talk about that. Okay?

15 ATTORNEY LINKOUS: We can go off the
16 record.

17 VIDEOGRAPHER: Going off the record. The
18 current time reads 11:26 a.m.

19 OFF VIDEOTAPE

20 ---

21 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

22 ---

23 ON VIDEOTAPE

24 VIDEOGRAPHER: We are back on the record.

1 The current time reads 11:37 a.m.

2 BY ATTORNEY TRYON:

3 Q. Dr. Kidd, when we concluded, when we took our
4 break we were just finishing up talking about watchful
5 waiting. Let me ask you just one or two more questions
6 about that. Is watchful waiting something that --- is
7 the only reason that you don't ever recommend that is
8 because of the Rafferty study?

9 A. So Rafferty is not a study. It's a policy
10 statement from the American Academy of Pediatrics that
11 summarizes best practice guidelines for gender diverse
12 young people. And so in that it does not recommend
13 watchful waiting.

14 Additionally, based on my own literature view
15 conducted over the course of my career thus far I have
16 never seen medical literature that supports the use of
17 that practice and is associated with positive mental
18 health outcomes for youth.

19 Q. Okay.

20 Let me ask you about gender dysphoria versus
21 gender non-conformity. You're familiar with both those
22 terms.

23 Right?

24 A. I am.

1 Q. What's the difference between those two things?

2 A. Gender conformity is simply someone rejecting
3 some tenet of what society presumes they should look
4 like, act like, think like as it pertains to gender.
5 And so that could be someone who, like myself, was
6 assigned female but who is very interested in building
7 and construction, right. Typically, that is considered
8 a more masculine pursuit. And so that could be gender
9 non-conformity, and that could extend through my
10 expression. Perhaps I would want to present myself in a
11 way that is more masculine or more androgenous. That
12 would also be reflective of gender nonconformity.

13 Where this enters into the territory of gender
14 dysphoria is when you have that significant distress
15 associated with that encumbrance between my sex
16 assignment and my gender identity. That is the
17 difference.

18 Q. Could you repeat that last part again?

19 A. From where?

20 ATTORNEY TRYON: Can I ask the court
21 reporter to read back that answer?

22 COURT REPORTER: It is simply someone
23 rejecting of what society presumed they should look
24 like, act like, think like as it pertains to gender.

1 And so that could be someone, who like myself, was
2 assigned female but who is very interested in building
3 and construction, right. Typically that is considered a
4 more masculine pursuit, and so that could be gender
5 non-conformity and that could express through my
6 expression perhaps. I would want to perhaps myself in
7 --- want to present myself in a way that is perhaps more
8 masculine or androgenous, where this enters into the
9 area of territory of gender dysphoria where you have
10 that significant distress encumbrance in between my
11 gender society. That is the difference. That's the
12 part I messed up.

13 BY ATTORNEY TRYON:

14 Q. Isn't there always some level of anxiety or
15 distress when someone has a gender non-conformity?

16 A. No, not always.

17 Q. So then in every event where there is some level
18 of stress or anxiety does it then turn into gender
19 dysphoria?

20 A. No. The word that I use is significant or
21 severe, and I believe that language is also echoed in
22 diagnostic criteria.

23 Q. So when I use the name BPJ, do you know who that
24 is?

1 A. I do.

2 Q. Who is that?

3 A. That is B [REDACTED], my patient.

4 Q. Last name J [REDACTED]?

5 A. I believe it's a hyphenated last name,

6 P [REDACTED]-J [REDACTED], but yes.

7 Q. Very good. Thank you for correcting me on that.

8 Any --- prior to --- strike that.

9 Do you have any personal relationship with
10 either BPJ or BPJ's family?

11 A. I am a physician caring for this young person.
12 That is the extent of my relationship with this family
13 and this young person.

14 Q. When did you first hear of BPJ, with that ---
15 those initials or any other name?

16 A. I believe the first time I heard about B [REDACTED] was
17 when Dr. Someshwar, an adolescent medicine specialist
18 who i work with, recommended that she see me.

19 Q. Remind me how to spell that doctor's name?

20 A. S-O-M-E-S-C-H-W-A-R (sic), Someshwar.

21 Q. And how did that come about?

22 A. So Dr. Someshwar is the division head of
23 Division of Adolescent Medicine and WVU Medicine
24 Children's and my direct supervisor in my current

1 position, but also Dr. Someshwar provides care for
2 gender diverse people, as I do, but she does not provide
3 care for those who are interested in or have received
4 pubertal blockers.

5 Q. Why not?

6 A. That is outside of her scope but well within my
7 own, and that is why she wished for me to see B [REDACTED].

8 Q. And how did --- and I'm also going to use BPJ
9 because that's the name on the Complaint, number one,
10 and number two, since BPJ is a minor, that's my practice
11 is to refer to people in court proceedings by their
12 initials, all minors.

13 ATTORNEY HARTNETT: And if I could just
14 --- for the record, this is Kathleen Hartnett for
15 Plaintiff. It's acceptable to us for you to refer to
16 her as B [REDACTED] or BPJ in this deposition. We marked the
17 Complaint BPJ per rules of Court, and we'll mark the
18 parts of this deposition about her medical records, if
19 any, confidential, but Plaintiff has no objection to
20 referring to her in either way. Thank you.

21 ATTORNEY TRYON: Well, to be clear, I'm
22 going to continue doing that because if I make the
23 mistake elsewhere, I can be sanctioned by a court, so
24 I'm going to stay with that.

1 BY ATTORNEY TRYON:

2 Q. So how did BPJ come to the attention to Dr.
3 Someshwar?

4 A. It is my understanding that Dr. Someshwar had
5 provided care to B [REDACTED].

6 Q. Do you know what care?

7 A. I had seen a note from Dr. Someshwar.

8 Q. And what did that note say?

9 A. I can't recall the contents of that note, simply
10 that I do remember seeing one.

11 Q. Is that in the records that you mentioned before
12 or the Epic records?

13 A. It would be in the Epic record, yes.

14 Q. Do you remember when you had your first contact
15 with BPJ and BPJ's family?

16 A. I know from my records the exact date. But
17 without I could easily tell you it was in the fall. I
18 can look at my records to get you the exact date if that
19 would be helpful.

20 Q. Before we go there, let me ask you if you have a
21 specific recollection of meeting with BPJ and Heather
22 Jackson.

23 A. I do.

24 Q. What do you remember right now about that

1 encounter?

2 A. I have a mental picture of where B [REDACTED] and her
3 mom were sitting in the exam room. That's most of the
4 extent of what I recall just from my own memory and not
5 reviewing the note.

6 Q. Do you have a mental memory of the discussions
7 you had with BPJ and BPJ's mother?

8 A. That would certainly refresh from my review of
9 my own note but also my practice is to have fairly
10 similar structured conversations with families, and so I
11 have a rough template in my brain of what we would have
12 talked about.

13 Q. Tell me about that template.

14 A. It involves asking lots of questions about young
15 people, their interests, their journey with gender
16 identity, their family. Sometimes I ask about pets.
17 It's a whole host of things to get to know the young
18 person and their family.

19 Q. What does that term mean journey with gender
20 identity?

21 A. We are all forever growing and evolving and
22 changing as humans. It's part of the human experience,
23 but particularly as it relates to gender for my patients
24 that's often a bit of a long journey, and so that may be

1 starting from when they are young children. It may be
2 starting from when they are adolescents. But
3 regardless, there is always much to talk about with
4 regard to a young person's experience of their own
5 gender identity over time.

6 Q. And is that gender identity sometimes fluid?

7 A. It absolutely can be.

8 Q. Somebody may be for one period of time have a
9 gender identity as one gender and then that can change?

10 A. Yes.

11 ATTORNEY HARTNETT: Object to form.

12 BY ATTORNEY TRYON:

13 Q. How many genders are there?

14 A. There are more genders than we understand, can
15 conceptualize or can count.

16 Q. So over a hundred?

17 A. Gender is a spectrum. There is no solid number.
18 It's someone's lived experience. It's much more
19 complicated than we try to make it by binarizing people.

20 Q. So setting aside binder --- how do you say that,
21 binderizing?

22 A. Binarizing people. Forcing folks into a binary.

23 Q. I've read some place there's 27 genders. Would
24 you agree with that or not?

1 ATTORNEY HARTNETT: Object to the form.

2 THE WITNESS: I'm certainly not familiar
3 with that particular study, but I would dispute it as I
4 could probably list more than 27 myself.

5 BY ATTORNEY TRYON:

6 Q. And when someone is gender fluid what does that
7 mean?

8 A. It depends on the individual, and so these terms
9 tend to be applied to folks but what matters to me is
10 the individual's definition of themselves.

11 Q. Have you had any --- well, let me move on to
12 Exhibit 16.

13 ATTORNEY TRYON: And let me try to bring
14 this up. This is going to be a first for me on doing
15 this on the system.

16 VIDEOGRAPHER: And I'm here if you need
17 some help or I can pull it up as well.

18 ATTORNEY TRYON: So Jacob, when I pull up
19 exhibits file sharing, it wants me to enter a password.

20 VIDEOGRAPHER: Did you join with a new
21 link when you rejoined after we got everything fixed?

22 ATTORNEY TRYON: I attempted to join with
23 the same link.

24 VIDEOGRAPHER: I can set that new one or

1 I can just pull it up for you, either/or.

2 ATTORNEY TRYON: Why don't you do that.
3 Can you pull up Exhibit 16, please?

4 VIDEOGRAPHER: Yes, just give me one
5 second.

6 ATTORNEY TRYON: No, I had uploaded.
7 Maybe you can't access them. I had uploaded three
8 documents. One was Exhibit 16 just so we would only
9 have to look at that one.

10 VIDEOGRAPHER: Got you. If you have them
11 uploaded, then I would not have access to them unless
12 you share them as host and share them with me.

13 ATTORNEY TRYON: Let me see if I can do
14 this.

15 VIDEOGRAPHER: Also, when you upload if
16 you check mark any of the boxes --- like if you check
17 mark like Defendant's Counsel, they would also all have
18 access to that as well.

19 ATTORNEY TRYON: Well, it's now rejecting
20 my password.

21 VIDEOGRAPHER: It might be since it's a
22 probably a different link that you joined the meeting
23 with you might have to hit the forget password and set
24 up a new one. That one --- the old one that you made

1 might be tied to the old link.

2 ATTORNEY TRYON: Let's go off the record
3 for a second so I can get this straightened out.

4 VIDEOGRAPHER: Going off the record. The
5 current time reads 11:52.

6 OFF VIDEOTAPE

7 - - -

8 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

9 - - -

10 ON VIDEOTAPE

11 VIDEOGRAPHER: We are back on the record.
12 The current time reads 11:59 a.m.

13 BY ATTORNEY TRYON:

14 Q. Dr. Kidd, this is what we've marked as Exhibit
15 16. Do you recognize this?

16 A. I'm not able to read any of it due to size.

17 Q. Okay.

18 I'm trying to blow it up. Does that help?

19 A. I have not seen it change. I may be able to do
20 --- I can do it on my end specifically. Let me do that.
21 I can only see the first page so far, but this does look
22 familiar, yes.

23 Q. I believe you can click the different pages, 1
24 through 9.

1 A. I see that now. Yes. This looks like my note.

2 Q. Do you have a hard copy of that in front of you
3 as well?

4 A. I do.

5 Q. Feel free to use either one, just to go through
6 this.

7 A. Yes.

8 Q. So my first question is simply what is this
9 document?

10 A. So certainly there are pages associated with
11 this packet that I'm not familiar with. I think they
12 are part from the pull from the health system. But
13 specifically as it relates to the section that begins
14 B [REDACTED] is a 11-year-old patient, that is the beginning of
15 my clinical note from our patient visit.

16 Q. How is the information in here populated into
17 this document?

18 A. The note itself?

19 Q. Well, everything in here. I'm just trying to
20 understand how this document is created.

21 A. I can't speak to the ancillary information
22 outside of my patient note. I can tell you how my note
23 was created.

24 Q. Well, let's start with that then.

1 A. Okay.

2 I use a note template that has spaces for me to
3 fill in information, as well as some information that is
4 already populated that I can adjust accordingly.

5 Q. Is that note template in Epic?

6 A. It is.

7 Q. And then Epic takes that information and would
8 populate it into a document that looks like what we have
9 before us?

10 A. Specifically the section that begins B [REDACTED] is an
11 11-year-old patient, yes.

12 Q. The other information in here, for example, the
13 visit date, the name, those sorts of things, do you know
14 how those are populated into this document?

15 A. So let me --- I don't know that you can see
16 where I am in the document, but this portion here that
17 has the WVU Medicine Children's logo, I think it copied
18 poorly. But from this section down, this is my note
19 template. Above that ---.

20 Q. I cannot see where you're at.

21 ATTORNEY TRYON: Jacob, can you enable
22 her to show that?

23 ATTORNEY LINKOUS: Jacob, you're on mute.

24 VIDEOGRAPHER: I have you enabled to mark

1 up the document. You should be able to put in
2 highlights or drag us around. Whatever you do we should
3 see.

4 THE WITNESS: Okay.

5 VIDEOGRAPHER: If you highlighted that
6 right there, that's --- I see the highlight. Does
7 everyone else see that highlight?

8 ATTORNEY TRYON: No, I can't see it.

9 VIDEOGRAPHER: On page three, around the
10 it looks like the logo.

11 ATTORNEY LINKOUS: I see it.

12 ATTORNEY HARTNETT: This is Kathleen
13 Hartnett. Just to make sure I'm clear, is the witness
14 able to move the exhibit in the window but the others
15 who see it cannot?

16 VIDEOGRAPHER: Right now I have the
17 witness set to move it. I can give anybody permission
18 to alter it and move it around and stuff. And it does
19 that for everybody. So right now I just have the
20 witness with the permission for that. Does that make
21 sense?

22 ATTORNEY TYRON: Yes.

23 ATTORNEY HARTNETT: Yes.

24 ATTORNEY TYRON: Yes.

1 BY ATTORNEY TRYON:

2 Q. Is it highlighted in color?

3 A. It is yellow.

4 ATTORNEY LINKOUS: Mr. Tryon, she is also
5 on BPJ099. I don't know if you're on that same page or
6 not. I think she moved us down to that page.

7 VIDEOGRAPHER: Let me try something to
8 synch it back up for you, Mr. Tryon.

9 ATTORNEY TRYON: Okay.

10 VIDEOGRAPHER: Do you see it now?

11 ATTORNEY TRYON: I see the document. I
12 don't see any yellow highlighting.

13 BY ATTORNEY TRYON:

14 Q. Well, go ahead and describe where you're at.

15 A. Sure. There's a logo on one of these pages that
16 has some cookie-cutter people holding hands and it says
17 WV Medicine Children's, although I think the photocopy
18 did not do that logo any justice. But that is the logo
19 located on the top of my note. And that logo and
20 everything beneath it is part of my note template. I am
21 not familiar with how Epic aggregates the additional
22 information in this packet.

23 Q. Okay.

24 Do you know who enters in the information, for

1 example, the date of birth and the visit date?

2 A. That information is likely entered at the time
3 of the visit being scheduled, although that is not part
4 of my role and so I cannot be certain.

5 Q. At the very top of that page, I think it's the
6 same page, do you see it's got a number --- MRN number.
7 Is that the patient's number that's assigned?

8 A. I have an E number on my screen that's below the
9 date of the visit encounter. That is in my note
10 template. That is the patient's medical record number,
11 that E number.

12 Q. So I'm seeing MRN: E2003446?

13 A. Yes. And I know that you're having trouble
14 seeing my highlighting, and I don't know if you can see
15 that piece. I pulled that number into my notes. I'm
16 not sure where you're referring to it, but that is the
17 number.

18 Q. Right at the top, I'm looking at the very top of
19 this page, page --- it's labeled BPJ099, and it's page
20 one.

21 A. I can see it here.

22 Q. Yes. Now I see you're highlighting, although
23 it's not yellow. Okay. So then if you move over to the
24 right and it says sex M. Does that stand for male?

1 A. It does.

2 Q. And who would input that that BPJ's sex is male?

3 A. I cannot speak with certainty, but my guess
4 would be the person who collected the insurance
5 information.

6 Q. And why would --- if BPJ identifies as a female,
7 as I think you say later on, why would that be put there
8 as male?

9 A. The sex marker has to line up with the insurance
10 for the purposes of billing in the medical system.

11 Q. Is that the only reason?

12 A. That's the reason that I'm familiar with.

13 Q. So you did not put that information in there?

14 A. I did not.

15 Q. If you can scroll down where it says desired to
16 be treated as other gender.

17 A. Sure.

18 Q. It shows the name pronouns of she and her.

19 Right?

20 A. Yes.

21 Q. And if I scroll down further I look at and I see
22 under gender dysphoria patient describes this experience
23 for themselves as --- why do you use a different pronoun
24 down there?

1 A. That's part of my standard note template. The
2 things before the colons in these sections are part of a
3 note template.

4 Q. Okay.

5 Then back up to desire to be rid of secondary
6 sex characteristics. It says expectations for today's
7 visit. That's part of the template?

8 A. It is before the colon.

9 Q. Right. And so that template is something that's
10 created by Epic or by someone else?

11 A. That's a note template that I created within
12 Epic.

13 Q. I see. And so it says want to establish care.
14 That seems obvious to me, but can you explain that?

15 A. This was my first time seeing B [REDACTED]. And as
16 part of my first visit with all of my patients I ask,
17 you know, what are their expectations or goals for
18 today's visit. And when I asked that question, B [REDACTED]
19 and her mom responded that they wanted to establish care
20 today. I'm not sure exactly who said that. I suspect
21 it was mom.

22 Q. And next it says has [REDACTED] since
23 June 2020 placed by Dr. Montano at UPMC. And you put
24 that in there?

1 A. I did.

2 Q. And how did you know about that [REDACTED] ?

3 A. I suspect that mom told me. That information
4 was provided to me during this visit. But also it was
5 in the medical record that I would have briefly reviewed
6 prior to this visit.

7 Q. What medical record is that?

8 A. The notes that are available for me in Epic.

9 Q. So you're telling me that in Epic there would be
10 some notes that stated that there was an [REDACTED] a
11 [REDACTED] ?

12 A. I believe Dr. Someshwar's note referred to it,
13 yes.

14 Q. Did you ever ask Dr. Montano if he had placed
15 that [REDACTED]

16 A. I don't recall specifically asking Dr. Montano
17 if he placed the [REDACTED] no.

18 Q. Did you do anything to confirm that the [REDACTED]
19 was in place?

20 A. I examined B [REDACTED]'s arm. I palpated the [REDACTED]
21 I noted the small scar at the insertion site. I also
22 confirmed it based on lab testing.

23 Q. Next, under desire to gain secondary sex
24 characteristics of other gender, slash --- other gender,

1 colon, that was part of the form?

2 A. That was part of my note template, yes.

3 Q. And you created that?

4 A. I did. I should note it's based off of a
5 template from those that taught me.

6 Q. Which would be whom?

7 A. Dr. Montano.

8 Q. Under there it has --- under severity, wanting
9 to be other gender, other gender is based on the
10 following, hair style and clothing and desire for
11 hormone therapy, which you created that template.

12 Right.

13 A. Yes, everything before the colon.

14 Q. And you inputted feminine, feminine in the
15 future.

16 Right?

17 A. I did, based on our conversation during this
18 visit.

19 Q. Are those the things upon which you made a
20 determination --- strike that.

21 Did you make a determination that B [REDACTED] was
22 gender dysphoric?

23 A. If you review the criteria for diagnosis for
24 gender dysphoria it's that essentially insistent,

1 persistent, consistent, incongruence associated with
2 significant distress, as I discussed earlier, plus two
3 or more of a list of criteria. This note outlines those
4 criteria. And so based on the responses to questions
5 that I asked in relation to my documentation here, yes,
6 B [REDACTED] does meet the diagnostic criteria for gender
7 dysphoria.

8 Q. Did you actually make a diagnosis?

9 A. B [REDACTED] already had that diagnosis prior to seeing
10 me.

11 Q. And that was --- who made that diagnosis?

12 A. I suspect the first person was Dr. Montano,
13 although I don't know that for sure.

14 Q. And who told you that she already --- that BPJ
15 already had such a diagnosis?

16 A. The medical record.

17 Q. And that medical record which was from Dr.
18 Someshwar?

19 A. And Doctor Someshwar would have had one of those
20 notes, yes.

21 Q. Any other notes that would have said that?

22 A. Likely notes from B [REDACTED]'s therapist.

23 Q. And you have access to B [REDACTED]'s therapist's ---
24 excuse me, BPJ's therapist --- let me start that over.

1 You had information from BPJ's therapist?

2 A. I had documentation.

3 ATTORNEY HARTNETT: Object to form.

4 THE WITNESS: Of her record.

5 BY ATTORNEY TRYON:

6 Q. Is that also on Epic?

7 A. Yes.

8 Q. So I want to go back to this part where it says
9 desire to gain secondary sex characteristics. So are
10 hairstyle and clothing the only bases to determine if
11 someone is gender dysphoric?

12 ATTORNEY HARTNETT: Object to form.

13 THE WITNESS: No.

14 BY ATTORNEY TRYON:

15 Q. What other?

16 A. Potential criteria, potential things that we
17 look for. There's no one single criterion.

18 Q. But those are the only things that are listed in
19 this form.

20 Right?

21 ATTORNEY HARTNETT: Object to form.

22 THE WITNESS: In that particular section.

23 BY ATTORNEY TRYON:

24 Q. And desire for hormone therapy in the future.

1 What additional hormone therapy was desired?

2 A. Estrogen.

3 Q. And were you told why?

4 A. I can't recall our exact conversation, but it is
5 my typical practice to have pretty detailed
6 conversations about where a young person is in their
7 chem thought process and understanding of what estrogen
8 could mean for them.

9 Q. And what could it mean for them?

10 A. It could meaning gaining secondary sex
11 characteristics of the other gender.

12 Q. Such as?

13 A. Breast growth.

14 Q. Any others?

15 A. Several others.

16 Q. What are those?

17 A. Thinning of hair follicles, softening of skin.
18 Those are the primary.

19 Q. I'm sorry. What did you say about hair
20 follicles?

21 A. Thinning, making the hair follicles less
22 apparent on the body especially.

23 Q. And do you recall discussing those with BPJ and
24 BPJ's mother?

1 A. I can't recall the specifics of that encounter,
2 but is my standard practice to have those discussions.

3 Q. Up at the top of that page, do you see at the
4 very top where it says P [REDACTED] -J [REDACTED], comma, and it's
5 blocked out?

6 A. Yes.

7 Q. So --- let me back up. This document was
8 produced to Plaintiff's Counsel then gave it to us.
9 Were you involved in that production to Plaintiff's
10 Counsel?

11 A. I was not.

12 Q. Okay.

13 Let me move on to the next page. And let me
14 ask you, during this conversation was BPJ joined by
15 Heather the entire time?

16 A. It is my standard practice to talk to young
17 people alone for at least a portion of their visit, and
18 so I suspect I did that during this visit.

19 Q. Do you recall during this visit anyone other
20 than you were involved as far as healthcare providers?

21 A. It is often that I have trainees with me, most
22 often in the role of shadows to witness how I talk to
23 patients, how I gather this information, that sort of
24 thing, how I provide care. I do not recall having a

1 trainee with me that day, but my memory could be
2 mistaken there.

3 Q. And in your memory was anyone else from WVU in
4 that meeting?

5 A. From WV Medicine?

6 Q. Yes.

7 A. I don't think so because I know that the other
8 members of my multidisciplinary team were not a part of
9 this conversation as B [REDACTED] was already established with
10 a mental health therapist.

11 Q. Under past medical history --- and I'm now on
12 page two of this document, it shows mental health HX.
13 What is that? What does HX stand for?

14 A. It's a common medical abbreviation for the word
15 history.

16 Q. In this past medical history that you have put
17 here, the source is --- what was the source?

18 A. This source was very likely B [REDACTED]'s mother.

19 Q. Under social history do you see that?

20 A. I do.

21 Q. Is there anything in there that affects or would
22 affect a determination or a diagnosis of BPJ having
23 gender dysphoria?

24 A. These items in the social history are really

1 about getting to know B [REDACTED] and her family dynamic and
2 more about her generally. These are not directly
3 related to her gender identity.

4 Q. And let me just confirm up at the top of the
5 page it says --- it shows the date being 9/16/2021. Was
6 that the date of the visit?

7 A. To the best of my recollection, yes.

8 Q. On the next page it shows patient active problem
9 list. Do you see that?

10 A. I do.

11 Q. And what --- it says WCC well check. Is that
12 something that you inputted?

13 A. It is not. So this is a problem list that is
14 maintained in Epic usually by the patient's primary care
15 provider.

16 Q. Who is this patient's primary care provider?

17 A. I do not recall.

18 Q. Is there anything on this form that would tell
19 you?

20 A. On this particular form, no, although in the
21 Epic record that would likely be noted, at least to the
22 extent of my note. It is not written in my notes. It
23 may have been in some of these ancillary pages that I'm
24 not as familiar with.

1 Q. During the visit did you discuss any of these
2 items under the diagnosis --- well, excuse me, under the
3 patient active problem list?

4 A. Not to my recollection, no.

5 Q. I'm sorry. Let me finish my question. The six
6 bullet points that are listed there, you did not input
7 any of those?

8 A. That is correct.

9 Q. And you didn't discuss any of those with BPJ or
10 BPJ's mother?

11 A. Not to my recollection, no.

12 Q. Now, the next paragraph of notes, was that
13 something that you inputted?

14 A. It is.

15 Q. And you ordered labs to confirm that the [REDACTED] was
16 likely to release medication. Do I understand that
17 correctly?

18 A. I ordered labs to confirm that the [REDACTED] was
19 continuing to release the medication, as I suspected it
20 would be, yes.

21 Q. Why do you do that?

22 A. It's routine and to make sure that the [REDACTED] is
23 functioning as we expect it to. And for my practice I
24 usually check those labs every 6 to 12 months.

1 Q. How is the [REDACTED] supposed to function?

2 A. So the [REDACTED] has a medication called [REDACTED]
3 [REDACTED] is a gonadotropin-releasing hormone agonist,
4 or abbreviated a GRNHA. A GRNHA works at the level of a
5 hypervolemic pituitary gonadal axis to suppress that
6 axis and subsequent release of sex hormones, either
7 testosterone or estrogen, depending on the sex assigned
8 at birth.

9 Q. Is it the same medication for both to stop
10 either testosterone or estrogen or is it different?

11 A. It is the same medication. It works in the same
12 way.

13 Q. And did you also discuss that a [REDACTED] scan be
14 done?

15 A. I had a discussion with B [REDACTED] and her mother
16 about why I thought a [REDACTED] scan could be helpful and
17 they opted to get one.

18 Q. It says I shared resources with mom to connect
19 her to local parents support programs. Who were those
20 resources?

21 A. I am connected to community organizations run by
22 parents wherein parents can talk with other parents of
23 gender diverse people. My abbreviation for the program
24 I referred B [REDACTED]'s mom to is, in fact, next to B [REDACTED]'s

1 mom's email. It's abbreviated POT for the Parent
2 Outreach Program.

3 Q. At the bottom it says on the day of the
4 encounter a total of 60 minutes was spent on this
5 patient encounter, including review of historical
6 information, examination, documentation of post
7 activities. And my question is what was the historical
8 information?

9 A. That would have been the conversation with B [REDACTED]
10 and her mom talking about the medical history as well as
11 my pre-review of the chart prior to this visit.

12 Q. And then the examination, what would that
13 entail?

14 A. For B [REDACTED], to my memory, that included making
15 sure that B [REDACTED]'s heart and lungs sounded normal and
16 generally evaluating how she was able to communicate,
17 how she moved about the room, those sorts of things are
18 the aspects of my physical exam.

19 Q. And when it refers to documentation, what is
20 that referring to?

21 A. The actual writing of this note.

22 Q. Anything that is not in this note?

23 A. It would have also involved me ordering the labs
24 and the [REDACTED] scan, writing why I was ordering the [REDACTED]

1 scan, things of that nature.

2 Q. And what would the post visit activities refer
3 to?

4 A. That could be things like reviewing the labs if
5 they came back the same day. This is a billing
6 statement and only includes the time spent during that
7 same day.

8 ATTORNEY LINKOUS: I'm sorry. Can you
9 repeat that?

10 THE WITNESS: It is a billing statement
11 and so it is referring to activities that were
12 undertaken on that day.

13 BY ATTORNEY TRYON:

14 Q. In your discussion with BPJ and BPJ's mother was
15 there any indication that BPJ had ever had any suicidal
16 ideations, suicide plans, threats or attempts?

17 A. Not to my recollection.

18 Q. Did you ask?

19 A. I likely did. That is part of my standard
20 practice.

21 Q. Why do you ask that?

22 A. Because gender diverse young people like B [REDACTED]
23 base health inequities particularly as it relates to
24 mental health, although that's at population level and

1 does not necessarily apply to B [REDACTED].

2 Q. Why wouldn't it apply to B [REDACTED]?

3 A. That's a population statistic, and so B [REDACTED] is
4 her own person and may or may not be in line population
5 statistics more promptly.

6 Q. And now I understand. Do you know if BPJ has
7 ever been hospitalized for anything?

8 A. I reviewed the chart and don't recall a specific
9 example of hospitalization. I think there may have been
10 notes from emergency sorts of visits, but I don't
11 remember an inpatient hospitalization.

12 Q. Before this visit had BPJ ever been diagnosed
13 with any mental or emotional illnesses?

14 ATTORNEY HARTNETT: Object to form.

15 THE WITNESS: Mom specifically mentioned
16 gender dysphoria, which is a diagnosis within the DSM-V,
17 which is a diagnostic and statistical manual and so I
18 suppose that could count.

19 BY ATTORNEY TRYON:

20 Q. Well, is that a mental or emotional illness?

21 ATTORNEY HARTNETT: Object to form.

22 THE WITNESS: It depends on your
23 interpretation. It is a diagnosis in the DSM-V.

24 BY ATTORNEY TRYON:

1 Q. Okay.

2 It is a diagnosis. Is it a diagnosis of mental
3 illness?

4 ATTORNEY HARTNETT: Objection to form.

5 THE WITNESS: That is a very challenging
6 question, and so the short answer is gender dysphoria is
7 significant distress, and it is that distress that can
8 be considered a mental health concern. Being gender
9 diverse or transgender is not a pathology.

10 BY ATTORNEY TRYON:

11 Q. Can you define then for our purposes what you
12 consider --- or based on DSM-V, what is a mental
13 illness?

14 ATTORNEY HARTNETT: Object to form.

15 THE WITNESS: Can you rephrase the
16 question?

17 BY ATTORNEY TRYON:

18 Q. Yes. So you referred to the DSM-V.

19 Right?

20 A. I mentioned it, yes.

21 Q. Does that define what a mental illness is?

22 A. The DSM-V is the diagnostic and statistical
23 manual of essentially all of the things that the
24 American Psychiatric Association considers in their

1 wheelhouse for diagnoses. And so things like depression
2 and anxiety are certainly in there but also things like
3 gender dysphoria.

4 Q. Does it define the term mental illness?

5 A. I can't recall. It's a very broad term.

6 Q. Other than gender dysphoria, were there any
7 other mental or emotional issues or problems that you
8 were aware that BPJ had been diagnosed with?

9 A. Not that I can ---.

10 ATTORNEY HARTNETT: Object to the form.

11 ATTORNEY TRYON: Jacob, can you pull up
12 Exhibit 33, please? Actually, I take that back. Let's
13 stick with this exhibit a little bit longer.

14 VIDEOGRAPHER: You got it.

15 ATTORNEY TRYON: I apologize for that.

16 BY ATTORNEY TRYON:

17 Q. So turning to page six of this exhibit?

18 A. I'm unable to do that on my end.

19 Q. I can.

20 A. I can now, yeah.

21 Q. Okay.

22 If you can go down to where it shows --- sorry,
23 it would be on actually page eight, eight of nine, I
24 believe. And this was part of the testing that you

1 would have requested.

2 Is that right?

3 A. This is one of those forms that Epic has
4 compiled for you, but it does look like it is of the
5 labs that I ordered, yes.

6 Q. When this came back did you review it?

7 A. I did.

8 Q. And it shows under components testosterone total
9 serum. Do you see that?

10 A. Let me highlight and make sure we're looking at
11 the same thing. Here?

12 Q. Yes.

13 A. Yes.

14 Q. And if you go lower it shows the total serum and
15 it shows value of less than 7.0.

16 Right?

17 A. Yes.

18 Q. And down below it shows the Tanner reference
19 stages and for prepubertal, 7-20 for Stage 1.

20 Right?

21 A. I can see that.

22 Q. So does that testosterone level indicate that
23 BPJ was at Tanner Stage 1?

24 A. No, that is not a correct interpretation.

1 Q. Could you please interpret it for me?

2 A. Sure. So the testosterone level demonstrates
3 that it is suppressed, actually below a detectable
4 threshold of 7.0 for the purposes of this lab. It is
5 important to note that all bodies, unless they are too
6 young or being blocked, make testosterone and that
7 includes people who are assigned female. And so I
8 myself right now very likely, in fact I'm extremely
9 confident, have a level much higher than seven of
10 testosterone because that is normal for an adult female.
11 And so B [REDACTED]'s testosterone based on this level is fully
12 suppressed. The reason that the Tanner stage reference
13 guidelines are in this record is that other folks use
14 this lab to monitor pubertal progression. B [REDACTED] was
15 Tanner stage prior to the rod and was at Tanner 2 at
16 that time. And so this table is not relevant to B [REDACTED],
17 just a refresh in the lab that her testosterone is fully
18 suppressed.

19 ATTORNEY TRYON: Okay.

20 Now let's turn to Exhibit 33.

21 VIDEOGRAPHER: Before I show it, you said
22 33.

23 ATTORNEY TRYON: I didn't hear you.

24 VIDEOGRAPHER: Before I show it, you said

1 33.

2 Correct?

3 ATTORNEY TRYON: Right. I sent you two
4 other forms.

5 VIDEOGRAPHER: I just wanted to make sure
6 before I showed it.

7 ATTORNEY TRYON: Yes.

8 VIDEOGRAPHER: And does everybody see
9 that.

10 THE WITNESS: Yes.

11 ATTORNEY TRYON: I do.

12 BY ATTORNEY TRYON:

13 Q. Great. So if we could go forward into page 11.
14 Sorry, it's going to be page 11 of the document itself,
15 so it looks like that will be page --- I'm not sure.

16 And Dr. Kidd, if you have the hard copy it might
17 be easier to read. It depends on which one you want to
18 look at. So the first two sentences of this read
19 through --- actually maybe the first three sentences.
20 Why don't you go ahead and read them to yourself. We
21 don't need to read them out loud.

22 VIDEOGRAPHER: While she's reading that,
23 Mr. Tryon, I also gave you permission to mark the
24 document as well if you need to highlight something or

1 guide the witness.

2 ATTORNEY TRYON: Thank you.

3 VIDEOGRAPHER: You're welcome.

4 BY ATTORNEY TRYON:

5 Q. Have you finished?

6 A. I have.

7 Q. Great. So this indicates that gender dysphoria
8 during childhood is not evidently continued to childhood
9 rather than the dysphoria persists and resulted for only
10 6 to 23 percent of the children.

11 Right?

12 ATTORNEY HARTNETT: Object to form.

13 THE WITNESS: I believe, which are a bit
14 dated, but yes, that is what it says.

15 BY ATTORNEY TRYON:

16 Q. Do you think that percentage has changed?

17 A. I think our understanding of diagnostic
18 criteria, for example many of those studies were from
19 when we used GID, a different diagnostic criteria, that
20 has evolved additional these guidelines from WV are from
21 2012, I believe. There is a new version that is set to
22 come out in the I think late winter of this coming year
23 that I was involved in giving feedback for.

24 Q. Yes. That version has not yet been accepted or

1 issued, has it?

2 A. Not yet. It's expected like within the winter.

3 Q. Assuming that's accepted, since it's still out
4 for comment, but assuming it's accepted, how does it
5 change in the eighth version, how does it change this
6 language?

7 A. To be clear, it's still not out for comment.
8 The comment period has ended and it's now back with its
9 writing committee. But there is more space given, to my
10 recollection, for exploring those differences by
11 diagnostic criteria that we did inform this prior
12 studies. I think it's important, though, to center
13 B [REDACTED] in this conversation. B [REDACTED] is an adolescent,
14 meaning that the second paragraph discussing the
15 likelihood of her gender identity is more relevant.

16 Q. And under these guidelines what is the
17 percentage of persistence for adolescents?

18 A. I couldn't cite a specific number because again
19 it's complicated, but it is the majority is my
20 understanding.

21 Q. So when BPJ originally identified as being a
22 girl, BPJ was a child.

23 Right?

24 A. I believe social transition was in third grade,

1 so into adolescence but perhaps not quite there yet
2 depending on your definition of adolescence.

3 Q. How do you define adolescence?

4 A. It depends. The World Health Organization puts
5 numbers on young people, and so I believe they say age
6 10 to 19. But that's not necessarily reflective of
7 pubertal changes, which is how I would define
8 adolescence. And it's normal for pubertal changes to
9 begin at age nine.

10 Q. And for --- well, let me just ask you, so since
11 this is the current and existing guideline and --- or
12 excuse me, standard of care, which you said you
13 subscribe to.

14 Right?

15 ATTORNEY HARTNETT: Object to form.

16 THE WITNESS: Well, I think it is
17 important to note if I may in this document.

18 BY ATTORNEY TRYON:

19 Q. I apologize. I didn't hear that.

20 A. It's possible, I would like to point out on
21 page two, page number two on that part of it where it
22 lists the standards of care are flexible clinical
23 guidelines, that's a critical piece of all of this. And
24 so they are not a kind of rule book but instead a

1 guideline and there are many circumstances to deviate
2 based on an individual patient circumstance.

3 Q. So you pick and choose what you agree with?

4 ATTORNEY HARTNETT: Object to form.

5 THE WITNESS: Not at all. I follow
6 numerous guidelines, including those from the American
7 Academy of Pediatrics, but I also shape them to fit the
8 needs of the patient.

9 BY ATTORNEY TRYON:

10 Q. Do you share with BPJ and BPJ's mother the
11 statistics that 6 to 23 percent of children due to
12 dysphoria --- excuse me, that the dysphoria persists
13 into adulthood for only 6 to 23 percent of children?
14 Did you share that with BPJ or BPJ's mother?

15 ATTORNEY HARTNETT: Object to form.

16 THE WITNESS: I believe the comment was
17 not relevant to the patient in front of me.

18 BY ATTORNEY TRYON:

19 Q. Did you share with BPJ or BPJ's mother the fact
20 that not all adolescents persist into adulthood?

21 A. I create space for people to explore their
22 gender identities. I do not assume that any of us will
23 wake up tomorrow feeling the way we feel today about our
24 gender identity.

1 Q. So the answer is no, you did not share that with
2 them?

3 A. I create space to have that conversation.

4 Q. Did you have a discussion in which you told BPJ
5 or BPJ's mother that BPJ's gender dysphoria may not
6 persist into adulthood?

7 A. I specifically in my practice make space to have
8 conversations about fluidity and gender identity.

9 Q. That doesn't mean anything to me. What do you
10 mean create space?

11 ATTORNEY HARTNETT: Object to form.

12 THE WITNESS: We have a conversation
13 where I explain to young people that I don't expect them
14 to be the same person every day for the rest of their
15 lives. And if they feel that circumstances have changed
16 or if their family feels that circumstances have changed
17 the rod that B [REDACTED] has is fully reversible and it's
18 always an option to remove that rod if it was in B [REDACTED]'s
19 best interest, which I did not feel it was at the time
20 of our encounter.

21 BY ATTORNEY TRYON:

22 Q. Did you tell BPJ or BPJ's mother that gender
23 dysphoria does not always persist for adolescents into
24 adulthood?

1 A. I don't think I said that exact thing, no.

2 Q. As I understand it --- well, let me back up.
3 Did BPJ or BPJ's mother tell you how it came about that
4 BPJ identified as being a girl instead of a boy?

5 A. I can't remember our exact conversation, but it
6 is my standard practice to ask questions relative to
7 that point and so I suspect, yes, we had that
8 conversation.

9 Q. You don't remember anything about that
10 conversation relative what I just asked you?

11 A. Not beyond what is documented in my note.

12 Q. In your notes it says that patient has
13 identified gender diverse since, and then you inserted
14 around age two. Does that refresh your recollection at
15 all as far as what happened at around age two?

16 A. I document what is talked about during the
17 visit, and so yes, that would have been the
18 conversation.

19 Q. Do you remember anything else about BPJ
20 identifying as a girl around age two?

21 ATTORNEY HARTNETT: Object to reading
22 from the document that is not before the witness.

23 ATTORNEY TRYON: She has a hard copy.

24 ATTORNEY HARTNETT: I don't know where

1 you're reading from. Can you tell us where you are
2 reading from?

3 ATTORNEY TRYON: Sure. It's on page one
4 of the --- well, it's on page three of the actual
5 exhibit and page one of Dr. Kidd's office notes.

6 ATTORNEY LINKOUS: It's okay. I think
7 Dr. Kidd has her office notes in front of her. Go
8 ahead, Doctor.

9 BY ATTORNEY TRYON:

10 Q. So I'm just asking when it says patient has
11 identified as gender diverse since and then you inputted
12 around age two, comma, she said she was a girl around
13 age three, does that refresh your recollection about
14 your conversation about how that came about?

15 A. Somewhat, yes.

16 Q. Okay.

17 And what do you remember now?

18 A. Specifically that B [REDACTED] and her mom more likely
19 in this conversation would have told me that for me to
20 write it down and so likely B [REDACTED]'s mom said that she
21 identified as gender diverse in some capacity, be that a
22 girl or otherwise, but first said she was a girl at age
23 three. And that's a common differentiation. It's often
24 children exhibit behaviors and interests that are

1 gendered in a direction parents may not expect. And
2 that aligns with that question you had earlier about
3 non-conformity.

4 Q. Do you remember anything else about that
5 conversation relating to that?

6 A. Well, my next line is that third grade was when
7 she started to wear girl clothes comfortably. I think I
8 had a typo there. I meant to write comfortably instead
9 of comfortable. And that social transition was the
10 summer before third grade.

11 Q. And you have no other recollection about the
12 conversation?

13 A. I do not.

14 Q. Very good.

15 ATTORNEY HARTNETT: I object to form on
16 the last question. Sorry.

17 BY ATTORNEY TRYON:

18 Q. Was the father, Wesley Pepper, in this meeting?

19 A. No. My appointment with B [REDACTED] was with B [REDACTED]
20 and her mom.

21 Q. Did you ever talk to Wesley Pepper?

22 A. I have not yet, though I expect to in the
23 future.

24 ATTORNEY TRYON: Let's take a quick ---

1 off the record for just one moment.

2 VIDEOGRAPHER: We are going off the
3 record. The current time reads 12:48 p.m.

4 OFF VIDEOTAPE

5 - - -

6 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

7 - - -

8 ON VIDEOTAPE

9 VIDEOGRAPHER: We are back on the record.
10 The current time reads 12:48 p.m.

11 BY ATTORNEY TRYON:

12 Q. So back in Exhibit 33, if we go to what's at the
13 bottom of the page, page 15 of the document itself. And
14 I have a question for you on paragraph two. If you can
15 take some time and review that and then I will ask you a
16 question.

17 A. Beginning with assessment of gender dysphoria?

18 Q. Correct.

19 A. Okay.

20 Q. Are you ready?

21 A. Yes.

22 Q. Great. So the second sentence says a
23 psychodiagnostic and psychiatric assessment covering the
24 areas of emotional functioning, peer and other social

1 relationships and intellectual functioning, slash,
2 school achievement should be performed.

3 Did I read that correctly?

4 A. I believe so.

5 Q. Do you know if a psychodiagnostic and
6 psychiatric assessment was performed?

7 A. And so during my visit, portions of that were
8 absolutely performed. But B [REDACTED] had those kinds of
9 discussions previously based on my review of the notes
10 and my experience working with Dr. Montano.

11 Q. So and --- okay.

12 I understand you have had experience with Dr.
13 Montano, but how do you know that those were performed
14 for BPJ specifically?

15 A. I know Dr. Montano's routine practice because he
16 is one of my teachers and I'm very confident in his
17 skills.

18 Q. I understand that. But for BPJ specifically,
19 are you aware if it was done?

20 A. Based on my review of the chart, I had every
21 indication that --- and I want to quote this, a
22 psychodiagnostic assessment covering areas of emotional
23 functioning, peer and other social relationships and
24 intellectual functioning and school achievement was

1 performed.

2 Q. By whom?

3 A. By Dr. Montano.

4 Q. Okay.

5 And there was something in the records that
6 shows that?

7 A. I was able to see portions of Dr. Montano's
8 note. It's that Care Everywhere thing we were talking
9 about before, that they're not complete notes. But
10 based on my understanding of what I was reading, Dr.
11 Montano had the same conversation with B [REDACTED] that he had
12 with all of the patients that I have witnessed him
13 talking to.

14 Q. What were in his notes that said that since we
15 don't have those?

16 A. And so I can't recall exactly what was in his
17 notes, but his notes are templated very similarly to my
18 notes in that they explore things like mental health
19 concerns, like school functioning, like peer support and
20 family support, things of that nature.

21 Q. And what does --- what's his title or his
22 specialty?

23 A. So Dr. Montano is the Clinical Director of the
24 Gender and Sexual Development Clinic at the Children's

1 Hospital of Pittsburgh. He is Board Certified in
2 Pediatrics and he is an expert in pediatric gender
3 affirming care.

4 Q. Is he a psychologist or a psychiatrist?

5 ATTORNEY HARTNETT: Object to form.

6 THE WITNESS: He is an adolescent
7 medicine specialist. And adolescent medicine
8 specialists have extensive training and experience in
9 mental health support for young people.

10 BY ATTORNEY TRYON:

11 Q. Is that a qualification --- does he have
12 qualifications that you don't?

13 ATTORNEY HARTNETT: Object to form.

14 THE WITNESS: I am not aware. He may
15 well. But he certainly had tons of training in the
16 space as have I.

17 BY ATTORNEY TRYON:

18 Q. Okay.

19 But you are not a psychiatrist or a
20 psychologist.

21 Right?

22 A. I am neither of those two things. That is
23 correct.

24 Q. So when it says psychiatric assessments, what

1 qualifications do you believe is necessary to do a
2 psychiatric assessment?

3 A. Someone who has extensive training and
4 background in psychiatric diagnoses like anxiety,
5 depression, and for these purposes gender dysphoria.

6 Q. And you're asserting you have that
7 qualification?

8 A. I do have that qualification, yes.

9 Q. Now, if we wanted these notes out of Epic that
10 you referenced, how would we get those?

11 A. I honestly am not sure how that system works or
12 the process of you getting those notes works.

13 Q. Who has control over those?

14 ATTORNEY HARTNETT: Objection to form.

15 THE WITNESS: I don't know.

16 ATTORNEY LINKOUS: Mr. Tryon, I can be of
17 benefit if you would like.

18 ATTORNEY TRYON: Sure.

19 ATTORNEY LINKOUS: Health Information
20 Management at West Virginia University Hospitals, Inc.
21 is the owner of the Epic medical records. I can also
22 send you an address for that.

23 ATTORNEY TRYON: That would be wonderful
24 if you would do that.

1 ATTORNEY LINKOUS: I would be happy to.

2 ATTORNEY TRYON: Can you email that to
3 me?

4 ATTORNEY LINKOUS: Yes, absolutely.

5 ATTORNEY TRYON: You have either mine
6 or ---?

7 ATTORNEY LINKOUS: Yes.

8 ATTORNEY TRYON: If not, you have
9 Curtis'.

10 Right?

11 ATTORNEY LINKOUS: I do, yes.

12 ATTORNEY TRYON: That would be wonderful.
13 Thanks.

14 ATTORNEY HARTNETT: This is Kathleen
15 Hartnett. Are you asking for the full Epic records for
16 Dr. Kidd or --- I just was unclear of what records
17 you're asking for.

18 ATTORNEY TRYON: Well, I'm a little
19 unclear what exactly there is in Epic, so it's hard for
20 me to ask. So I guess I would be probably asking for
21 all of the records in Epic for BPJ.

22 ATTORNEY HARTNETT: Okay.

23 Just for the record, as you know, the
24 Plaintiff has requested BPJ's records from WV Medical,

1 produced what we have and this Saturday --- and maybe
2 Mr. Linkous can speak to it further, we produced
3 additional records that were apparently the printout
4 that Dr. Kidd was able to see, even though that's not
5 what the records department produced. Just for the
6 record, we produced all records that we received from
7 WVU Medical, which was in our requests were all records
8 that exist.

9 ATTORNEY LINKOUS: Sure. And to expedite
10 things, I can certainly --- if counsel agree, I can
11 certainly produce to Kathleen the records I have
12 obtained from WVU, because I represent WVU, obviously,
13 and then Kathleen can redact and send them on.

14 ATTORNEY HARTNETT: We have done that.
15 Is that the records that you sent this weekend.

16 ATTORNEY LINKOUS: That is Dr. Kidd's
17 office visit. I have access to BPJ's records from the
18 health system that go beyond Dr. Kidd's visit.

19 ATTORNEY HARTNETT: Okay.

20 I mean, obviously whatever you would like
21 to do would be helpful, but I guess for the record to be
22 clear we've asked for and to our knowledge received all
23 documents related to BPJ's treatment by WVU Medical.
24 And that's what we produced to the other parties. And

1 then we understood this weekend that you were able to
2 --- Dr. Kidd is able to see something different in her
3 interphase, and so --- which appeared to be largely
4 additional administrative information, and we produced
5 that document as soon as we received it from you on
6 Saturday.

7 ATTORNEY LINKOUS: That's correct. I can
8 do it however you would like.

9 ATTORNEY TRYON: So Mr. Linkous, we would
10 like to get the rest of the documents that are in the
11 Epic system that we don't already have. And we will go
12 over the other documents that I got over the weekend
13 next. But if there are additional documents in the Epic
14 system, we'd like to obtain those.

15 ATTORNEY LINKOUS: Okay.

16 ATTORNEY HARTNETT: Just to be clear, are
17 you asking for the --- sorry, the documents from the
18 Epic system from WVU Medical?

19 ATTORNEY TRYON: Are you asking me?

20 ATTORNEY HARTNETT: Yes, just because I
21 think what the witness has stated is that the Epic
22 system is used by different institutions, and so I think
23 --- I'm just trying to be clear if you are asking Mr.
24 Linkous for the documents from WVU Medical's Epic system

1 or you are trying to seek more broadly all of the
2 documents about BPJ that may be out there in the, you
3 know, in the Epic systems of other institutions, which
4 it doesn't sound like he is the person that would be
5 able to get that for you.

6 ATTORNEY TRYON: Right. That's my
7 understanding. So whatever Mr. Linkous has access to,
8 including Epic and the Care System, which is part of
9 Epic.

10 ATTORNEY LINKOUS: I only have access to
11 West Virginia University records, and that would include
12 these --- what was the tab called again, Care Everywhere
13 tab. And I can certainly produce that. I would prefer
14 to produce that in a link to Kathleen and then let
15 Kathleen look at it. It may be duplicative of what she
16 already has and then she can produce.

17 ATTORNEY TRYON: I will agree to that.

18 ATTORNEY HARTNETT: And I will just make
19 a representation for the record that we'll produce it
20 even if it's duplicative just to make clear to the
21 Defendants that we are producing everything we have.
22 And I would expect that those --- any records that were
23 referred to in a different institution have been sought
24 and received from that institution, such as Dr. Montano.

1 ATTORNEY LINKOUS: And just, Mr. Tryon, I
2 want to be completely transparent with you so when you
3 get the records you can understand any distinction or
4 differences that might be in them. When I get records
5 from West Virginia University I have my nursing staff
6 organize them, Bates stamp them and bookmark them in a
7 PDF document so they're in a format that I typically use
8 for case by case by case. So for instance, the exhibit
9 you are about to use will have my unique Bates stamp
10 number on it at the bottom center. I can produce them
11 certainly in that Bates stamped organized, bookmarked
12 fashion to Kathleen or I can produce the native
13 documents as they came to me, however you would like.
14 Does that make sense?

15 ATTORNEY TRYON: Native, you mean without
16 the Bates stamp?

17 ATTORNEY LINKOUS: Yes. So for instance,
18 West Virginia University may end me --- I'm making it up
19 --- a thousand pages of medical records for a patient.
20 I give that to my nursing staff who organizes it by
21 provider, by date, and they bookmark it so you can go to
22 this date, this date, this date, this lab result, this
23 admission, this ER, this pediatrician and you can
24 navigate the records quickly. So I have my nursing

1 staff do that for me.

2 ATTORNEY TRYON: That's great.

3 ATTORNEY LINKOUS: I can produce that if
4 you'd like. That way there's a Bates stamp and it shows
5 you every one through how many ever there are.

6 ATTORNEY TRYON: That's fantastic. I
7 appreciate it.

8 ATTORNEY LINKOUS: Sure.

9 ATTORNEY TRYON: So I would like to now
10 turn to Exhibit 35. If you could pull that up, Jacob.

11 VIDEOGRAPHER: Can you see that?

12 ATTORNEY TRYON: Yes.

13 ATTORNEY TYRON: Yes.

14 VIDEOGRAPHER: And again, the witness and
15 Mr. Tryon, you have permission to move to pages,
16 highlight that, et cetera.

17 ATTORNEY TRYON: Thank you.

18 BY ATTORNEY TRYON:

19 Q. So Dr. Kidd, my first question simply, do you
20 recognize this document?

21 A. I recognize that it is a face sheet, and I think
22 this may have been part of the packet that I was sent.

23 ATTORNEY HARTNETT: Could I ask for the
24 record what --- we can only see one page at a time and I

1 don't have this exhibit. So I'd be happy to pull the
2 document that Mr. Linkous gave us and that we produced
3 to you, but what Bates numbers are on this document?

4 ATTORNEY TRYON: Sure. They got cut off
5 because the Bates number is so close to the bottom that
6 when I printed it out ---.

7 VIDEOGRAPHER: And Attorney Hartnett, I
8 did submit this document, which basically means it is
9 now shared with everybody. If you go to the top and
10 click on files, then that --- exhibit file sharing, you
11 should be able to see it off to the right.

12 ATTORNEY HARTNETT: I do.

13 VIDEOGRAPHER: And you should be able to
14 download that yourself.

15 ATTORNEY HARTNETT: Appreciate it. Thank
16 you.

17 VIDEOGRAPHER: You're welcome.

18 ATTORNEY TRYON: And Mr. Linkous' Bates
19 numbers are 101103 through 101137.

20 ATTORNEY HARTNETT: And these were, just
21 for the record, the documents that we produced on
22 Saturday from Mr. Linkous with Bates BPJ 02510 to BPJ
23 02545.

24 BY ATTORNEY TRYON:

1 Q. Okay.

2 Dr. Kidd, I'm not sure I understood your
3 answer. What do you understand this document to be?

4 A. I just scrolled through it and it looks like
5 some supportive documentation around my note.

6 Q. Would there be any information in this document
7 that's not in Exhibit 16?

8 A. Is Exhibit 16 the document we reviewed
9 previously.

10 Q. Yes, it is the --- it's your notes and the lab
11 information.

12 A. I can't speak to the nuance in this ancillary
13 documentation. I'm sure that there is information on
14 the face sheet if it was not present in the prior
15 packet, Exhibit 16, but my notes should be the same in
16 both packets.

17 Q. Now, there are places where there have been
18 redactions of names.

19 Do you see that?

20 A. Are you referring to --- let me use my
21 highlighter again.

22 Q. On the very first page that you look at there
23 are three places where information is blocked out, which
24 yeah, you've highlighted it.

1 A. Yes, I can see that.

2 Q. Did you have any involvement in that --- in
3 blocking that out or redacting it?

4 A. No, no, I did not.

5 ATTORNEY HARTNETT: For the record,
6 Plaintiff produced these to you with that information
7 redacted at the request of Mr. Linkous.

8 BY ATTORNEY TRYON:

9 Q. On the second page of this exhibit, if you can
10 go there, under the organs inventory, none of that is
11 filled out. Is there a reason for that?

12 A. So this is a form that is optional to complete
13 in Epic and is not part of my standard practice for
14 adolescents.

15 Q. So underneath admission diagnosis, slash, and
16 reasons for visits, do you see that?

17 A. I do not --- oh, down here at the bottom, yes, I
18 see that now.

19 Q. What is ICD-10-CM?

20 A. That is the system that we use for billing codes
21 ICD-10 specifically, I'm not sure what the -CM refers
22 to.

23 Q. And under it, it says long-term, parentheses,
24 current, closed paren, use of other agents affecting

1 estrogen receptors and estrogen levels. And that's
2 under the admission diagnosis and reason for visit. So
3 tell me what that means.

4 A. I have to assume because I myself did not enter
5 in that code I believe that that is an umbrella code
6 that the code I actually entered falls under. But
7 again, I can't be positive about that. The code I would
8 have ---.

9 Q. Go ahead.

10 A. The code I would have entered was likely
11 something along the lines of long-term use of a
12 gonadotropin-releasing hormone agonist or GRNHA.

13 Q. And is that a diagnosis or reason for visit?

14 A. So that is a reason to get the labs and the [REDACTED]
15 scan that I subsequently ordered. And so when you order
16 labs or imaging you have to tell insurance why it is
17 medically relevant. And so that is the purpose of that
18 code.

19 Q. During your visit with BPJ and BPJ's mother, did
20 you actually make any diagnoses?

21 ATTORNEY HARTNETT: Objection to form.

22 THE WITNESS: To my recollection, no new
23 diagnoses that had not already been made.

24 BY ATTORNEY TRYON:

1 Q. On the fourth page, which at the bottom center
2 is 101 to 106, do you see --- let's see. I'm blowing it
3 up on my screen. Does it get any larger on yours?

4 A. No, but I have it zoomed in on mine.

5 VIDEOGRAPHER: Mr. Tryon, if you
6 highlight or write with the pencil tool, that will share
7 it with everybody. But the zoom feature --- or the
8 zooming is specific to each person. So each person can
9 zoom in on the page that whatever their preference is.

10 BY ATTORNEY TRYON:

11 Q. Okay.

12 So I tried to highlight this one part that says
13 it says gender dysphoria. Did it highlight on your
14 screen?

15 A. Where patient describes this experience for
16 themselves as?

17 Q. Yes.

18 A. Yes.

19 Q. So before the colon that's part of the form.
20 Is that right?

21 A. That's correct.

22 Q. And then the rest of that language you added?

23 A. That language came from B [REDACTED] and I typed it in
24 to this note.

1 Q. Do you remember any more about the conversation
2 with BPJ about those words?

3 A. I can't speak more to what other words were
4 said, but I try to write these as directly as the young
5 person provides them to me, and I didn't make any
6 additional notation. I make additional notation if the
7 young person's experience is unexpected or different
8 from my experience in working with gender diverse young
9 people. And so in my practice this would suggest that
10 this was what B [REDACTED] said and that her experience she
11 described was very similar to other young people that I
12 have cared for.

13 Q. What does it mean angel, slash, devil on
14 shoulder kind of feeling?

15 A. To my recollection, B [REDACTED] kind of described that
16 what you often see depicted in media, that there were
17 kind of parts of who she was that were in conflict. And
18 my interpretation based on my memory was that those
19 parts of her were her gender identity and what society
20 kind of expects of her because of her sex assignment.
21 That's that distress that is associated with the gender
22 dysphoria diagnostic code.

23 Q. What did society expect from BPJ?

24 A. Typically when babies are assigned male at birth

1 we expect them to identify as boys and eventually men
2 and to live their lives as such.

3 Q. Do you remember anything specifically about BPJ,
4 though, about what BPJ thought society expected of BPJ?

5 A. I can't recall specifically if B [REDACTED] spoke to
6 that.

7 Q. What does society expect of boys and men?

8 ATTORNEY HARTNETT: Object to form.

9 THE WITNESS: Can you restate that
10 question?

11 BY ATTORNEY TRYON:

12 Q. Well, I'm just going back to what you said, you
13 said society expects certain things of boys and I think
14 you used the terminology of those that are assigned male
15 at birth and they expect certain things of boys and
16 certain things when they grow up to be men.

17 A. Society.

18 ATTORNEY HARTNETT: Object to form.

19 THE WITNESS: To be very clear on this,
20 society expects --- in my experience if someone is
21 assigned male that they identify as male, simply put.

22 BY ATTORNEY TRYON:

23 Q. Okay.

24 Well, what specifically does society expect of

1 men?

2 ATTORNEY HARTNETT: Object to form.

3 THE WITNESS: Can you rephrase that?

4 BY ATTORNEY TRYON:

5 Q. Well, you're telling me that society expects
6 certain things of boys and men. I want to know what you
7 are saying that society expects from them.

8 ATTORNEY HARTNETT: Object to form.

9 THE WITNESS: I'm simply stating is that
10 folks who are assigned male are expected to identify as
11 male. That is what society expects.

12 BY ATTORNEY TRYON:

13 Q. And what does that mean to identify as male?

14 A. To have one's sense of gender for one's self be
15 on the masculine spectrum.

16 Q. What's on the masculine spectrum?

17 A. There is a very helpful tool for this that I
18 often use in talking about gender identity. It's called
19 the gender unicorn, and it diagrams this out really
20 nicely. But essentially there are masculine and
21 feminine and nonbinary and other gender components in
22 all of us to some varying degree. And when I say
23 masculine I mean that the masculine component is
24 dominant.

1 Q. What are masculine components?

2 A. It's a bit of a cultural and time, so temporally
3 associated sort of thing, and I talk about this with
4 patients and families, but it's often how we
5 communicate, how we carry ourselves, what our place and
6 role in society is, lots of expectations. But when
7 we're talking about gender identity, it's this inherent
8 sense of self as it relates to gender.

9 ATTORNEY TRYON: I would ask the court
10 reporter to read back my question, please.

11 COURT REPORTER: What are the masculine
12 components?

13 BY ATTORNEY TRYON:

14 Q. Please answer that question.

15 ATTORNEY HARTNETT: Object to form.

16 THE WITNESS: They are not specific
17 components but instead a sense of self.

18 BY ATTORNEY TRYON:

19 Q. So there are no masculine components?

20 ATTORNEY HARTNETT: Object to form.

21 THE WITNESS: There is not a checkbox for
22 masculinity, although society does impose ideas on us.

23 BY ATTORNEY TRYON:

24 Q. Well, you used term masculine components. I

1 didn't. What were you referring to?

2 A. Those thoughts that society has about what is
3 masculine.

4 Q. Which are what?

5 A. I think it depends on the society in question.

6 Q. Okay.

7 Our society here in West Virginia?

8 ATTORNEY HARTNETT: Object to form.

9 THE WITNESS: Here in West Virginia one
10 may masculine things are --- things like I gave the
11 example earlier of interest in construction, right, and
12 what we were discussing earlier, interest in hunting.
13 While there are many folks who consider those things
14 feminine as well, they stereotypically masculine in our
15 society by my interpretation.

16 BY ATTORNEY TRYON:

17 Q. So that would be your stereotype?

18 ATTORNEY HARTNETT: Object to form.

19 THE WITNESS: The stereotype that I
20 observe in our society as part of my job.

21 BY ATTORNEY TRYON:

22 Q. So how have you reported your observations as to
23 what constitutes a masculine component?

24 ATTORNEY HARTNETT: Object to form.

1 ATTORNEY TRYON: Do you have a list?

2 THE WITNESS: Could you repeat the
3 question?

4 BY ATTORNEY TRYON:

5 Q. Do you have a list of what you've observed to be
6 masculine components in our society here in West
7 Virginia?

8 ATTORNEY HARTNETT: Object to form.

9 THE WITNESS: I do not have a list, no.

10 BY ATTORNEY TRYON:

11 Q. So just when you're talking to a young person
12 how do you know what constitutes a masculine component?

13 A. I think that's irrelevant for the purposes of
14 discussing someone's gender identity as they see it
15 themselves and instead more relevant to conversations
16 about society's expectations of them.

17 Q. You say it's relevant or irrelevant?

18 A. It is relevant in some ways as to how they see
19 themselves certainly. The primary thing we focus on is
20 how the young person experiences their gender identity.

21 Q. How did BPJ experience BPJ's identity?

22 A. She identified as a girl.

23 Q. And what does that mean then?

24 A. It means that in her own mind and her own sense

1 of self she is a girl. She sees herself as a girl. Her
2 relationships with people are based on her own internal
3 sense of self as a girl.

4 Q. Did BPJ tell her what components constitute
5 being a girl?

6 ATTORNEY HARTNETT: Object to form.

7 THE WITNESS: Not to my recollection.

8 BY ATTORNEY TRYON:

9 Q. So just the fact that BPJ said I identify as a
10 girl, that was enough?

11 ATTORNEY HARTNETT: Object to form.

12 THE WITNESS: No one knows their own
13 lived experience better than the individual themselves.
14 And so when young people tell me how they identify, I
15 explore what that mean for them. But B [REDACTED] identifies
16 as a girl and so she is a girl.

17 BY ATTORNEY TRYON:

18 Q. So you explored that with BPJ. Can you tell me
19 about that exploration, what it meant for BPJ to be a
20 girl?

21 A. Only to the extent that I documented it and
22 based on my standard practice. I don't recall the
23 specifics of our conversation beyond that.

24 Q. So if someone comes to you and says --- who is a

1 girl who was, as you say, assigned the sex of female at
2 birth, that says I identify as a male, but all outward
3 appearances --- let me rephrase that. Let me just start
4 over. If a young woman of any age comes to you and says
5 I identify as a male, is that in and of itself enough to
6 establish gender --- now I'm forgetting the terminology,
7 sorry, gender dysphoria?

8 ATTORNEY HARTNETT: Object to form.

9 THE WITNESS: It is not because, as we
10 discussed, there are specific diagnostic criteria for
11 that diagnosis.

12 BY ATTORNEY TRYON:

13 Q. And that is they have to identify as such for
14 six months?

15 ATTORNEY HARTNETT: Object to form.

16 THE WITNESS: I'm happy to review based
17 on my memory, but I would refer to the DSM-V and that
18 specific diagnostic criteria.

19 BY ATTORNEY TRYON:

20 Q. What if that persons says I don't care about
21 DSM-V, you know, I was assigned girl at birth, but I
22 identify as a girl, that's not good enough?

23 ATTORNEY HARTNETT: Object to form.

24 THE WITNESS: I think you are confusing

1 the difference between gender dysphoria, the diagnosis,
2 and gender identity, the experience.

3 BY ATTORNEY TRYON:

4 Q. Thank you for clarifying. So for someone to
5 have a gender identity different than what they are
6 quote assigned at birth, they just simply need to say
7 that they have a different gender identity.

8 Is that right?

9 ATTORNEY HARTNETT: Object to form.

10 THE WITNESS: They also don't have to say
11 it. It's something they know in their own minds for
12 themselves and for them to share or not.

13 BY ATTORNEY TRYON:

14 Q. But if they share that, is it your view that
15 that person needs to accept that, that other folks need
16 to accept that?

17 ATTORNEY HARTNETT: Object to form.

18 THE WITNESS: It's my view that no one
19 can know inside someone's else's mind better than that
20 person themselves.

21 BY ATTORNEY TRYON:

22 Q. Do others --- should others be required to
23 accept that or not?

24 ATTORNEY HARTNETT: Object to form.

1 THE WITNESS: I can't speak to that more
2 broadly. All I can talk about is B [REDACTED] and what she
3 told me.

4 BY ATTORNEY TRYON:

5 Q. Okay.

6 If we could turn now to page --- okay. I'm
7 looking at what is page 18 of 36. Do you see that?

8 A. I do.

9 Q. Okay. So ---.

10 ATTORNEY HARTNETT: Could I just say for
11 the record it's the document with the 101120 at the
12 bottom?

13 ATTORNEY TRYON: Correct.

14 ATTORNEY HARTNETT: Thank you.

15 BY ATTORNEY TRYON:

16 Q. And it says --- under messages sent it shows
17 delivery and it shows on 10/25/2021 it looks like a
18 message was sent to Matthew Bunner. Is that a correct
19 interpretation of that?

20 A. That would be my guess, although I'm not
21 familiar with that exact message nor is this kind of
22 usually how I see this report. So outside of this
23 setting, I wouldn't necessarily have access to this
24 view.

1 Q. Do you remember talking to or sending a message
2 to Mr. Bunner on 10/25/2021?

3 A. No, I don't have recollection of that and I
4 suspect it was not me who sent the message.

5 Q. Okay.

6 Then down below further it says call
7 information and it references Steven Deci and you and
8 --- that's all. It references a call apparently on
9 9/16/2021. Do you know what that is about?

10 A. I don't. I don't recall receiving a phone call.
11 I do know that is the date of the visit and the time of
12 the visit, and so this may be what it is referring to.

13 Q. Okay.

14 Now, I'm on page 21, which is at the bottom of
15 the page. The bottom is 101123. And under here it
16 shows today's visit. There's a box there. Do you see
17 that?

18 A. I do.

19 Q. And who inputted this information?

20 A. It depends on what information you're referring
21 to, and I only know partial answers to that question.

22 Q. Okay.

23 The blood pressure?

24 A. It is our standard practice that the nurse takes

1 the blood pressure and then enters it into the chart.

2 Q. The same thing with the BMI and the weight?

3 A. So the nurse would take a weight and measure
4 height and then the computer would automatically
5 calculate a BMI.

6 Q. Okay.

7 And the temperature, the nurse does that as
8 well?

9 A. Yes.

10 Q. And the pulse?

11 A. Yes.

12 Q. And it says under that percentiles calculated
13 using cc, paren, boys 2, dash, 20 years, closed paren.
14 Do you see that there?

15 A. I do.

16 Q. And so why is that percentage using the boys
17 chart as opposed to a girls chart?

18 A. Because in Epic the sex designation carries over
19 to the gender marker, and so that is what chart is used.

20 Q. Is there a reason to determine percentiles for
21 the child?

22 A. The BMI percentiles are important for youth as
23 BMI itself is a poor measure and so BMI percentile is
24 the standard based on my training that is used.

1 Q. And why is that important?

2 A. It's important to look at growth and development
3 throughout childhood. Children are not fixed as adults
4 often are in their height, for example.

5 Q. So if BPJ identifies as a female, why not use
6 the female chart?

7 ATTORNEY HARTNETT: Object to the form.

8 THE WITNESS: It's a question and it's a
9 limitation of our health system and our health record.

10 BY ATTORNEY TRYON:

11 Q. So you don't think it matters which chart is
12 used, whether it's a male or female?

13 ATTORNEY HARTNETT: Object to form.

14 THE WITNESS: I certainly think it
15 matters.

16 BY ATTORNEY TRYON:

17 Q. And why does it matter?

18 A. It matters because these charts are slightly
19 different and based on a child's growth trajectory it
20 may be better to use one chart over the other or even
21 both to make sure that a child growth trajectory is on
22 target.

23 Q. Did you prescribe any treatment for BPJ?

24 ATTORNEY HARTNETT: Object to form.

1 THE WITNESS: No new treatment. I did
2 continue with [REDACTED] For example, we did not discontinue
3 the [REDACTED] during my visit.

4 BY ATTORNEY TRYON:

5 Q. Is --- let me see if I can pronounce this right.
6 [REDACTED] hormone, what is that?

7 A. [REDACTED] hormone or LH is a hormone that is
8 downregulated by the presence of the [REDACTED] It is a
9 hormone that goes on to stimulate a secretion of sex
10 hormone in the body throughout.

11 Q. Do you anticipate any of --- prescribing any
12 further treatment?

13 A. So I think I have a visit with B [REDACTED] coming up
14 next month and at that point we will be discussing B [REDACTED]
15 and her family's goals and discussing options like
16 [REDACTED] We began that conversation at our first
17 visit.

18 Q. And what about options such as surgery?

19 A. I'm not a surgeon, and in my experience, B [REDACTED]
20 is very young to be making kind of long-term plans in
21 that direction, although if she has questions I will
22 answer them to the best of my ability.

23 Q. So if that's something that BPJ wanted, is there
24 something that you would --- is that something you would

1 refer BPJ to someone else?

2 ATTORNEY HARTNETT: Object to form.

3 THE WITNESS: When appropriate.

4 BY ATTORNEY TRYON:

5 Q. Do you have someone in particular --- well, have
6 you ever referred anybody to another specialist for
7 surgery?

8 A. Yes.

9 Q. Who have you referred them to?

10 A. Well, there are usually surgical centers as well
11 as individual surgeons, but it depends on what the young
12 person is seeking and what their insurance coverage is,
13 where their family is located, and a host of other
14 factors.

15 Q. How many referrals have you made for surgery?

16 ATTORNEY HARTNETT: Object to form,
17 scope. Go ahead.

18 THE WITNESS: I couldn't speak to that
19 specifically. I don't know off the top of my head.

20 BY ATTORNEY TRYON:

21 Q. More than one?

22 A. Yes.

23 ATTORNEY HARTNETT: Same objection.

24 BY ATTORNEY TRYON:

1 Q. Can you just give me the names of a couple of
2 folks who do this type of --- do surgery for gender
3 transition?

4 ATTORNEY HARTNETT: Objection, form,
5 scope.

6 THE WITNESS: What type of surgery are we
7 talking about?

8 BY ATTORNEY TRYON:

9 Q. Sex reassignment surgery.

10 ATTORNEY HARTNETT: Objection. This
11 deposition concerns the diagnosis and treatment of
12 Plaintiff, BPJ aka B [REDACTED] P [REDACTED]-J [REDACTED]. I would like
13 to understand how this line of questioning is at all
14 relevant to that.

15 ATTORNEY TRYON: To understand the future
16 of possible treatments.

17 ATTORNEY HARTNETT: She has not testified
18 to any such future possible treatment with BPJ or --- I
19 just don't understand why having her list the names of
20 providers to conduct surgeries has anything at all to do
21 with BPJ's diagnosis or treatment.

22 BY ATTORNEY TRYON:

23 Q. You can answer the question.

24 A. Can you restate the question?

1 Q. Can you give me a list of providers for a sex
2 reassignment surgery that you've referred people to?

3 ATTORNEY HARTNETT: Object to the form
4 and scope.

5 THE WITNESS: Sex reassignment surgery is
6 very broad, and so I'm not able to give you a specific
7 list of surgeons without further clarity.

8 BY ATTORNEY TRYON:

9 Q. Then I guess I need to ask you what is included
10 within sex reassignment surgery.

11 A. It's a rather long list, but none of this
12 pertains to B [REDACTED] right now and may not in the future.

13 Q. But you have referred folks out for some form of
14 sex reassignment surgery or not?

15 ATTORNEY HARTNETT: Object to form.

16 THE WITNESS: I have referred patients
17 for a variety of needs outside of my scope of practice,
18 yes.

19 BY ATTORNEY TRYON:

20 Q. Can you recall the name of even one of the
21 surgeons you've referred people to?

22 ATTORNEY HARTNETT: Same objection and
23 asked and answered.

24 THE WITNESS: John Pang.

1 BY ATTORNEY TRYON:

2 Q. How do you spell the last name?

3 A. P-A-N-G.

4 Q. Give me two more and we will be done.

5 ATTORNEY HARTNETT: Objection to scope
6 and form and harassing the witness.

7 ATTORNEY LINKOUS: If you can recall, you
8 can tell him.

9 THE WITNESS: And there are usually teams
10 and not individual surgeons, but Toby Meltzer is someone
11 whose name I had mentioned previously. And I'm thinking
12 of centers, and so there's lots of folks in centers.

13 BY ATTORNEY TRYON:

14 Q. Give me a center name?

15 A. The Hopkins Clinic.

16 Q. Is that in West Virginia?

17 A. It is not. In fact, none of these providers
18 are.

19 Q. I see. Okay.

20 ATTORNEY TRYON: Let's go off the record.
21 Let me take just a very short break and see if there are
22 any other questions that I have.

23 VIDEOGRAPHER: Going off the record. The
24 current time reads 1:32 p.m.

1 OFF VIDEOTAPE

2 - - -

3 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

4 - - -

5 ON VIDEOTAPE

6 VIDEOGRAPHER: We are back on the record.

7 The current time reads 1:41 p.m.

8 ATTORNEY TRYON: Dr. Kidd, I want to
9 thank you very much for your time. I have no further
10 questions for you at this time. In the rare event that,
11 unlikely I will say, event that the Epic records somehow
12 show something that we need to reconvene this for, then
13 I would want to reconvene this. Otherwise, I have no
14 further questions. And you have the option to --- well,
15 your counsel will advise you you have the option to read
16 this or waive reading. So that's all I have. Thanks
17 again.

18 ATTORNEY HARTNETT: And this is Kathleen
19 Hartnett for Plaintiff. I just would like to
20 provisionally mark the transcript as confidential in
21 light of the discussion of medical records. And we'll
22 do a more specific designation when we review.

23 And I also just wanted to state from the
24 Plaintiff's perspective, the deposition is closed

1 because we made the production requested of us, but we
2 will, as I noted, review with what Mr. Linkous sent and
3 we will send to Defendants anything responsive to RFP-1
4 per the way we have responded to date in this
5 litigation.

6 ATTORNEY LINKOUS: If there are no more
7 questions, we will read and sign. And you may send her
8 deposition transcript to me and I will facilitate the
9 errata process to the doctor.

10 ATTORNEY TRYON: Any other Defendants
11 have any other questions?

12 ATTORNEY CROPP: This is Jeff Cropp for
13 Defendant Harrison County Board of Education and Doris
14 Stutler. I came on for Susan Deniker who had to leave
15 early. We have no questions today.

16 ATTORNEY GREEN: This is Roberta Green
17 here on behalf of West Virginia Secondary School
18 Activities Commission. No questions.

19 ATTORNEY TAYLOR: This is Michael Taylor
20 on behalf of the West Virginia State Board of Education.
21 Kelly Morgan had to step off, so I jumped on, and we
22 have no questions.

23 ATTORNEY TRYON: Mr. Ducar, you are
24 muted.

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ATTORNEY DUCAR: Thank you. Timothy Ducar on behalf of the Intervenor Lainey Armistead. We have no questions.

ATTORNEY TRYON: Thank you, everyone.

VIDEOGRAPHER: That concludes this deposition. The current time reads 1:43 p.m. Thank you, Counsel.

* * * * *

VIDEOTAPED VIDEOCONFERENCE DEPOSITION

CONCLUDED AT 1:43 P.M.

* * * * *

1 STATE OF WEST VIRGINIA)

2 CERTIFICATE

3 I, Nicole Montagano, a Notary Public in
4 and for the State of West Virginia, do hereby
5 certify:

6 That the witness whose testimony appears
7 in the foregoing deposition, was duly sworn by me
8 on said date, and that the transcribed deposition
9 of said witness is a true record of the testimony
10 given by said witness;

11 That the proceeding is herein recorded
12 fully and accurately;

13 That I am neither attorney nor counsel
14 for, nor related to any of the parties to the
15 action in which these depositions were taken, and
16 further that I am not a relative of any attorney
17 or counsel employed by the parties hereto, or
18 financially interested in this action.

19 I certify that the attached transcript
20 meets the requirements set forth within article
21 twenty-seven, chapter forty-seven of the West
22 Virginia.



Nicole Montagano

Nicole Montagano,

Court Reporter

Exhibit 20

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 *

vs. *

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, PATRICK MORRISEY *

In his official capacity as *

Attorney General, and THE STATE *

OF WEST VIRGINIA, *

Defendants *

Case No.
2:21-CV-00316

CONFIDENTIAL
VIDEOTAPED
VIDEOCONFERENCE
DEPOSITION
OF
GERALD MONTANO, D.O.
February 24, 2022

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Page 2

1 CONFIDENTIAL VIDEOTAPED VIDEOCONFERENCE DEPOSITION
 2 OF
 3 GERALD MONTANO, D.O., taken on behalf of the Defendant,
 4 State of West Virginia herein, pursuant to the Rules of
 5 Civil Procedure, taken before me, the undersigned, Lacey
 6 C. Scott, a Court Reporter and Notary Public in and for
 7 the State of West Virginia, on Thursday, February 24,
 8 2022, beginning at 10:06 a.m.
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Page 3

1 A P P E A R A N C E S
 2
 3 JOSHUA BLOCK, ESQUIRE
 4 American Civil Liberties Union Foundation
 5 125 Broad Street
 6 New York, NY 10004
 7 COUNSEL FOR PLAINTIFF
 8
 9 KATHLEEN R. HARTNETT, ESQUIRE
 10 ANDREW BARR, ESQUIRE
 11 ZOE HELSTROM, ESQUIRE
 12 KATELYN KANG, ESQUIRE
 13 Cooley, LLP
 14 3 Embarcadero Center, 20th Floor
 15 San Francisco, CA 94111-4004
 16 COUNSELS FOR PLAINTIFF
 17
 18 SRUTI SWAMINATHAN, ESQUIRE
 19 Lambda Legal
 20 120 Wall Street, 19th Floor
 21 New York, NY 10005-3919
 22 COUNSEL FOR PLAINTIFF
 23
 24

Page 4

1 A P P E A R A N C E S (cont'd)
 2
 3 DAVID TRYON, ESQUIRE
 4 CURTIS R.A. CAPEHART, ESQUIRE
 5 State Capitol Complex
 6 Building 1, Room E-26
 7 Charleston, WV 25305
 8 COUNSEL FOR STATE OF WEST VIRGINIA
 9
 10 ROBERTA F. GREEN, ESQUIRE
 11 Shuman McCuskey Slicer, PLLC
 12 1411 Virginia Street East
 13 Suite 200
 14 Charleston, WV 25301
 15 COUNSEL FOR WEST VIRGINIA SECONDARY SCHOOL
 16 ACTIVITIES COMMISSION
 17
 18 JEFFREY M. CROPP, ESQUIRE
 19 Steptoe & Johnson
 20 400 White Oaks Boulevard
 21 Bridgeport, WV 26330
 22 COUNSEL FOR HARRISON COUNTY BOARD OF EDUCATION and
 23 HARRISON COUNTY SUPERINTENDENT DORA STUTLER
 24

Page 5

1 A P P E A R A N C E S (cont'd)
 2
 3 KELLY C. MORGAN, ESQUIRE
 4 KRISTEN V. HAMMOND, ESQUIRE
 5 Bailey Wyant
 6 500 Virginia Street East
 7 Suite 600
 8 Charleston, WV 25301
 9 COUNSEL FOR WEST VIRGINIA BOARD OF EDUCATION and
 10 SUPERINTENDANT W. CLAYTON BURCH
 11
 12 CHRISTIANA HOLCOMB, ESQUIRE
 13 Alliance Defending Freedom
 14 15100 North 90th Street
 15 Scottsdale, AZ 85260
 16 COUNSEL FOR INTERVENOR, LAINEY ARMISTEAD
 17
 18 TIMOTHY D. DUCAR, ESQUIRE
 19 Law Office of Timothy D. Ducar
 20 7430 East Butherus Drive, Suite E
 21 Scottsdale, AZ 85260
 22 COUNSEL FOR INTERVENOR, LAINEY ARMISTEAD
 23
 24

Page 6

1 A P P E A R A N C E S (cont'd)

2

3 RONALD G. JONES, ESQUIRE

4 Jackson Kelly, PLLC

5 501 Grant Street, Suite 1010

6 The Union Trust Building

7 Pittsburgh, PA 15219

8 COUNSEL FOR GERALD MONTANO, D.O.

9

10

11

12

13

14

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Page 7

1 I N D E X

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3 DISCUSSION AMONG PARTIES 10 - 14

4 WITNESS: GERALD MONTANO, D.O.

5 EXAMINATION

6 By Attorney Tryon 14 - 159

7 DISCUSSION AMONG PARTIES 159 - 161

8 CERTIFICATE 162

9

10

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22

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Page 8

1 E X H I B I T P A G E

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3 P A G E

4 NUMBER DESCRIPTION IDENTIFIED

5 4 Adolescent Medicine Evaluation --

6 5 Discharge Summary --

7 6 Outpatient Evaluations --

8 7 Outpatient Evaluations --

9 8 Adolescent Medicine Evaluation --

10 9 Progress Note --

11 11A Progress Note --

12 11B Progress Note --

13 33 Standards of Care for Health of

14 Transexual, and Gender

15 Nonconforming People --

16 36 Adolescent Medicine Questionnaire --

17 37 Doctor Note --

18 38 Doctor Note --

19 39 Doctor Note --

20 40 Procedure Note --

21 42 Doctor Note --

22 43 Doctor Note --

23 45 Confidential Disclosure Statement --

24

Page 9

1 O B J E C T I O N P A G E

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3 ATTORNEY P A G E

4 Block 18, 21, 27, 27, 35, 38, 39, 40, 41, 45, 47, 49,

5 58, 59, 59, 60, 62, 62, 65, 65, 68, 68, 73, 76, 76, 77,

6 78, 86, 94, 95, 95, 95, 97. 99, 99, 99, 108, 119, 149,

7 155

8

9 Jones 20, 21, 25, 27, 38, 39, 40, 41, 45, 46, 48, 49,

10 50, 51, 51, 53, 57, 57, 58, 59, 60, 60, 61, 62, 63, 64,

11 65, 66, 68, 68, 68, 72, 73, 73, 74, 76, 76, 76, 76, 77,

12 77, 78, 78, 85, 86, 88, 89, 89, 90, 91, 93, 94, 94, 95,

13 95, 95, 97, 99, 99, 109, 116, 117, 120, 120, 121, 121,

14 125, 126, 129, 131, 137, 141, 141, 142, 143, 146, 147,

15 148, 149, 151, 152, 155, 156

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Page 10

1 STIPULATION
 2 -----
 3 (It is hereby stipulated and agreed by and between
 4 counsel for the respective parties that reading,
 5 signing, sealing, certification and filing are not
 6 waived.)
 7 -----
 8 P R O C E E D I N G S
 9 -----
 10 VIDEOGRAPHER: We're now on the record.
 11 My name is Jacob Stock. I'm a Certified Legal Video
 12 Specialist employed by Sargent's Court Reporting
 13 Services. The date today is February 24th, 2022. The
 14 current time reads 10:06 a.m. This deposition is being
 15 taken remotely by video conference. The caption of this
 16 case is in the the United States District Court for the
 17 Southern District of West Virginia, Charleston Division.
 18 BPJ by her next friend and mother, Heather Jackson,
 19 versus West Virginia State Board of Education, et al.
 20 Case number 2:21-CV-00316. The name of the witness is
 21 Gerald Montano, D.O. Will the attorneys present state
 22 their names and the parties they represent?
 23 ATTORNEY TRYON: This is David Tryon
 24 representing the State of West Virginia. Curtis

Page 11

1 Capehart, my colleague, is also on the line.
 2 ATTORNEY BLOCK: This is Josh Block,
 3 representing the Plaintiff. And I have other colleagues
 4 on the line that will identify themselves.
 5 ATTORNEY SWAMINATHAN: This is Sruti
 6 Swaminathan from Lambda Legal representing the
 7 Plaintiff.
 8 ATTORNEY HARTNETT:
 9 This is Kathleen Hartnett from Cooley
 10 representing the Plaintiff.
 11 ATTORNEY KANG: This is Katelyn Kang from
 12 Cooley representing Plaintiff.
 13 ATTORNEY JONES: This is Ron Jones
 14 representing Doctor Montano.
 15 ATTORNEY CROPP: My name is Jeffrey Cropp
 16 of Steptoe & Johnson, representing Defendants Harrison
 17 County Board of Education and Dora Stutler.
 18 ATTORNEY HELSTROM: This is Zoe Helstrom
 19 from Cooley LLP representing the Plaintiff.
 20 ATTORNEY DUCAR: This is Timothy Ducar on
 21 behalf of the intervenor. Also on the line is my
 22 colleague, Christiana Holcomb. I'd like to note that I
 23 am viewing the real time transcript and the intervenor
 24 is not going to participate in the charges for that.

Page 12

1 ATTORNEY MORGAN: This is Kelly Morgan on
 2 behalf of the West Virginia Board of Education and
 3 Superintendent Burch. Also on phone is Kristen Hammond
 4 with my office as well. We do not need the real time or
 5 a rough copy.
 6 ATTORNEY GREEN: This is Roberta Green
 7 here on behalf of West Virginia Secondary School
 8 Activities Commission. We do not need the real time
 9 feed nor do we want the rough copy of the transcript.
 10 ATTORNEY DUCAR: This is Tim Ducar once
 11 again. I didn't --- I didn't talk about the rough
 12 draft, and we don't need that as well.
 13 ATTORNEY BLOCK: This is Josh Block for
 14 Plaintiff again. We don't need the real time either.
 15 VIDEOGRAPHER: And if that's everybody,
 16 the court reporter can swear in the witness and we can
 17 begin.
 18 ATTORNEY BARR: Sorry, this is Andrew
 19 Barr for the Plaintiff. I got kicked out of the room
 20 and just reentered. I'm with Cooley L.L.P.
 21 VIDEOGRAPHER: Okay.
 22 ---
 23 GERALD MONTANO, D.O.,
 24 CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND

Page 13

1 HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS
 2 FOLLOWS:
 3 ---
 4 ATTORNEY TRYON: Thank you. Before we
 5 actually get started, I was on muted --- I was mute ---
 6 muted, so I meant to say there is a couple things we
 7 wanted to hit right before we actually get started with
 8 regard to how we're handling objections. I think we can
 9 do that with the witness present and in discussion with
 10 Mr. Jones prior to this. And as we have done in prior
 11 depositions to make things smoothly, these are the ---
 12 what I would like to propose as far as how objections
 13 are handled. That the objections would be limited to
 14 objections to form, objections to scope, specifically as
 15 to that this doctor is not going to serve as an expert
 16 witness and objections to terminology since we have
 17 various terminology that each party prefers to use and
 18 objections for privilege if the witness's counsel needs
 19 to assert that. Is that satisfactory to you, Mr. Block?
 20 ATTORNEY BLOCK: Yes, it is.
 21 ATTORNEY TRYON: And Mr. Jones, that's
 22 satisfactory to you.
 23 ATTORNEY JONES: Yes, it is.
 24 ATTORNEY TRYON: And Mr. Jones, for some

1 reason your picture is frozen for me. That's okay, but
2 just FYI for your information. Does anybody else have
3 any objection to that procedure? Okay. Then we will go
4 ahead and move forward.

5 ---
6 EXAMINATION
7 ---

8 BY ATTORNEY TRYON:

9 **Q. Mr. Montano, thank you very much for joining me**
10 **this morning. I appreciate your time, I know your time**
11 **is valuable. And I will try to make this as smooth and**
12 **move through this as quickly as possible. So thank you**
13 **again?**

14 A. You're welcome.

15 **Q. First of all, who's there with you for the**
16 **record?**

17 A. Ron Jones. I'm sorry, my lawyer.

18 **Q. And you are represented by counsel?**

19 A. Yes.

20 **Q. And who is that?**

21 A. Ron Jones.

22 **Q. Have you ever been deposed before?**

23 A. Yes.

24 **Q. Tell me about that. What case was that in?**

1 **Q. Yes, that was someone who --- a female that**
2 **wanted to take testosterone?**

3 A. It was a --- someone who was assigned a female
4 at birth who identified as male.

5 **Q. Have you been deposed any other times besides**
6 **that?**

7 A. No.

8 **Q. Have you ever been sued?**

9 A. No.

10 **Q. Have you ever testified at trial?**

11 A. No.

12 **Q. So as we go through here, just for everyone's**
13 **reference, we're in Federal Court, so the Federal Rules**
14 **of Civil Procedure apply here. And Federal Rules of**
15 **Civil Procedure 30(c)(2) regarding objections says that**
16 **an objection at the time of examination, whether to**
17 **evidence to party's conduct or to the officer's**
18 **qualifications, to the manner of taking deposition or to**
19 **any other aspect of the deposition must be noted on the**
20 **record, but the examination still proceeds. And we**
21 **discussed how we're going to do objections.**

22 **And Mr. Montano --- Doctor Montano, if your**
23 **counsel or any other lawyer objects, then you are still**
24 **required to answer unless instructed not to by your**

1 A. It was regarding a case of whether or not to
2 allow one of my patients to proceed with
3 gender-affirming hormones because their parents
4 objected.

5 **Q. When was that?**

6 A. I recall 2018.

7 **Q. And were you sued in that case?**

8 A. No.

9 **Q. Who was suing whom?**

10 A. It wasn't a lawsuit, it was trying to determine
11 if this kid needed care, and I served as a witness.

12 **Q. You served as an expert witness?**

13 A. No, witness to that person's care.

14 **Q. And what was the result of that?**

15 A. The patient was allowed to get on
16 gender-affirming hormones.

17 **Q. What hormones were those?**

18 A. Testosterone.

19 **Q. So that was a female who wanted to take**
20 **testosterone.**

21 **Is that right?**

22 A. Can you repeat?

23 **Q. Yes.**

24 A. Can you repeat the question?

1 **lawyer.**

2 **Do you understand that?**

3 A. Yes.

4 **Q. And I would ask you to make sure that you answer**
5 **verbally as opposed to nodding or shaking your head for**
6 **the court reporter's benefit.**

7 **Okay?**

8 A. Yes.

9 **Q. And if you don't understand a question, please**
10 **tell me and I will try and clarify my question. And if**
11 **you answer the question, that indicates to me that you**
12 **do understand the question.**

13 **So do you understand that?**

14 A. Yes.

15 **Q. And finally, if you need a break, let me know**
16 **and we will do our best to break for you. And the only**
17 **qualifications on that is that we can't take a break**
18 **while a question is pending.**

19 **All right?**

20 A. Yes.

21 **Q. So are you familiar with the subject of the**
22 **lawsuit that we're here for?**

23 A. Yes.

24 **Q. Are you familiar with the law that's involved,**

Page 18

1 commonly known as by some of us as Save Women's Sports
 2 Act, also known as HB 3293?
 3 A. Yes.
 4 Q. Are you aware of who BPJ is?
 5 A. Yes.
 6 Q. What is your understanding of who BPJ is?
 7 A. She is the Plaintiff of that case.
 8 Q. Has BPJ been your client in the past?
 9 A. Yes.
 10 Q. Does BPJ continue to be your patient?
 11 A. No.
 12 Q. Do you know BPJ's full name?
 13 A. Yes.
 14 Q. Okay.
 15 I understand there's some concern about using a
 16 child's birth name in these circumstances, but can you
 17 give me the full name as you understand it to be?
 18 ATTORNEY BLOCK: Objection. Do you mean
 19 --- do you want the name assigned at birth or do you
 20 want the name that BPJ goes by?
 21 BY ATTORNEY TRYON:
 22 Q. Give me the name that you use for BPJ?
 23 A. E [REDACTED] P [REDACTED] r- [REDACTED]
 24 Q. But you're aware of the birth name.

Page 19

1 Correct?
 2 A. Yes.
 3 Q. Have you brought any documents to the deposition
 4 today?
 5 A. Yes.
 6 Q. What documents have you brought?
 7 A. I brought medical records and also the
 8 psychosocial assessment.
 9 ATTORNEY JONES: Just for the record,
 10 this is Ron Jones, these are the records that were
 11 provided.
 12 ATTORNEY TRYON: I'm sorry. I didn't
 13 hear you, Mr. Jones.
 14 ATTORNEY JONES: I'm sorry. Can you hear
 15 me now?
 16 ATTORNEY TRYON: Yes.
 17 ATTORNEY JONES: I said just for the
 18 record these were the records that were provided by
 19 counsel.
 20 ATTORNEY TRYON: Okay.
 21 ATTORNEY JONES: Based on the nature that
 22 this is a virtual deposition.
 23 BY ATTORNEY TRYON:
 24 Q. So the medical records that we have seen have

Page 20

1 your name on them and --- on many of them and some of
 2 them say that you edited them or reviewed them or that
 3 you were the author. Is that a typical process?
 4 A. Yes.
 5 Q. And if it says that you were --- that you either
 6 edited them or reviewed them or that you were the
 7 author, is it safe to rely upon the accuracy of those
 8 statements that you did so?
 9 A. Yes.
 10 Q. And when did you last review the documents that
 11 you have --- let me rephrase that. When is the last
 12 time you reviewed the medical records for BPJ?
 13 A. This morning.
 14 Q. Have you gone through what you believed to be
 15 all of the medical records for BPJ from your offices?
 16 A. Yes.
 17 Q. Are they correct?
 18 ATTORNEY JONES: Objection to form. You
 19 can answer.
 20 THE WITNESS: Yes.
 21 BY ATTORNEY TRYON:
 22 Q. Is there anything you saw that's incorrect that
 23 you need to correct before we review them.
 24 ATTORNEY JONES: Objection to form. You

Page 21

1 can answer.
 2 THE WITNESS: Can you repeat the question
 3 again?
 4 BY ATTORNEY TRYON:
 5 Q. Yes. Did you see anything in there during the
 6 review that you believe is incorrect that you need to
 7 correct before we review them?
 8 A. No.
 9 Q. Have you had any type of communications, whether
 10 written or oral, with BPJ's lawyers?
 11 A. Yes.
 12 Q. When was the first time that you did?
 13 A. I don't recall the exact date, but I believe it
 14 was early January.
 15 Q. Do you remember who you spoke with? Let me
 16 rephrase that. What type of communication was it?
 17 A. It was a phone call.
 18 Q. Who was it with?
 19 A. Avatara Smith-Carrington.
 20 Q. And who initiated that phone call?
 21 A. Avatara or Ms. Smith Carrington.
 22 ATTORNEY BLOCK: Just objection. Avatara
 23 uses they/them pronouns.
 24 THE WITNESS: Thank you.

Page 22

1 BY ATTORNEY TRYON:
 2 **Q. What was discussed?**
 3 A. What was discussed was that the lawyers from
 4 West Virginia intended to depose me as a witness to
 5 BPJ's case.
 6 **Q. So what else was discussed? Tell me about the**
 7 **details of that conversation.**
 8 A. They just summarized what was the nature of the
 9 case and why they --- why the lawyers from West Virginia
 10 wanted to talk to me about it.
 11 **Q. What did you tell Avatara?**
 12 A. I just said that, okay, what would I expect
 13 next.
 14 **Q. What were you told to expect?**
 15 A. That they will contact me and request a
 16 deposition and that's all that I recall.
 17 **Q. Did they --- did ---?**
 18 ATTORNEY TRYON: I'm sorry. Josh, what
 19 is the first name again. Avatara?
 20 ATTORNEY BLOCK: Avatara.
 21 ATTORNEY TRYON: Can you spell that for
 22 me?
 23 ATTORNEY BLOCK: Yes, A-V-A-T-A-R-A.
 24 ATTORNEY TRYON: Thank you.

Page 23

1 BY ATTORNEY TRYON:
 2 **Q. Did Avatara tell you what you should say in the**
 3 **deposition?**
 4 A. No.
 5 **Q. Any other communications with Plaintiff's**
 6 **attorneys?**
 7 A. With --- if I can --- Sruti Swaminathan
 8 regarding medical records.
 9 **Q. When was that?**
 10 A. As I recall, the end of January.
 11 **Q. Was it a phone call or other communication?**
 12 A. Phone call.
 13 **Q. What happened in that phone call?**
 14 A. Sruti asked about certain medical records and
 15 where he can get them, and I directed her to the
 16 Department that handles medical records.
 17 **Q. Anything else?**
 18 A. No.
 19 **Q. Any other communications?**
 20 A. None.
 21 **Q. So only two communications with Plaintiff's**
 22 **counsel?**
 23 A. Yes.
 24 **Q. Do you know a Doctor Kacie Kidd?**

Page 24

1 A. Yes.
 2 **Q. How do you know Doctor Kidd?**
 3 A. I am one of her mentors when she was a fellow.
 4 **Q. What does that mean to be a mentor?**
 5 A. It means being an advisor on academic and career
 6 advancement.
 7 **Q. When is the last time you had any communications**
 8 **with Doctor Kidd?**
 9 A. As I recall, two weeks ago.
 10 **Q. What was that communication?**
 11 A. Can you rephrase the question?
 12 **Q. Did you have a phone call or a written**
 13 **communication with Doctor Kidd two weeks ago?**
 14 A. Phone call.
 15 **Q. And what was the subject of that phone call?**
 16 A. How stressed we were about this case.
 17 **Q. And who called whom?**
 18 A. As I recall, she called me.
 19 **Q. What else was discussed besides the fact that**
 20 **you were both stressed about the case?**
 21 A. That was all.
 22 **Q. Was that before or after her deposition?**
 23 A. I don't recall.
 24 **Q. Did she tell you anything about her deposition?**

Page 25

1 A. No.
 2 **Q. Why was she stressed about this case?**
 3 A. I think any physician being disposed (sic) can
 4 be stressful.
 5 **Q. And you said you were also stressed about this**
 6 **case?**
 7 A. Yes.
 8 **Q. And why is that?**
 9 A. Again, any physician who's deposed, it's always
 10 a stressful experience.
 11 **Q. Well, I will try to not to make this stressful**
 12 **for you. I'll try and do my best to give you**
 13 **straightforward questions. Anything else that was**
 14 **discussed in that conversation?**
 15 A. No.
 16 **Q. Any other communications with Doctor Kidd in the**
 17 **past two weeks?**
 18 ATTORNEY JONES: Objection to form.
 19 Regarding this matter?
 20 ATTORNEY TRYON: Yes regarding this
 21 matter.
 22 THE WITNESS: None.
 23 BY ATTORNEY TRYON:
 24 **Q. So there's some things I want to understand that**

1 **I have read during the course of this case that I think**
 2 **you may have had some involvement with. So do you know**
 3 **what a [REDACTED] [REDACTED] is?**
 4 A. Yes.
 5 **Q. And can you tell me what that is?**
 6 A. It is a form of pubertal blocker.
 7 **Q. What chemical is in a [REDACTED] implant?**
 8 A. The general term would be a
 9 gonadotropin-releasing hormone agonist.
 10 **Q. I think I've seen the term [REDACTED] What is**
 11 **that?**
 12 A. That is the generic term of the medication.
 13 **Q. I understand that that's been FDA approved for**
 14 **precocious puberty.**
 15 **Is that right?**
 16 A. Yes.
 17 **Q. I have also seen that it is using it for a**
 18 **puberty delay is an off-label use and is not FDA**
 19 **approved.**
 20 **Is that right?**
 21 A. Can you be specific when you said not FDA
 22 approved for which condition?
 23 **Q. Sure. It is my understanding it is not FDA**
 24 **approved just for puberty delay but only for precocious**

1 question?
 2 BY ATTORNEY TRYON:
 3 **Q. The actual [REDACTED] [REDACTED] is similar to a stick.**
 4 **Is that right?**
 5 A. Yes.
 6 **Q. Can you describe the diameter and the length?**
 7 A. It's about four centimeters.
 8 **Q. Long?**
 9 A. Yes.
 10 **Q. Right --- okay.**
 11 **And how thick is it?**
 12 A. I estimate around five millimeters.
 13 **Q. And how long does it work?**
 14 A. It is FDA approved for one year, but studies
 15 show that it could be extended into two.
 16 **Q. And how much does it cost?**
 17 A. It depends. If it's the [REDACTED] brand, it's
 18 about \$4,000. The [REDACTED] brand is \$40,000.
 19 **Q. Did you say 4-0 thousand?**
 20 A. That is correct.
 21 **Q. I have also read about a Nexplanon implant.**
 22 **What is that?**
 23 A. That is a form of birth control.
 24 **Q. What chemical is used in the Nexplanon implant?**

1 **puberty.**
 2 **Is that right?**
 3 ATTORNEY BLOCK: Objection to form.
 4 THE WITNESS: It is not FDA approved for
 5 treating gender dysphoria.
 6 BY ATTORNEY TRYON:
 7 **Q. What is the significance of that?**
 8 ATTORNEY JONES: Objection to form.
 9 THE WITNESS: I don't understand the
 10 question. Can you rephrase it?
 11 ATTORNEY TRYON: I'll move on.
 12 BY ATTORNEY TRYON:
 13 **Q. How does Histrelin work? What does it do?**
 14 A. So what it does, in simple terms, it blocks the
 15 communication between the hypothalamus and the
 16 pituitary. And what that ultimately does is that it
 17 stops the gonads from producing either testosterone and
 18 estrogen, which are important hormones in puberty
 19 development.
 20 **Q. And the [REDACTED] [REDACTED] itself is --- well, tell**
 21 **me what that is.**
 22 ATTORNEY BLOCK: Objection to form.
 23 ATTORNEY TRYON: Go ahead.
 24 THE WITNESS: Can you rephrase the

1 A. Etonogestrel. And let me know if you want me to
 2 spell that.
 3 **Q. I've got it. And that's FDA approved for**
 4 **contraception.**
 5 **Is that right?**
 6 A. Yes.
 7 **Q. That's not used for puberty delay, is it?**
 8 A. No.
 9 **Q. So let me go back and get some basic**
 10 **information. Give me your --- if you wouldn't mind**
 11 **giving me your business address please?**
 12 A. 120 Lytton, L-Y-T, as in Timothy, T as in
 13 Timothy, O-N, as in Nancy, Suite M, as in Michael, 060,
 14 Pittsburgh PA, 15213.
 15 **Q. What is your business number?**
 16 A. Can you rephrase the question?
 17 **Q. Do you have a work number?**
 18 A. As in a phone number?
 19 **Q. Yes. Sorry.**
 20 A. (412) 692-6356.
 21 **Q. And I'm going to ask for your home number or**
 22 **cell number, whichever is preferably, in the event that**
 23 **for some reason you're not represented by counsel and we**
 24 **need to get a hold of you. That would be only if your**

1 counsel is --- if you are no longer represented would I
2 ever use this number.

3 A. Cell phone number?

4 Q. Yes.

5 A. [REDACTED]

6 Q. So on your website it shows that you are Board
7 Certified with the American Board of Pediatrics in
8 Pediatrics and Adolescent Medicine.

9 Is that accurate?

10 A. Yes.

11 Q. And when did you get that Board Certification?

12 A. Can you clarify which one?

13 Q. Oh, it's more than one?

14 A. Yes.

15 Q. Let's start with pediatrics.

16 A. 2013.

17 Q. And Adolescent Medicine?

18 A. 2020.

19 Q. What does it take to get Board Certification in
20 Pediatrics?

21 A. You are required to go to medical school and
22 graduate and then you have to complete a three-year
23 residency in pediatrics in order to sit for the Boards.

24 Q. Anything else?

1 A. Yes.

2 Q. When did you become that --- when did you get
3 that title?

4 A. As I recall, I believe it was 2018.

5 Q. What do you do in that position?

6 A. So I create a program and work with several
7 colleagues in delivering gender-affirming care and
8 oversee to make sure that is done in a correct manner.

9 Q. When you say you create a program, can you tell
10 me what that means?

11 A. That means create --- gathering a group of
12 professionals in mental health, in pediatrics and
13 nursing and basically discussing and creating what kind
14 of services we can provide for our patients.

15 Q. In that position do you supervise others?

16 A. Yes.

17 Q. How many people do you supervise?

18 A. Estimation currently, around nine people.

19 Q. Do you see patients in that capacity?

20 A. Yes.

21 Q. And I read that you are also an Assistant
22 Professor of pediatrics at the University of Pittsburgh
23 School of Medicine.

24 Is that correct?

1 A. Passing the exam.

2 Q. And then for Adolescent Medicine, what do you
3 have to do for that?

4 A. Not only do you have to go through or complete a
5 pediatric residency, you will need to complete an
6 adolescent medicine fellowship and a research project
7 during that time and then sit for the Boards and pass
8 it.

9 Q. Is it a different set of Boards?

10 A. Yes.

11 Q. What is the significance of having a
12 certification in pediatrics?

13 A. It verifies that you have the correct and
14 acceptable knowledge in your field.

15 Q. Are there things that it enables you to do
16 professionally that otherwise you could not do?

17 A. Technically you can practice without Board
18 Certification, but some hospitals will not allow you to
19 practice in their facility if you are not Board
20 Certified or at least Board Eligible.

21 Q. I also read that you are the Medical Director on
22 the Gender and Sexuality Development Program at UPMC
23 Children's Hospital of Pittsburgh.

24 Is that correct?

1 A. Yes.

2 Q. When did you take that position?

3 A. That would be in 2017.

4 Q. What do you do in that position?

5 A. So I'm primarily responsible for the teaching of
6 our residents and assisting in research.

7 Q. When you say teach residents, is this in a
8 classroom setting?

9 A. No.

10 Q. Tell me about it then.

11 A. So I teach residents in terms of inside the
12 clinic and supervise their care of the patients there.

13 Q. Tell me about the clinic.

14 A. Can you be more specific?

15 Q. All right. I will be. Trying to understand
16 what --- what this clinic is, where it is, what it does,
17 how many patients it has. Let's just start in general,
18 what does --- what's the name of the clinic?

19 A. The Center for Adolescent and Young Adult
20 Health.

21 Q. Where is it located?

22 A. In the University Center at the same address as
23 where I work.

24 Q. Are you employed by the Center for Adolescent

Page 34

1 **and Young Adult Health?**
 2 A. No, I'm employed by University of Pittsburgh
 3 Physicians.
 4 **Q. But you work at the Center for Adolescent and**
 5 **Young Adult Health?**
 6 A. Yes.
 7 **Q. I'm just going to call that the clinic from now**
 8 **on. Does the clinic see patients there?**
 9 A. Yes.
 10 **Q. How many doctors see patients there?**
 11 A. Counting how much ---?
 12 **Q. Let me clarify my question. How many doctors**
 13 **are there that see patients there?**
 14 A. By my estimation, around eight.
 15 ATTORNEY TRYON: So I hear somebody's
 16 kids, I think.
 17 BY ATTORNEY TRYON:
 18 **Q. I don't know if that --- where that's at. Is**
 19 **that where you're at Doctor Montano?**
 20 A. No.
 21 ATTORNEY BLOCK: They're mine. Sorry.
 22 ATTORNEY TRYON: That's okay, Josh. I
 23 was wondering if they were somewhere in my office. But
 24 that's okay, Josh. You do what you got to do.

Page 35

1 BY ATTORNEY TRYON:
 2 **Q. So about how many patients come through there in**
 3 **a week?**
 4 A. I don't know.
 5 **Q. Would it be 10, 20, 100?**
 6 A. I don't know. I don't keep count of that.
 7 **Q. What is the funding for the clinic --- let me**
 8 **rephrase that. Where does the funding come from for the**
 9 **clinic?**
 10 ATTORNEY BLOCK: Objection, scope.
 11 ATTORNEY TRYON: Go ahead. I'm just
 12 trying to --- I'm just trying understand. Let me
 13 actually ask a different question.
 14 BY ATTORNEY TRYON:
 15 **Q. Is the clinic separate or is it part of a larger**
 16 **organization?**
 17 A. It's part of a larger organizations.
 18 **Q. Which is what?**
 19 A. UPMC Children's Hospital of Pittsburgh.
 20 **Q. Is that the only place where you see patients,**
 21 **at the clinic, that is?**
 22 A. No.
 23 **Q. Where else do you see patients?**
 24 A. At the Student Health Center at University of

Page 36

1 Pittsburgh.
 2 **Q. Any other place where you see patients?**
 3 A. No.
 4 **Q. On your website it says that you received your**
 5 **medical degree from Kansas City University of Medicine**
 6 **in bioscience.**
 7 **Is that right?**
 8 A. Yes.
 9 **Q. And when was that?**
 10 A. 2010.
 11 **Q. And your master's degree in clinical research**
 12 **from the University of Pittsburgh.**
 13 **Is that right?**
 14 A. Yes.
 15 **Q. And when was that?**
 16 A. 2016.
 17 **Q. Is there a particular major or emphasis that you**
 18 **had in your master's degree?**
 19 A. Clinical research.
 20 **Q. Okay.**
 21 **And then it says that you completed a**
 22 **pediatrics residency at Saint John Children's Hospital.**
 23 **Is that right?**
 24 A. Yes.

Page 37

1 **Q. And when did you complete that residency?**
 2 A. 2013.
 3 **Q. And then your fellowship in adolescent medicine**
 4 **at UPMC Children's Hospital, Pittsburgh.**
 5 **Is that right?**
 6 A. Yes.
 7 **Q. What year was that?**
 8 A. 2016.
 9 **Q. And your post-doctoral research --- sorry. You**
 10 **were a post-doctoral research scholar in primary care**
 11 **research at the University of Pittsburgh.**
 12 **Right?**
 13 A. Yes.
 14 **Q. When was that?**
 15 A. From 2014 to 2016.
 16 **Q. What does that mean to be a research scholar?**
 17 A. You get training on how to conduct research
 18 under supervision from a mentor.
 19 **Q. On your website it says that your interests**
 20 **include increasing healthcare access for transgender and**
 21 **gender-diverse youth and advocating for government and**
 22 **systems policies that protect and enhance their health**
 23 **and wellbeing. Is that accurate as stated on your**
 24 **website?**

1 A. Yes.
2 **Q. And what government policies do you advocate in**
3 **this context?**

4 A. Any government policies that would make any
5 transperson's environment a safe place to be.

6 **Q. Are there any specific government policies that**
7 **you have either advocated for or against?**

8 ATTORNEY JONES: Objection to form.

9 ATTORNEY BLOCK: Same.

10 THE WITNESS: Can you rephrase the
11 question?

12 BY ATTORNEY TRYON:

13 **Q. Sure. You indicate that one of your interests**
14 **is advocating for government policies that protect and**
15 **enhance the health and wellbeing of gender-diverse youth**
16 **and transgender youth. My question is have you actually**
17 **advocated for any particular government policies?**

18 A. For, no.

19 **Q. Against?**

20 A. Yes.

21 **Q. Did you advocate against HB 3293?**

22 A. No.

23 **Q. What government policies did you advocate**
24 **against?**

1 ATTORNEY BLOCK: Objection to form.

2 BY ATTORNEY TRYON:

3 **Q. Do you anticipate submitting an expert report in**
4 **this case?**

5 A. No.

6 **Q. Why not?**

7 ATTORNEY JONES: Objection to form.

8 ATTORNEY TRYON: You can answer.

9 THE WITNESS: I wasn't requested to.

10 BY ATTORNEY TRYON:

11 **Q. Do you anticipate testifying as an expert in**
12 **this case?**

13 A. No.

14 **Q. And why not?**

15 A. I wasn't asked to.

16 **Q. Have you --- so I'm trying to understand this**
17 **because you said you agreed to be an expert witness in**
18 **this case, but you don't anticipate testifying. Has**
19 **that request been withdrawn?**

20 A. Just to be clear, which case are you referring
21 to?

22 **Q. Maybe we're confused. I'm talking the BPJ case.**
23 **Have you been asked --- let me start over then. Have**
24 **you been asked to testify --- sorry. Have you been**

1 A. I don't recall the bill number, but it was a law
2 in Pennsylvania that would prevent transgender girls
3 from playing in women's sports.

4 **Q. What did you do --- excuse me. What did you do**
5 **to advocate against that law?**

6 ATTORNEY BLOCK: Objection to scope.

7 ATTORNEY JONES: Same.

8 THE WITNESS: Should I answer ---?

9 ATTORNEY JONES: If you understand the
10 question.

11 THE WITNESS: Yes, I understand the
12 question. I testified in the Pennsylvania Assembly.

13 BY ATTORNEY TRYON:

14 **Q. When was that?**

15 A. I believe August 2021.

16 **Q. Have you been asked to be an expert witness in**
17 **this case?**

18 A. Yes.

19 **Q. When were you asked to be an expert witness in**
20 **this case?**

21 A. Around August 2021.

22 **Q. Did you agree to be an expert witness in this**
23 **case?**

24 A. Yes.

1 **asked to serve as an expert witness in the BPJ case?**

2 ATTORNEY BLOCK: Objection to form.

3 ATTORNEY JONES: Same. You can answer.

4 THE WITNESS: No.

5 BY ATTORNEY TRYON:

6 **Q. Thank you. That's --- I was confused there. I**
7 **apologize if I caused that confusion.**

8 **I presume you're licensed to practice medicine.**
9 **Which states would you be --- are you licensed to**
10 **practice in?**

11 A. Pennsylvania.

12 **Q. Any others?**

13 A. No.

14 **Q. I understand you're a member of the American**
15 **Academy of Pediatrics.**

16 **Is that correct?**

17 A. Yes.

18 **Q. And what is the American Academy of Pediatrics?**

19 A. It is a professional organization of
20 pediatricians.

21 **Q. What does it take to be a member?**

22 A. You have to be a healthcare professional that
23 deals with pediatrics and you pay a fee to be a member.

24 **Q. Why did you join?**

Page 42

1 A. It will help me network with other providers and
 2 it's a good learning opportunity because they also offer
 3 conferences.
 4 **Q. Do you do anything else in there besides attend
 5 conferences and network?**
 6 A. No.
 7 **Q. I understand you're also a member of the Society
 8 for Adolescent Health and Medicine.**
 9 **Is that right?**
 10 A. Yes.
 11 **Q. What is that?**
 12 A. That is another professional organization and
 13 they specialize or focus on the adolescents' and young
 14 adults' health.
 15 **Q. How is it different from the American Academy of
 16 Pediatrics?**
 17 A. Their focus. So in the AAP, the American
 18 Academy of Pediatrics, they look at all pediatrics,
 19 which include the age of 18, but in Society of
 20 Adolescent Health and Medicine it could be anywhere
 21 between 9 to 26-year-olds. So they have different laps
 22 or different scopes.
 23 **Q. What does it take to be a member of that?**
 24 A. You have to be some sort of professional or

Page 43

1 someone who has interest in adolescent and young adult
 2 health and pay a membership fee.
 3 **Q. You said professional. So that would include
 4 any kind of professional or just medical professionals?**
 5 A. It could be any serving professionals like
 6 therapists or nurses.
 7 **Q. Why did you join that one?**
 8 A. Again, for networking opportunities, learning
 9 opportunities, and camaraderie.
 10 **Q. You are the Treasurer/Secretary for the Ohio
 11 Valley Society of Adolescent Medicine. What is that?**
 12 A. So that is a regional organization that is
 13 focusing on the health of adolescent and young adult
 14 health, but this time within the areas of southwestern
 15 Pennsylvania, eastern Ohio, West Virginia and Kentucky,
 16 basically the Ohio Valley area.
 17 **Q. Are you a member of WPATH?**
 18 A. No.
 19 **Q. Why not?**
 20 A. I have not had the chance to join.
 21 **Q. Are you a member of any other organizations?**
 22 A. That's about it.
 23 **Q. Where do you currently work?**
 24 A. At the Center for Adolescent Youth and Health.

Page 44

1 **Q. Which is the clinic.**
 2 **Right?**
 3 A. Yes.
 4 **Q. Where else do you work?**
 5 A. The student health center at University of
 6 Pittsburgh.
 7 **Q. And where else?**
 8 A. That's all.
 9 **Q. So you are an assistant professor at the
 10 University of Pittsburgh. Do you not work there?**
 11 A. I will make a correction. I do work at the
 12 University of Pittsburgh as well.
 13 **Q. Any place else?**
 14 A. That's all.
 15 **Q. Okay.**
 16 **And so you are currently a treating physician.**
 17 **Right?**
 18 A. Yes.
 19 **Q. Tell me about the areas of your medical
 20 practice.**
 21 A. Can you rephrase the question?
 22 **Q. Sure. I mean, I can kind of infer that you ---
 23 your medical practice is for adolescents and youth and
 24 children. Would that much be accurate?**

Page 45

1 A. Yes.
 2 **Q. Is it beyond that? Do you treat or diagnose
 3 adults?**
 4 A. I treat young adults.
 5 **Q. So what age group or age range of people do you
 6 treat?**
 7 A. Anywhere between 9 to up to 26 years old.
 8 **Q. What types of medical issues or problems
 9 diseases, disorders, do you see the most?**
 10 ATTORNEY BLOCK: Objection to form.
 11 ATTORNEY JONES: Same.
 12 THE WITNESS: Can you rephrase the
 13 question?
 14 BY ATTORNEY TRYON:
 15 **Q. I'm trying to understand the scope of your
 16 practice. Is it just --- is it anything that 9 to
 17 26-year-olds encounter or do you limit your practice?**
 18 A. I don't limit my practice, so yes, I see many of
 19 the medical issues for anyone between 9 to 26 years old.
 20 **Q. So do you treat people for cold, flu, ear
 21 infections, those types of things?**
 22 A. Yes.
 23 **Q. And mental health issues?**
 24 A. Yes.

Page 46

1 **Q. Would that include bipolar issues?**
 2 A. No.
 3 **Q. How about chronic depression?**
 4 A. Yes.
 5 **Q. How about things like bulimia?**
 6 A. Yes.
 7 **Q. Borderline personality disorder?**
 8 A. Yes.
 9 **Q. Urinary tract infection?**
 10 A. Yes.
 11 **Q. Gender dysphoria?**
 12 A. Yes.
 13 **Q. How much of your time is spent on --- as a**
 14 **treating physician versus other parts of your**
 15 **professional work?**
 16 A. I would say about 80 percent.
 17 **Q. And that 80 percent, would that include**
 18 **supervising other doctors or is that separate?**
 19 A. It includes supervising other doctors.
 20 **Q. When patients come to you they sometimes**
 21 **probably already have a self diagnosis or what they**
 22 **think they have.**
 23 **Is that right?**
 24 ATTORNEY JONES: Objection to form.

Page 47

1 THE WITNESS: Can you rephrase the
 2 question? I don't understand.
 3 BY ATTORNEY TRYON:
 4 **Q. Sure. When patients come to you they I presume**
 5 **describe their symptoms.**
 6 **Right?**
 7 A. Yes.
 8 **Q. And when they do that they tell you I think I**
 9 **have X, Y, Z ---**
 10 ATTORNEY BLOCK: Objection to form.
 11 BY ATTORNEY TRYON:
 12 **Q. --- illness or problem?**
 13 ATTORNEY BLOCK: Objection to form.
 14 THE WITNESS: Can you rephrase that
 15 question? I don't understand.
 16 BY ATTORNEY TRYON:
 17 **Q. Sometimes when I go to my doctor I say I'm**
 18 **experiencing these symptoms and I think this is what it**
 19 **is. I think I've got a cold or I think I have got --- I**
 20 **don't know Parkinson's disease or something. And then**
 21 **the doctor will either say yes, no, maybe, need to run**
 22 **more tests. Tell me about when patients come to you.**
 23 **Do they just give you their symptoms and say what's**
 24 **wrong with me or do they sometimes say I think this is**

Page 48

1 **what's wrong with me, am I right or am I wrong?**
 2 A. It would be the former. They would tell me what
 3 they are experiencing and then I ask additional
 4 questions and make further assessments and
 5 recommendations based on what I see in the history and
 6 the physical exam.
 7 **Q. So for example, if they come to you and say I**
 8 **think I have --- nobody comes to you and says I think I**
 9 **have the flu?**
 10 ATTORNEY JONES: Objection to form.
 11 THE WITNESS: Can you rephrase that
 12 question?
 13 BY ATTORNEY TRYON:
 14 **Q. Has anyone come to you and say --- and said I**
 15 **think I have chronic depression?**
 16 A. Yes.
 17 **Q. Do you take that at face value or do you ask**
 18 **further questions?**
 19 A. I ask further questions.
 20 **Q. So that's what I'm referring to as a self**
 21 **diagnosis. Someone comes to you and says I think I have**
 22 **chronic depression. Can you tell me how often people**
 23 **come in to you, youth come in to you with a self**
 24 **diagnosis?**

Page 49

1 ATTORNEY BLOCK: Objection to form.
 2 ATTORNEY JONES: Objection to form.
 3 THE WITNESS: I don't know what
 4 percentages that would be.
 5 BY ATTORNEY TRYON:
 6 **Q. You indicated you are involved in diagnosing and**
 7 **treating what is typically known as gender dysphoria.**
 8 **Is that right?**
 9 A. Yes.
 10 **Q. What percentage of your practice involves that**
 11 **type of medical issue?**
 12 A. By my estimation, around 70 to 80 percent.
 13 **Q. And how often do these types of patients come to**
 14 **you with a self diagnosis saying I think I have gender**
 15 **dysphoria?**
 16 A. I don't know that number.
 17 **Q. Does it happen?**
 18 A. Yes.
 19 **Q. Would you estimate it's more than ten percent?**
 20 A. I don't know.
 21 **Q. But you recall that some have done that.**
 22 **Right?**
 23 A. Yes.
 24 **Q. And of those that do self diagnose with gender**

1 **dysphoria, have you ever come up with a different**
 2 **diagnosis for them?**
 3 A. Yes.
 4 **Q. What are some alternative diagnoses that you**
 5 **have given?**
 6 A. Eating disorders.
 7 **Q. Anything else?**
 8 A. That's as I recall.
 9 **Q. How many times has that happened?**
 10 A. I don't know the percentages.
 11 **Q. As far as is it 1, 2, 20, not in percentage but**
 12 **absolute numbers?**
 13 A. That I do not know.
 14 **Q. Could it be just one?**
 15 A. That I don't know.
 16 **Q. So when you mention eating disorders, were you**
 17 **thinking of a particular case?**
 18 ATTORNEY JONES: Objection to scope.
 19 THE WITNESS: I don't understand the
 20 question.
 21 BY ATTORNEY TRYON:
 22 **Q. Well, I asked you of those that self diagnose**
 23 **with gender dysphoria issues, have you ever come up with**
 24 **a different diagnosis. You said yes. And I asked you**

1 **patients. How does that happen? Does a new patient**
 2 **call in or is a new patient referred to you?**
 3 A. It's a combination of both.
 4 **Q. When that happens and they --- who gathers**
 5 **information on this person --- on this patient first?**
 6 **Would that be you or a secretary or a nurse?**
 7 A. Initially it would be the schedulers to get
 8 their basic information. That would be the first point
 9 of contact.
 10 **Q. And does the scheduler then set up something in**
 11 **a system with the patient's name and information?**
 12 A. Yes.
 13 **Q. What is that system?**
 14 A. Can you clarify the question?
 15 **Q. Sure. Is there a particular software that is**
 16 **used?**
 17 A. Yes.
 18 **Q. What is that?**
 19 A. Epic, currently.
 20 **Q. How long has it been Epic?**
 21 A. For our clinic, since 2020. February of 2020.
 22 **Q. Before 2020 what was it?**
 23 A. Cerner.
 24 **Q. Sorry?**

1 **what and you said eating disorders. So I'm asking you**
 2 **was that a specific patient you recall?**
 3 A. No.
 4 **Q. Do you remember any specific patients where**
 5 **you've given them a different diagnosis?**
 6 A. Yes.
 7 **Q. How many?**
 8 A. That number I don't know off the top of my head.
 9 **Q. Well, you're thinking of one person at least.**
 10 **Was it more than one?**
 11 ATTORNEY JONES: Objection. Asked and
 12 answered.
 13 BY ATTORNEY TRYON:
 14 **Q. Go ahead.**
 15 A. Can you repeat the question?
 16 **Q. I said you were thinking of one person at least.**
 17 **Do you recall more than one?**
 18 A. Yes.
 19 ATTORNEY JONES: Same objection.
 20 BY ATTORNEY TRYON:
 21 **Q. Do you recall more than five?**
 22 A. No.
 23 **Q. Let me ask about the --- let me start that over.**
 24 **Let me ask you about the intake process for new**

1 A. Cerner, C-E-R-N-E-R.
 2 **Q. Now, you said you see patients outside the**
 3 **clinic.**
 4 **Right?**
 5 A. Yes.
 6 **Q. Sorry. Where is that again?**
 7 A. The University of Pittsburgh Student Health
 8 Center.
 9 **Q. Does that use the same system?**
 10 A. No.
 11 **Q. What system does that use?**
 12 ATTORNEY JONES: Objection, scope.
 13 ATTORNEY TRYON: Let me back up.
 14 BY ATTORNEY TRYON:
 15 **Q. Let me ask you this question because ultimately**
 16 **I just want to focus on BPJ. So BPJ came to see you at**
 17 **the clinic or at the University of Pittsburgh?**
 18 A. At the clinic.
 19 **Q. So at the clinic, if I understand correctly, the**
 20 **scheduler will set up the initial record.**
 21 **Is that right?**
 22 A. Yes.
 23 **Q. And then when the patient comes in will there be**
 24 **additional information sought from the patient?**

1 A. The social worker usually calls the patient
2 beforehand to get a sense of what that patient's needs
3 are.

4 **Q. And then what happens?**

5 A. And then the social work team provides me with
6 that information on the electronic medical records that
7 would help me put things into context.

8 **Q. So the social worker calls the patient and
9 inputs -- talks to the patient and inputs information
10 into the system.**

11 **Is that right?**

12 A. Yes.

13 **Q. At some point the patient comes into the clinic.
14 Right?**

15 A. Yes.

16 **Q. I suppose especially during COVID that sometimes
17 these things are handled remotely. Did that happen
18 during the COVID period?**

19 A. Yes.

20 **Q. Now, does a nurse meet with the patient before
21 you do or are you the first contact?**

22 A. The medical assistant --- let me back up. I
23 apologize. It's the schedulers that first meet the
24 patients when they register and they check in the

1 **Q. How would that process happen?**

2 A. Typically, the patient would request to forward
3 the medical records to our office.

4 **Q. Now, I just want to make sure I understand one
5 thing about the systems that are being used. Before
6 February 2020, the Cerner system was used. And then
7 when you --- when the clinic started using Epic, were
8 all of the records transferred from Cerner into Epic?**

9 A. Not all.

10 **Q. Which ones were not?**

11 A. Typically, it would be phone conversations.
12 Those are not usually transferred over.

13 **Q. So the clinic's use of Epic, is that tied into
14 other medical providers besides just the clinic?**

15 A. I don't understand the question.

16 **Q. Sure. Epic has an ability to, as I understand
17 it, to tie systems together from various hospitals or
18 other medical providers, whether it's individual doctors
19 or clinics. Are you aware of that capability of Epic?**

20 A. Yes.

21 **Q. And so my question is with respect to the
22 clinics' use of Epic, is it tied into any other medical
23 providers or hospitals or systems besides just the
24 clinics?**

1 clinic.

2 **Q. And then what happens?**

3 A. Then the medical assistant comes out and take
4 the patient's vitals and a short history of their
5 complaints and their medications.

6 **Q. When you say medical assistant, can you tell me
7 what that means?**

8 A. That would be a professional who helps take
9 vitals and rooms the patient.

10 **Q. Is that --- would a nurse be a medical
11 assistant?**

12 A. Sometimes.

13 **Q. Other than nurses, who would be medical
14 assistants?**

15 A. Anyone with a certification in medical
16 assistance.

17 **Q. So is the term medical assistant an actual
18 title?**

19 A. Yes.

20 **Q. If there are other --- if there are prior
21 medical providers, would the medical assistant or the
22 scheduler get those records or get any records from
23 prior medical providers before you see the patient?**

24 A. Yes.

1 A. They have something called Care Everywhere and
2 so that allows them to gain or obtain records from other
3 facilities.

4 **Q. And do you know what the clinic is tied into,
5 what other facilities through Care Everywhere?**

6 A. Can you rephrase that question? I don't
7 understand.

8 **Q. Sure. So in the Epic system at the clinic, can
9 you access records from say the West Virginia ---
10 University of West Virginia Medicine?**

11 A. Sometimes.

12 **Q. Why only sometimes?**

13 A. Not everyone shares their records. So it is not
14 always consistent.

15 ATTORNEY JONES: Objection. I think
16 we're getting off track, off scope. So objection to the
17 scope.

18 BY ATTORNEY TRYON:

19 **Q. What information do you need to make a diagnosis
20 of a problem?**

21 ATTORNEY JONES: Objection.

22 BY ATTORNEY TRYON:

23 **Q. Let me be more specific. What are objective
24 symptoms?**

1 ATTORNEY JONES: Objection to form.
 2 ATTORNEY BLOCK: Objection to form.
 3 THE WITNESS: Can you rephrase the
 4 question?
 5 BY ATTORNEY TRYON:
 6 **Q. When I say an objective symptom, do you know**
 7 **what that means?**
 8 A. It doesn't make sense, the term objective
 9 symptom.
 10 **Q. Do you know what a subjective symptom is?**
 11 A. Yes.
 12 **Q. What's a subjective symptom?**
 13 A. Basically a symptom that the patient reports.
 14 **Q. Is there any way to measure subjective symptoms?**
 15 A. It depends.
 16 **Q. On what?**
 17 A. The type of symptom.
 18 **Q. Can you tell me of a symptom that you can**
 19 **measure, a subjective symptom that you can measure?**
 20 A. Depression.
 21 **Q. How do you measure depression?**
 22 A. We --- in our practice we do what we call a
 23 Patient Health Questionnaire. It's a series of
 24 questions that describes or measures the severity of

1 **issues?**
 2 ATTORNEY JONES: Same objections.
 3 THE WITNESS: Is there a different way
 4 you can ask that question?
 5 BY ATTORNEY TRYON:
 6 **Q. When someone calls to you, speak to the**
 7 **scheduler and they have gender dysphoria issues, what do**
 8 **they typically tell the scheduler?**
 9 ATTORNEY BLOCK: Objection to form.
 10 ATTORNEY JONES: Same.
 11 THE WITNESS: Is there another way you
 12 could phrase that question?
 13 BY ATTORNEY TRYON:
 14 **Q. Tell me about the term gender dysphoria. What**
 15 **does that mean to you?**
 16 A. That is a distressing feeling an individual has
 17 when their gender identity does not match their physical
 18 body.
 19 **Q. How do you typically get patients that have**
 20 **issues with gender identity?**
 21 A. There are two ways. You may have another
 22 provider refer that patient to me or they come to my
 23 clinic on their own volition.
 24 **Q. When they come to your clinic on their own**

1 depression.
 2 **Q. But isn't that still asking the patient**
 3 **subjectively the patient's subjective feelings?**
 4 A. Yes.
 5 **Q. Would an objective symptom be something you**
 6 **could observe externally such as a broken arm through an**
 7 **x-ray?**
 8 ATTORNEY BLOCK: Objection to form.
 9 THE WITNESS: Yes.
 10 BY ATTORNEY TRYON:
 11 **Q. What's --- is the intake process for someone**
 12 **coming to you with gender dysphoria issues different**
 13 **than a person coming to you for other types of medical**
 14 **issues?**
 15 ATTORNEY JONES: Objection to
 16 terminology.
 17 ATTORNEY BLOCK: Same.
 18 THE WITNESS: Can you rephrase the
 19 question?
 20 BY ATTORNEY TRYON:
 21 **Q. So you've indicated that you treat patients for**
 22 **a lot of different things, and I'm just interested if**
 23 **there is a different intake process for someone with**
 24 **gender dysphoria as opposed to any other types of**

1 **volition, do you know what they say to the scheduler?**
 2 A. In our typical practice, they would basically
 3 say they have gender issues.
 4 **Q. Does the scheduler handle people who say they**
 5 **have gender issues any differently than any other types**
 6 **of medical issues?**
 7 ATTORNEY JONES: Objection to form. If
 8 you understand, you can answer.
 9 THE WITNESS: No, they don't treat them
 10 any differently.
 11 BY ATTORNEY TRYON:
 12 **Q. Are you familiar with the term gender**
 13 **nonconformity?**
 14 A. Yes.
 15 **Q. And how do you describe gender nonconformity?**
 16 A. That is when someone's mannerisms and behaviors
 17 do not conform to what a society's view of gender.
 18 **Q. Do you have patients come to you who only have**
 19 **gender nonconformity but not gender dysphoria?**
 20 A. Yes.
 21 **Q. How do you distinguish between those?**
 22 A. You talk to the patient.
 23 **Q. You talk to the patient and how do you make a**
 24 **determination which it is?**

1 A. Typically, for example, if a patient wears
2 skirts and they say, well, I still identify as the sex
3 assigned at birth, so in this case male, then that would
4 be more gender nonconforming.

5 **Q. So the distinction is if they say they identify
6 as male or female, that's the distinction?**

7 ATTORNEY BLOCK: Objection to form.

8 ATTORNEY JONES: Objection.

9 THE WITNESS: Is there another way you
10 can ask that question?

11 BY ATTORNEY TRYON:

12 **Q. So a male --- in your hypothetical, a male comes
13 in and says I have got a --- I am wearing a skirt, but I
14 still identify as a male. Then that person would have
15 gender nonconformity.**

16 **Is that right?**

17 A. Yes.

18 **Q. But if that same person said I identify as a
19 female, then that person would have gender dysphoria.**

20 **Is that right?**

21 ATTORNEY BLOCK: Objection to form.

22 THE WITNESS: Can you rephrase that
23 question?

24 BY ATTORNEY TRYON:

1 this person is just gender nonconforming.

2 **Q. Do you have a list of questions?**

3 A. Yes.

4 **Q. Is that list of questions on the Epic system?**

5 A. Yes.

6 **Q. Is it a form that you give to the patient?**

7 ATTORNEY JONES: Objection to form.

8 THE WITNESS: I understand the question.

9 No, we don't give that form to the patient.

10 BY ATTORNEY TRYON:

11 **Q. Are there any qualifications for a medical
12 professional to give a diagnosis of gender dysphoria?**

13 A. Can you be --- can you rephrase that question?

14 I don't understand.

15 **Q. Sure. Can just any doctor give a diagnosis of
16 gender dysphoria or do they have to have some other
17 qualifications?**

18 A. What do you mean by qualifications?

19 **Q. Professional qualifications.**

20 A. To answer that question, there isn't a
21 certification or degree or anything of that sort for
22 qualifications. But in terms of training and the
23 ability to do so, there are some recommendations that
24 they should have to make that diagnosis.

1 **Q. In what you just told me, if a patient comes in
2 who is a male wearing a skirt and says I identify as a
3 male, that person you said would have gender
4 nonconformity. But if that person instead says I
5 identify as a female, then would that mean that person
6 has gender dysphoria?**

7 ATTORNEY JONES: Objection to form.

8 THE WITNESS: Not always, because that's
9 not how we determine that.

10 BY ATTORNEY TRYON:

11 **Q. Okay.**

12 **So how do you determine that?**

13 A. Which one? Can you be specific?

14 **Q. The child or person comes in, is a male wearing
15 a skirt, says I identify as a female. How would you
16 determine if that person has gender dysphoria or gender
17 nonconformity?**

18 A. We do an assessment when we ask the patient some
19 questions about their behaviors. And they would have
20 their parents, too, so we would also interview the
21 parents, to get a sense of this person's behavior. And
22 then, based on what the patient tells us and our
23 objective findings, then we make the determination if
24 this person may be suffering from gender dysphoria or

1 **Q. Who gives those recommendation?**

2 A. WPATH and the Endocrine Society.

3 **Q. What is the purpose of getting a diagnosis of
4 gender dysphoria?**

5 ATTORNEY JONES: Objection to form.

6 THE WITNESS: Is there a different way
7 you could ask that question?

8 BY ATTORNEY TRYON:

9 **Q. Sure. Is it necessary for some purpose that a
10 person receive a diagnosis of gender dysphoria?**

11 ATTORNEY BLOCK: Objection to form.

12 THE WITNESS: Is there a different way
13 you can ask that question?

14 BY ATTORNEY TRYON:

15 **Q. Let me give you an example. Before I had my
16 appendix taken out, the doctor needs to do a diagnosis
17 that says that I need to get my appendix taken out. So
18 that diagnosis of a problem with my appendix, whatever
19 it is, is necessary for the operation. Is there any
20 need for a diagnosis of gender dysphoria or is it just
21 something that people come to understand what's wrong
22 with them, not wrong, but what's different about them?**

23 ATTORNEY BLOCK: Objection to form.

24 ATTORNEY TRYON: That's not even the

1 right way to say it.
 2 BY ATTORNEY TRYON:
 3 **Q. That there's something about them that they are**
 4 **trying to understand, is that the only purpose of a**
 5 **diagnosis of gender dysphoria?**
 6 ATTORNEY JONES: Objection to form.
 7 THE WITNESS: I understand the question.
 8 It is actually both. Some people are looking to
 9 understand what's going on and at the same time in order
 10 to receive any treatment in the healthcare system they
 11 need a diagnosis.
 12 BY ATTORNEY TRYON:
 13 **Q. How many of your patients --- let me try and**
 14 **establish the right terminology from your perspective.**
 15 **As far as gender dysphoria, is it considered a medical**
 16 **condition?**
 17 A. No.
 18 **Q. What is it considered?**
 19 A. It's a mental health condition.
 20 **Q. I'm sorry. You said it's a mental health**
 21 **condition?**
 22 A. Yes.
 23 **Q. The patients that you see with gender dysphoria,**
 24 **how often is it that they've already been diagnosed with**

1 **watchful waiting?**
 2 A. I learned it in --- when I read about the
 3 guidelines or when I talk to my colleagues or in
 4 professional conferences because this is something that
 5 is discussed amongst us.
 6 **Q. Any particular papers you've read on it?**
 7 A. That, I don't recall which particular papers.
 8 **Q. Did you read the original Dutch study?**
 9 ATTORNEY BLOCK: Objection to scope.
 10 ATTORNEY JONES: Objection to scope.
 11 BY ATTORNEY TRYON:
 12 **Q. Did you read the original Dutch study?**
 13 ATTORNEY BLOCK: Objection to form.
 14 ATTORNEY JONES: Objection to form. Go
 15 ahead.
 16 THE WITNESS: I'm aware of the Dutch
 17 study.
 18 BY ATTORNEY TRYON:
 19 **Q. Did you read it?**
 20 ATTORNEY JONES: Same objections.
 21 THE WITNESS: Is there any way you could
 22 ask that question differently?
 23 BY ATTORNEY TRYON:
 24 **Q. You said you were aware of the Dutch study. I'm**

1 **gender dysphoria versus a first-time approach to you**
 2 **asking you about the --- this condition?**
 3 A. I don't know the exact numbers off the top of my
 4 head.
 5 **Q. Can you give me an approximation?**
 6 A. That, I don't know.
 7 **Q. Are you familiar with the concept of watchful**
 8 **waiting?**
 9 A. Yes.
 10 **Q. Have you ever told any of your patients about**
 11 **watchful waiting?**
 12 A. No.
 13 **Q. So you never recommended that to anyone? Is**
 14 **that a true statement?**
 15 A. Yes.
 16 **Q. What do you know about the concept of watchful**
 17 **waiting?**
 18 A. It's a concept in which you do not do any
 19 interventions for the child to see how the gender
 20 dysphoria may worsen or improve without it.
 21 **Q. What's your under --- basis of your**
 22 **understanding of the concept of watchful waiting?**
 23 A. I don't understand the question.
 24 **Q. Where have you learned your information about**

1 **asking if you read it?**
 2 A. That I don't recall the exact details.
 3 **Q. So you don't recall reading it?**
 4 A. Correct.
 5 **Q. When you give the diagnosis of gender dysphoria,**
 6 **you said sometimes that's necessary for treatment. What**
 7 **treatment would that be necessary for?**
 8 A. Can you rephrase the question?
 9 **Q. Are there treatments which require a diagnosis**
 10 **of gender dysphoria?**
 11 A. Yes.
 12 **Q. What are those treatments?**
 13 A. That would include puberty blockers,
 14 gender-affirming hormones and surgeries and even mental
 15 health treatments.
 16 **Q. Are you familiar with the WPATH standards of**
 17 **care?**
 18 A. Yes.
 19 ATTORNEY TRYON: Jacob, can you bring up
 20 --- actually, no, I think I can do this.
 21 ATTORNEY BLOCK: David, it has been about
 22 an hour and a half. I just wanted to see if anyone
 23 needs a break.
 24 ATTORNEY TRYON: Yeah, if we want to take

1 a break we can take a break now. Or keep on going,
 2 whatever you prefer.
 3 THE WITNESS: I could take a break.
 4 ATTORNEY TRYON: And I'll be going past
 5 lunchtime. I'm probably halfway through. So we can
 6 consider whether or not we want to take lunch or keep
 7 going all the way through. But we can talk about that
 8 later. Why don't we take a five-minute break right now?
 9 THE WITNESS: Thank you.
 10 VIDEOGRAPHER: Going off the record.
 11 Current time reads 11:37 a.m.
 12 OFF VIDEOTAPE
 13 ---
 14 (WHEREUPON, A SHORT BREAK WAS TAKEN.)
 15 ---
 16 ON VIDEOTAPE
 17 VIDEOGRAPHER: Back on the record.
 18 Current time reads 11:45 a.m.
 19 ATTORNEY TRYON: Okay.
 20 I'm going to try and share Exhibit 33
 21 here. Jacob, do I just click on sharing or open?
 22 VIDEOGRAPHER: Right.
 23 ATTORNEY JONES:
 24 Is this the --- for clarification, is

1 **Do you see that?**
 2 A. Yes.
 3 **Q. So I would like to go to page 11. No, that's**
 4 **not the right page. Sorry.**
 5 ATTORNEY JONES: I'm just going to object
 6 to the scope. Just making a standing objection.
 7 ATTORNEY TRYON: Okay.
 8 This is the page I want to ---.
 9 BY ATTORNEY TRYON:
 10 **Q. So take a look at page 11 there. And this is**
 11 **directly relevant to this situation, and ask you a**
 12 **question about the first two paragraphs.**
 13 A. I have read it.
 14 **Q. Let me know when you are ready to discuss those.**
 15 A. I'm ready.
 16 **Q. Okay.**
 17 **So in the first paragraph under the title**
 18 **differences between children and adolescents with gender**
 19 **dysphoria it says that gender dysphoria during childhood**
 20 **does not inevitably continue into adulthood rather in**
 21 **follow-up studies of prepubertal children, mainly boys,**
 22 **who were referred to clinics for assessment of gender**
 23 **dysphoria, the dysphoria persisted into adulthood were**
 24 **only 6 to 23 percent of children. Boys in these studies**

1 this the documents that you just sent to me?
 2 ATTORNEY TRYON: These are documents ---
 3 this is document from before. It's the standards of
 4 care for WPATH.
 5 ATTORNEY JONES: Okay.
 6 VIDEOGRAPHER: You will hit open and then
 7 that opens it for you. And then you'll hit start and
 8 that shares it with everyone.
 9 ATTORNEY TRYON: Okay.
 10 So I hit start. Do people see standards
 11 of care?
 12 THE WITNESS: Yes.
 13 BY ATTORNEY TRYON:
 14 **Q. Great. You're familiar with WPATH's Standards**
 15 **of Care.**
 16 **Right?**
 17 A. Yes.
 18 **Q. And the most recent version is the 7th version.**
 19 **Is that right?**
 20 A. Yes.
 21 **Q. So you can see at the top up here --- and you**
 22 **can zoom in on your own, I believe, if it's too small.**
 23 **It says 7th version Standards --- under Standards of**
 24 **Care.**

1 **more likely to identify as gay in adulthood than as**
 2 **transgender. My question is do you ever disclose this**
 3 **information to your patients?**
 4 ATTORNEY JONES: Objection to form.
 5 THE WITNESS: Is there a different way
 6 you could ask that question?
 7 BY ATTORNEY TRYON:
 8 **Q. Pardon me?**
 9 A. Is there a different way you can ask that
 10 question, meaning --- what I mean is that specific
 11 information or the fact that not every one ends up being
 12 trans?
 13 **Q. Do you disclose to any of your patients that**
 14 **prepubertal children with gender dysphoria that**
 15 **statistically it only persists into adulthood for only 6**
 16 **to 23 percent of children?**
 17 ATTORNEY BLOCK: Objection to form.
 18 ATTORNEY JONES: Objection to form.
 19 THE WITNESS: To answer your question, I
 20 don't cite those statistics. I just say that it is a
 21 possibility.
 22 BY ATTORNEY TRYON:
 23 **Q. So you tell your patients that is a possibility**
 24 **that gender dysphoria may not persist into adulthood.**

1 **Is that a fair statement?**
 2 A. Yes.
 3 **Q. Do you tell all of your patients that?**
 4 A. Yes.
 5 **Q. Do you give them any percentages at all?**
 6 A. No.
 7 **Q. Do you just say it is a possibility?**
 8 A. Yes.
 9 ATTORNEY JONES: Objection to form.
 10 BY ATTORNEY TRYON:
 11 **Q. Do any of your --- okay.**
 12 **Are there standards that you use --- we're done**
 13 **with that exhibit for now. Are there standards that you**
 14 **use for diagnosing gender dysphoria?**
 15 A. By standards, do you mean guidelines?
 16 **Q. Yes.**
 17 A. Yes.
 18 **Q. What's the source of those guidelines?**
 19 A. And by guidelines do you mean like position
 20 papers or which organizations?
 21 **Q. Yes.**
 22 A. I use several, including WPATH, the Endocrine
 23 Society and the University of California, San Francisco
 24 Guidelines.

1 **standards?**
 2 ATTORNEY JONES: Objection to scope.
 3 THE WITNESS: There is. I just don't
 4 know the exact name of that group.
 5 BY ATTORNEY TRYON:
 6 **Q. Fair enough. Do you know if there is an**
 7 **approval process for those standards?**
 8 ATTORNEY BLOCK: Objection to scope.
 9 ATTORNEY JONES: Objection to scope.
 10 THE WITNESS: From my knowledge, yes,
 11 there's an approval process.
 12 BY ATTORNEY TRYON:
 13 **Q. Are there disputes about those standards?**
 14 ATTORNEY JONES: Objection to scope.
 15 ATTORNEY BLOCK: Objection to scope.
 16 ATTORNEY JONES: And objection to form.
 17 BY ATTORNEY TRYON:
 18 **Q. Are you aware of any disputes as to those**
 19 **standards?**
 20 ATTORNEY JONES: Objection to scope and
 21 objection to form.
 22 THE WITNESS: By dispute, do you mean
 23 some mild disagreement in how this is done or like a
 24 rift?

1 **Q. Do you use DSM-V?**
 2 A. Yes.
 3 **Q. Now, I have not heard of the University of**
 4 **California, San Francisco Guidelines. What are those?**
 5 A. They are a set of guidelines on how to work and
 6 manage people with gender dysphoria.
 7 **Q. Are those different from DSM-V as far as**
 8 **diagnosing gender dysphoria?**
 9 A. No DSM-V focuses on criteria for diagnosis where
 10 UCSF focuses more on medical management.
 11 **Q. Is there anything different between DSM-V and**
 12 **WPATH?**
 13 A. None to my knowledge.
 14 **Q. Is there any difference between the DSM-V**
 15 **Guidelines and the Endocrine Society Guidelines?**
 16 A. None to my knowledge.
 17 **Q. Who came up with standards for DSM-V?**
 18 A. From an organizational perspective, it would be
 19 American ---.
 20 **Q. I'm afraid I didn't hear you.**
 21 A. It would be the American Psychological
 22 Association who writes the DSM-V.
 23 **Q. And is there a particular group within the**
 24 **American Psychological Association that writes the**

1 BY ATTORNEY TRYON:
 2 **Q. Well, let's start with a rift. Are you aware of**
 3 **any rifts in the medical community which dispute the**
 4 **methodology of DSM-V for diagnosing gender dysphoria?**
 5 ATTORNEY BLOCK: Objection to the scope.
 6 This is a lay witness.
 7 ATTORNEY JONES: He's not an expert in
 8 this. He's made that perfectly clear. I'm going to
 9 instruct him not to answer. We're getting into expert
 10 testimony.
 11 ATTORNEY TRYON: Well, no it's not expert
 12 testimony, but maybe I'll lay a foundation a little bit
 13 differently for you.
 14 BY ATTORNEY TRYON:
 15 **Q. So you use DSM-V. Are there other standards out**
 16 **there that you could use that disagree with DSM-V?**
 17 ATTORNEY JONES: Objection to form.
 18 THE WITNESS: There isn't any other set
 19 of criteria that would oppose DSM-V, if that's the word
 20 you use.
 21 BY ATTORNEY TRYON:
 22 **Q. It is different for adults and adolescents and**
 23 **children in DSM-V.**
 24 **Right?**

1 ATTORNEY BLOCK: Objection to form.
 2 ATTORNEY JONES: Objection to form.
 3 THE WITNESS: Can you rephrase the
 4 question?
 5 BY ATTORNEY TRYON:
 6 **Q. The standards for diagnosing gender dysphoria is**
 7 **different for adults and adolescents and children under**
 8 **DSM-V.**
 9 **Right?**
 10 A. Yes.
 11 **Q. Are you ---?**
 12 ATTORNEY JONES: Again, I think that
 13 we're getting off track here. And I hate to make this
 14 speaking objection, but you're asking him differences in
 15 standards of care and he's here to talk about the care
 16 and the treatment of BPJ. I think you can ask him about
 17 his care and treatment of BPJ, but I think you're
 18 getting off track with the scope.
 19 ATTORNEY TRYON: Yeah. And just to be
 20 clear, we're establishing what sort of the baseline,
 21 which I think is totally appropriate here. I'm going to
 22 keep on moving on.
 23 ATTORNEY JONES: Well, I think --- I
 24 think you can ask him what he used for his baseline.

1 **Q. What pediatrician referred them?**
 2 A. I don't recall the name of the pediatrician.
 3 **Q. Do you remember that first visit?**
 4 A. Yes.
 5 **Q. Tell me about that.**
 6 A. Can you be more specific?
 7 **Q. Do you remember when you first saw them, their**
 8 **appearances?**
 9 A. Yes.
 10 **Q. Who was there?**
 11 A. B[REDACTED] --- BPJ and her mother.
 12 **Q. Did someone see them on that --- let me back up.**
 13 **You saw them at the clinic.**
 14 **Is that right?**
 15 A. Yes.
 16 **Q. Did someone at the clinic see them before you**
 17 **did?**
 18 A. No.
 19 **Q. Not even the scheduler?**
 20 A. I correct myself. So if you meant like another
 21 professional than me, no. But yes, they did --- the MA
 22 as part of the check-in process.
 23 **Q. As part of the check-in process would another**
 24 **medical professional have then taken BPJ's vitals and**

1 ATTORNEY TRYON: I think I have just done
 2 that, but keep on moving.
 3 ATTORNEY JONES: I'll keep on objecting.
 4 ATTORNEY TRYON: Okay.
 5 BY ATTORNEY TRYON:
 6 **Q. So let's talk about BPJ. Do you have any**
 7 **personal relationship with BPJ or BPJ's family?**
 8 A. Personal relationship? No.
 9 **Q. And how did the professional relationship with**
 10 **BPJ or BPJ's family start?**
 11 A. They made an appointment to see me at the
 12 clinic.
 13 **Q. Do you remember when that was?**
 14 A. July 15th, 2019.
 15 **Q. Was that when they made the appointment or when**
 16 **the appointment actually was?**
 17 A. That's the actual date of the appointment.
 18 **Q. Do you know how that appointment was made,**
 19 **whether it was through a referral or just a direct phone**
 20 **call or something else?**
 21 A. It was a self referral --- I correct myself.
 22 **Q. I'm sorry. There's some interference. I**
 23 **couldn't hear you.**
 24 A. I recall that a pediatrician referred them.

1 **other information?**
 2 A. Yes.
 3 **Q. Before you met BPJ and the mother --- the mother**
 4 **is Heather Jackson.**
 5 **Is that right?**
 6 A. Yes.
 7 **Q. And before you met with them did you have any**
 8 **written materials to look at before you actually met**
 9 **with them in person?**
 10 A. By written materials do you mean like previous
 11 medical records.
 12 **Q. Either previous medical records or any**
 13 **information that had been typed into the system by**
 14 **anyone else?**
 15 A. I have reviewed those ---.
 16 **Q. I'm sorry. You're breaking up. I can't hear**
 17 **you.**
 18 ---
 19 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)
 20 ---
 21 BY ATTORNEY TRYON:
 22 **Q. Let's go back.**
 23 A. Can you remind me what was the last question?
 24 **Q. I'm thinking here. Before you --- let me ask a**

1 different question. So you actually met with them in
2 person as opposed to a televisit.

3 Right?

4 A. Yes.

5 Q. And before you actually met with them, did you
6 review anything --- any --- either medical records or
7 anything that any of your assistants or staff had typed
8 into the system?

9 A. Yes.

10 Q. What did you review?

11 A. One of the things I reviewed was the social work
12 note that, as I had told earlier, usually calls the
13 patient before we see them.

14 Q. Do you remember what was in those social worker
15 notes?

16 A. Basically for that note they said they tried
17 contacting that patient and they didn't pick up.

18 Q. Anything else that you reviewed that was in
19 writing?

20 A. Just the patient's vitals and the reason why
21 they're here.

22 Q. So tell me about that visit. When you first met
23 with them, did Heather Jackson speak first or did BPJ
24 speak first?

1 Q. Did Heather tell you that?

2 A. No.

3 Q. At that time did you do a psychodiagnostic
4 assessment of BPJ?

5 A. I did a psychosocial evaluation.

6 Q. Is that different than a psychodiagnostic
7 assessment?

8 A. Yes.

9 Q. How is that different?

10 A. Because I am asking more questions about the
11 context of that patient and it's not necessarily to make
12 a diagnosis.

13 Q. Did you do a psychiatric assessment?

14 A. Can you clarify? What do you mean by
15 psychiatric assessment?

16 Q. Yes, I can. Let me go back to Exhibit 33. Do
17 you see that on your screen?

18 A. No.

19 VIDEOGRAPHER: Attorney Tryon, did you
20 hit the start button? There you go.

21 BY ATTORNEY TRYON:

22 Q. Let me know when you see that.

23 A. I see --- there we go.

24 Q. Okay.

1 A. I believe that BPJ spoke first.

2 Q. What did BPJ tell you?

3 A. As I recall, she was --- she told me that she
4 was concerned about going into puberty.

5 Q. Anything else that you can recall as you sit
6 here?

7 A. That's the initial thing I recall.

8 Q. How about Heather Jackson, do you remember
9 anything that she said?

10 A. Not without looking at my notes.

11 Q. Fair enough. Do you remember anything that you
12 told them?

13 A. Yes.

14 Q. What did you tell them?

15 A. I counseled them about all --- you know, what
16 would the visit look like and what kind of options are
17 available and how we could help them. That's part of my
18 custom and practice.

19 Q. At that time did you ask questions in order to
20 determine if BPJ should be diagnosed with gender
21 dysphoria?

22 A. Yes.

23 Q. Did BPJ tell you that BPJ had gender dysphoria?

24 A. No.

1 I want to go to page 15. Okay. This is in the
2 WPATH Standards of Care, page 15, item two. It says
3 assessment of gender dysphoria and mental health should
4 explore the nature and characteristics of a child's or
5 adolescent's gender identity. A psychodiagnostic and
6 psychiatric assessment covering the areas of emotional
7 functioning, peer and other social relationships and
8 intellectual functioning, slash, school of achievement
9 should be performed. Did you do either --- did you do
10 that psychiatric assessment as described here?

11 A. Yes.

12 Q. What did that entail?

13 A. So in adolescent medicine you ask questions
14 about that person's school life and how they are doing
15 in their grades. You screen for any depression. You
16 ask about their eating behaviors. You ask about any
17 substance use and potential for violence in the home,
18 any concerns about their sexual orientation or gender
19 identity and smoking habits and the relationships or at
20 least observe the relationships between their family
21 members.

22 Q. Is that what you consider a psychiatric
23 assessment?

24 ATTORNEY JONES: Objection to form.

1 THE WITNESS: I understand the question.
2 By defined at the WPATH the psychiatric assessment, if
3 they describe the emotional functioning, peer and social
4 relationships and school achievements, then yes, I did
5 something like that.

6 BY ATTORNEY TRYON:

7 **Q. But you indicated I think that a
8 psychodiagnostic assessment is different.**

9 **Is that right?**

10 ATTORNEY BLOCK: Objection to form.

11 ATTORNEY JONES: Objection to form.

12 BY ATTORNEY TRYON:

13 **Q. You can answer.**

14 A. From what I understand when you first asked the
15 question, but if reading that and say that a
16 psychodiagnostic and psychiatric assessment includes
17 those things that I ask, then that would be a
18 psychodiagnostic exam.

19 **Q. And how did you document your assessment?**

20 A. There's a form that the patient filled out and I
21 verified.

22 **Q. I'm trying to post Exhibit 36. Let me know when
23 you see that.**

24 A. I can see it.

1 **Q. Down lower, under what would you like to talk
2 about today and it says other, explain AFAB, do you see
3 that?**

4 A. Yes.

5 **Q. What does AFAB mean?**

6 A. The acronym I'm familiar with is assigned female
7 at birth.

8 **Q. Under self it says --- the third question there,
9 if you could change one thing about your life or
10 yourself would it be --- it says to be a girl, which is
11 --- I presume BPJ wrote that.**

12 **Is that right?**

13 A. Yes.

14 **Q. Did you explore why BPJ wanted to be a girl?**

15 A. Can you clarify? What do you mean by exploring?

16 **Q. Did you ask BPJ why BPJ would like to be a girl?**

17 ATTORNEY JONES: Objection to form and
18 terminology.

19 THE WITNESS: In my practice I don't ask
20 the reasons someone wants to be a girl. What I ask is
21 what are the features or what are the behaviors that
22 would be consistent in saying that I am a girl or that
23 patient is a girl.

24 BY ATTORNEY TRYON:

1 **Q. Is this the form that you are referring to?**

2 A. Yes.

3 **Q. Did --- do you know who filled this out?**

4 A. BPJ did.

5 **Q. Did BPJ fill this out in your presence?**

6 A. I don't recall.

7 **Q. What is the source of this form?**

8 A. By source do you mean like who created the form
9 or ---?

10 **Q. Created this form?**

11 A. The American Medical Association.

12 **Q. Let me ask you, up in the upper right-hand
13 corner here --- just to make sure I understand some of
14 the things on this --- it shows DOS 7/15/2019. That
15 means the date of service.**

16 **Is that right?**

17 A. Yes.

18 **Q. And this was the first visit you had with BPJ
19 and Heather Jackson?**

20 A. Yes.

21 **Q. And then I see in that same area, Epic FIN, and
22 then number. What is that?**

23 A. That is the financial information number. It
24 helps with billing.

1 **Q. And did you ask BPJ that?**

2 A. Yes.

3 **Q. What did BPJ tell you?**

4 A. That she was afraid of going through puberty
5 because she does not want to be a boy, that she dresses
6 as a girl, that she doesn't like her own body, that she
7 prefers people use she/her pronouns and use the name
8 E■■■■, that, as I said, she dresses in a way that is
9 consistent with being a girl, like the clothing, the
10 hairstyle, and that she identifies as a girl.

11 **Q. And why did BPJ --- why was BPJ afraid of being
12 a boy?**

13 ATTORNEY JONES: Objection to form.

14 ATTORNEY BLOCK: Object to form.

15 THE WITNESS: I can answer that question.
16 Because she didn't identify as a boy.

17 BY ATTORNEY TRYON:

18 **Q. What was --- what was BPJ afraid of?**

19 ATTORNEY JONES: Objection to form.
20 Asked and answered.

21 THE WITNESS: Can you repeat that
22 question?

23 BY ATTORNEY TRYON:

24 **Q. You said she was afraid of going through puberty**

1 because she does not want to be a boy. Why was she
 2 afraid of going through puberty?
 3 A. [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 BY ATTORNEY TRYON:
 13 Q. Is that a word that you would use or a word that
 14 BPJ actually used?
 15 A. That is from my own observation.
 16 Q. [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 Q. Did BPJ --- strike that.
 23 Did you ask BPJ what it means in BPJ's mind to
 24 be a girl?

1 system.
 2 Right?
 3 A. Yes.
 4 Q. Let's go to the second page here. Do you see
 5 under development there's some questions there?
 6 A. Yes.
 7 Q. Did you discuss issues under this category with
 8 BPJ?
 9 A. Yes.
 10 Q. Tell me about those discussions.
 11 A. So the two main questions I ask that is custom
 12 and part of my practice is if you --- what parts of your
 13 body do you feel most uncomfortable with. And then if
 14 there are anything you would change to make your body
 15 fit with who --- with that person's or patient's gender
 16 identity.
 17 Q. And what was BPJ's response?
 18 A. [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 Q. The next --- well, I don't know how to
 22 characterize this, but it says I am romantically or
 23 sexually attracted to boys, [REDACTED]. Did
 24 you ask BPJ about that?

1 ATTORNEY JONES: Form.
 2 THE WITNESS: Is there a different way
 3 you can ask that question?
 4 BY ATTORNEY TRYON:
 5 Q. In the form it says if you could change one
 6 thing about your life or yourself would it be, BPJ wrote
 7 to be a girl. Did you ask BPJ what it meant to be a
 8 girl?
 9 A. If you mean from an existential point, no.
 10 Q. Did you ask anything else --- you may have
 11 already answered part of this. I apologize if I'm ---
 12 if I'm asking the same thing. Did you ask BPJ --- let
 13 me --- and forgive me if I'm asking you to repeat
 14 yourself. Did you ask BPJ what characteristics of being
 15 a girl that BPJ wanted?
 16 A. I may have to look at my notes to refresh my
 17 memory.
 18 Q. What notes are those?
 19 A. The medical records on the day I saw her.
 20 Q. I see. Okay. We'll get to those in a bit then.
 21 Do you have any handwritten notes from your visit with
 22 BPJ and Heather Jackson that day?
 23 A. No.
 24 Q. So the only notes would be what are in the

1 A. No, I didn't expand upon that.
 2 Q. [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 BY ATTORNEY TRYON:
 7 Q. [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 Q. Why do you ask that?
 15 A. It provides me a level of that patient's mental
 16 health.
 17 Q. Ultimately, did you, in fact, diagnose BPJ with
 18 gender dysphoria or not?
 19 A. Yes, I diagnosed her with gender dysphoria.
 20 Q. Has anyone else previously or after, to your
 21 knowledge, diagnosed BPJ with gender dysphoria?
 22 A. Do you mean as in like a second opinion?
 23 Q. I don't know if I would call it second opinion
 24 or not. I want to know if you know of anyone else

1 **that's actually made a formal diagnosis of gender**
2 **dysphoria for BPJ?**

3 A. That I do not know.

4 **Q. I have been told that there's something called**
5 **--- that gender identity is fluid.**

6 **Is that right?**

7 ATTORNEY BLOCK: Objection to form.

8 ATTORNEY JONES: Form and terminology.

9 ATTORNEY TRYON: Let me back up.

10 BY ATTORNEY TRYON:

11 **Q. What does the term gender identity mean?**

12 A. Gender identity is an immutable characteristic
13 of someone's feeling of either being a woman or a man or
14 something in between or another gender, which could be a
15 combination of bio, psychosocial, societal expectations
16 and their own sense of what their gender identity is.

17 **Q. Can gender identity be fluid?**

18 ATTORNEY JONES: Objection to form.

19 THE WITNESS: It cannot be fluid. It is
20 immutable.

21 BY ATTORNEY TRYON:

22 **Q. So if another medical professional said that**
23 **gender identity is fluid, that person would be wrong in**
24 **your estimation?**

1 THE WITNESS: That is something that a
2 person only knows.

3 ATTORNEY TRYON: Jacob, I'm trying to
4 find the documents used previously. Trying to find
5 Exhibit 4.

6 VIDEOGRAPHER: Give me one moment here.
7 That would be --- 4 would be in the one marked 1 through
8 9. Correct?

9 ATTORNEY TRYON: Correct.

10 VIDEOGRAPHER: Okay.

11 It should be shared with you. You might
12 see it in a folder labeled shared with you.

13 ATTORNEY TRYON: Shared with group.
14 There we go. Okay.

15 Jacob, is there a way to get through here
16 without clicking the arrow button so I can get through
17 faster?

18 VIDEOGRAPHER: You can highlight the
19 number and type in, you know, whatever number page you
20 want to go to.

21 ATTORNEY TRYON: Thank you.

22 Okay. This is Exhibit 4.

23 BY ATTORNEY TRYON:

24 **Q. Can you see that, Doctor Montano?**

1 ATTORNEY JONES: Objection to scope.
2 He's not here as an expert.

3 BY ATTORNEY TRYON:

4 **Q. You can answer.**

5 A. I would say they're using --- that would be
6 incorrect definition of what gender identity is.

7 **Q. I've also been told that gender identity**
8 **evolves. Are you saying --- is that right or wrong?**

9 ATTORNEY BLOCK: Objection to the form.

10 BY ATTORNEY TRYON:

11 **Q. Or that it can evolve. Would that be right or**
12 **wrong.**

13 ATTORNEY BLOCK: Objection to form.

14 ATTORNEY JONES: And scope.

15 THE WITNESS: Can you clarify what do you
16 mean by evolve?

17 BY ATTORNEY TRYON:

18 **Q. Change over time.**

19 A. No.

20 **Q. Have you ever --- is gender identity something**
21 **that is observable externally or only what some person**
22 **feels?**

23 ATTORNEY BLOCK: Objection to form.

24 ATTORNEY JONES: Form. You can answer.

1 A. I cannot see it.

2 **Q. Oh, let me know when you see it.**

3 A. It's loading. Sorry.

4 **Q. That's okay.**

5 A. I see it.

6 **Q. Do you recognize this document?**

7 A. Yes.

8 **Q. What is it?**

9 A. That is the physical documentation when I first
10 saw BPJ.

11 **Q. How is this form filled out? Do you see this**
12 **form just like this on the system and you type in your**
13 **information or is this just a separate internal form**
14 **that then populates this?**

15 A. It's the template within the electronic medical
16 record.

17 **Q. Are you saying this is the actual template or**
18 **there is a template that you --- on the system that you**
19 **type into which then populates this form?**

20 ATTORNEY BLOCK: Objection to form.

21 ATTORNEY JONES: Objection to form.

22 THE WITNESS: Is there --- can you
23 rephrase that question?

24 BY ATTORNEY TRYON:

1 Q. Yeah. I'm just trying to understand. When you
 2 --- when --- you don't fill things out in paper, right?
 3 You do it right on the computer.
 4 Is that correct?
 5 A. Yes.
 6 Q. And when you pull up --- go to enter information
 7 on the computer, does the document look like this
 8 Exhibit 4?
 9 A. Yes, it's like a pre-form template that I use.
 10 Q. And what's the source of the template? Is it
 11 something that you developed or that UPMC developed or
 12 something that Epic developed or something else?
 13 A. It's a template I developed.
 14 Q. Is this form in the Epic system now?
 15 A. Yes.
 16 Q. And more than form. I guess I should say ---
 17 rephrase that. Is this actual document in the Epic
 18 system?
 19 A. Are you referring to WV 4?
 20 Q. Yes.
 21 A. Yes. It's in the electrical medical record
 22 system.
 23 Q. At the top here it has got the designation of
 24 male.

1 Q. Is it offensive to you?
 2 A. No.
 3 Q. In what way is it misleading?
 4 A. Because it disqualifies someone's gender
 5 identity when you describe them as biologically male.
 6 Q. Does the term --- how does the term male as used
 7 in this document differ from the term biological male?
 8 A. Going back to my assigned male at birth, this is
 9 what that patient was assigned at birth typically based
 10 on what the doctors see in their genitalia.
 11 Q. Now, [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 16 Q. Under desire or secondary sex characteristics of
 17 other gender, slash, to be other gender, in that part of
 18 this form can you tell me what part of the template and
 19 what items you actually inputted?
 20 A. So the heading desire to get rid of secondary
 21 sex characteristics and then the expectations for
 22 today's visit and then hopes for hormone therapy, those
 23 are part of the template. And then the words afterwards
 24 are something that I input based on the patient

1 Do you see that?
 2 A. Yes.
 3 Q. Why does it say male?
 4 A. Because that is the legal sex of the patient.
 5 Q. Is there any other reason that the designation
 6 of male should be in here?
 7 ATTORNEY BLOCK: Objection to form.
 8 ATTORNEY JONES: Objection to form.
 9 THE WITNESS: From my custom and
 10 practice, it's important to know what organs that person
 11 has. So it's a good thing to know.
 12 BY ATTORNEY TRYON:
 13 Q. Does that mean that BPJ is a biological male?
 14 ATTORNEY BLOCK: Objection to form.
 15 ATTORNEY JONES: Objection to form.
 16 THE WITNESS: The way I would describe it
 17 is that B [REDACTED] or BPJ was assigned male at birth.
 18 BY ATTORNEY TRYON:
 19 Q. Does the term biological male have a meaning?
 20 ATTORNEY BLOCK: Objection to form.
 21 THE WITNESS: To answer your question, it
 22 is a very misleading and to some people offensive
 23 meaning.
 24 BY ATTORNEY TRYON:

1 response.
 2 Q. And the words desire for secondary sex
 3 characteristic of other gender, slash, to be other
 4 gender, that's part of the template?
 5 A. Yes.
 6 Q. And then severity of wanting to be another
 7 gender is based on the following, that's part of the
 8 template?
 9 A. Yes.
 10 Q. And then there's four items underneath that,
 11 hairstyle, clothing, shoes and name. Are those part of
 12 the template?
 13 A. Yes.
 14 Q. And the Y after each one of those, is that
 15 something that you inputted into the system?
 16 A. Yes.
 17 Q. I presume Y stands for yes.
 18 Correct?
 19 A. Yes. Yes.
 20 Q. So are you the one that created the template
 21 that listed hairstyle, clothing, shoes and name.
 22 Is that right?
 23 A. Yes.
 24 Q. Why did you choose those particular four

1 categories?

2 A. That was based on my training on what questions

3 would be high yield and also based on my understanding

4 of the criteria for gender dysphoria.

5 Q. So you just limited it to four there, not ---

6 why didn't you have more characteristics?

7 A. I felt that those would be sufficient enough to

8 indicate someone's desire to be of the other gender.

9 Q. When it says been expressing herself as female,

10 that's template?

11 A. No, that actually was something I inputted

12 myself.

13 Q. Okay.

14 So including the one year? That question is

15 not entirely clear. Let me try again. So it says been

16 expressing herself as female, colon, one year. That

17 entire phrase is something you inputted separately, not

18 part of the template?

19 A. I'm sorry. I had a recording phrase. I don't

20 know if you said something.

21 Q. The language, it says been expressing herself as

22 female. Is that language part of the template or

23 something you typed in?

24 A. That is something I typed in.

1 assessment was conducted and documented confidentially

2 and relevant recommendations and health education was

3 offered to the patient and family. Is that part of the

4 template or is that something you typed in?

5 A. That is part of the template.

6 Q. And was that psychosocial assessment conducted?

7 A. Yes.

8 Q. And how is it documented?

9 A. It was documented through that confidential

10 Adolescent Medicine Questionnaire.

11 Q. The two-page document that we looked at earlier?

12 A. Yes.

13 Q. Any other documentation on that psychosocial

14 assessment?

15 A. No.

16 Q. On the page we're looking at, which is page five

17 of 6, also labeled at the bottom BPJ 038, at the top

18 there's a part that says we discussed with B [REDACTED] and her

19 parents/caregiver the nature, effects, benefits, et

20 cetera.

21 Do you see that paragraph?

22 A. Yes.

23 Q. How much of that is part of the template and how

24 much of that was actually typed in by you?

1 Q. And then the one year, you typed that in?

2 A. Yes.

3 Q. And that was based on what BPJ and/or BPJ's mom

4 told you?

5 A. Both of them.

6 Q. [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 Q. So I don't really understand what that's saying.

17 Can you explain that?

18 A. To be honest, I don't understand what it means

19 either.

20 Q. On the next page, under social and psychosocial

21 habits it says no data available. Did you type in no

22 data available?

23 A. No.

24 Q. And the next part says a detailed psychosocial

1 A. That was part of the template, but it's my

2 custom and practice to describe all of that when I'm

3 counseling my patients.

4 Q. And so it says that you offered a refer to the

5 fertility services at Magee Womens Hospital. Why did

6 you offer her a referral to the fertility services at

7 Magee Womens Hospital?

8 A. The reason being is that if B [REDACTED] were to decide

9 to get a puberty blocker, [REDACTED]

10 [REDACTED] And so I always --- it's my custom

11 and practice to always counsel my parents that that is a

12 possibility and they should consult with a fertility

13 specialist to understand what would happen if this

14 person were to go or use puberty blockers.

15 Q. Well, will BPJ be able to produce any eggs with

16 or without puberty blockers?

17 A. I apologize. [REDACTED]

18 [REDACTED]

19 Q. You threw me there. One more question about

20 this form, back on the first page, page one of eight I

21 think it is. So under history of present illness ---

22 OFF VIDEOTAPE

23 Q. --- incongruence, it says identifies as

24 transgender instead of male. What does it take to

Page 106

1 **identify as transgender?**
 2 A. To stop you right there, I can't see that file.
 3 VIDEOGRAPHER: Hold on one second. The
 4 witness's video feed cut out for a second and that ended
 5 up pausing the recording during your question. The
 6 reporter still heard it, though. But let me get
 7 everything sorted here real quick.
 8 Okay. We are recording again. Doctor
 9 Montano, can you see the exhibit right now?
 10 THE WITNESS: No.
 11 VIDEOGRAPHER: Mr. Tryon, could you do me
 12 a favor and just hit stop and then start again?
 13 ATTORNEY JONES: Just so you know, I have
 14 --- if you would like ---?
 15 VIDEOGRAPHER: The witness got cut out
 16 again.
 17 ATTORNEY TRYON: I can see Mr. Jones. I
 18 cannot see the witness.
 19 VIDEOGRAPHER: Right. The witness's feed
 20 is not here. Mr. Jones, is he losing internet
 21 connection on the computer he's using? I'm going to
 22 send him a chat.
 23 ATTORNEY JONES: I apologize. I would
 24 have thought that my --- my office had the capability to

Page 107

1 handle this.
 2 ATTORNEY TRYON: Are we all back together
 3 again?
 4 ATTORNEY JONES: Yes.
 5 VIDEOGRAPHER: Give me one second. Mr.
 6 Tryon, you might have to do that stop and start again if
 7 the witness can't see the exhibit.
 8 THE WITNESS: I can see it right now.
 9 VIDEOGRAPHER: Oh, okay.
 10 ATTORNEY JONES: And I have the document
 11 that he's referring to, our copy, in front of him.
 12 VIDEOGRAPHER: Okay. We are recording
 13 and we are back on the record.
 14 ON VIDEOTAPE
 15 BY ATTORNEY TRYON:
 16 **Q. Independent of this exhibit, did you tell BPJ or**
 17 **Heather Jackson that there was a possibility that BPJ**
 18 **could --- might not persist with gender dysphoria?**
 19 A. It is my custom and practice to discuss that
 20 with all of my patients.
 21 **Q. Do you remember saying that to BPJ and Heather**
 22 **Jackson?**
 23 A. Again, it's part of my custom and practice to
 24 always bring that up.

Page 108

1 **Q. I understand. Do you remember having that**
 2 **discussion with them?**
 3 A. Not the specific details, but yes.
 4 **Q. Do you remember what their reaction was, the**
 5 **response was?**
 6 A. I don't remember.
 7 **Q. And on the document, Exhibit 4, it says history**
 8 **of present illness, incongruence, that much is part of**
 9 **the form.**
 10 **Right?**
 11 A. Yes.
 12 **Q. And then the next part says identifies as**
 13 **transgender instead of --- instead of male. Is that**
 14 **something you typed in?**
 15 A. Yes.
 16 **Q. And did BPJ say that BPJ identifies as**
 17 **transgender or something else and you just**
 18 **re-characterized it?**
 19 A. I don't recall specifically.
 20 **Q. Okay.**
 21 **What does it take for someone to identify as**
 22 **transgender, to say I identify as transgender, or is**
 23 **there something beyond that?**
 24 ATTORNEY BLOCK: Objection to form.

Page 109

1 ATTORNEY JONES: Objection to form.
 2 THE WITNESS: The criteria for
 3 incongruence is someone who states that someone
 4 identifies differently from the sex assigned to them at
 5 birth.
 6 BY ATTORNEY TRYON:
 7 **Q. Okay.**
 8 **I'm showing you now Exhibit 5. Do you see**
 9 **that?**
 10 A. Yes.
 11 **Q. So this would have been generated through the**
 12 **same system --- I mean this appears to have much of the**
 13 **same information as the prior document, Exhibit 4, but**
 14 **in a different format. At the top it says discharge**
 15 **summary. So let me, first of all, ask you if you have**
 16 **seen this document before?**
 17 A. Yes.
 18 **Q. And how is this different from Exhibit 4, which**
 19 **is --- is titled Adolescent Medicine, dash, Evaluation?**
 20 VIDEOGRAPHER: I have to interrupt you.
 21 The witness's video cut out again. It looks like he's
 22 back.
 23 THE WITNESS: I can still see the form
 24 --- oh, I'm frozen.

BY ATTORNEY TRYON:

Q. Do you see the form or not?

A. I can see the form.

Q. Okay.

Did you understand my question?

A. Can you repeat the question, please?

Q. Yes. Let me fix my system here. Okay. How is this Exhibit 5 differ from Exhibit 4?

A. So the discharge summary is something that we are required by the hospital to give to summarize their care and the next steps for the patient.

Q. Under provider plan there's three items. That's information you typed in there.

Correct?

A. Yes.

Q. And item two, I will contact Doctor Murray in Morgantown, West Virginia, to determine if her clinic can give pubertal blockers, did you contact Doctor Murray?

A. My memory is not clear. I may have to review some of the telephone notes to see if I remember or to help me recall that I did speak with Doctor Murray.

Q. Why were you considering contacting Doctor Murray to determine if her clinic could give pubertal

blockers?

A. Because it would be closer to the patient.

Q. Who is Doctor Murray?

A. She is a physician that used to work at West Virginia University Adolescent Medicine.

Q. Where does Doctor Murray work now?

A. Boston Children's.

Q. What is Doctor Murray's first name?

A. Pamela.

Q. Ultimately, Doctor Murray did not give any pubertal blockers to BPJ.

Correct?

A. Yes.

Q. Do you know why?

A. From my recollection, she just didn't do those procedures or give out those medications.

Q. This is Exhibit 6. This is also from the date of service of -- I'm sorry. Do you see that?

A. Yes.

Q. Are you looking at a hard copy?

A. I'm looking at both.

Q. Very good. This is also from July 15, 2019 it says at the top. Do you see that?

A. Yes.

Q. And this is outpatient evaluations. It appears to have much the same information again, but it's a different form. Can you explain the purpose of this form?

A. I believe it's just a duplication because my recollection of the full form, it looks like the exact same information that was on the previous exhibit.

Q. Okay.

Let's look at the bottom here. And I think you're probably right. The bottom, it says it was printed on 5/19/2021. So back in May this was printed. Do you know why this was printed back in May of 2021?

A. That I would not know.

Q. Next I have got Exhibit 7. Do you see that?

A. Yes.

Q. This is the same thing it appears.

Is that right?

A. Yep. Yes.

Q. Next I'm showing you Exhibit 8. Do you see that?

A. Yes.

Q. And it shows an addendum typed in there. Do you see that?

A. Yes.

Q. Is all of that something you typed in?

A. Yes.

Q. And you typed it in on October 17, 2019?

A. Yes.

Q. Did you see the patient on this date?

A. No.

Q. Who did see the patient on that date?

A. Laura Lynch.

Q. And who is Laura Lynch?

A. She's a physician assistant at the clinic.

Q. Next I'm showing you Exhibit 9. Have you seen this document before?

A. Yes.

Q. What is it?

A. It's the progress note written by Laura Lynch on October 15th, 2019, of PBJ.

Q. And did you review these notes on the date of service of 10/15/2019?

A. It appears I reviewed these notes two days afterwards.

Q. Did you make any changes to Laura Lynch's -- what she had put in?

A. No.

Q. Would that somehow be indicated if you had made

1 any changes?
 2 A. Yes.
 3 **Q. How would you notate that? Would that be simply**
 4 **--- would you state that on the addendum?**
 5 A. I would state that on the addendum.
 6 **Q. And this was just a follow-up visit.**
 7 **Is that right?**
 8 A. Yes.
 9 **Q. I'm now showing you Exhibit 11A. Do you see**
 10 **that?**
 11 A. Not yet.
 12 **Q. I forgot to hit start. Let me know when you see**
 13 **it.**
 14 A. I see it.
 15 **Q. This says --- have you seen this document**
 16 **before?**
 17 A. Yes.
 18 **Q. The encounter date is March 16, 2020.**
 19 **Right?**
 20 A. Yes.
 21 **Q. Encounter date means the date of the visit.**
 22 **Correct?**
 23 A. Yes.
 24 **Q. And who is Taylor Rives?**

1 **Q. Such as what?**
 2 A. Depending on sex, but for those assigned male at
 3 birth, it would be testicular growth. And for those
 4 assigned female at birth, it would be breast buds.
 5 ---
 6 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)
 7 ---
 8 BY ATTORNEY TRYON:
 9 **Q. Down lower it says therapist, she has not**
 10 **started seeing a therapist yet. However, they have a**
 11 **therapist in her town who specializes in gender**
 12 **dysphoria. Mother is waiting to start therapy until**
 13 **B█ wants to start. Do you know who that therapist**
 14 **was to be?**
 15 A. No.
 16 **Q. Is it normal to wait as long as BPJ and Heather**
 17 **waited to start seeing a therapist?**
 18 ATTORNEY JONES: Objection to form.
 19 THE WITNESS: To answer your question,
 20 it's not atypical for someone to wait to see a
 21 therapist.
 22 BY ATTORNEY TRYON:
 23 **Q. Do your patients who have gender dysphoria**
 24 **typically meet with a therapist before meeting with you?**

1 A. She was one of the resident trainees with me
 2 that day.
 3 **Q. Now, it says under history of present illness,**
 4 **second sentence, she has been followed for gender**
 5 **dysphoria with desire to start hormone blockers, but was**
 6 **█ last visit. What does that mean?**
 7 A. █.
 8 █.
 9 **Q. █.**
 10 █.
 11 █.
 12 A. Generally it means first signs of puberty, which
 13 is different ---.
 14 VIDEOGRAPHER: You're cutting out again,
 15 Doctor Montano.
 16 THE WITNESS: Can you hear me now?
 17 VIDEOGRAPHER: Yes.
 18 ATTORNEY TRYON: Yes.
 19 THE WITNESS: Can you repeat the question
 20 that you couldn't hear my answer?
 21 BY ATTORNEY TRYON:
 22 **Q. █.**
 23 █.
 24 █.

1 A. Not always.
 2 **Q. But sometimes?**
 3 A. Yes.
 4 **Q. During your discussions with BPJ and Heather**
 5 **Jackson, did you discuss having a therapist prior to**
 6 **this date of 3/16/2020?**
 7 A. From my recollection, yes, because of my custom
 8 and practice. But yes.
 9 **Q. Why do you --- and I take it you recommend that**
 10 **they talk to a therapist.**
 11 **Is that true?**
 12 ATTORNEY JONES: Objection to form.
 13 ATTORNEY BLOCK: Same.
 14 BY ATTORNEY TRYON:
 15 **Q. Go ahead.**
 16 A. To answer your question, it's my custom and
 17 practice to always --- to recommend seeing a therapist
 18 because gender affirmation can be very difficult for the
 19 patient, so it's in order to get them support that they
 20 need.
 21 **Q. And did you recommend that in your first visit**
 22 **with BPJ and Heather Jackson?**
 23 A. From my recollection, yes.
 24 **Q. And what was their response?**

1 A. I do not recall what their response was.
 2 **Q. Did you suggest any names?**
 3 A. That I don't know.
 4 **Q. Do you typically give your patients names of**
 5 **therapists?**
 6 A. Yeah, my --- yes, my custom and practice is I
 7 actually consult our behavioral health team and then
 8 they speak with our patients to help find a therapist if
 9 they need one.
 10 **Q. Next is Exhibit 11B. I'm sorry, I need to go**
 11 **back to 11A for a moment. So under physical exam, do**
 12 **you see that?**
 13 A. Yes.
 14 **Q. It shows a reference to BP and then also to BMI.**
 15 **What is BMI?**
 16 A. BMI is a measurement of the weight in ratio to
 17 someone's height.
 18 **Q. And why is that tracked?**
 19 A. Because it helps determine if --- a patient
 20 might be having difficulties with obesity if it's too
 21 high of a number.
 22 **Q. And BMI percentages are divided into categories**
 23 **for comparison to similar populations.**
 24 **Is that right?**

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 ATTORNEY JONES: Objection to form.
 6 BY ATTORNEY TRYON:
 7 **Q. [REDACTED]**
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 **Q. So in your opinion, should BPJ have been**
 14 **compared on BMI with [REDACTED]**
 15 [REDACTED]
 16 ATTORNEY JONES: Objection, scope.
 17 BY ATTORNEY TRYON:
 18 **Q. Go ahead.**
 19 A. There's a debate as to which ones to be used and
 20 our --- at least in my practice, if this is something
 21 pertinent, I will try to do both boys and girls and make
 22 a comparison.
 23 **Q. So you think for BPJ you should track BPJ on**
 24 **both boy's and girl's charts?**

1 A. Yes.
 2 **Q. Is it important to compare people to the correct**
 3 **grouping?**
 4 ATTORNEY BLOCK: Objection to form.
 5 ATTORNEY TRYON: Let me rephrase.
 6 BY ATTORNEY TRYON:
 7 **Q. Go ahead.**
 8 A. No, you can rephrase the question, please.
 9 **Q. Why are they divided into categories to compare**
 10 **for comparison to similar populations?**
 11 A. It helps create a normalized data to help
 12 pediatricians in general to figure out if someone is
 13 outside the typical range.
 14 **Q. And they're dividing it between boys and girls.**
 15 **Right?**
 16 A. Yes.
 17 **Q. And this one shows that BPJ was in the [REDACTED]**
 18 [REDACTED]
 19 **Right?**
 20 A. Yes.
 21 **Q. [REDACTED]**
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]

1 ATTORNEY JONES: Objection, scope.
 2 BY ATTORNEY TRYON:
 3 **Q. Is that right?**
 4 A. That's what I would do.
 5 **Q. Well, this is your form. Can't you modify it to**
 6 **do that?**
 7 ATTORNEY JONES: Objection, scope, asked
 8 and answered.
 9 BY ATTORNEY TRYON:
 10 **Q. Go ahead. You can answer.**
 11 ATTORNEY JONES: I don't want to give a
 12 speaking objection.
 13 ATTORNEY TRYON: I'll give you a standing
 14 objection on this.
 15 THE WITNESS: Can you repeat the
 16 question?
 17 BY ATTORNEY TRYON:
 18 **Q. Well, let me back up. Maybe I misunderstood**
 19 **something. This form that you're --- that is being**
 20 **filled out here, is this a form that you created?**
 21 A. It's a template I created, yes.
 22 **Q. So on the template, are you able to add an**
 23 **additional category for BMI percentiles for girls as**
 24 **well as boys?**

1 A. No, I cannot.
 2 **Q. Why not?**
 3 A. Because that's not automatically populated based
 4 on the chart and what is listed as the legal sex of the
 5 child.
 6 **Q.** [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 **Q. Do you record that anywhere?**
 15 A. Usually I do.
 16 **Q. Where would you record that?**
 17 A. I would record that somewhere near the physical
 18 exam.
 19 **Q. On the system in the --- in the notes that you**
 20 **type in.**
 21 **Is that right?**
 22 A. To clarify, I would just type it in.
 23 **Q. And then when it was printed out, if you had**
 24 **done that, it would be in here.**

1 A. Yes.
 2 **Q. Then under clinical notes it says Quest came**
 3 **upstairs. Is Quest a person?**
 4 A. Quest is a laboratory service.
 5 **Q. It says Quest came upstairs and said they needed**
 6 **[REDACTED], since the patient is only**
 7 **nine. I entered the correct estradiol script. What is**
 8 **[REDACTED]?**
 9 A. [REDACTED] is the measurement of
 10 the female hormone, [REDACTED]. And especially for those
 11 who may not produce enough, that's the one that will
 12 pick up smaller levels.
 13 **Q. And then at the end of the sentence it has two**
 14 **superscript things. One says LM.1M. What does that**
 15 **mean?**
 16 A. Based on the attribution key, it basically said
 17 who wrote that note and how did they write that note.
 18 **Q. So the M says manual. Does that mean it's typed**
 19 **in manually?**
 20 A. Yes.
 21 **Q. So does that mean information to the left of**
 22 **that superscript is --- was entered manually?**
 23 A. Yes.
 24 **Q. Why was a script written for BPJ for [REDACTED]**

1 **Right?**
 2 A. Yes.
 3 **Q. Okay.**
 4 **And just so we're clear, I'm not trying to, you**
 5 **know, trick you or anything, but it's not in this chart**
 6 **for BPJ.**
 7 **Correct?**
 8 A. Yes.
 9 **Q. Okay.**
 10 **I'm now showing you Exhibit 37. Let me know**
 11 **when you can see that.**
 12 A. Yes.
 13 **Q. So this is one of the documents that we just**
 14 **received. So on page one it shows at the top chief**
 15 **complaint and then it says orders. What does that mean?**
 16 A. So the heading says telephone. So what it shows
 17 is basically the conversation that was done on the
 18 telephone. And in this case it would be the reason why
 19 they called.
 20 **Q. Okay.**
 21 **In the last exhibit that we looked at, Exhibit**
 22 **11A, it showed the encounter date of 3/16, which is the**
 23 **same date of this document.**
 24 **Right?**

1 [REDACTED]
 2 A. It was written because it was the part of the
 3 baseline labs if we were to start this patient on
 4 pubertal blockers.
 5 **Q. This particular document was also from the March**
 6 **2000 --- March 16, 2020, but this information was not in**
 7 **the other document that we had received from that same**
 8 **date. Can you explain to me why there's two separate**
 9 **systems? It appears it's two separate systems for**
 10 **visits on the same day. Is that how that works? I mean**
 11 **can you clear it up for me?**
 12 ATTORNEY JONES: Objection. Scope. You
 13 know, he's not an IT.
 14 ATTORNEY TRYON: I understand.
 15 BY ATTORNEY TRYON:
 16 **Q. I'm just trying to understand what information**
 17 **you have on this that can help me out.**
 18 A. That I would not know.
 19 **Q. But you are familiar with this document.**
 20 **Right?**
 21 A. Yes.
 22 **Q. Did you see this back in March of 2020?**
 23 A. Yes, it was sent to me.
 24 **Q. Electronically?**

1 ATTORNEY BLOCK: It's been about two
 2 hours since our last break. Is now a good time for
 3 another one?
 4 ATTORNEY TRYON: It works for me if
 5 people want to do that.
 6 ATTORNEY JONES: Do you want to take a
 7 break?
 8 THE WITNESS: Yes.
 9 ATTORNEY JONES And can also go off the
 10 record just about timing also, just so I can get an idea
 11 of, you know, how much time ---?
 12 ATTORNEY TRYON: So let's go off the
 13 record.
 14 VIDEOGRAPHER: Let me take us off then.
 15 Going off the record. The current time reads 1:33 p.m.
 16 OFF VIDEOTAPE
 17 ---
 18 (WHEREUPON, A SHORT BREAK WAS TAKEN.)
 19 ---
 20 ON VIDEOTAPE
 21 VIDEOGRAPHER:
 22 We're back on the record. The current
 23 time reads 1:44 p.m.
 24 BY ATTORNEY TRYON:

1 A. So in this case it gives us the baseline in
 2 terms of what their original levels are.
 3 **Q. I'm sorry, original levels of those two**
 4 **chemicals?**
 5 A. Yes.
 6 **Q. And then testosterone, is that a separate lab**
 7 **test?**
 8 A. Yes.
 9 **Q. And this document does not show those levels.**
 10 **Correct?**
 11 A. Correct.
 12 **Q. And the next word, estradiol, how do you**
 13 **pronounce that?**
 14 A. Estradiol.
 15 **Q. Estradiol. And that was also a test that was**
 16 **run?**
 17 A. Yes.
 18 **Q. [REDACTED]**
 19 [REDACTED]
 20 [REDACTED]
 21 **Q. So on the next page, where it says we discussed**
 22 **with B [REDACTED] and then it has that language, if I**
 23 **understand correctly, that is basically template**
 24 **language but you insert B [REDACTED] name.**

1 **Q. Okay.**
 2 **Exhibit 11, do you see that?**
 3 A. Yes.
 4 **Q. And this is from the encounter date of April 13,**
 5 **2020.**
 6 **Right?**
 7 A. Yes.
 8 **Q. And you've seen this document before?**
 9 A. Yes.
 10 **Q. It shows you at the top. Does that mean you are**
 11 **the author of this document?**
 12 A. Yes.
 13 **Q. And everything in here is correct as far as you**
 14 **can tell?**
 15 ATTORNEY JONES: Objection to form.
 16 THE WITNESS: I see no errors.
 17 BY ATTORNEY TRYON:
 18 **Q. Under it says review the labs with mom, F [REDACTED]**
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 **Q. And you had a lab done for that --- for those?**
 23 A. Yes.
 24 **Q. And what does that tell you?**

1 **Is that right?**
 2 A. Yes.
 3 **Q. But you recall that you discussed those things**
 4 **with BPJ and Heather Jackson?**
 5 A. Yes.
 6 **Q. So this is on April 13. I'm going to show you**
 7 **another document from April 13, 2020. Let me know when**
 8 **you see that.**
 9 A. I can see that.
 10 **Q. It is Exhibit 38?**
 11 A. Yes.
 12 **Q. Again, this is from the prior document, which**
 13 **was Exhibit 11B. We received that some time ago.**
 14 **Exhibit 38 we just received within the past week. It**
 15 **looks like --- are these --- and you may have already**
 16 **said you don't know, but are these from different**
 17 **systems or different parts of the same system, if you**
 18 **know?**
 19 A. That I --- that I do not know.
 20 **Q. You see at the top it says visit date,**
 21 **4/13/2020.**
 22 **Right?**
 23 A. Yes.
 24 **Q. And have you seen this document before?**

Page 134

1 A. No --- I clarify. I reviewed that document the
 2 night before but not in my electronic medical records.
 3 **Q. Okay.**
 4 **It says under progress notes, it has your name**
 5 **and it says you are the author. What were you the**
 6 **author of?**
 7 A. I was the author of the progress note that I
 8 wrote related to that visit on that date.
 9 **Q. What do you see in this document, because I'm**
 10 **not familiar with it, that you believe that you actually**
 11 **input it into the system?**
 12 A. Can you rephrase the question? I do not
 13 understand.
 14 **Q. Sure. There's a lot of information on here, a**
 15 **lot of writing. And I'm trying to understand what**
 16 **information you would have inputted into this that**
 17 **appears on this document.**
 18 ATTORNEY JONES: And can I interject real
 19 quick. It appears, you know, yesterday, last night was
 20 the first time we were made aware of these documents.
 21 And after looking at these documents going to, you know,
 22 we're using your Bates number WV 0031 and WV 0032 and
 23 then looking at the page number of both of them, it
 24 appears that a page is missing from the progress note.

Page 135

1 I do not believe that Doctor Montano can accurately, you
 2 know, answer this question based on this missing page.
 3 ATTORNEY TRYON: Yeah. I will represent
 4 to you, as far as I know, this is what we got. I don't
 5 know why that page is missing. I don't know if it was
 6 not copied correctly when it was sent to us. These are
 7 the documents that we received just two days ago. I'm
 8 not sure what the missing page is. But if we could just
 9 find out what Doctor Montano knows about these two
 10 particular pages, recognizing that there's a missing
 11 page that nobody knows what's there.
 12 THE WITNESS: So from I tell by looking
 13 through the information, it feels like it was a
 14 duplicate --- there are words and information that are
 15 duplicated from the progress note that I wrote on that
 16 same day.
 17 BY ATTORNEY TRYON:
 18 **Q. Okay.**
 19 **The reference to the [REDACTED]**
 20 **[REDACTED], is that something**
 21 **you would have inputted or someone else?**
 22 A. That would be something I would have ordered and
 23 then it would be reflected on that note.
 24 **Q. When you order something, how does that actually**

Page 136

1 **happen? Do you write a script on like one of the old**
 2 **fashion pads and give it to somebody or tell somebody**
 3 **and they inputted it into the system or do you actually**
 4 **input it into the system like this?**
 5 A. I electronically inputted it.
 6 **Q. Okay.**
 7 **Did you actually order it from the provider?**
 8 A. Can you clarify that question?
 9 **Q. Let me ask you a different question. Who's**
 10 **Samantha Richard?**
 11 A. She was a medical assistant that worked in our
 12 clinic at that time.
 13 **Q. Okay.**
 14 **So this [REDACTED] kit, is that something**
 15 **that would be stocked in the clinic or has to be ordered**
 16 **from the manufacturer or supplier?**
 17 A. It has to be ordered from the manufacturer.
 18 **Q. Do you know who actually ordered it from the**
 19 **manufacturer?**
 20 A. I did.
 21 **Q. You did?**
 22 A. Yes.
 23 **Q. So you actually --- do you do that**
 24 **electronically or do you make a phone call?**

Page 137

1 A. I do that electronically.
 2 **Q. Okay.**
 3 **Then next on the next page of this exhibit,**
 4 **which I recognize appears that there may be a missing**
 5 **page in between, it refers to --- under instructions it**
 6 **says we will first obtain a preauthorization of**
 7 **[REDACTED] Authorization from whom?**
 8 A. It would be authorization from the patient's
 9 insurance company.
 10 **Q. Next I'm showing you Exhibit 39. Let me know**
 11 **when you see that.**
 12 A. Yes.
 13 **Q. And this is for --- the note is dated 5/5/2020.**
 14 **Do you see that?**
 15 A. Yes.
 16 **Q. And have you seen this document before?**
 17 A. I've seen the contents of that document but not
 18 in that format.
 19 **Q. Fair enough. Everything in this document seems**
 20 **correct to you?**
 21 ATTORNEY JONES: Objection to form.
 22 BY ATTORNEY TRYON:
 23 **Q. I think you can --- anybody who has access to it**
 24 **can scroll through it on the screen, but I think you**

1 have a hard copy of it as well.
 2 Is that right?
 3 A. Yeah. Based on the interaction, I recall that
 4 happening and that is correct.
 5 Q. Who is Alexis Hammond?
 6 A. She's one of the nurses who works at our clinic.
 7 Q. Lauren Machi is also a nurse at the clinic.
 8 Is that right?
 9 A. Yes.
 10 Q. Do you remember a [REDACTED] being delivered?
 11 A. No, I did not physically saw it delivered.
 12 Q. Was it --- did you do --- well, strike that.
 13 On 6/15/2020 there was [REDACTED]
 14 with BPJ.
 15 Is that right?
 16 A. Yes.
 17 Q. And who performed that?
 18 A. I did.
 19 Q. Who else was present at that procedure?
 20 A. If I could see the procedure note it will help
 21 me remember if anyone else helped me during that
 22 procedure.
 23 Q. Okay.
 24 I'm showing you Exhibit 40. Is that the

1 Q. So [REDACTED],
 2 is it?
 3 A. Correct.
 4 Q. Did you insert a [REDACTED] insert?
 5 A. No.
 6 Q. It says she has been counseled concerning the
 7 risks, benefits and alternatives to [REDACTED] and she
 8 especially understands that her menstrual periods are
 9 expected to become irregular and unpredictable
 10 throughout the time she is using the [REDACTED] She has
 11 no contradictions to [REDACTED] Her questions have been
 12 answered. She has fully reviewed the FDA approved
 13 [REDACTED] consent brochure, has signed the consent form
 14 and wishes to proceed with the insertion today. Did she
 15 sign a [REDACTED] consent brochure consent form?
 16 A. No.
 17 Q. But this says that she --- that BPJ did?
 18 ATTORNEY BLOCK: David, can you change
 19 the view of the document so the page you're reading from
 20 is up on the screen?
 21 ATTORNEY TRYON: I'm sorry. I thought
 22 everyone could see this, could go through it. So it
 23 goes from page one onto page two.
 24 BY ATTORNEY TRYON:

1 procedure note that you're referring to? This is the
 2 only information that I've received for any visit on
 3 6/15/2020.
 4 A. That was part of the note, but I do have a hard
 5 copy here.
 6 Q. Yeah. It's several pages long.
 7 A. Yes.
 8 Q. It goes --- Bates stamp is WV 22 through WV 26.
 9 A. Yes, I can see that.
 10 Q. Okay.
 11 Is this the note you were referring to?
 12 A. Yes.
 13 Q. And have you seen the information in this
 14 document before?
 15 A. Yes.
 16 Q. And it shows under procedures that you're the
 17 author of this.
 18 Is that right?
 19 A. Yes.
 20 Q. And then down at the bottom it says P [REDACTED],
 21 [REDACTED] k, P [REDACTED] -J [REDACTED] d [REDACTED]
 22 [REDACTED]
 23 Do you see that?
 24 A. Yes.

1 Q. So this says that BPJ signed the consent form
 2 for the [REDACTED] insert. Are you now saying this note
 3 is wrong?
 4 A. The note is a template I was forced to use and
 5 that's why I put in parentheses [REDACTED] because it's
 6 a very similar procedure. But the way the hospital set
 7 this up that was the only template I used and would not
 8 let me finish the note or bill the patient's insurance
 9 if I do not use that note. So this was the best next
 10 option for me to use.
 11 Q. How many [REDACTED] insertions do you do a year?
 12 ATTORNEY JONES: Objection.
 13 THE WITNESS: That number I do not keep
 14 track of.
 15 BY ATTORNEY TRYON:
 16 Q. Well, it's many many.
 17 Right?
 18 A. It's something I do ---.
 19 Q. I'm sorry, what?
 20 A. I do it commonly, yes.
 21 Q. And yet you don't have a template that allows
 22 you to say you inserted a [REDACTED] ?
 23 ATTORNEY JONES: Objection. Don't answer
 24 that. We're not here to talk about any type of --- you

1 know, his diagnosis is what it is and ---.
2 ATTORNEY TRYON: No, this is --- this is
3 very relevant.

4 ATTORNEY JONES: Well, I'm --- I'm
5 instructing him not to answer. He spoke to you about
6 this and he spoke to you why he inserted --- or why he
7 inserted the words the way he did. If there's any other
8 concern then, you know, that's to be taken up for --- at
9 another time, another thing. But this case is about BPJ
10 and essentially her inability to play sports.

11 ATTORNEY TRYON: This case is about BPJ
12 and BPJ's diagnosis and treatment, and I'm entitled to
13 ask these questions and I'm not going to debate it.

14 ATTORNEY JONES: Okay.
15 I'm instructing him not to answer. I
16 think this is going beyond the scope. He explained.
17 It's asked and answered. Keep moving.

18 BY ATTORNEY TRYON:

19 **Q. The next statement says procedure, [REDACTED]**
20 **insert. Do you see that?**

21 ATTORNEY JONES: Objection, form. It
22 also says [REDACTED] insertion.

23 BY ATTORNEY TRYON:

24 **Q. Do you see where I'm reading?**

1 **you see that?**

2 A. Yes.

3 **Q. It says office supplied device and then it says**
4 **yes. Did the office supply that device?**

5 A. We had the device, correct.

6 **Q. And it shows the lot number.**
7 **Right?**

8 A. Yes.

9 **Q. What's that lot number?**

10 A. It's the identification of the [REDACTED] to know
11 which lot it came from.

12 **Q. I'm sorry?**

13 A. Continue. I apologize.

14 **Q. So is it the actual lot number for the item**
15 **which was inserted?**

16 A. Yes.

17 **Q. Down further under procedure details it says**
18 **blank, presumably the child's name, was given post**
19 **insertion instructions. She understands that [REDACTED]**
20 **must be removed at the end of three years and may be**
21 **removed sooner if she wishes. And it has your initials**
22 **and the superscript. Did you enter that data?**

23 A. That was part of the template, yes.

24 **Q. No, it's not part of the data --- the template I**

1 A. Yes.

2 **Q. Do you have the ability to modify the language**
3 **underneath where it says clinical notes?**

4 A. No, because it's a template.

5 **Q. And you cannot modify that template?**

6 A. Correct.

7 **Q. And you cannot insert your own clinical notes?**

8 A. I could ---.

9 ATTORNEY JONES: Objection to form.

10 THE WITNESS: Under procedure comments I
11 clarified that this is specifically for [REDACTED]
12 procedure.

13 BY ATTORNEY TRYON:

14 **Q. Can you show me what you're referring to?**

15 A. In the very bottom, where it says procedure
16 comments, I said that I specifically reviewed the risk
17 for [REDACTED] procedure and including those risks and
18 that they both understand and consented.

19 **Q. Where is that consent form?**

20 A. It's in the chart.

21 ATTORNEY TRYON: We would request that
22 consent form because we do not have it.

23 BY ATTORNEY TRYON:

24 **Q. Where it says [REDACTED] insert information, do**

1 **don't think because if you look down at the bottom under**
2 **attribution key, it says M for manual.**

3 **Right?**

4 A. Yes.

5 **Q. So it says GM.1M, so that means it was manually**
6 **inputted.**

7 **Right?**

8 A. Yes.

9 **Q. And it actually shows the exact date and time**
10 **when you inputted that information.**

11 **Right?**

12 A. Yes.

13 **Q. The [REDACTED] insert lasts for three years.**

14 **Right?**

15 A. Yes.

16 **Q. But the [REDACTED] insert does not.**

17 **Correct?**

18 A. Yes.

19 **Q. There's nothing on this entire form that has the**
20 **word [REDACTED] does it?**

21 A. I used the word [REDACTED] because that's the
22 generic name.

23 **Q. Let's go to the next page. Up at the top, on**
24 **the right, where it says status, do you see that?**

1 A. Yes.

2 **Q. It says deleted by Montano, Gerald, D.O., at**

3 **6/15/2020, 9:33 a.m. What does that mean? What is that**

4 **referring to?**

5 A. That means that I deleted the note.

6 **Q. What note did you delete?**

7 A. The procedure note that you see in the exhibit

8 on that current page.

9 **Q. What did the note say that you deleted?**

10 A. The whole note was deleted.

11 **Q. Does the information --- are you saying the**

12 **document that I have before me was deleted?**

13 ATTORNEY JONES: Objection to form.

14 THE WITNESS: So this page, specific

15 page, was the one I deleted, not the page before.

16 BY ATTORNEY TRYON:

17 **Q. Why did you delete this page?**

18 A. Same reason why I have difficulty with the last

19 page, because it had incorrect information and I did not

20 want to represent that.

21 **Q. Where are you able to --- but it says deleted,**

22 **but it's still here.**

23 **Right?**

24 A. Yes.

1 **Right?**

2 A. As I can see, yes.

3 **Q. Is that you?**

4 A. It looks like I did.

5 **Q. It says desires [REDACTED] insertion. You could**

6 **have typed in right there desires [REDACTED] insertion, but**

7 **you didn't.**

8 **Right?**

9 ATTORNEY JONES: Objection. Again, if

10 you look at the top it says deleted by Gerald Montano.

11 He again explained why this was deleted.

12 BY ATTORNEY TRYON:

13 **Q. You could have typed that in if you wanted to.**

14 **Right?**

15 COURT REPORTER: Was there an answer? I

16 didn't hear. What was the answer?

17 ATTORNEY JONES: I told him not to answer

18 that and I said next question.

19 COURT REPORTER: Did he answer it?

20 ATTORNEY TRYON: So you told him not to

21 answer that?

22 ATTORNEY JONES: I did. He explained to

23 you already why he deleted it. If you look at this note

24 it says deleted by Gerald Montano, and he told you why

1 **Q. So why does it say deleted if it's still here?**

2 **I'm confused.**

3 ATTORNEY JONES: Objection to form.

4 THE WITNESS: That I cannot explain.

5 BY ATTORNEY TRYON:

6 **Q. Who else was present at this appointment?**

7 A. Based on the note and my recollection, it was

8 me, BPJ and mom.

9 **Q. I'm sorry. I couldn't hear that.**

10 A. Based on the note and my recollection, it would

11 be BPJ, me, and her mom.

12 **Q. So where it says names of all present during the**

13 **procedure there's three asterisks below that. What are**

14 **those three asterisks for?**

15 A. That --- that means that it's a blank template,

16 fill in the blank. The reason ---.

17 **Q. I couldn't hear that. Sorry?**

18 A. Those three asterisks is a fill in --- is a

19 --- is a place where you can fill in that information.

20 However, that was left blank because I deleted that

21 note.

22 **Q. So there is information below which specifically**

23 **says blank Pepper-Jackson. So somebody typed in BPJ's**

24 **name.**

1 he specifically deleted that portion of the note. I can

2 have the court reporter read it back to you.

3 ATTORNEY TRYON: Well, let's go back to

4 the prior page. Go back to page one. Oops, I'm on the

5 wrong document.

6 ATTORNEY BLOCK: Objection. Just, David,

7 for the scope of this deposition, this is about his

8 treatment of BPJ, not about their recordkeeping

9 practices.

10 ATTORNEY TRYON: Jacob, can you bring up

11 Exhibit 40 for me again, please? Somehow I've lost it.

12 VIDEOGRAPHER: Yes.

13 ATTORNEY JONES: I join on that last

14 objection.

15 VIDEOGRAPHER: Mr. Tryon, I need you to

16 stop sharing the one that you have. If you could hit

17 the stop button. Thank you. This is what I have for

18 Exhibit 40. Do you see that?

19 ATTORNEY TRYON: Yes.

20 BY ATTORNEY TRYON:

21 **Q. So at the bottom there you did not delete this**

22 **page or the following page.**

23 **Is that right?**

24 A. Yes.

1 Q. And you did enter that information, B [REDACTED]
2 Pepper-Jackson desires, as indicated by that superscript
3 there.

4 Right?

5 A. Can you refer ---?

6 Q. Where it says --- at the very bottom there is a
7 blank, a redaction, and it says Pepper --- well, B [REDACTED]
8 Pepper-Jackson --- well, the deletion, desires. You
9 inputted those words.

10 Right?

11 A. The [REDACTED] part, yes.

12 Q. So you were able to insert [REDACTED] insertion?

13 A. Yes, they allow for comments.

14 ATTORNEY JONES: With, all due respect,
15 if you look at the blank Pepper-Jackson it's GM.IT. GM,
16 if you go to the attribution key on WV 0024 is Montano,
17 Gerald, and then IT is template. So if we're doing what
18 you said before and you're going to the left, the blank
19 Pepper-Jackson is part of the template.

20 ATTORNEY TRYON: Okay.

21 BY ATTORNEY TRYON:

22 Q. Help me out here. So blank Pepper-Jackson is in
23 the template, Mr. Montano?

24 A. Yes, that's part of the procedure note. It

1 A. No.

2 Q. How about a timeline for [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 Q. Then it said below recently her dad said [REDACTED]
6 which caused distress. What do you remember about that
7 conversation?

8 A. Exactly what it says there.

9 Q. So you just remember that --- who told you that
10 dad said [REDACTED], Heather or BPJ?

11 A. Heather.

12 Q. And that caused distress to whom?

13 A. That caused distress to B [REDACTED]

14 Q. And did B [REDACTED] explain that?

15 A. As you can see she wasn't present in that visit.
16 I was speaking solely to mom. So this is from mom's
17 point of view.

18 Q. Yeah, thank you for pointing that out. Lastly,
19 it says she has not [REDACTED]. Why would that be put
20 in there?

21 ATTORNEY JONES: Real quick, I'm just
22 going to object to the --- to the form of the question.
23 You're asking him to interpret a note of his resident.
24 I mean, as a supervising physician, you know, there are

1 automatically generates the name.

2 ATTORNEY JONES: And again, I just object
3 to this line of questioning. I mean ---.

4 ATTORNEY TRYON: I'm going to move on to
5 the next exhibit.

6 ATTORNEY JONES: Thank you.

7 BY ATTORNEY TRYON:

8 Q. So sharing with you Exhibit 42. Let me know
9 when you can see that.

10 A. Yes, I see that.

11 Q. And I'm going to go to the third page of that
12 document. And if we look down you see the paragraph
13 that starts B [REDACTED] Oh, there's a couple places. Under
14 history of present illness, the second paragraph, do you
15 see that?

16 A. Yes.

17 Q. And it says she wants to know when she can start
18 hormone therapy. [REDACTED]

19 [REDACTED] And so do you have an idea --- did you
20 already decide when BPJ can start hormone therapy at
21 that point?

22 A. No.

23 Q. Did you ever discuss a timeframe for that with
24 BPJ and Heather Jackson?

1 some things, but you know some --- I'm just going to
2 object to the form of the question.

3 BY ATTORNEY TRYON:

4 Q. Well, let's back up. Did you review the
5 information in this form?

6 A. Yes.

7 Q. And it says she had [REDACTED]. Did you
8 review that?

9 A. Yes.

10 Q. And why did you let that stay in there?

11 A. I do not recall.

12 Q. I mean, it's impossible for [REDACTED]
13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 Q. I'll show you Exhibit 43. Have you seen this
17 document before --- oops, I need to start. Let me know
18 when you see that.

19 A. Yes.

20 Q. This is from May 17, 2021. And then the second
21 page is from 5/17/2021. And this shows under telephone
22 encounter that your name and author is your name. And
23 then it says, hi, scheduling team, can you please reach
24 out to this family to schedule a follow-up appointment

1 with me.
 2 Do you see that?
 3 A. Yes.
 4 Q. Why did you want to have a follow-up
 5 appointment?
 6 A. It's routine practice to have the patient return
 7 every three months once they're put on the puberty
 8 blocker to make sure everything is going all right.
 9 Q. And did you have that follow-up appointment?
 10 A. It did not happen.
 11 Q. Do you know why?
 12 A. That I don't know why. They didn't make that
 13 appointment.
 14 Q. Did you have --- forgive me if I don't get the
 15 terminology correct. Did you recommend or prescribe any
 16 further treatment for BPJ other than the [REDACTED]
 17 A. No.
 18 Q. I'm showing you Exhibit 45. First page is just
 19 a confidential disclosure statement that came with these
 20 documents when we received them. And then the next
 21 three pages are for --- well, I don't know how to
 22 characterize this, but they're dated 5 --- excuse me. I
 23 can't even --- it looks like the active coverage is as
 24 of 12/31/2021, so it looks like that's the date of this

1 Q. And I recognize there's some information that
 2 does not appear here and I'm just asking you to be clear
 3 about the information that does appear here. So does
 4 that --- your answer remain the same?
 5 A. Yes.
 6 Q. Let me ask you one question under problem list,
 7 where it says [REDACTED].
 8 Do you see that?
 9 A. Yes.
 10 ATTORNEY JONES: On WV 000 ---.
 11 BY ATTORNEY TRYON:
 12 Q. Is this [REDACTED] and the answer is no?
 13 A. Yes, I see that.
 14 Q. So can you explain that to me? Does that mean
 15 that gender dysphoria is not a chronic condition or does
 16 it mean something else? I don't understand it.
 17 A. If I understand this completely, when you put in
 18 the diagnosis in the chart, sometimes that would be
 19 specific to that date only. So it doesn't list that as
 20 chronic. That date is only specific to that date from
 21 my understanding of how the electronic medical records
 22 is listed.
 23 ATTORNEY JONES: Again, objection to this
 24 line of questioning. I'm not exactly sure if Doctor

1 document but the problem listed --- yeah, so 12/31/2021.
 2 Do you recognize this document?
 3 A. It looks like a duplicate of the previous
 4 document.
 5 Q. Can you look through here and tell me if
 6 everything in here looks to be correct?
 7 ATTORNEY JONES: Objection to form. What
 8 --- just this page only?
 9 ATTORNEY TRYON: No, all three pages. I
 10 guess a total of --- after the first page, disclosure
 11 statement, the rest of the document.
 12 ATTORNEY JONES: So just so we're clear,
 13 not going by the Bates --- well, we can go by the Bates.
 14 It would be WV 002 through WV ---.
 15 ATTORNEY TRYON: 0004.
 16 ATTORNEY BLOCK: I'm just going to make
 17 an objection to form. A lot of this information is
 18 blank.
 19 THE WITNESS: From what I'm reading in
 20 the information here, this is all correct.
 21 BY ATTORNEY TRYON:
 22 Q. I didn't hear you.
 23 A. From what I'm reading in the information here in
 24 the exhibit they are correct.

1 Montano was even the person filling out this part of the
 2 form. So you're essentially asking him to interpret
 3 what someone else put.
 4 VIDEOGRAPHER: Mr. Tryon, you appear to
 5 be muted. Mr. Tryon? Can everybody hear me?
 6 THE WITNESS: I can hear you.
 7 VIDEOGRAPHER: Okay.
 8 I'm going to send him a message. Give me
 9 one second.
 10 ATTORNEY HARTNETT: This is Kathleen
 11 Hartnett for the Plaintiff. Just for the record, the
 12 volume is going in and out for a lot of people listening
 13 to it. So whatever is happening to him may be what's
 14 been happening to us sporadically throughout the
 15 deposition.
 16 VIDEOGRAPHER: Okay.
 17 ATTORNEY TRYON: I got booted. I am
 18 back. Can you guys hear me?
 19 VIDEOGRAPHER: Yes. I just sent you a
 20 chat message.
 21 ATTORNEY TRYON: Okay.
 22 VIDEOGRAPHER: Okay.
 23 BY ATTORNEY TRYON:
 24 Q. I'm sorry. So my question that I was trying to

1 ask, Doctor Montano, have you had any conversations ---
2 communications with BPJ or Heather Jackson since May 17,
3 2021?

4 A. Yes ---.

5 Q. I'm sorry?

6 A. Yes.

7 Q. And when was that?

8 A. From my recollection, it would be sometime in
9 December of 2021.

10 Q. And what was that communication?

11 A. The communication, as I recall, was that the
12 lawyers for West Virginia wanted to talk to me regarding
13 her care, and I basically told them that they would need
14 to sign a release of information for them to speak with
15 those lawyers.

16 Q. And that was a conversation with --- with
17 Heather Jackson or BPJ?

18 A. With Heather Jackson.

19 Q. And anything else discussed during that
20 conversation?

21 A. No.

22 Q. Any other conversations other than that since
23 May 2021?

24 A. No.

1 else has any questions, but ---.

2 ATTORNEY GREEN: This is Roberta Green,
3 WVSSAC. I have no questions.

4 ATTORNEY BLOCK: This is Josh Block for
5 Plaintiff. We don't have any questions, but we want to
6 make sure the transcript is marked confidential.

7 ATTORNEY CROPP: This is Jeff Cropp for
8 Harrison County Board of Education, Dora Stutler. We
9 don't have any questions.

10 ATTORNEY MORGAN: This is Kelly Morgan on
11 behalf of the West Virginia Board of Education and
12 Superintendent Burch. I don't have any questions.

13 ATTORNEY TRYON: Tim, you're muted.

14 ATTORNEY DUCAR: Thank you. Timothy
15 Ducar on behalf of the intervenor. We have no
16 questions.

17 ATTORNEY TRYON: I think that concludes
18 today's deposition, Mr. Montano. You have the right to
19 review this --- the transcript. I'm sure your client
20 --- your attorney will instruct you accordingly, whether
21 or not ---

22 ATTORNEY JONES: We'll read.

23 ATTORNEY TRYON: --- to read or waive.

24 ATTORNEY JONES: We will read.

1 ATTORNEY TRYON: Well, give me just a
2 minute. I think I'm about finished here. Let me take a
3 quick break and I'll be back in just a moment.

4 VIDEOGRAPHER: Going off the record.
5 Current time is 2:34 p.m.

6 OFF VIDEOTAPE

7 ---

8 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

9 ---

10 ATTORNEY TRYON: No further questions.
11 ON VIDEOTAPE

12 VIDEOGRAPHER: We're back on the record,
13 2:37.

14 ATTORNEY TRYON: Okay.

15 This is David Tryon. I'm back, and I
16 have no further questions. Doctor Montano, thank you
17 for your time. I appreciate it. And we would request a
18 copy of that consent form that was discussed earlier.
19 And my question is simply do I need to do anything
20 formal to request that or will this suffice, Mr. Jones?

21 ATTORNEY JONES: I would say just send me
22 an e-mail just so I have something hard copy. And then
23 I'll make the request and get that for you.

24 ATTORNEY TRYON: Great. I doubt anybody

1 VIDEOGRAPHER: That concludes the
2 deposition.

3 ATTORNEY TRYON: I guess I didn't --- we
4 would like a copy of the transcript and that only, and
5 we would like an etranscript as well.

6 ATTORNEY DUCAR: Yes, the intervenor
7 would like a copy of the transcript as well. No video,
8 please.

9 VIDEOGRAPHER: That concludes the
10 deposition. The current time is 2:40 p.m.

11 *****

12 CONFIDENTIAL VIDEOTAPED DEPOSITION CONCLUDED

13 AT 2:40 P.M.

14 *****

Exhibit 21

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)
6 mother, HEATHER JACKSON,)
7 Plaintiff,)

8 vs.) Case No.

9 WEST VIRGINIA STATE BOARD OF) 2:21-cv-00316
10 EDUCATION, HARRISON COUNTY)
11 BOARD OF EDUCATION, WEST)
12 VIRGINIA SECONDARY SCHOOL)
13 ACTIVITIES COMMISSION, W.)
14 CLAYTON BURCH in his official)
15 capacity as State)
16 Superintendent, DORA STUTLER,)
17 in her official capacity as)
18 Harrison County)
19 Superintendent, and THE STATE)
20 OF WEST VIRGINIA,)

21 Defendants,)
22 LAINEY ARMISTEAD,)
23 Defendant-Intervenor.)
24 -----

25 REMOTE VIDEOTAPED DEPOSITION OF
LAINEY ARMISTEAD
Friday, March 11, 2022
Volume I

Reported by:
ALEXIS KAGAY, CSR No. 13795
Job No. 5082427
PAGES 1 - 175

1
2
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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,)
 vs.) Case No.
 WEST VIRGINIA STATE BOARD OF) 2:21-cv-00316
 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,)
 LAINEY ARMISTEAD,)
 Defendant-Intervenor.)

Videotaped deposition of LAINEY ARMISTEAD,
Volume I, taken on behalf of Plaintiff, with all
participants appearing remotely, beginning at
12:03 p.m. and ending at 5:03 p.m. on Friday,
March 11, 2022, before ALEXIS KAGAY, Certified
Shorthand Reporter No. 13795.

1 APPEARANCES (via Zoom Videoconference):

2

3 For the Intervenor:

4 ALLIANCE DEFENDING FREEDOM

5 BY: CATIE KELLEY

6 BY: JONATHAN SCRUGGS

7 BY: CHRISTIANA HOLCOMB

8 BY: RACHEL CSUTOROS

9 BY: HAL FRAMPTON

10 BY: TIMOTHY DUCAR

11 Attorneys at Law

12 20116 Ashbrook Place

13 Suite 250

14 Ashburn, Virginia 20147

15 CKelly@adflegal.org

16 JScruggs@adflegal.org

17 CHolcomb@adflegal.org

18 RCsutoros@adflegal.org

19 TDucar@adflegal.org

20

21

22

23

24

25

1 APPEARANCES (Continued):

2

3 For defendants Harrison County Board of Education and
4 Superintendent Dora Stutler:

5 STEPTOE & JOHNSON PLLC

6 BY: SUSAN L. DENIKER

7 Attorney at Law

8 400 White Oaks Boulevard

9 Bridgeport, West Virginia 26330

10 304.933.8154

11 Susan.Deniker@Steptoe-Johnson.com

12

13

14 For the State of West Virginia:

15 WEST VIRGINIA ATTORNEY GENERAL

16 BY: DAVID TRYON

17 Attorney at Law

18 112 California Avenue

19 Charleston West Virginia 25305-0220

20 681.313.4570

21 David.C.Tryon@wvago.gov

22

23

24

25

1 APPEARANCES (Continued):

2

3 For West Virginia Secondary School Activities

4 Commission:

5 SHUMAN MCCUSKEY & SLICER

6 BY: ROBERTA GREEN

7 Attorney at Law

8 1411 Virginia Street E

9 Suite 200

10 Charleston, West Virginia 25301-3088

11 RGreen@Shumanlaw.com

12

13 For West Virginia Board of Education and Superintendent

14 Burch, Heather Hutchens as general counsel for the

15 State Department of Education:

16 BAILEY & WYANT, PLLC

17 BY: KELLY MORGAN

18 Attorney at Law

19 500 Virginia Street

20 Suite 600

21 Charleston, West Virginia 25301

22 KMorgan@Baileywyant.com

23

24

25

1 APPEARANCES (Continued):

2

3 For Plaintiff:

4 LAMBDA LEGAL

5 BY: SRUTI SWAMINATHAN

6 Attorney at Law

7 120 Wall Street

8 Floor 19

9 New York, New York 10005-3919

10 SSwaminathan@lambdalegal.org

11

12

13

14

15

16

17

18

19

20

21

22

23

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25

1 APPEARANCES (Continued):

2

3 For The Plaintiff, B.P.J.:

4 COOLEY

5 BY: KATHLEEN HARTNETT

6 BY: ELIZABETH REINHARDT

7 BY: KATELYN KANG

8 BY: ANDREW BARR

9 BY: MATT MARTINEZ

10 BY: JULIE VEROFF

11 Attorneys at Law

12 500 Boylston Street

13 14th Floor

14 Boston, Massachusetts 02116-3740

15 617.937.2305

16 Khartnett@cooley.com

17 EReinhardt@cooley.com

18 KKang@Cooley.com

19 ABarr@Cooley.com

20 MMartinez@Cooley.com

21 JVeroff@cooley.com

22

23

24

25

1 APPEARANCES (Continued):

2

3 For the Plaintiff:

4 AMERICAN CIVIL LIBERTIES UNION

5 BY: JOSHUA A. BLOCK

6 125 Broad Street

7 18th Floor

8 New York, New York 10004

9 JBlock@aclu.org

10 212.549.2500

11

12 Also Present:

13 MITCH REISBORD - VERITEXT CONCIERGE

14

15 Videographer:

16 DAVE HALVORSON

17

18

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INDEX

WITNESS EXAMINATION

LAINY ARMISTEAD

Volume I

BY MR. BARR 14

EXHIBITS

NUMBER DESCRIPTION PAGE

Exhibit 43 West Virginia State University 122
Board of Governors Document, BOG
#14 Policy, Title: Unlawful
Discrimination and Harassment,
Sexual Harassment, Grievance
Procedures, Child Abuse and
Neglect Reporting and
Relationships

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PREVIOUSLY MARKED EXHIBITS

NUMBER	PAGE
Exhibit 34	78
Exhibit 39	144
Exhibit 40	149

1
2
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Friday, March 11, 2022

12:03 p.m.

THE VIDEOGRAPHER: Okay. Good afternoon.

We are on the record at 12:04 p.m. on
March 11th, 2022. This is media unit 1 in the 12:03:44
video-recorded deposition of Lainey Armistead in the
matter of B.P.J. by Heather Jackson versus
West Virginia State Board of Education, et al.

It's filed in the U.S. District Court for the
Southern District of West Virginia in the Charleston 12:04:04
Division. The case number is 2:21-cv-00316.

This deposition is being held virtually. My
name is Dave Halvorson. I'm the videographer here from
Veritext. And I'm here with the court reporter,
Alexis Kagay, also from Veritext. 12:04:25

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

MR. BARR: Yes. Good afternoon.

This is Andrew Barr from the law firm
Cooley, LLP. I'll have the rest of my co-counsel 12:04:37
introduce themselves before defense and intervenor
counsel.

THE VIDEOGRAPHER: Okay.

MS. HARTNETT: Hi. This is Kathleen Hartnett
from Cooley for the plaintiffs. 12:04:48

1 MS. VEROFF: This is Julie --

2 MS. KANG: This is --

3 MS. VEROFF: Oh, sorry, Katelyn, go ahead.

4 MS. KANG: Hi. This is Katelyn Kang from
5 Cooley on behalf of the plaintiff.

6 MS. VEROFF: This is Julie Veroff from Cooley,
7 LLP, on behalf of the plaintiff.

8 MS. REINHARDT: This is Elizabeth Reinhardt
9 with Cooley, LLP, for the plaintiff.

10 MS. SWAMINATHAN: This is Sruti --

11 MR. BLOCK: Josh --

12 MS. SWAMINATHAN: -- Swaminathan -- sorry,
13 Josh, go ahead.

14 MR. BLOCK: No, no, you go ahead.

15 MS. SWAMINATHAN: This is Sruti Swaminathan
16 from Lambda Legal on behalf of the plaintiff.

17 MR. BLOCK: Josh Block from the ACLU on behalf
18 of plaintiff.

19 MS. HOLCOMB: If that's everyone from
20 Plaintiff, this is Christiana Holcomb with Alliance 12:05:29
21 Defending Freedom on behalf of the intervenor,
22 Lainey Armistead.

23 And with me, we also have my colleague
24 Hal Frampton, Jonathan Scruggs, Catie Kelley,
25 Rachel Csutoros and Timothy Ducar. 12:05:42

1 MS. DENIKER: Good afternoon.

2 This is Susan Deniker, counsel for defendants
3 Harrison County Board of Education and Superintendent
4 Dora Stutler.

5 MS. MORGAN: Kelly Morgan on behalf of the 12:05:56
6 West Virginia Board of Education and
7 Superintendent Burch.

8 MS. ROGERS: This is Shannon Rogers on behalf
9 of the West Virginia Secondary School Activities
10 Commission. And I believe Roberta Green is on Zoom on 12:06:07
11 behalf of the SSAC as well.

12 MS. GREEN: I am. Thank you.

13 MR. TRYON: This is David Tryon from the West
14 Virginia Attorney General's Office on behalf of the
15 State of West Virginia. 12:06:21

16 THE VIDEOGRAPHER: Is that everyone? Last
17 chance.

18 All right. Go ahead, let's swear in the
19 witness, please.

20 (Witness sworn.) 12:06:34

21 THE VIDEOGRAPHER: Please proceed.

22 MR. BARR: Before we get started, I just
23 wanted to memorialize for the record that the parties
24 have agreed that objections to form will preserve all
25 objections other than privilege and that there will be 12:06:58

1 no speaking objections on the record.

2 And, Attorney Holcomb, if you could confirm
3 that.

4 MS. HOLCOMB: I concur. Thank you.

5 MR. BARR: Would the rest of defense counsel 12:07:08
6 please also concur.

7 MS. DENIKER: This is Susan Deniker. I'm in
8 agreement with that.

9 MS. MORGAN: This is Kelly Morgan. I'm in
10 agreement. 12:07:22

11 MS. ROGERS: This is Shannon Rogers. I'm in
12 agreement.

13 MR. TRYON: That's fine.

14 MR. BARR: Okay. I believe that's all defense
15 counsel. 12:07:38

16
17 LAINEY ARMISTEAD,
18 having been administered an oath, was examined and
19 testified as follows:

20
21 EXAMINATION

22 BY MR. BARR:

23 Q Good afternoon. My name is Andrew Barr. I'm
24 with the law firm of Cooley, LLP. I'm located in
25 Denver. I use the pronouns of he and him, and I'm 12:07:40

1 representing the plaintiff B.P.J. in this case.

2 Would you please state your name and spell it
3 for the record.

4 A Lainey Armistead, L A-I-N-E-Y

5 A-R-M-I-S-T-E-A-D. 12:08:01

6 Q And which pronouns do you use?

7 A She/her.

8 Q Is it okay with you -- is it okay with you if
9 I refer to you as "Ms. Armistead" today?

10 A That's okay. 12:08:14

11 Q Am I pronouncing your name correctly?

12 A Yes.

13 Q So before we get started, I want to discuss a
14 few things about the process for today.

15 The oath you've taken is the same oath you 12:08:28
16 would take in a court of -- courtroom.

17 Do you understand that?

18 A Yes.

19 Q That means you must testify truthfully and not
20 leave out any important facts. 12:08:36

21 Is there any reason you cannot testify
22 truthfully today?

23 A No.

24 Q Okay. Please give verbal answers to my

25 questions. Nonverbal answers, such as nodding or 12:08:45

1 shaking your head, can't be reflected in the
2 transcript; and, therefore, I need you to answer
3 verbally.

4 Do you understand?

5 A Yes. 12:08:54

6 Q If you don't understand a question that I ask,
7 I promise you it isn't a trick question; I probably
8 just worded it poorly. So just ask me to ask again,
9 okay?

10 A Okay. 12:09:07

11 Q And what that does mean is if you do not ask
12 me to reword it, I'll assume you understood the
13 question, okay?

14 A Okay.

15 Q At no point today am I asking about the 12:09:17
16 substance of communications that you've had with your
17 attorneys. So if I ask a question and you think that's
18 what I'm asking you, please do not give me any
19 information you have, based on conversation with your
20 attorney, okay? 12:09:32

21 A Got it.

22 Q We're obviously on the -- the Zoom platform,
23 which makes it very important we don't speak over each
24 other. So let me finish my question, and I will let
25 you finish your answer. Understood? 12:09:47

1 A Got it.

2 Q And then we're here today talking about
3 House Bill 3293 that's been codified at West Virginia
4 Code 18-2-25d. I'm going to refer to that just as
5 "H.B. 3923" -- or "3293." Is that okay? 12:10:09

6 A Yes.

7 Q I'm also certainly going to mess those numbers
8 up and perhaps call it 3923 or something else.

9 Do you understand that if I talk about
10 House Bill 3293 or a similar set of numbers, I'm 12:10:23
11 actually talking about House Bill 3293?

12 A Yes.

13 Q Okay. There's a couple of words we're going
14 to be using today that I just want to explain to you
15 what I mean by those words so that we have -- we all 12:10:31
16 have a similar understanding about what I'm asking.

17 When I say the word "cisgender," I mean
18 someone whose gender identity matches the sex they were
19 assigned at birth.

20 Do you understand what that means? 12:10:52

21 MS. HOLCOMB: Objection to form.

22 MR. TRYON: Objection.

23 MR. BARR: And, defense counsel, I'm willing
24 to give you a standing objection to terminology
25 throughout this because I feel like we've established, 12:10:58

1 over the past couple of weeks, we're just going to have
2 a fundamental disagreement on terminology, and I don't
3 think there's a reason you should have to object every
4 single time I say the word "transgender" or
5 "cisgender." 12:11:11

6 MR. TRYON: I'm objecting -- I'm objecting to
7 your definitional actions -- instructions. Excuse me.

8 MR. BARR: Understood.

9 BY MR. BARR:

10 Q Ms. Armistead, do you know what I mean when I 12:11:23
11 say the word "cisgender"?

12 A I understand what you are referring to.

13 Q Okay. Just to be clear, what am I referring
14 to?

15 A You are talking about a biological male. 12:11:36

16 Q Well, let's -- let's make sure we're all
17 talking about the same thing here.

18 When I say "cisgender," I'm saying someone
19 whose gender identity matches the sex they were
20 assigned at birth. 12:11:52

21 Is that something that you are able to
22 understand moving forward in this deposition?

23 MR. TRYON: Objection.

24 MS. HOLCOMB: Object to form.

25 THE WITNESS: I understand what you are 12:12:04

1 referring to.

2 MR. BARR: Okay. Hold on. My lights just
3 turned off for some reason.

4 I apologize. In making an effort to be
5 environmentally friendly, my lights turn off every 47 12:12:29
6 minutes, so I'll try to avoid that.

7 BY MR. BARR:

8 Q Same thing, Ms. Armistead, when I say
9 "transgender," what I'm referring to is someone whose
10 gender identity does not match the sex they were 12:12:41
11 assigned at birth.

12 Do you understand that?

13 MR. TRYON: Objection.

14 MS. HOLCOMB: Same objection.

15 THE WITNESS: I understand what you are 12:12:48
16 referring to.

17 BY MR. BARR:

18 Q So when I say the word "cisgender" or
19 "transgender" today, those are the definitions I am
20 using. 12:12:54

21 A Okay.

22 Q When I say "B.P.J.," I'm referring to the
23 plaintiff in this case.

24 Do you understand that?

25 A Yes. 12:13:06

1 Q Did you prepare for this deposition?

2 A Yes.

3 Q How?

4 MS. HOLCOMB: And I'll just object to the
5 extent that it calls for any privileged attorney-client 12:13:23
6 communications, but, Lainey, you can answer.

7 THE WITNESS: I prepared with my attorneys.

8 BY MR. BARR:

9 Q Other than speaking with your attorneys, did
10 you do anything else to prepare for this deposition? 12:13:33

11 A No.

12 Q Did you review any documents?

13 A When I was speaking to my attorneys.

14 Q Okay. Which documents were those?

15 A Documents that have already been turned over 12:13:56
16 to the plaintiff, such as my declaration.

17 Q Other than your declaration, what documents
18 did you review?

19 A I reviewed documents that we turned over to
20 the plaintiff. 12:14:18

21 Q I understand. I'm asking which ones.

22 A I don't recall all the documents that we
23 reviewed or turned over to the plaintiff.

24 Q Well, let's just work on identifying some of
25 those. 12:14:34

1 So you said the declaration. Beyond the
2 declaration, what did you review to prepare for this
3 deposition?

4 A I reviewed scholarship information. I
5 reviewed text messages with my mom and my declaration. 12:14:52

6 Q Is that it?

7 A I don't recall all of the documents that I
8 reviewed.

9 Q When did you review these?

10 A Within the last week. 12:15:10

11 Q But the only thing you remember looking at was
12 your declaration, some text messages and scholarship
13 information.

14 Did I understand that correctly?

15 A Yes. 12:15:26

16 Q Have you ever had your deposition taken
17 before?

18 A No.

19 Q Have you ever testified at trial?

20 A No. 12:15:41

21 Q Did you bring anything with you today?

22 A My laptop.

23 Q Are you referring to your laptop during this
24 deposition?

25 A What do you mean? 12:15:58

1 Q So explain to me why you brought your laptop
2 to the deposition.

3 A So I could be in the deposition via Zoom.

4 Q Is there anyone else in the room with you?

5 A Yes. 12:16:20

6 Q Who else is in the room?

7 A Christiana and Catie.

8 Q And by "Christiana" and "Catie," you're
9 referring to your attorneys?

10 A Yes. 12:16:39

11 Q Other than your laptop, did you bring anything
12 else with you today?

13 A I brought water, snacks, a book bag, a laptop
14 charger.

15 Q Any documents? 12:17:02

16 A No.

17 Q Have you ever been a party to a lawsuit?

18 A No.

19 Q Other than this case, have you ever intervened
20 in a lawsuit? 12:17:21

21 A No.

22 Q Did you know what an intervenor was prior to
23 this lawsuit?

24 A Kind of.

25 Q What is your understanding of an intervenor? 12:17:39

1 A My understanding is that it's someone who can
2 intervene for a certain side that they support and
3 hopefully maintain the bill or law and keep it in
4 place.

5 Q And was that your understanding before or 12:18:02
6 after you intervened in this case?

7 A After.

8 Q What was your understanding of an intervenor
9 before this case?

10 A It was a vague understanding that I had heard 12:18:16
11 from a TV show or something. It wasn't a clear
12 understanding.

13 Q So what was that vague understanding?

14 A Someone who supports a bill or law.

15 Q Why did you decide to intervene in this case? 12:18:40

16 A Because I care about women's sports and the
17 sport that I play, and I think that it's a good law.

18 Q How did you decide to actually intervene?

19 I understand you support the bill, but it
20 sounds like you didn't really understand what an 12:19:10
21 intervenor was prior to this lawsuit, so I'm trying to
22 understand how you actually intervened in this case.

23 MS. HOLCOMB: And I'll just object to the
24 extent it calls for any communications between Lainey
25 and myself. 12:19:23

1 THE WITNESS: I don't know how to answer that
2 question without divulging privileged information.

3 BY MR. BARR:

4 Q Let me ask it a different way.

5 Prior to discussing this case with the ADF, 12:19:32
6 were you interested in intervening?

7 And by "ADF," I mean your attorneys.

8 A No.

9 Q Was intervening an easy decision?

10 A No. 12:19:53

11 Q Why not?

12 A Because it's not always easy standing up for
13 what you believe when you know other people do not also
14 believe in that, and it's a public thing, and I was
15 nervous about it. 12:20:21

16 Q Did you talk with anyone about the decision
17 prior to making it?

18 MS. HOLCOMB: Same objection.

19 BY MR. BARR:

20 Q Other than your attorneys. 12:20:34

21 A Yes.

22 Q Who?

23 A My parents, my coach and my siblings.

24 Q Anyone else?

25 A I may have talked about it with my best friend 12:20:56

1 before I chose to intervene.

2 Q Explain to me those discussions with your
3 parents.

4 A I asked them what they thought about the law
5 and how they -- if they thought that intervening would 12:21:28
6 be a good decision on my part, and they supported me.

7 Q Did you approach your parents about
8 intervening, or did your parents approach you about
9 intervening?

10 A I approached my parents. 12:21:48

11 Q And you said your parents supported your
12 decision; is that right?

13 A Yes.

14 Q Did they explain why they supported your
15 decision? 12:22:10

16 A Soccer is a huge deal in my family, and it's
17 something that I grew up with, and my dad grew up
18 coaching me and other female athletes and male
19 athletes, and he thinks that it was a good -- he thinks
20 that it's a good law because he's seeing the 12:22:34
21 differences, and he encouraged me.

22 Q What about your mom?

23 A My mom is supportive in all that I do.

24 Q There's nothing you have done your mom doesn't
25 support? 12:22:56

1 A She is supportive with everything that I do.

2 Q When did you reach out to your attorneys, ADF?

3 MS. HOLCOMB: Again, objection to the extent
4 it calls for communications, Lainey, between your
5 attorneys and you. 12:23:22

6 MR. BARR: I'm just asking about the initial
7 reach-out. There certainly wouldn't have been a
8 relationship between client and attorney at that point.

9 THE WITNESS: I don't recall the exact time
10 when I first got in contact with ADF. 12:23:34

11 BY MR. BARR:

12 Q Was it before or after the bill had been
13 passed?

14 A After.

15 Q So are -- are we thinking June timeframe of 12:23:48
16 last year?

17 A I don't recall an exact date.

18 Q Just give me a -- a timeframe. I'm trying to
19 understand the sequence of events.

20 A I would say it was sometime in 2021. 12:24:21

21 Q So you don't recall even time of year that you
22 had reached out to them?

23 A I don't remember the first conversation I had
24 with her, no.

25 Q And who is "her" in that sentence? 12:24:40

1 A My attorney, Christiana.

2 Q How did you find ADF when you decided you
3 wanted to intervene?

4 A My mom has a friend who works for ADF.

5 Q Who is that friend? 12:25:08

6 A Jamie Metzger.

7 Q Did your mom speak with Jamie about this case?

8 MS. HOLCOMB: Object to form.

9 THE WITNESS: I can't comment on the
10 conversations that my mom has with other people. 12:25:25

11 BY MR. BARR:

12 Q I didn't ask for the substance. I'm just
13 asking if your mom reached out to her friend regarding
14 this case.

15 MS. HOLCOMB: Again, object to form. 12:25:40

16 THE WITNESS: I'm not sure if my mom reached
17 out to her or not.

18 BY MR. BARR:

19 Q So you spoke to your parents about
20 intervening, your mom happened to have a friend at ADF, 12:25:50
21 and that's how you got connected with ADF. Am I
22 understanding that correctly?

23 A No.

24 Q So what happened?

25 A I don't know how to answer that question 12:26:11

1 without giving privileged information -- information
2 with my attorney and I.

3 Q I certainly don't want privileged information.

4 Would it be fair to say that the first time
5 you thought about intervening in this case was in 12:26:20
6 connection with the discussion with your attorneys?

7 A Yes.

8 Q And you don't recall when that was?

9 A It was sometime last year.

10 Q Was it your -- your mom's friend Jamie who 12:26:42
11 encouraged you to join as an intervenor?

12 A No.

13 Q Who encouraged you to join as an intervenor?

14 MR. TRYON: Objection.

15 THE WITNESS: I made the decision after 12:27:12
16 talking with my -- I made the decision after a lot of
17 thought, prayer and then communications with my
18 parents.

19 BY MR. BARR:

20 Q What's Jamie's last name? 12:27:33

21 A Metzger.

22 Q Do you know what Jamie Metzger does at ADF?

23 A I do not.

24 Q How does your mom know Jamie?

25 MS. HOLCOMB: Object to form. 12:27:51

1 THE WITNESS: My -- through my mom's adoption
2 agency.

3 BY MR. BARR:

4 Q Could you explain that with a little more
5 detail, please? 12:28:05

6 A I'm not sure exactly how they know each other,
7 but I do believe that it was from my mom's adoption
8 agency, and Jamie writes articles about adoption.

9 Q Help me understand. Your mom knows Jamie
10 because of articles that Jamie has written that pertain 12:28:37
11 to adoptions?

12 A I believe so.

13 Q What's the nature of these articles?

14 MS. HOLCOMB: Object to form.

15 THE WITNESS: It's about adoption. 12:28:55

16 BY MR. BARR:

17 Q But specifically, what is -- what -- is
18 Jamie -- what is Jamie saying in these articles about
19 adoption?

20 MS. HOLCOMB: Object to form. 12:29:08

21 THE WITNESS: I don't know. You'd have to
22 read them.

23 BY MR. BARR:

24 Q Have you read them?

25 A I might have read one of them. I don't really 12:29:17

1 recall. It was a long time ago.

2 Q Would you consider your mom friends with Jamie
3 or just happens to read Jamie's articles?

4 A I'm not sure on their relationship. I can't
5 speculate on that. 12:29:47

6 Q What's your understanding?

7 A I believe Jamie has interviewed my mom for
8 adoption purposes.

9 Q Did Jamie reach out to your mom regarding this
10 case? 12:30:02

11 MS. HOLCOMB: Object to form.

12 MR. TRYON: Objection.

13 THE WITNESS: No.

14 BY MR. BARR:

15 Q So your mom reached out to Jamie; is that 12:30:12
16 right?

17 A No.

18 MS. HOLCOMB: Object to form.

19 BY MR. BARR:

20 Q So explain to me what happened. 12:30:21

21 A What happened with what?

22 Q Well, you -- you told me that you found ADF
23 because your mom was friends with Jamie. Did I get
24 that right?

25 A Yes. 12:30:43

1 Q You also told me that Jamie didn't reach out
2 to your mom and your mom didn't reach out to Jamie;
3 right?

4 A Regarding this case.

5 Q Well, that's -- that's what I'm trying to 12:30:59
6 understand.

7 How did you get connected with ADF for this
8 case?

9 A I don't know how to answer that question
10 without giving privileged information. 12:31:09

11 Q Okay. What did your siblings think about you
12 intervening in the case?

13 A They were supportive.

14 Q Explain to me those discussions you had with
15 them. 12:31:31

16 A I asked them what their opinion was on the
17 law, and they agreed with the substance of the law, and
18 they said that I would be brave to participate in the
19 case.

20 Q What do you think they meant when they said 12:31:54
21 you would be brave?

22 MS. HOLCOMB: Object to form.

23 THE WITNESS: I don't know -- I can't
24 speculate on what they were thinking.

25 BY MR. BARR: 12:32:07

1 Q You know what the word "brave" means; right?

2 MS. HOLCOMB: Object to form.

3 THE WITNESS: I have an understanding of the
4 word "brave."

5 BY MR. BARR: 12:32:24

6 Q So why would your siblings describe you as
7 brave for intervening in a lawsuit?

8 MS. HOLCOMB: Object to form.

9 THE WITNESS: I don't know exactly what they
10 were thinking whenever they described me as brave. 12:32:39

11 BY MR. BARR:

12 Q What did your coach think when you talked
13 about intervening?

14 MS. HOLCOMB: Object to form.

15 THE WITNESS: I don't know what my coach was 12:32:49
16 thinking.

17 BY MR. BARR:

18 Q What did your coach say to you in response to
19 you telling your coach you might intervene in this
20 case? 12:32:57

21 A She told me that she would be supportive,
22 although she wasn't sure if she would want, herself, to
23 get involved with the case, but she was supportive of
24 my decision to get involved in the case.

25 Q Why didn't any of your teammates try to 12:33:20

1 intervene with you?

2 MS. HOLCOMB: Object to form.

3 THE WITNESS: I don't know why they did not
4 decide to, but at least one of them was interested.

5 BY MR. BARR: 12:33:40

6 Q Who is that?

7 MS. HOLCOMB: And I will just object to the
8 extent that this calls for communication in
9 anticipation of litigation, but, Lainey, you may
10 answer. 12:33:50

11 THE WITNESS: Sinead.

12 BY MR. BARR:

13 Q Could you say that name again, please?

14 A Sinead.

15 Q How do you spell that? 12:33:58

16 A S-I-N-E-A-D.

17 Q What's Sinead's last name?

18 A Samarczuk.

19 Q That's going to take a minute, so bear with us
20 as we try to spell that one. 12:34:23

21 Go ahead, please.

22 A S-A-M-A-R-C-Z-U-K.

23 Q Do you mind if I just refer to your teammate
24 as "Sinead" because the last name I'm certainly going
25 to mess up? 12:34:46

1 A That is fine.

2 Q Why did Sinead ultimately decide not to
3 intervene?

4 MS. HOLCOMB: Object to form and to the extent
5 it calls for privileged communications with counsel. 12:34:57

6 THE WITNESS: I don't know how to answer that
7 without divulging confidential information --
8 privileged information.

9 BY MR. BARR:

10 Q You said Sinead's on your team; right? 12:35:09

11 A Yes.

12 Q You never discussed this with Sinead?

13 A Discussed it when with Sinead?

14 Q Well, let's start at the beginning.

15 Tell me about the first discussion you had 12:35:36
16 with Sinead about intervening in this lawsuit.

17 A I asked her if she would want to intervene
18 with me.

19 Q You approached Sinead about interviewing. Did
20 I get that right? 12:35:59

21 A Yes.

22 Q How did you get the idea to approach Sinead?

23 MS. HOLCOMB: Again, objection, to the extent
24 it calls for privileged communications.

25 BY MR. BARR: 12:36:07

1 Q I'll rephrase.

2 Other than a discussion with your attorney,
3 why did you approach Sinead to intervene in this case?

4 A She and I are very close friends.

5 Q Did you approach anyone else on your team? 12:36:27

6 A Yes.

7 Q Who?

8 A Brooklyn.

9 Q What's Brooklyn's last name?

10 A Pritt. 12:36:43

11 Q Anyone else?

12 A No, I did not approach anyone else on my team
13 to intervene for this case.

14 Q Why didn't you ask your entire team, if this
15 is an important lawsuit to protect women's sports? 12:37:07

16 A I'm not as close with all of my teammates for
17 something that was such a big deal. They -- I'm
18 very -- I love my teammates, we are close, but this is
19 something that I was nervous about, intervening, and it
20 was a big decision to make, so I just wanted to see 12:37:33
21 what Brooklyn and Sinead thought about it.

22 Q Did you discuss that with Sinead and Brooklyn?

23 A Discuss what?

24 Q Did you invite them to intervene in the case?

25 A I asked them if they would be interested in 12:37:56

1 doing so.

2 Q And, presumably, they said no; right?

3 A By the time they had reached a decision, it
4 was too late for other people to intervene, is my
5 understanding. 12:38:17

6 Q Well, what decision did they reach?

7 A Both of them wanted to get involved in some
8 type of way, but it was too late for Sinead, and
9 Brooklyn is very, very busy with school and work and
10 other things, so she just didn't have the time. 12:38:49

11 Q I asked a -- a little bit of a different
12 question.

13 They ultimately both decided not to intervene;
14 right?

15 A That wasn't their decision. It was too late 12:38:57
16 for Sinead.

17 Q Had it not been too late, would Sinead have
18 joined?

19 A I believe so, but I can't answer that for
20 certain. 12:39:17

21 Q Is Sinead still a student at West Virginia
22 State University?

23 A She is currently in England.

24 Q Is she still a student at West Virginia State
25 University? 12:39:33

1 A I believe she's still enrolled, yes.

2 Q Is she still on your team?

3 A I believe she's still on the team. She's just
4 taking a semester off, but -- she might return; she
5 might not. 12:39:48

6 Q Is Brooklyn still a student at West Virginia
7 State?

8 A Yes.

9 Q Is Brooklyn still on your team?

10 A Yes. 12:40:02

11 Q Are there any other of your teammates who you
12 believe might be -- let me rephrase that.

13 Are there any other of your teammates that you
14 believe would have intervened but for a timing issue?

15 A It's possible. 12:40:19

16 Q A lot of things are possible. I'm asking if
17 there's any specific names you have of someone you
18 believe you would like to have intervened.

19 A I can't speculate on what other people want.

20 Q So you have no reason to think that there's 12:40:42
21 another one of your teammates who would have liked to
22 intervene?

23 MR. TRYON: Objection.

24 THE WITNESS: Again, I can't speculate on what
25 other people want. 12:40:59

1 BY MR. BARR:

2 Q I'm not asking you to speculate.

3 Do you have reason to believe that any of your
4 other teammates wanted to intervene in this case?

5 MS. HOLCOMB: Object to form. 12:41:06

6 MR. TRYON: Objection.

7 THE WITNESS: I don't know.

8 BY MR. BARR:

9 Q Can you provide me with the name of one of
10 your teammates, other than Sinead and Brooklyn, who 12:41:20
11 wanted to intervene in this case?

12 MR. TRYON: Objection.

13 MS. HOLCOMB: Object to form.

14 The witness: I don't know what my teammates
15 would have wanted to do. 12:41:37

16 BY MR. BARR:

17 Q Where are you from?

18 A Owensboro, Kentucky.

19 Q What's the closest big city to Owensboro, just
20 so I can understand geography? 12:42:02

21 A Louisville, Kentucky.

22 Q Did you grew up a Cardinals fan?

23 A No.

24 Q Does that make you a UK fan?

25 A Yes. 12:42:20

1 Q How old are you?

2 A 21.

3 Q Did you grow up in the same house as your
4 parents?

5 A Yes. 12:42:43

6 Q You mentioned siblings. How many siblings do
7 you have?

8 A I have two biological brothers.

9 Q Only because of the way you phrased that, do
10 you have a sibling that you wouldn't consider 12:43:07
11 biological?

12 A I have two adopted siblings, but,
13 unfortunately, I am not in contact with them anymore.

14 Q How old are your -- are -- are your adopted
15 siblings also brothers? 12:43:26

16 A They are siblings, a brother and sister.

17 Q As you described it, your biological siblings,
18 what are their names?

19 A Kyler and Declan.

20 Q Did you say Kyler, with a K? 12:43:47

21 A Yes.

22 Q What does Kyler do?

23 A Kyler works at UPS.

24 Q And what about Declan?

25 A He is a student athlete in university. 12:44:02

1 Q And where does Kyler live?

2 A Louisville, Kentucky.

3 Q And what school does Declan attend?

4 A Brescia University.

5 Q I'm sorry, what's it called? 12:44:23

6 A Brescia.

7 Q Where is that located?

8 A In Owensboro, Kentucky.

9 Q It's close to home.

10 What is your adopted brother's name? 12:44:39

11 A David.

12 Q What does David do?

13 A I'm not sure.

14 Q When is the last time you spoke with David?

15 A When I was 16. 12:44:52

16 Q Where does David live?

17 A I have no idea. I'm not sure.

18 Q What's your adopted sister's name?

19 A Gabby.

20 Q Are Gabby and David biological siblings? 12:45:19

21 A Yes.

22 Q When is the last time you spoke with Gabby?

23 A I'm not sure.

24 Q Was it around the last time you spoke to David

25 or some other time? 12:45:47

1 MS. HOLCOMB: Object to form.

2 THE WITNESS: I'm not sure. It was a long
3 time ago.

4 BY MR. BARR:

5 Q I take it you don't know where Gabby lives? 12:45:55

6 A No.

7 Q Are David and Gabby still in touch with your
8 parents?

9 A I'm not sure.

10 Q Are David and Gabby still in touch with Kyler? 12:46:14

11 MS. HOLCOMB: Object to form.

12 THE WITNESS: I'm not sure.

[REDACTED]

23 Q And Gabby went with him?

24 A No. She was older, so she was already out of
25 our house. 12:47:04

1 Q Okay. What do you currently do?

2 A I am a student athlete.

3 MS. HOLCOMB: Just -- may I jump in here for a
4 moment, Andrew?

5 MR. BARR: Yes. 12:47:26

6 MS. HOLCOMB: Do you need a break?

7 I -- I understand you may be moving to a
8 different line of questioning.

9 Do you need a break? Okay.

10 Andrew, would you be amenable to -- 12:47:32

11 MR. BARR: No worries. We'll take a break.

12 How about we come back at 1:00? Does that
13 work for you?

14 MS. HOLCOMB: That works great. Thank you.

15 THE VIDEOGRAPHER: Okay. We are going off the 12:47:43

16 record -- sorry. We're going off the record. The time
17 is 12:48 p.m., and this is the end of Media Unit No. 1.

18 (Recess.)

19 THE VIDEOGRAPHER: All right. We are back on
20 the record at 1:00 p.m., and this is the beginning of 01:00:18
21 Media Unit No. 2.

22 Go ahead, please.

23 BY MR. BARR:

24 Q Ms. Armistead, you stated you were a student
25 at West Virginia State University; is that right? 01:00:26

1 A Yes.

2 Q Are you employed anywhere?

3 A Yes.

4 Q Where do you work?

5 A I work as a work-study student, and I work at 01:00:37
6 Red Lobster.

7 Q What's a work-study student?

8 A I work in the Dean's office of my college.

9 Q And what do you do there?

10 A I answer the phone, run errands, talk to 01:00:56
11 professors.

12 Q Largely administrative tasks, am I
13 understanding that correctly?

14 A Yes.

15 Q And what do you do at Red Lobster? 01:01:17

16 A I'm a server.

17 Q Any other jobs at the moment?

18 A If you consider soccer a job, then sure.

19 Q Do you consider soccer a job?

20 A I love it, but I have to show up, and I'm 01:01:36
21 getting a scholarship for it, so...

22 Q Let's talk about soccer separately.

23 Other than Red Lobster and the Dean's office,
24 do you have any other jobs?

25 A No. 01:01:50

1 Q Where is West Virginia State University?

2 A Like, the address?

3 Q The city.

4 A Dunbar.

5 Q If I call it "West Virginia State," will that 01:02:10
6 be okay with you?

7 A Yes.

8 Q Did you grow up rooting for West Virginia
9 State?

10 A No. 01:02:26

11 Q You mentioned UK earlier. Was that your team
12 growing up?

13 A Sure.

14 Q You tell me. I'm just asking.

15 A I like it. I wouldn't say I necessarily had a 01:02:39
16 team growing up.

17 Q What conference is West Virginia State in?

18 A The Mountain East Conference.

19 Q How many teams are in that conference?

20 A I'm not sure. 01:02:57

21 Q Is it closer to ten or closer to 20?

22 A Closer to ten.

23 Q Are those schools all located within
24 West Virginia?

25 A I don't think so, but I'm not sure where 01:03:20

1 they're all located.

2 Q Are you aware that the NCAA has divisions?

3 A Yes.

4 Q What division is West Virginia State in for

5 girls' soccer? 01:03:36

6 A Division II.

7 Q How many NCAA divisions are there?

8 A Three.

9 Q What is your understanding of the difference

10 between Division I, II and III? 01:03:54

11 A I believe it's based off of school size and
12 the ability for D-I and D-II to give athletic aid and
13 scholarship.

14 Q Is one division generally thought to be more
15 competitive than another? 01:04:16

16 A Division I is usually thought to be more
17 competitive, but I think all three are very
18 competitive. We're college athletes.

19 Q Do you think Division I is more competitive?

20 A I think -- 01:04:34

21 MR. TRYON: Objection.

22 THE WITNESS: I think that we're all very
23 competitive.

24 BY MR. BARR:

25 Q I don't take issue with that. I'm -- I'm sure 01:04:56

1 you're right there. I'm just asking if you believe
2 Division I is more competitive than Division II.

3 MS. HOLCOMB: Object to form.

4 MR. TRYON: Objection.

5 THE WITNESS: What do you mean by 01:05:13
6 "competitive"?

7 BY MR. BARR:

8 Q As a general matter, if a Division I women's
9 soccer team played a Division II women's soccer team,
10 who would you expect to win? 01:05:16

11 MS. HOLCOMB: Objection.

12 THE WITNESS: Generally, we would expect the
13 Division I team to win.

14 BY MR. BARR:

15 Q How big is West Virginia State, in terms of 01:05:33
16 student size?

17 A Couldn't tell you.

18 Q How did you pick West Virginia State?

19 A There were a myriad of reasons.

20 Q What -- what was the primary reason? 01:05:51

21 A Because of the opportunity that West Virginia
22 State gave me.

23 Q What opportunity is that?

24 A To play soccer -- to play soccer and have a
25 very good scholarship. 01:06:15

1 Q Did you consider going to any other colleges?

2 A Yes.

3 Q How many?

4 A How many did I visit or consider? What do you
5 mean? 01:06:43

6 Q Let's start with, how many other colleges did
7 you consider attending?

8 A I'm not sure.

9 Q Less than 20?

10 A Less than 20. 01:06:57

11 Q Less than ten?

12 A Seriously considered, yes, less than ten.

13 Q Less than five?

14 A Probably about five.

15 Q What -- what were the five colleges you
16 seriously considered attending? 01:07:14

17 MS. HOLCOMB: Object to form.

18 MR. TRYON: I also object.

19 THE WITNESS: I didn't say that it was
20 definitely five. 01:07:34

21 BY MR. BARR:

22 Q I'll rephrase. I'm not trying to put words in
23 your mouth.

24 Tell me the colleges you seriously considered
25 attending. 01:07:41

1 A West Virginia State, Austin Peay,
2 Transylvania, Kentucky Wesleyan. And that's all of the
3 ones that I seriously considered.

4 Q Other than West Virginia State, did you have
5 an opportunity to play soccer at those schools? 01:08:17

6 A Yes.

7 Q Which ones?

8 A Kentucky Wesleyan and Transylvania.

9 Q Did Kentucky Wesleyan offer you a scholarship?

10 A For what? 01:08:47

11 Q For soccer.

12 A I had communications with their coach, but
13 there was nothing official for an athletic scholarship.

14 Q To make sure I'm clear, there was no official
15 offer of an athletic scholarship at Kentucky Wesleyan? 01:09:11

16 A I don't believe so.

17 Q Same question for Transylvania, were you
18 offered an athletic scholarship for Transylvania?

19 A Transylvania is a D-III school, so they can't
20 give athletic scholarship. 01:09:32

21 Q Were you offered an athletic scholarship for
22 any school other than West Virginia State?

23 A Yes.

24 Q What school is that?

25 A Brescia University. 01:09:46

1 Q I'm sorry, you cut out. Could you repeat
2 that?

3 A Brescia.

4 Q Is that the same school that your brother goes
5 to? 01:09:59

6 A Indeed.

7 Q But you weren't seriously considering
8 attending that school, were you?

9 A No.

10 Q Any other schools offer you an athletic 01:10:14
11 scholarship?

12 A Many schools e-mailed me saying that they
13 would give me scholarships, but I never really
14 conversed with any others ones, no.

15 Q So no formal offers for athletic scholarships 01:10:33
16 other than the two we just discussed?

17 A No formal offers, correct.

18 Q Is Kentucky Wesleyan a Division I or
19 Division II school?

20 A Division II. 01:10:52

21 Q What do you study at West Virginia State?

22 A Political science.

23 Q Anything else?

24 A What do you mean?

25 Q Let me ask it a different way. What's your 01:11:20

1 major, currently?

2 A Political science.

3 Q Do you have a minor?

4 A I am on track to get a minor in psychology.

5 Q What year are you, in terms of freshman, 01:11:48
6 sophomore, etcetera?

7 A I -- this will be my third year of college.

8 Q And when you say "this," as we sit here today,
9 in March, you're a junior, or you are saying the
10 upcoming school year that starts in August, you'll be a 01:12:06
11 junior?

12 A What do you mean?

13 Q I'm trying to understand if you've been
14 attending West Virginia State for four semesters or
15 6 semesters. 01:12:22

16 A I have attended it for six semesters, I think.
17 Since fall of 2019, and I have continuously studied at
18 West Virginia State.

19 Q Thank you. That's helpful. And that answers
20 the question. 01:12:44

21 Are you on track to graduate at the end of
22 next school year?

23 A I am not sure of my exact graduation plans
24 yet.

25 Q What do you mean by that? 01:12:57

1 BY MR. BARR:

2 Q So help me understand how that impacts your
3 decision on graduation.

4 A Because I have to decide if I want to take
5 medicine that would impair me to play, but as it 01:15:01
6 currently is, I can play.

7 Q So I'm not a doctor, I don't understand how
8 any of that works, but what I hear you saying is if you
9 do whatever the doctors are saying is an option, you'd
10 have to stop playing soccer; is that right? 01:15:22

11 MR. TRYON: Objection.

12 MS. HOLCOMB: Object to form.

13 THE WITNESS: I'm not my doctor either. I
14 just know the options, and I'm weighing them carefully
15 to decide what my next step will be, and I'm not sure 01:15:35
16 yet, but I would love to stay in West Virginia and play
17 soccer. And I am still currently on the team, so...

18 BY MR. BARR:

19 Q Were you in with the roster for -- the season
20 is over right now; right? 01:15:54

21 A We are in a spring semester, but yes, it is a
22 fall sport.

23 Q So, currently, there's no practices or games;
24 right?

25 A We are in the spring semester, so there is 01:16:07

1 practices, it's just not for our season.

2 Q I don't -- I don't understand. What do you
3 mean?

4 A So, typically, in collegiate sports, you have
5 a season, and right now, we're in our offseason, but we 01:16:28
6 are still allowed to practice and play scrimmage games,
7 according to NCAA rules.

8 Q And those are official practices and official
9 scrimmages?

10 A With our coach in West Virginia, yes, 01:16:43
11 West Virginia State.

12 Q Are you still participating in those practices
13 and scrimmages?

14 A Yes.

15 Q As we sit here today, do you expect to be on 01:16:52
16 the team next fall?

17 A I would love to be.

18 Q Slightly different question.

19 Do you expect to be?

20 A I am not sure what the future holds yet 01:17:12
21 because of the health concerns, and I have to carefully
22 see and weigh the options.

23 Q I understand that.

24 When do you think you'll have to make that
25 decision? I assume your coach is interested. 01:17:37

1 A She hasn't given me a specific time to make
2 the decision yet.

3 Q Do you have an expectation of when that
4 timeframe will be?

5 A I don't make the rules. 01:17:54

6 Q Just asking if you have an expectation of when
7 that timeframe will be, if you need to decide if you're
8 going to play or not.

9 MS. HOLCOMB: Objection.

10 THE WITNESS: I don't have an expectation. 01:18:10

11 BY MR. BARR:

12 Q When is scholarship awarded for next school
13 year?

14 A For whom?

15 Q For you. 01:18:27

16 A Typically, we re-sign the paper in the spring,
17 stating our scholarship, but my coach can decide when
18 to allow us to sign the papers. Some people sign in
19 June, July, August. It's up to our coach.

20 Q When did you sign last year? 01:19:04

21 A Sometime in the spring.

22 Q February?

23 A I think that's winter.

24 Q Okay. When -- what month did you sign your
25 scholarship award last year? 01:19:33

1 A I'm not sure.

2 Q Where would we have to go to find that date
3 out?

4 A I don't know. I don't have any papers on it.

5 Q It sounds like you signed a paper, and I'm 01:19:44
6 just trying to figure out when.

7 MS. HOLCOMB: Object to form.

8 THE WITNESS: I'm not sure of the exact date.
9 It was sometime in 2021.

10 BY MR. BARR: 01:19:59

11 Q So what is the spring to you, if it doesn't
12 include February?

13 MS. HOLCOMB: Object to form.

14 THE WITNESS: Maybe March through June.

15 BY MR. BARR: 01:20:17

16 Q So as you sit here today, you believe that you
17 would have signed your scholarship award package
18 sometime between March and June of last year; is that
19 right?

20 A Yes. 01:20:28

21 Q Do you expect that that same timeframe would
22 apply to this year?

23 A I don't know.

24 Q Do you have any reason to think it won't?

25 MR. TRYON: Objection. 01:20:55

1 THE WITNESS: My coach is very patient. And
2 seeing as I'm a captain and a starter, I'm sure that
3 she would give me as much time as she could to keep me
4 on the team.

5 BY MR. BARR: 01:21:08

6 Q What is your coach's name?

7 A Lisa Mann.

8 Q How do you spell your coach's last name?

9 A M-A-N-N.

10 Q Have you had discussions with Coach Mann about 01:21:22
11 the possibility of you not playing next year?

12 A Yes.

13 Q Explain -- when was the first conversation you
14 had with Coach Mann regarding the possibility you don't
15 play next year? 01:21:38

16 A Sometime in February.

17 Q How many discussions have you had with
18 Coach Mann regarding the possibility you don't play
19 next year?

20 A I'm not sure. 01:21:56

21 Q More than five?

22 A I'm not sure.

23 Q More than ten?

24 MS. HOLCOMB: Object to form.

25 THE WITNESS: I don't know. 01:22:17

1 BY MR. BARR:

2 Q More than 20?

3 MS. HOLCOMB: Object to form.

4 THE WITNESS: I don't recall saying it was

5 more than ten either. 01:22:24

6 BY MR. BARR:

7 Q It sounds like you're not sure. I'm just

8 trying to get a range here.

9 A More than one, less than 20, probably.

10 Q And that's the closest estimate you can give 01:22:37

11 on the number of discussions you've had with Coach Mann

12 about this?

13 A Yes.

14 MR. TRYON: Objection.

15 BY MR. BARR: 01:22:50

16 Q What -- what was Coach Mann's response?

17 A She wants me to do what's best for me.

18 Q Did she say anything else?

19 A She would love for me to stay on the team.

20 Q Did she also say that she would like to use 01:23:07

21 that scholarship award for a different player if you're

22 not going to come back?

23 A She did not tell me that.

24 Q What else did she say?

25 A To keep her updated. 01:23:25

1 Q Have you kept her updated?

2 A As much as I possibly can, because I'm not
3 sure what my future holds yet.

4 Q So what did you tell her in your first update?

5 A I don't recall what I told her on the first 01:23:47
6 update.

7 Q So you've updated your coach at least once,
8 but you have no recollection of what you told
9 Coach Mann?

10 A I didn't say that. You asked what I said on 01:24:07
11 my first update. I'm not sure. There's been a couple
12 conversations, more than one, like I said.

13 Q Okay. If we take all the update meetings
14 together, what have -- what have you conveyed to
15 Coach Mann? 01:24:23

16 A I've conveyed that I am still wanting to
17 practice and be a part of the team, and I'm not sure
18 what my plans are for the fall.

19 Q At no point Coach Mann said, hey, it would be
20 really nice to know by X date? 01:24:46

21 A She would like to know, but she's never given
22 me an exact date, no.

23 Q Did she give you a timeframe?

24 A No.

25 Q If you graduate in May, can you still play on 01:24:57

1 the team?

2 A Yes.

3 Q How?

4 A Because I am interested in possibly getting a
5 Master's degree at West Virginia State, and I still 01:25:20
6 have three years of NCAA eligibility, which would mean
7 I can continue playing in the fall.

8 Q So you would play as a graduate student; is
9 that right?

10 A That is what I'm saying. 01:25:36

11 Q What Master's are you interested in pursuing?

12 A Master's of Public Administration.

13 Q When's the application due for that?

14 A I'm not sure. I'd have to ask the professor.

15 Q Have you looked into it? 01:25:56

16 A I see the chair of the department or of the
17 Master's of Public Administration a couple times a
18 week, and yes, we have discussed it.

19 Q How long of a program is that?

20 A It depends on the -- how many hours you take, 01:26:15
21 but I would expect a year and a half.

22 Q Why are you interested in getting a Master's
23 of Public Administration?

24 A It would mean continuing my academic career
25 and athletic career, which are both things that I love. 01:26:48

1 Q Did I read somewhere you want to be a lawyer?

2 A Yes.

3 Q Does West Virginia State have a law school?

4 A No.

5 Q Have you considered, upon graduation, going to 01:27:07
6 law school?

7 A Yes.

8 Q Did you take the LSAT?

9 A Yes.

10 Q Have you applied to law school? 01:27:17

11 A Yes.

12 Q Where did you apply?

13 A I applied to University of Florida, FSU and
14 ASU.

15 Q Warm states. Totally understand. 01:27:41

16 Any other schools?

17 A I don't think I've sent in my official
18 applications to any other schools, no.

19 Q What other schools are you planning to send an
20 official application to? 01:27:59

21 A Possibly the University of Houston.

22 Q Any others?

23 A I haven't really considered it because I'm not
24 sure if I'm even going to be going to law school in the
25 fall. 01:28:15

1 Q You've applied to three programs; is that
2 right? FSU, UF and ASU?

3 A Yes.

4 Q Have you been admitted?

5 A I haven't gotten any decisions. 01:28:28

6 Q When do you expect to hear back?

7 A Hopefully soon.

8 Q If you get in, will you go?

9 A I don't know, because I would still love to
10 continue playing soccer. I'm not ready to give it up 01:28:56
11 yet.

12 Q Is there any reason you can't play soccer at
13 FSU or UF or ASU?

14 A I'm not sure if I would be able to play soccer
15 and do law school. 01:29:13

16 Q So it's not an eligibility concern; it's just
17 a timing concern?

18 A Yes.

19 Q Do you think you'd make the team at FSU?

20 MS. HOLCOMB: Object to form. 01:29:29

21 MR. TRYON: Objection.

22 THE WITNESS: I would hope so. That would be
23 cool.

24 BY MR. BARR:

25 Q Am I mistaken? Didn't Florida State win the 01:29:42

1 national championship a couple of years ago for women's
2 soccer?

3 A They could have. I don't keep up with FSU
4 sports.

5 Q Do you expect you'd make the team at 01:29:54
6 University of Florida?

7 MS. HOLCOMB: Object to form.

8 MR. TRYON: Objection.

9 THE WITNESS: I don't know.

10 BY MR. BARR: 01:30:09

11 Q I presume you don't know if you would make the
12 team at Arizona State either?

13 MS. HOLCOMB: Same objection.

14 THE WITNESS: I don't make the decisions for
15 those coaches. 01:30:20

16 BY MR. BARR:

17 Q If you get into law school, are you going to
18 try out for the team, or that's the end of soccer?

19 MR. TRYON: Objection.

20 MS. HOLCOMB: Object to form. 01:30:28

21 THE WITNESS: I don't know. I definitely
22 don't think that I said if I get into law school, I'm
23 definitely -- it's definitely the end of law school --
24 or soccer, I mean.

25 ///

1 BY MR. BARR:

2 Q Have you reached out to the coaches at any of
3 those programs?

4 A No. That would be illegal to do because I'm
5 not in the transfer portal. 01:30:54

6 Q You're not transferring; you're graduating;
7 right?

8 A I still --

9 MS. HOLCOMB: Object to the form.

10 MR. BARR: I'm sorry, could you repeat that? 01:31:04

11 That got --

12 MS. HOLCOMB: I would like to put my objection
13 back on the record, please.

14 You can go.

15 THE WITNESS: I still can't reach out to those 01:31:12
16 schools.

17 BY MR. BARR:

18 Q When are you able to reach out to those
19 schools?

20 A I haven't looked into that because I really 01:31:17
21 love playing at West Virginia State University.

22 Q But if I understand you correctly, there's a
23 possibility you end up in law school, come the fall;
24 right?

25 MS. HOLCOMB: Object to form. 01:31:41

1 MR. TRYON: Objection.

2 THE WITNESS: As you said earlier, a lot of
3 things are possible.

4 BY MR. BARR:

5 Q Well, you've applied to three of them, and 01:31:52
6 you're waiting to hear back; right?

7 MR. TRYON: Objection.

8 MS. HOLCOMB: Object to form.

9 THE WITNESS: I want to play soccer at
10 West Virginia State. 01:32:05

11 BY MR. BARR:

12 Q But you couldn't do that if you were in law
13 school; right?

14 MS. HOLCOMB: Object to form.

15 THE WITNESS: I could not do that if I was in 01:32:13
16 law school, correct.

17 BY MR. BARR:

18 Q Is the only interest you have in the Master's
19 of Public Administration to play soccer?

20 A That's not the only reason. 01:32:32

21 Q What other reasons are there?

22 A I would be learning and getting a better
23 education while I was playing soccer and cultivating
24 relationships and learning important school skills.

25 Q Why do you think you could play soccer in the 01:33:07

1 Master's program, but not during a law school program?

2 A I don't know if a Master's program is as
3 vigorous as law school will be.

4 Q When do you intend to apply for the Master's
5 program? 01:33:30

6 MS. HOLCOMB: Object to form.

7 THE WITNESS: As I said earlier, I still don't
8 know what I'm going to be doing yet.

9 BY MR. BARR:

10 Q Would you say it's more likely than not that 01:33:42
11 you graduate this May?

12 MR. TRYON: Objection.

13 THE WITNESS: I'm not sure.

14 BY MR. BARR:

15 Q What's your expectation, sitting here today? 01:33:54

16 MS. HOLCOMB: Object to form.

17 THE WITNESS: It's really not set in stone
18 yet.

19 BY MR. BARR:

20 Q I'm not asking if it's set in stone. I'm just 01:34:09
21 saying today, March 11th, are you expecting to graduate
22 in May?

23 MS. HOLCOMB: Object to form.

24 MR. TRYON: Objection.

25 THE WITNESS: It's possible. 01:34:24

1 BY MR. BARR:

2 Q Ms. Armistead, do you plan on graduating in
3 May? It's two months away. It's a fairly
4 straightforward question.

5 MS. HOLCOMB: Andrew, I don't mean to provide 01:34:38
6 a speaking objection, but I do think this is getting a
7 little bit excessive and harassing. That has been
8 asked and answered. I suggest that you move on.

9 MR. BARR: Attorney Holcomb, I'm asking a very
10 simple question that hasn't been answered. I'm just 01:34:50
11 asking what her expectation is for two months from
12 today, that's it.

13 MS. HOLCOMB: And she has told you multiple
14 times that she does not yet know. That is asked and
15 answered. Please proceed. 01:35:01

16 MR. BARR: Well, the question stands.

17 THE WITNESS: I am not sure, but if I do, I
18 would still like to continue my education at
19 West Virginia State.

20 BY MR. BARR: 01:35:21

21 Q When do you expect that you'll know if you're
22 going to graduate in May?

23 MS. HOLCOMB: Object to form.

24 THE WITNESS: I don't know. Hopefully before
25 May. 01:35:43

1 BY MR. BARR:

2 Q Has Coach Mann talked to you about graduation?

3 MS. HOLCOMB: Object to form.

4 THE WITNESS: What do you mean?

5 BY MR. BARR: 01:36:03

6 Q When -- in one or more of those updates you've
7 had with Coach Mann, have you talked about graduation
8 with her?

9 A I think, yes.

10 Q What did Coach Mann say? 01:36:31

11 A She wants me to get my Master's degree at
12 State, if I chose to graduate this May, or she would
13 want me to not graduate and just get two Bachelor's
14 degrees so I could continue on in the fall without
15 graduating. 01:36:58

16 Q What other Bachelor degree are you
17 considering?

18 MS. HOLCOMB: Object to form.

19 THE WITNESS: It's not -- I'm not certain. I
20 would be interested in psychology. 01:37:13

21 BY MR. BARR:

22 Q Did you file a form to graduate in May?

23 A Yes.

24 Q When did you file that form?

25 A Sometime before the due date. 01:37:28

1 MR. BARR: Attorney Holcomb, can you produce
2 that because that's certainly relevant to your
3 discovery request?

4 MS. HOLCOMB: We can certainly see if we can
5 obtain that. 01:37:52

6 MR. BARR: Thank you.

7 While we're at it, if you could obtain the
8 scholarship agreements that happened in the last two
9 years and their date of signature, that would also
10 clearly fall within our discovery request. 01:38:02

11 MS. HOLCOMB: Yeah, we don't have access to
12 those, Lainey does not have them in her possession, but
13 we can see if we can obtain them.

14 MR. BARR: Thank you.

15 BY MR. BARR: 01:38:11

16 Q Do you have any plans to withdraw the form
17 you've already filed to graduate in two months?

18 A Filing the form doesn't automatically mean
19 that I graduate.

20 Q I'm just asking if you have any plans to 01:38:27
21 withdraw the form.

22 A I don't know what my plans are yet.

23 Q But sitting here today, you have no plans to
24 do that?

25 MS. HOLCOMB: Object to form. 01:38:35

1 THE WITNESS: Sitting here today, I am not
2 sure what my future holds yet.

3 BY MR. BARR:

4 Q I understand that. But your future for the
5 two -- next two months, do you plan on withdrawing that 01:38:48
6 form?

7 MS. HOLCOMB: Objection to form.

8 MR. TRYON: Objection.

9 THE WITNESS: I'm not sure.

10 BY MR. BARR: 01:39:07

11 Q Have you talked to your parents about
12 graduating?

13 A Yes.

14 Q Explain to me those discussions.

15 A We have talked about all of the different 01:39:19
16 options that I have, one being which I could graduate,
17 another where I continue without graduating and get
18 another Bachelor's degree, another where I get a
19 Master's degree at State or go to law school.

20 But as I said earlier, there are a lot of 01:39:48
21 options that I have to weigh carefully, but I would
22 definitely love to be at West Virginia State.

23 Q What would your dad like you to do?

24 A What?

25 MS. HOLCOMB: I'm sorry, could you please 01:40:03

1 restate the question?

2 MR. BARR: Yes, absolutely.

3 BY MR. BARR:

4 Q In having those discussions you just
5 described, what is your understanding of what your dad 01:40:09
6 would like you to do?

7 A He wants me to decide for myself, and he said
8 that he would support my decision.

9 Q He has no preference?

10 MS. HOLCOMB: Object to form. 01:40:28

11 THE WITNESS: I don't know what my dad's
12 preference is.

13 BY MR. BARR:

14 Q So you've had these discussions with your
15 parents and your dad just stated whatever you decide is 01:40:39
16 fine with him?

17 MR. TRYON: Objection.

18 MS. HOLCOMB: Object to form.

19 THE WITNESS: He wants me to do what I deem
20 best for myself. I'm the one who is going to be 01:40:54
21 graduating or staying or playing soccer. So,
22 ultimately, both of my parents want me to decide to do
23 what's best for me.

24 Would he love to continue seeing me play
25 because I've been playing since I was little? I'm -- I 01:41:13

1 would assume he would.

2 BY MR. BARR:

3 Q Does your mom have a preference for what you
4 do?

5 MS. HOLCOMB: Object to form. 01:41:23

6 THE WITNESS: She said that she would be
7 supportive.

8 BY MR. BARR:

9 Q I understand that. And I'm sure your parents
10 would be supportive. I'm just curious if your mom has 01:41:36
11 a preference for what decision you make for yourself.

12 MS. HOLCOMB: Object to form.

13 MR. TRYON: Objection.

14 THE WITNESS: I know she likes watching me
15 play soccer, but I can't answer on what she wants me to 01:41:52
16 do.

17 BY MR. BARR:

18 Q So you've had the discussions about graduating
19 with your parents, and as far as you can tell, they're
20 okay with whatever you choose? 01:42:02

21 MR. TRYON: Objection. Come on.

22 MS. HOLCOMB: Objection.

23 THE WITNESS: They'll be supportive, I
24 believe.

25 ///

1 BY MR. BARR:

2 Q Do your parents want you to go to law school?

3 MS. HOLCOMB: Object to form.

4 THE WITNESS: I'm not sure exactly what they

5 want me to do with my life. 01:42:35

6 BY MR. BARR:

7 Q Have you talked to them about the Master's of

8 Public Administration?

9 A Yes.

10 Q What did they say about that? 01:42:47

11 A They told me that they would be supportive of

12 whatever I did. I believe my mom would like me to get

13 my MPA.

14 Q Do you believe your dad wants you to get your

15 MPA? 01:43:17

16 MS. HOLCOMB: Object to form.

17 MR. TRYON: Objection.

18 THE WITNESS: I don't know. My parents would

19 want me to do whatever I see fit.

20 BY MR. BARR: 01:43:30

21 Q But sitting here today, you're just not sure

22 what that is?

23 MS. HOLCOMB: Object to form.

24 MR. TRYON: Objection again.

25 THE WITNESS: I don't think that's what I 01:43:48

1 said.

2 BY MR. BARR:

3 Q What did you say?

4 A They want me to do what I think is best for my
5 future. 01:43:56

6 Q Maybe my question wasn't clear, I'm sorry.

7 My question was, sitting here today, you don't
8 know what you think is best for your future?

9 MS. HOLCOMB: Object to form.

10 THE WITNESS: I know what I would love to do, 01:44:12
11 and that's to continue playing the sport that I love.

12 BY MR. BARR:

13 Q But it's uncertain whether that will happen or
14 not?

15 MS. HOLCOMB: Object to form. 01:44:23

16 MR. TRYON: I'm sorry, Mr. Barr, could you
17 repeat that? I couldn't hear it.

18 MR. BARR: Yes, I said, and it's uncertain
19 whether that will happen?

20 MS. HOLCOMB: Object to form. 01:44:34

21 THE WITNESS: I don't know yet.

22 BY MR. BARR:

23 Q Do you know who B.P.J. is?

24 A I know that that's the plaintiff.

25 Q What do you know about B.P.J.? 01:44:53

1 A There's nothing that I know for certain about
2 B.P.J. other than she's the plaintiff.

3 Q What do you mean there's nothing you know for
4 certain?

5 A You asked me what I knew about her. I don't 01:45:16
6 know who that is. I don't know who -- I know that
7 P.B. -- B.P.J. is the plaintiff.

8 Q You've never met or spoke with B.P.J. before?

9 A No.

10 Q Are you aware that B.P.J. is 11 years old? 01:45:32

11 A I don't know.

12 Q Are you aware that B.P.J. ran cross-country on
13 her middle school's girls' cross-country team last
14 year?

15 A I don't know. 01:45:51

16 Q You don't know that?

17 A (No response.)

18 Q I'm sorry, that was a question.

19 You -- you're not -- you're not aware that
20 B.P.J. ran on her middle school's girls' cross-country 01:46:02
21 team last fall?

22 A I don't know.

23 Q You don't know, or you're not aware of that?

24 MS. HOLCOMB: Objection.

25 THE WITNESS: I don't know. 01:46:28

1 BY MR. BARR:

2 Q Are you aware that B.P.J.'s middle school
3 supports her inclusion on the girls' team?

4 A I don't know.

5 Q Are you aware that B.P.J.'s school has a 01:46:54
6 transgender support plan for B.P.J.?

7 A I don't know.

8 Q Do you know anything about B.P.J.'s athletic
9 interests?

10 MS. HOLCOMB: Object to form. 01:47:31

11 THE WITNESS: I don't know.

12 BY MR. BARR:

13 Q Sitting here today, do you know anything about
14 B.P.J. at all other than the fact --

15 MS. HOLCOMB: Object to form. 01:47:47

16 BY MR. BARR:

17 Q -- that B.P.J. is the plaintiff?

18 MS. HOLCOMB: Object to form.

19 THE WITNESS: I believe that B.P.J. doesn't
20 like the law from West Virginia. 01:47:59

21 BY MR. BARR:

22 Q What law is that?

23 A H.B. -- sorry, the numbers, I forget -- 3293.

24 Q You -- I get distracted with the numbers all
25 the time, so don't worry about that. 01:48:24

Page 75

1 So other than your understanding that

2 B.P.J. doesn't like H.B. 3293, do you know anything

3 else about B.P.J.?

4 A No.

5 Q Would you be surprised to learn that B.P.J.'s 01:48:48

6 school didn't have to cut any girls when they allowed

7 B.P.J. to play on the girls' team last year?

8 MS. HOLCOMB: Object to form.

9 THE WITNESS: I don't know.

10 BY MR. BARR: 01:49:10

11 Q What is your understanding of how

12 B.P.J. placed in the cross-country events that she

13 participated in last year?

14 A I don't know.

15 Q Do you have any understanding at all? First? 01:49:26

16 Last? Middle of the pack?

17 A I don't know.

18 Q Do you know how many events B.P.J.

19 participated in last year for cross-country?

20 A No. 01:49:51

21 Q Did you run cross-country growing up?

22 A No. I would run races, but it wasn't

23 organized cross-country.

24 Q What kind of races?

25 A Just in elementary school, we would have races 01:50:13

1 once a year.

2 Q Explain -- explain that to me. Some sort
3 of -- everybody in the school goes down to the field
4 and runs a distance, something like that?

5 A Something like that, divided by grade and 01:50:35
6 gender.

7 Q Did you win?

8 A Yes.

9 Q Every time?

10 A Yes. 01:50:55

11 Q Were you first for everyone in your grade?

12 A For all the girls, yes.

13 Q What years is this?

14 A Kindergarten through fifth grade.

15 Q Have you been a part of any other organized or 01:51:13
16 semiorganized running events, other than that?

17 A No.

18 MR. BARR: Let's go off the record.

19 THE VIDEOGRAPHER: All right. I was on mute.

20 Okay. We're going off the record. The time 01:51:37
21 is 1:52 p.m., and this is the end of Media Unit

22 Number 2.

23 One moment.

24 (Recess.)

25 THE VIDEOGRAPHER: Okay. We are back on the 02:06:12

1 record at 2:06 p.m., and this is the beginning of Media
2 Unit No. 3.

3 Go ahead, please.

4 MR. BARR: Ms. Armistead, I just introduced to
5 you and your counsel what has been previously marked as 02:06:24
6 West Virginia Exhibit 34. Let me know you've got that
7 in front of you.

8 THE WITNESS: I have it in front of me.

9 BY MR. BARR:

10 Q Do you recognize this document? 02:06:34

11 A It looks like H.B. 3293.

12 Q Have you read this before?

13 A Sorry?

14 Q Have you read what is now Exhibit WV-34 prior
15 to seeing it now? 02:07:02

16 A I have read a little bit of it before, but not
17 the whole thing.

18 Q What part of it did you read before?

19 A The -- article 2, paragraph 1 and 2.

20 Q Did you read anything else? 02:07:29

21 A Not a full read, no.

22 Q So prior to today, article 2, section 1 and 2,
23 you've -- you've read, but everything else -- this will
24 be -- I'm just trying to gauge timing -- it will be new
25 for you? 02:07:56

1 A Yeah.

2 Q What is your understanding of the impact of
3 H.B. 3293?

4 A My understanding is that it will keep
5 biological women competing with biological women in 02:08:10
6 sports.

7 Q Where did you get that understanding?

8 MS. HOLCOMB: I'll just object to the extent
9 it calls for any communications with counsel, but
10 Lainey, you may answer. 02:08:28

11 THE WITNESS: Through conversations with my
12 attorney.

13 BY MR. BARR:

14 Q Other than in discussions with your attorney,
15 do you have any other reason to think that's what 02:08:42
16 H.B. 3293 does?

17 A I had heard that that's what they did too.

18 Q Who did you hear that from?

19 A I don't remember exactly.

20 Q Do you remember when you had that 02:09:25
21 conversation?

22 MS. HOLCOMB: Object to form.

23 THE WITNESS: I don't know how to answer that
24 question without giving privileged information.

25 ///

1 BY MR. BARR:

2 Q Let me ask it a different way.

3 Is your entire understanding of the impact of
4 H.B. 3293 based on discussions with your attorney?

5 A Yes. 02:09:43

6 Q Under this law, can B.P.J. play on a girls'
7 school sports team?

8 MS. HOLCOMB: Object to form.

9 MR. TRYON: Objection.

10 THE WITNESS: I can't make a legal 02:10:15
11 determination.

12 BY MR. BARR:

13 Q Is it your understanding that this law would
14 prohibit B.P.J. from playing on her school's girls'
15 team? 02:10:28

16 A I'm not sure.

17 Q So sitting here today, you don't know one way
18 or the other whether B.P.J. could play on the girls'
19 team based --

20 MS. HOLCOMB: Ob- -- 02:10:44

21 BY MR. BARR:

22 Q -- on this law?

23 MS. HOLCOMB: Sorry. Object to form.

24 THE WITNESS: I'm not sure because I'm not an
25 attorney. 02:10:54

1 BY MR. BARR:

2 Q What is your understanding of what happens if
3 you win in this lawsuit?

4 A I'm not sure.

5 Q Why did you think it would be important to 02:11:11
6 intervene if you don't understand the impact of
7 intervening?

8 A I believe that keeping this law in place will
9 result in fair and equitable playing for women in -- in
10 sports. 02:11:37

11 MR. BARR: That wasn't my question.

12 Court Reporter, can you read back the
13 question, please.

14 (Record read.)

15 MS. HOLCOMB: I'll just object to form. 02:12:03

16 THE WITNESS: I understand that intervening
17 means that I think that the bill is a good step of
18 legislation, and I believe that it will help keep the
19 playing fields even and equal, and that's why I thought
20 it was so important to intervene. 02:12:38

21 BY MR. BARR:

22 Q That brings me back to -- maybe I just didn't
23 understand your answer before.

24 What happens if you win?

25 A I guess the law stays as it is. 02:12:57

1 Q And what happens if you lose?

2 A I can't speculate on what will happen if I
3 lose. I'm not sure.

4 Q Do you have any understanding at all?

5 MS. HOLCOMB: Object to form. 02:13:21

6 MR. TRYON: Objection.

7 THE WITNESS: I don't know.

8 BY MR. BARR:

9 Q Why did you intervene in the lawsuit if you
10 don't know what happens if you win or lose? 02:13:39

11 MS. HOLCOMB: Object to form.

12 MR. TRYON: Objection.

13 THE WITNESS: Again, that's not what I said.

14 I understand that if -- if this law stays in
15 place, that women will be protected and it will keep 02:13:53
16 the playing field even and equitable for women in
17 sports.

18 BY MR. BARR:

19 Q Which women?

20 A Women -- 02:14:05

21 MR. TRYON: Objection.

22 THE WITNESS: I'm confused on your question.

23 BY MR. BARR:

24 Q Well, you said that the law will protect
25 women's sports, something along those lines, and I'm 02:14:25

1 asking, which women is it protecting?

2 A Women.

3 Q All women?

4 A Biological women in sports.

5 Q When did you first become aware of this law? 02:14:43

6 MS. HOLCOMB: Object to form and also to the
7 extent that it calls for privileged information again.

8 MR. BARR: You know, Christiana, I would be
9 willing to just -- I'm not trying to get any privileged
10 information at all. And if the answer is that 02:15:03

11 Ms. Armistead didn't know about this law until she
12 spoke with your office, I'll -- I'll move on. I'm just
13 trying to understand.

14 MS. HOLCOMB: Sure. We've -- this is also
15 asked and answered a couple of times, which is in part 02:15:14
16 while I raised the objection again. But yes, I will
17 continue to maintain attorney-client privileged
18 objections.

19 BY MR. BARR:

20 Q Okay. So I'll ask again, when did you first 02:15:26
21 become aware of this law?

22 MS. HOLCOMB: Same objection.

23 THE WITNESS: I can't answer that without
24 divulging privileged information with my attorney.

25 BY MR. BARR: 02:15:37

1 Q Was Jamie Metzger part of that conversation?

2 A No.

3 Q I don't want to know anything that was said,
4 but who was at that -- who was present for that
5 conversation?

02:15:55

6 A Christiana.

7 Q Anyone else?

8 A No.

9 Q But you don't recall when that conversation
10 happened?

02:16:13

11 MS. HOLCOMB: Objection to form again.

12 THE WITNESS: Sometime in 2021.

13 BY MR. BARR:

14 Q Was it on the phone?

15 A I don't recall.

02:16:30

16 Q Was it in person?

17 A No.

18 Q So it was in some type of virtual format,
19 phone, computer, something like that?

20 A Yes.

02:17:01

21 Q Did Ms. Holcomb reach out to you, or did you
22 reach out to Ms. Holcomb?

23 MS. HOLCOMB: Again, objection to the extent
24 it calls for privileged information.

25 And I'm not sure why we're rereading ground

02:17:13

Page 84

1 that's already been covered, Counsel.

2 MR. BARR: I went back and looked at the
3 transcript, and I still don't fully understand, so I'm
4 just trying to make sure we have clarify on the record.

5 MS. HOLCOMB: I also want to just state my 02:17:24
6 objection to revisiting ground already trod.

7 MR. BARR: Noted.

8 THE WITNESS: I don't know how to give you an
9 answer without divulging attorney-client privileges.

10 BY MR. BARR: 02:17:38

11 Q Ms. Holcomb can certainly correct me, but the
12 manner in -- who -- who reached out to who wouldn't be
13 a privileged communication, I'm aware of, and I didn't
14 hear Ms. Holcomb direct you not to answer based on
15 privilege. So I'll ask the question again. 02:17:55

16 Did Ms. Holcomb reach out to you?

17 A Yes.

18 Q Does this law apply to club sports?

19 MR. TRYON: Objection.

20 MS. HOLCOMB: Object to form. 02:18:20

21 THE WITNESS: I don't know.

22 BY MR. BARR:

23 Q Does it apply to grade school sports?

24 MS. HOLCOMB: Objection to form.

25 MR. TRYON: Objection. 02:18:28

1 THE WITNESS: I don't know.

2 BY MR. BARR:

3 Q Does it apply to intramural sports at
4 West Virginia State?

5 MR. TRYON: Objection. 02:18:38

6 MS. HOLCOMB: Objection to form.

7 THE WITNESS: I don't know.

8 BY MR. BARR:

9 Q Does it apply to all the schools in your
10 conference? 02:18:48

11 MS. HOLCOMB: Objection.

12 MR. TRYON: Objection.

13 THE WITNESS: I don't know.

14 BY MR. BARR:

15 Q Does it apply to all school-sponsored sports 02:18:58
16 in West Virginia?

17 MS. HOLCOMB: Object to form.

18 MS. MORGAN: Object to form.

19 MR. TRYON: Objection.

20 THE WITNESS: I don't know. 02:19:08

21 BY MR. BARR:

22 Q Tell me what you do know about this law.

23 A I don't know anything because I'm not an
24 attorney.

25 Q So to the extent you've said things about this 02:19:22

1 law in other contexts, you didn't have a basis to say
2 that?

3 MS. HOLCOMB: Object to form.

4 THE WITNESS: Can you repeat the question?

5 BY MR. BARR: 02:19:42

6 Q Sure. I understood your last answer to be
7 that you don't understand the scope or impact of this
8 law because you're not a lawyer. Did I say that
9 correctly?

10 MS. HOLCOMB: Object to form. 02:19:56

11 THE WITNESS: That's not what I said.

12 BY MR. BARR:

13 Q What did you say?

14 A I said I'm not going to make legal
15 commentation on something that I can't make legal 02:20:03
16 commentation on because I'm not an attorney.

17 Q And by "legal commentation," you mean whether
18 or not the law applies to a particular school or a
19 particular person; is that right?

20 MS. HOLCOMB: Object to form. 02:20:23

21 BY MR. BARR:

22 Q You tell me what you meant by "legal
23 commentation."

24 A Any legal commentary, I'm going to say I don't
25 know. 02:20:36

1 Q And discussing the impact of this law would
2 fall in legal commentary, as far as you understand it?

3 A What do you mean, the impact?

4 Q Well, I asked if you knew if this law applied
5 to club sports. Is that something that you would 02:20:56
6 consider legal commentary?

7 A I don't know if it applies.

8 Q And then I asked if this law applied to every
9 school in your conference. Is that something you would
10 consider legal commentary? 02:21:20

11 A I said I don't know.

12 Q And then I said, tell me what you do know
13 about this law.

14 MS. HOLCOMB: Object to form.

15 THE WITNESS: What my understanding is, is 02:21:26
16 that this will protect women in sports.

17 BY MR. BARR:

18 Q What do you mean by "protect"?

19 A Women are built different than biological men.
20 Biological men are stronger, fitter, faster, have a 02:22:09
21 bigger stature, in general, than women. So this law,
22 it was put into place to protect women, women's safety
23 and their interests.

24 Q Is this law accomplishing what you just said
25 by excluding transgender women? 02:22:28

1 MS. HOLCOMB: Object to form.

2 MR. TRYON: Objection.

3 THE WITNESS: Can you restate the question,
4 please?

5 MR. BARR: Is -- 02:22:45

6 Court Reporter, could you read the question
7 back, please.

8 (Record read.)

9 MS. HOLCOMB: Same objection.

10 THE WITNESS: Can you restate it in a 02:23:05

11 different way?

12 BY MR. BARR:

13 Q Is it that you don't understand the question?

14 MS. HOLCOMB: Object to form.

15 THE WITNESS: I just would like you to restate 02:23:11

16 it in a different way.

17 BY MR. BARR:

18 Q You just told me a series of things that you

19 believe the law is accomplishing; is that right?

20 A Yes. 02:23:27

21 Q And you said fairness, and I believe you said
22 safety; is that right?

23 A Correct.

24 Q And my question to you is, how is this law

25 accomplishing those goals? 02:23:41

1 MS. HOLCOMB: Object to form.

2 THE WITNESS: By -- by protecting fairness and
3 safety for biological women in sports.

4 BY MR. BARR:

5 Q I understand that that's what you believe the 02:24:01
6 goal of the law to be. I'm asking how it does that.

7 MS. HOLCOMB: Object to form.

8 MR. TRYON: Objection.

9 THE WITNESS: That's not for me to interpret.

10 BY MR. BARR: 02:24:13

11 Q Well, you're intervening in this lawsuit to
12 protect the law. I'm trying to understand why.

13 What do you think this law is doing? How does
14 it accomplish those goals?

15 MS. HOLCOMB: Object to form. 02:24:22

16 MR. TRYON: Objection.

17 THE WITNESS: I don't know. I think I already
18 answered your question.

19 BY MR. BARR:

20 Q So you don't know how the law accomplishes 02:24:36
21 those goals; you're just aware that those are the goals
22 of the law?

23 MR. TRYON: Objection.

24 MS. HOLCOMB: Object to form.

25 THE WITNESS: I'm aware that that's what, I 02:24:52

1 believe, the law would be doing if it's in effect, yes.

2 BY MR. BARR:

3 Q If the law is in effect, can B.P.J. play on a
4 girls' team?

5 MS. HOLCOMB: Object to form. 02:25:00

6 THE WITNESS: I don't know.

7 BY MR. BARR:

8 Q If the law is in effect, can a transgender
9 woman play on a girls' team?

10 MS. HOLCOMB: Object to form. 02:25:13

11 MR. TRYON: Objection.

12 THE WITNESS: I don't know.

13 BY MR. BARR:

14 Q Does this law apply to contact sports?

15 MS. HOLCOMB: Object to form. 02:25:40

16 THE WITNESS: I don't know.

17 BY MR. BARR:

18 Q Does this law apply to noncontact sports?

19 MS. HOLCOMB: Object to form.

20 THE WITNESS: I don't know. 02:25:57

21 BY MR. BARR:

22 Q Do you have any understanding what sports this
23 law applies to?

24 MS. HOLCOMB: Object to form.

25 THE WITNESS: I don't know. 02:26:09

1 BY MR. BARR:

2 Q Do you know if this law applies to esports,
3 when people sit around and play video games on behalf
4 of their school?

5 MS. HOLCOMB: Object to form. 02:26:28

6 THE WITNESS: I don't know.

7 BY MR. BARR:

8 Q Do you know if this law is different than the
9 NCAA's policy regarding transgender women playing
10 school sports?

11 MS. HOLCOMB: Object to form.

12 THE WITNESS: I don't know.

13 BY MR. BARR:

14 Q You said it's your understanding this law will
15 protect women for safety and fairness reasons. Did I 02:27:02
16 understand that correctly?

17 A Yes.

18 Q Are there any other things that this law does?

19 MS. HOLCOMB: Object to form.

20 THE WITNESS: I told you what my understanding 02:27:15
21 was.

22 BY MR. BARR:

23 Q I'm just trying to make sure I'm comprehensive
24 in understanding what you told me. I heard "fairness
25 and safety." Is there anything else? 02:27:31

1 MS. HOLCOMB: Object to form.

2 THE WITNESS: I don't know.

3 BY MR. BARR:

4 Q Would you be surprised to learn that this law
5 does not apply to every school in your conference? 02:28:01

6 MS. HOLCOMB: Objection.

7 MR. TRYON: Objection.

8 THE WITNESS: I don't know.

9 BY MR. BARR:

10 Q You don't know if you would be surprised, or 02:28:11
11 you didn't know that that was the case?

12 MS. HOLCOMB: Object to form.

13 MR. TRYON: Objection.

14 THE WITNESS: I just don't know.

15 BY MR. BARR: 02:28:24

16 Q I heard you. I'm trying to figure out what
17 you don't know.

18 Do you not know that the law doesn't apply to
19 every school in your conference?

20 MS. HOLCOMB: Object to form. 02:28:34

21 MR. TRYON: Objection.

22 THE WITNESS: I don't know. No, I don't know.

23 BY MR. BARR:

24 Q Is this law changing things from the way they
25 were before? 02:29:00

1 MS. HOLCOMB: Object to form.

2 MR. TRYON: Objection.

3 THE WITNESS: I don't know.

4 BY MR. BARR:

5 Q Would you expect that if a law is passed, it's 02:29:15
6 meant to change things?

7 MS. HOLCOMB: Object to form.

8 MR. TRYON: Objection.

9 THE WITNESS: I don't know.

10 BY MR. BARR: 02:29:25

11 Q Do you know any transgender people?

12 MR. TRYON: Objection.

13 MS. HOLCOMB: Object to form.

14 THE WITNESS: I have an -- had an acquaintance
15 a few years ago, that there are rumors that they have 02:29:55
16 transitioned or started a transition or something, but
17 I'm really not certain.

18 BY MR. BARR:

19 Q Who is that person?

20 A I don't know the name they currently go by. 02:30:09

21 Q Well, I appreciate you not using their former
22 name.

23 Other than that person, do you know any
24 transgender people?

25 MS. HOLCOMB: Object to form. 02:30:29

1 THE WITNESS: Not to my knowledge, but I don't
2 know.

3 BY MR. BARR:

4 Q Have you ever competed in a soccer game with
5 or against someone who's transgender? 02:30:44

6 A I'm not sure. I don't know.

7 Q Are there any transgender women playing on a
8 team in the Mountain East Conference.

9 MR. TRYON: Objection.

10 THE WITNESS: I don't know. 02:31:05

11 BY MR. BARR:

12 Q Have you ever heard of the phrase "inner sense
13 of self"?

14 A No.

15 Q If I asked you to tell me what that phrase 02:31:20
16 means, would you be able to do that?

17 MR. TRYON: Objection.

18 MS. HOLCOMB: Object to form.

19 THE WITNESS: No.

20 BY MR. BARR: 02:31:27

21 Q Have you ever seen that phrase written on a
22 piece of paper?

23 A It's possible. I do a lot of reading.

24 Q But nothing specific comes to mind?

25 A Correct. 02:31:42

1 Q What do you know about puberty blockers?

2 MR. TRYON: Objection.

3 MS. HOLCOMB: Object to form.

4 THE WITNESS: I don't know.

5 BY MR. BARR: 02:32:11

6 Q Have you ever heard of puberty blockers?

7 A I've heard of that.

8 Q What is your understanding of what puberty
9 blockers are?

10 MR. TRYON: Objection. 02:32:27

11 MS. HOLCOMB: Same objection.

12 THE WITNESS: I don't know.

13 BY MR. BARR:

14 Q So you've heard of it, but you don't have an
15 understanding of what it means? 02:32:33

16 A Correct.

17 Q Have you ever heard of hormone replacement
18 therapy?

19 A Yes.

20 Q Do you have an understanding of what that is? 02:32:46

21 MS. HOLCOMB: Object to form.

22 THE WITNESS: I don't know.

23 BY MR. BARR:

24 Q I'm sorry, I didn't hear you.

25 A I don't know. 02:32:56

1 Q Do you have any thoughts about what happens to
2 someone who starts puberty blockers before going
3 through puberty?

4 A I don't know.

5 Q Have you ever read anything that describes 02:33:22
6 what might happen to someone who takes puberty blockers
7 before going through puberty?

8 A I'm not sure.

9 Q Do you think transgender girls are faster than
10 you? 02:33:50

11 MR. TRYON: Objection.

12 A I think in general, biological males are
13 stronger, fitter, faster and have a bigger stature than
14 women do.

15 BY MR. BARR: 02:34:11

16 Q My question was, do you think transgender
17 girls are faster than you?

18 MR. TRYON: Objection.

19 MS. HOLCOMB: Objection; form.

20 THE WITNESS: I think in general, biological 02:34:18
21 males are faster than me, yes.

22 BY MR. BARR:

23 Q So if I'm hearing you correctly, and I'm not
24 trying to put words in your mouth, your response was
25 that all biological males are faster than you? 02:34:44

1 MR. TRYON: Objection.

2 MS. HOLCOMB: Objection.

3 BY MR. BARR:

4 Q Is that what you said?

5 A I believe I said in general. 02:34:57

6 Q Do you believe that all transgender girls --
7 let me rephrase it.

8 Do you believe, in general, transgender girls
9 are faster than you?

10 MS. HOLCOMB: Objection -- 02:35:12

11 MR. TRYON: Objection; asked and answered.

12 THE WITNESS: I already answered that.

13 BY MR. BARR:

14 Q You answered about biological males. I'm
15 asking about transgender girls. 02:35:24

16 MS. HOLCOMB: Object to form.

17 MR. TRYON: Objection.

18 THE WITNESS: I believe biological males are
19 in gen- -- are generally faster than females.

20 BY MR. BARR: 02:35:36

21 Q Every time that I ask about a transgender girl
22 and you respond with "biological males," are we, from
23 your perspective, talking about the same thing, the
24 same group of people?

25 A Yes. 02:35:47

1 Q So if I ask a question and you respond saying
2 "biological males," I can understand you to be, from my
3 perspective, my definition, meaning a transgender girl;
4 is that right?

5 MS. HOLCOMB: Object to form. 02:36:02

6 MR. TRYON: Objection.

7 THE WITNESS: I'm just going to answer the
8 questions how I know to answer the questions.

9 BY MR. BARR:

10 Q I understand, but I'm just trying to speed 02:36:14
11 this up for both of us. If I can understand that when
12 I say "transgender girl" and you respond with

13 "biological male," if we're -- if you're answering the
14 question I'm asking, and we're all talking about the
15 same group of people with our understood difference of 02:36:27

16 opinion there, it's going to allow us to run through
17 the next set of questions faster, but I'm happy to not
18 do that if you don't want to.

19 MS. HOLCOMB: Object to form.

20 MR. TRYON: Objection. 02:36:40

21 THE WITNESS: I'm still going to answer how
22 I've been answering.

23 BY MR. BARR:

24 Q Okay. Do you believe that transgender girls
25 are bigger than you? 02:37:04

1 MS. HOLCOMB: I'm sorry, Andrew, we didn't
2 fully hear your question.

3 MR. BARR: I asked if it was her belief that
4 transgender girls are bigger than her.

5 THE WITNESS: In general, biological men are 02:37:20
6 bigger than women, yes.

7 BY MR. BARR:

8 Q Where did you form that opinion?

9 A Observation.

10 Q Is that it? 02:37:40

11 A Yes. Looking around, in everyday life, I can
12 see that biological men are typically bigger than me.

13 Q Do you recognize there's a difference between
14 transgender women and biological men?

15 MS. HOLCOMB: Object to form. 02:38:11

16 THE WITNESS: I don't know.

17 BY MR. BARR:

18 Q Why do you keep using the phrase "biological
19 male"?

20 MS. HOLCOMB: Object to form. 02:38:24

21 THE WITNESS: Because that's my vocabulary.

22 BY MR. BARR:

23 Q Why don't you also say "biological female,"
24 then?

25 MS. HOLCOMB: Object to form. 02:38:51

1 MR. TRYON: Objection.

2 THE WITNESS: I don't know.

3 BY MR. BARR:

4 Q So a typical conversation, you'll say "women"
5 and "biological males"? 02:39:01

6 MS. HOLCOMB: Object to form.

7 THE WITNESS: I don't know. Probably not.

8 BY MR. BARR:

9 Q So why do you keep saying that today?

10 MS. HOLCOMB: Object to form. 02:39:14

11 MR. TRYON: Objection.

12 THE WITNESS: Because I'm choosing to.

13 BY MR. BARR:

14 Q Why are you making that decision?

15 MS. HOLCOMB: Object to form. 02:39:26

16 THE WITNESS: That's how I'm choosing to
17 answer your questions.

18 BY MR. BARR:

19 Q Okay. Well, let me -- help me. What is a
20 biological male? 02:39:41

21 MS. HOLCOMB: Object to form.

22 THE WITNESS: Someone who -- I believe someone
23 whose gender is male, assigned male at birth and is a
24 male.

25 BY MR. BARR: 02:40:09

1 Q That's a biological male?

2 A Yes.

3 Q What word do you describe someone who was
4 assigned male at birth, but their gender identity is
5 female? 02:40:25

6 MS. HOLCOMB: Object to form.

7 THE WITNESS: I would say "biological male."

8 BY MR. BARR:

9 Q So explain to me the difference between what I
10 ask and what you're saying for biological male. 02:40:43

11 MR. TRYON: Objection.

12 MS. HOLCOMB: Object to form.

13 THE WITNESS: I'm sorry?

14 BY MR. BARR:

15 Q If I heard you correctly, you said a 02:40:58
16 biological male is someone who is assigned the sex of
17 male at birth, has a gener -- gender identity of male.
18 Did I get that correct?

19 MS. HOLCOMB: Object to form.

20 THE WITNESS: I'm not sure. I'm not a doctor. 02:41:13

21 BY MR. BARR:

22 Q Okay. Let's -- let's start over. I must have
23 misheard you.

24 What is your understanding of what a
25 biological male is? 02:41:22

1 A I'm not a doctor.

2 Q I -- I understand that you're not a doctor.

3 What is your understanding of what a
4 biological male is?

5 A I don't know. 02:41:32

6 Q The court reporter could tell us, but I bet
7 you used the word -- the phrase "biological male" more
8 than 30 times. What does it mean?

9 MS. HOLCOMB: Object to form.

10 MR. TRYON: I'm just going to object. Asked 02:42:17
11 and answered.

12 THE WITNESS: Someone who was -- I think
13 someone who was assigned male at birth and identifies
14 as a male.

15 BY MR. BARR: 02:42:41

16 Q Okay. That's what I heard you say the first
17 time, so I appreciate you clarifying that.

18 What do you call someone who was assigned male
19 at birth but identifies as a female?

20 MS. HOLCOMB: Object to form. 02:42:52

21 THE WITNESS: Biological male.

22 BY MR. BARR:

23 Q So regardless how the person identifies, you
24 would call them a biological male?

25 MR. TRYON: Objection. 02:43:09

1 THE WITNESS: I didn't say what I would call
2 them. That's just how I'm referring to what you're
3 asking today, biological males.

4 BY MR. BARR:

5 Q So if it wasn't today, what would you refer to 02:43:22
6 them as?

7 MS. HOLCOMB: Object to form.

8 MR. TRYON: Objection.

9 THE WITNESS: I would think it's someone who's
10 a biological male. 02:43:42

11 MR. BARR: Court Reporter, could you read the
12 answer prior to the last answer, please.

13 (Record read.)

14 BY MR. BARR:

15 Q So what would you call them? 02:44:05

16 MS. HOLCOMB: Object to form.

17 THE WITNESS: If someone asks me to call them
18 by a certain name, then I would, but that doesn't mean
19 that it changes what I am considering a biological
20 male. 02:44:22

21 BY MR. BARR:

22 Q Could you explain that? Because that doesn't
23 make any sense to me.

24 A I would respect what someone would want their
25 name to be called. 02:44:36

1 Q So if somebody walked up and said, I'm a
2 transgender female, you would refer to them as a
3 transgender female?

4 A I --

5 MS. HOLCOMB: Object to form. 02:44:52

6 MR. TRYON: Objection.

7 THE WITNESS: If someone asked me to call them
8 by "Joe," then I would call them by their name -- by
9 what name that they told me that they wanted to be
10 called, which would be "Joe," "Michael," whatever it 02:45:04
11 would be, but that doesn't change my answer of
12 biological male.

13 BY MR. BARR:

14 Q I think I understand what you're -- you are
15 saying that you would respect the name that they would 02:45:18
16 like to be called, but regardless, you would still
17 consider someone who was assigned male at birth a
18 biological male?

19 A Yes.

20 Q Where did you learn that phrase? 02:45:37

21 That's not how most people talk in day-to-day
22 conversation, so I'm trying to understand why you're
23 choosing to use it today.

24 A I thought it would clarify the conversation so
25 you would know what I was talking about. 02:46:01

1 Q And why did you think that?

2 A Because of your terms that you've been using.

3 Q I don't -- I don't understand. The terms that

4 I'm using have led -- let you to use the term

5 "biological male"? 02:46:30

6 MR. TRYON: Objection.

7 MS. HOLCOMB: Object to form.

8 THE WITNESS: I think it's -- it's clarifying

9 the conversation, but I will just refer to all

10 biological males as "males" from now on, if you would 02:46:42

11 prefer.

12 BY MR. BARR:

13 Q No, you should answer however you feel most

14 comfortable. I'm just trying to make sure I

15 understand. 02:46:52

16 When did you first use the phrase "biological

17 male"?

18 A I couldn't tell you.

19 Q You've been using it your whole life?

20 A I might have said it a long time ago at some 02:47:04

21 point. I'm not sure.

22 Q If you were to introduce me to your brother,

23 would you say, This is Declan, a biological male?

24 MR. TRYON: Objection; harassment.

25 MS. HOLCOMB: Object to form. 02:47:22

1 THE WITNESS: No.

2 BY MR. BARR:

3 Q How would you introduce me to Declan?

4 A "This is Declan."

5 Q So what changed that you want to use the 02:47:38
6 phrase "biological male" today if you don't use it in
7 common speak?

8 MR. TRYON: Objection; asked and answered
9 about three times now.

10 MS. HOLCOMB: Object to form. 02:47:53

11 THE WITNESS: I think I answered that.

12 BY MR. BARR:

13 Q Just give me a moment.

14 Did I hear you say earlier that you're not
15 aware of having been on a team with a transgender girl? 02:48:35

16 A I'm not aware of that, no.

17 Q Have you ever been injured by a transgender
18 girl?

19 A Not to my knowledge.

20 Q Have you ever been harmed by a transgender 02:48:55
21 girl?

22 MR. TRYON: Objection.

23 MS. HOLCOMB: Object to form.

24 THE WITNESS: Not to my knowledge.

25 ///

1 BY MR. BARR:

2 Q Do you play any sports at West Virginia State
3 other than soccer?

4 A No.

5 Q Do you have plans to play any other sports at 02:49:31
6 West Virginia State other than soccer?

7 A No.

8 Q Do you believe that H.B. 3293 applies to the
9 West Virginia women's soccer team?

10 MS. HOLCOMB: Object to form. 02:49:48

11 THE WITNESS: I'm not sure.

12 BY MR. BARR:

13 Q What position do you play?

14 A Left center back.

15 Q Have you always played that position? 02:50:03

16 A No.

17 Q What position did you play before that?

18 A I've played in many different positions on the
19 soccer field.

20 Q And when did you become a left center back as 02:50:24
21 a regular position?

22 A My sophomore year of college.

23 Q What position were you your freshman year of
24 college?

25 A Left wingback or left center back. 02:50:41

1 Q Why did you change?

2 A I was needed for the left center back
3 position.

4 Q Your choice or the coach's choice?

5 MS. HOLCOMB: Object to form. 02:51:11

6 THE WITNESS: My coach's choice.

7 BY MR. BARR:

8 Q You don't seem happy with that choice; is that
9 right?

10 MS. HOLCOMB: Object to form. 02:51:22

11 THE WITNESS: I love both positions probably
12 equally.

13 BY MR. BARR:

14 Q Well, I was a wingback, and I loved running,
15 you know, the edges of the field, so I would understand 02:51:39
16 if you were a little upset about it, but in any event.

17 Is your team good?

18 A Yes.

19 Q How long has West Virginia State had a team, a
20 women's soccer team? 02:52:00

21 A Since fall of 2019.

22 Q You were on the inaugural team; right?

23 A Yes.

24 Q Did you play your freshman year?

25 A Yes. 02:52:21

1 Q Did you start?

2 A Yes.

3 Q Every game?

4 A I was injured, but other than that, yes.

5 Q How were you injured? 02:52:41

6 A I had to sit out one game for a fractured
7 foot, and I think that's it for my freshman year.

8 Q What was your record freshman year?

9 A I don't recall. Good. It was good, though.

10 Q More wins than losses? 02:53:15

11 A Yes.

12 Q Did you go to the conference tournament that
13 year?

14 A Since it was an inaugural season, no.

15 Q The conference didn't allow you to play? 02:53:41

16 Explain that.

17 A For first-year teams, although we were playing
18 games and competing, it was not for the title. That is
19 how I still have an extra year of NCAA eligibility and
20 one of the reasons that I decided to come to 02:54:03
21 West Virginia State.

22 Q I understood the part about eligibility.

23 Why did that encourage you to attend
24 West Virginia State?

25 A Because it would let me play soccer for 02:54:15

1 longer.

2 Q What was your team's record last year, 2020?

3 A I'm not sure of the record, but we qualified
4 for the tournament.

5 Q Did you win the tournament? 02:54:36

6 A No.

7 Q Did you make it to the finals?

8 A No.

9 Q How did you guys do?

10 A We lost in the first round. 02:54:51

11 Q What about this year, 2021?

12 A Oh, I was answering for this last season,
13 sorry.

14 Q No, that's okay.

15 So in 2021, this year, you qualified for the 02:55:14

16 tournament, but didn't make it past the first round; is
17 that right?

18 A Yes.

19 Q What happened in 2020, last year?

20 I imagine COVID impacted your season or 02:55:23

21 something, but I'm still curious how you-all did.

22 A Yes, COVID impacted it. So instead of the
23 fall, we played a shorter spring season. And I don't
24 remember how we did, but we didn't get into the
25 tournament. 02:55:41

1 Q I imagine it was a big step to -- to qualify
2 this year.

3 A Yes. It was impressive for our first official
4 season in the NCAA.

5 Q Over the last three years, have you played a 02:55:59
6 college called "Notre Dame"? And I'm not talking about
7 the Fighting Irish. I'm talking about the Notre Dame
8 in your conference.

9 A Yes.

10 Q Did you play the Fighting Irish? 02:56:13

11 A No, we didn't.

12 Q So if I -- if I talk about Notre Dame, you'll
13 understand I'm talking about the Notre Dame in your
14 conference?

15 A Yes. 02:56:23

16 Q Do you know where Notre Dame is located?

17 A I'm not sure.

18 Q Would it surprise you to find out it is not in
19 West Virginia?

20 MS. HOLCOMB: Object to -- object to form. 02:56:36

21 THE WITNESS: That wouldn't surprise me.

22 BY MR. BARR:

23 Q How about a school called "Frostburg"?

24 A What about it?

25 Q Have you played a game against Frostburg? 02:56:53

1 A Yes.

2 Q Do you know where Frostburg is located?

3 A Not in West Virginia.

4 Q I'm asking you.

5 A I don't know. It was a guess. 02:57:06

6 Q Would you be surprised to find out it's not in
7 West Virginia?

8 MS. HOLCOMB: Object to form.

9 THE WITNESS: No.

10 BY MR. BARR: 02:57:15

11 Q Do you have any understanding of whether
12 H.B. 3293 applies to Notre Dame?

13 MS. HOLCOMB: Object to form.

14 THE WITNESS: I don't know.

15 BY MR. BARR: 02:57:28

16 Q The same question for Frostburg.

17 MS. HOLCOMB: Same objection.

18 MR. TRYON: Objection.

19 THE WITNESS: I don't know.

20 BY MR. BARR: 02:57:40

21 Q If you end up playing on the team next year,
22 do you anticipate you'll play against Notre Dame?

23 MS. HOLCOMB: Object to form.

24 THE WITNESS: Most likely.

25 ///

1 BY MR. BARR:

2 Q And you say most likely because they're one of
3 the schools in your conference; right?

4 A Right.

5 Q Do you also expect that if you were to play on 02:58:02
6 the team next year, you would play against Frostburg,
7 given that Frostburg is in your conference?

8 MS. HOLCOMB: Object to form.

9 THE WITNESS: It's likely.

10 BY MR. BARR: 02:58:17

11 Q Do you have any understanding whether a
12 transgender woman can play on Frostburg or Notre Dame's
13 team?

14 MR. TRYON: Objection.

15 MS. HOLCOMB: Object to form. 02:58:37

16 THE WITNESS: I don't know.

17 BY MR. BARR:

18 Q If you found out that a transgender woman was
19 on Notre Dame or Frostburg's team, what would you do?

20 MR. TRYON: Objection. 02:58:46

21 MS. HOLCOMB: Object to form.

22 THE WITNESS: I would play a soccer game.

23 BY MR. BARR:

24 Q I understand you have a medical concern that
25 may impact soccer, but assuming that everything goes 02:59:19

1 well for you and that doesn't impact your game, do you
2 plan on playing competitive soccer after college?

3 MS. HOLCOMB: Object to form.

4 THE WITNESS: What kind of competitive soccer?

5 BY MR. BARR: 02:59:35

6 Q Do you have -- fair. I'll ask a different
7 question.

8 Do you have any plans to play soccer
9 postgraduation, of any kind?

10 A If the opportunity arises, I would love to 02:59:50
11 continue playing soccer.

12 Q What type of opportunities are you aware of
13 for playing soccer postgraduation?

14 A I'm sure in many cities there are women's
15 teams that I could join for things like that. 03:00:26

16 Q So some type of recreational, fun league is
17 what you're referencing?

18 A Yes.

19 Q Any plans of trying out or trying to join the
20 U.S. women's national team? 03:00:47

21 A No.

22 Q Do you know anybody on that team?

23 A No.

24 Q Would you agree with me they're probably the
25 best players in the country, if not the world, when it 03:01:10

1 comes to women's soccer?

2 MS. HOLCOMB: Object to form.

3 THE WITNESS: I think that they are amazing
4 athletes.

5 BY MR. BARR: 03:01:30

6 Q What was your reaction when you saw that they
7 recently got equal pay for women on the national team?

8 MS. HOLCOMB: Object to form.

9 THE WITNESS: I was happy for them.

10 BY MR. BARR: 03:01:53

11 Q Did you happen to see their game last month in
12 Texas?

13 A I did not.

14 Q Did you see the team came out publicly
15 supporting transgender youth? 03:02:06

16 MR. TRYON: Objection.

17 MS. HOLCOMB: Object to form.

18 THE WITNESS: I did not see that.

19 MR. BARR: We can go off the record.

20 THE VIDEOGRAPHER: All right. We are going 03:02:28
21 off the record. The time is 3:03 p.m., and this is the
22 end of Media Unit No. 3.

23 (Recess.)

24 THE VIDEOGRAPHER: We where back on the record
25 at 3:13 p.m., and this is the beginning of Media Unit 03:13:03

1 No. 4.

2 Go ahead, please.

3 BY MR. BARR:

4 Q Ms. Armistead, do you know what Title IX is?

5 A I -- I've heard of it before. 03:13:19

6 Q What is your understanding of Title IX?

7 A I believe it's to give equal opportunities to
8 women.

9 Q Do you have any other understandings about
10 Title IX? 03:13:46

11 A I don't know for certain.

12 Q So if I heard you correctly, Title IX is about
13 protecting women's rights; is that right?

14 MR. TRYON: Objection.

15 MS. HOLCOMB: Object to form. 03:14:14

16 THE WITNESS: In my opinion, yes.

17 BY MR. BARR:

18 Q How did you form that opinion?

19 A I believe we have to have Title IX trainings
20 to participate in collegiate athletics. 03:14:31

21 Q And those are annual, aren't they?

22 A Yes.

23 Q So at this point, you've attended three
24 Title IX trainings; is that right?

25 A I'm not sure about the third one yet. 03:14:45

1 Q So you know you've attended two and possibly a
2 third; is that fair?

3 A I believe so, yes.

4 Q Who conducts that training?

5 A I think it might be online. I'm not for sure. 03:15:05

6 Q That wasn't a fair question, I'm sorry.

7 Is that put on by your school?

8 A Yes.

9 Q So as a student athlete, you're required to
10 sit through a Title IX training on some type of basis. 03:15:27

11 Is that accurate?

12 A Yes.

13 Q What did you learn at those trainings?

14 A I don't recall specifics.

15 Q Do you believe that your school complies with 03:15:50
16 Title IX?

17 MS. HOLCOMB: Object to form.

18 MR. TRYON: Objection.

19 THE WITNESS: I don't know.

20 BY MR. BARR: 03:16:09

21 Q Do you have any reason to think your school
22 doesn't comply with Title IX?

23 A I have no reason to think that, no.

24 Q Do women's rights include transgender women's
25 rights? 03:16:30

1 MS. HOLCOMB: Object to form.

2 MR. TRYON: Objection.

3 THE WITNESS: I believe that women's --

4 whenever I am referring to women's rights, I'm

5 referring to biological women's rights. 03:16:48

6 BY MR. BARR:

7 Q Does that mean transgender women don't have

8 rights?

9 MR. TRYON: Objection.

10 MS. HOLCOMB: Object to form. 03:16:57

11 THE WITNESS: That's definitely not what I

12 said.

13 BY MR. BARR:

14 Q If Title IX protects women's rights, but not

15 transgender women's rights, what rights do transgender 03:17:14

16 women have?

17 MR. TRYON: Objection; asked and answered.

18 MS. HOLCOMB: Object to form.

19 THE WITNESS: I don't know.

20 BY MR. BARR: 03:17:34

21 Q Do you think transgender women should be

22 protected by the law?

23 MR. TRYON: Objection.

24 MS. HOLCOMB: Object to form.

25 By what law? 03:17:50

1 BY MR. BARR:

2 Q Just any law.

3 MS. HOLCOMB: Object to form.

4 THE WITNESS: I believe that living in the
5 United States allows all people in the United States to 03:18:01
6 have rights and protections under the Constitution.

7 BY MR. BARR:

8 Q And that would include transgender women?

9 MR. TRYON: Objection.

10 THE WITNESS: That would include everyone. 03:18:19

11 BY MR. BARR:

12 Q Does West Virginia State do a good job of
13 protecting women's rights?

14 MS. HOLCOMB: Object to form.

15 THE WITNESS: I don't have any reason to think 03:18:39
16 that it doesn't.

17 BY MR. BARR:

18 Q Have any of your school's policies regarding
19 Title IX harmed you?

20 MS. HOLCOMB: Object to form. 03:18:53

21 THE WITNESS: I don't know what you're asking.

22 BY MR. BARR:

23 Q Has your school ever done something, on the
24 premise that Title IX requires them to do so, that you
25 disagree with? 03:19:16

1 MS. HOLCOMB: Object to form.

2 THE WITNESS: Not to my knowledge.

3 BY MR. BARR:

4 [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

12 MR. BARR: Let's go off the record.

13 MS. HOLCOMB: Yeah, that sounds great.

14 THE VIDEOGRAPHER: Hang on. Hang on. Hang

15 on. 03:20:30

16 We're going off the record. The time is

17 3:21 p.m.

18 (Recess.)

19 THE VIDEOGRAPHER: All right. We are back on

20 the record at 3:29 p.m. 03:28:54

21 Go ahead, please.

22 (Lainey Armistead left the room.)

23 [REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

[REDACTED]

6

[REDACTED]

7

[REDACTED]

8

[REDACTED]

9

[REDACTED]

10

[REDACTED]

[REDACTED]

11

[REDACTED]

12

[REDACTED]

13

[REDACTED]

14

(Lainey Armistead entered the room.)

15

MR. BARR: Ms. Armistead, I've introduced an

03:29:49

16

exhibit, Exhibit 43. Let me know when you've got it in

17

front of you.

18

(Exhibit 43 was marked for identification

19

by the court reporter and is attached hereto.)

20

THE WITNESS: Got it.

03:30:12

21

MS. HOLCOMB: If you'll hold for just one

22

moment, I don't.

23

Okay. You're good to proceed. Thank you.

24

BY MR. BARR:

25

Q Do you recognize the document, Ms. Armistead?

03:30:19

1 A Um.

2 Q I can ask a different question.

3 Is this the policy that would have presented

4 to you on an annual basis as part of the Title IX

5 training at West Virginia State University?

03:30:42

6 A It could have been.

7 Q So this document, Exhib- -- Exhibit 43, is

8 entitled "Unlawful Discrimination and Harassment,

9 Sexual Harassment, Grievance Procedures, Child Abuse

10 and Neglect Reporting and Relationships."

03:31:14

11 Did I read that correctly, Ms. Armistead?

12 A Yes.

13 Q And this is published by the West Virginia

14 State University Board of Governors as BOG Policy

15 No. 14.

03:31:31

16 Did I read that correctly?

17 A Yes.

18 Q You have the right to read this whole policy,

19 if you would like; otherwise, I can direct you to

20 specific questions. You let me know what you prefer.

03:31:38

21 A You can direct me.

22 Q Okay. If you go to the bottom of page 1,

23 you'll see section 3.1. Tell me when you see that.

24 A Got it.

25 Q Cognoscente of the break we just had, I'm

03:31:58

Page 123

1 going to just pinpoint a couple of specific words and
2 phrases for you; however, if you would like to read the
3 whole paragraph, you're more than welcome to do so,
4 okay?

5 3.1 says (as read): 03:32:10

6 "Title IX of the Education
7 Amendments...and other state and
8 federal laws prohibit unlawful
9 discrimination on the basis of sex."

10 Do you see that? 03:32:23

11 A I do see that.

12 Q Did I read that correctly?

13 A Yes.

14 Q If you keep going, it says (as read):

15 "In accordance with The West Virginia 03:32:37

16 Higher Education Policy Commission and
17 Board of Governors Policy #17, the
18 University considers" --

19 And I'm going to skip through some of these.

20 (As read): 03:32:47

21 -- sex and gender and gender identity
22 as protected under federal, state and
23 local antidiscrimination laws as
24 protected characteristics and will not
25 permit unlawful discrimination or

03:33:00

1 harassment.

2 Did you follow that?

3 A Yes.

4 Q What do you understand the phrase "basis of

5 sex" mean -- to mean? 03:33:15

6 A I believe that that is referring to the gender
7 of someone.

8 Q Do you have any reason to dispute your

9 school's statement that Title IX and other state and

10 federal laws prohibit unlawful discrimination on the 03:33:45

11 basis of sex?

12 MS. HOLCOMB: Object to form.

13 THE WITNESS: I don't know.

14 BY MR. BARR:

15 Q You don't know if you have a reason to dispute 03:33:59

16 it, or you just don't know if that's true?

17 MS. HOLCOMB: Object to form.

18 THE WITNESS: I don't know if I have a reason

19 to dispute it.

20 BY MR. BARR: 03:34:08

21 Q Does that mean you don't have a reason to

22 dispute it?

23 MS. HOLCOMB: Object to form.

24 THE WITNESS: I don't know.

25 ///

1 BY MR. BARR:

2 Q Okay. Scroll down and you'll go to
3 section 5.1. Are you there?

4 A Yes.

5 Q All right. The very first clause, and that's 03:34:28
6 where we'll stop, it says (as read):

7 "The University prohibits Protected
8 Class Discrimination and Harassment."

9 Did I read that correctly?

10 A Yes. 03:34:40

11 Q Do you know what discrimination is?

12 MS. HOLCOMB: Object to form.

13 THE WITNESS: I have heard that word before.

14 BY MR. BARR:

15 Q What is your understanding of the meaning of 03:34:57
16 the word "discrimination"?

17 MR. TRYON: Objection.

18 MS. HOLCOMB: Object to form.

19 THE WITNESS: I think it's a broad word, and
20 it would be hard for your -- me to give you a 03:35:16
21 definition without looking it up.

22 BY MR. BARR:

23 Q Okay. How about harassment, do you know what
24 the word "harassment" means?

25 MS. HOLCOMB: Object to form. 03:35:26

1 MR. TRYON: Objection.

2 THE WITNESS: I have a good idea of what the
3 word "harassment" means.

4 MR. BARR: Okay. Let's --

5 MR. TRYON: Excuse me, Andrew, can we excuse 03:35:41
6 the witness for a minute? I'd like to talk about
7 something on the record without -- without the witness.

8 MS. HOLCOMB: You can step out.

9 (Lainey Armistead left the room.)

10 MR. TRYON: Christiana, is she out of the 03:35:57
11 room?

12 MS. HOLCOMB: Yes, she is now.

13 MR. TRYON: So, you know, forgive me, but I
14 don't understand how this witness could possibly
15 provide any useful information about a school policy 03:36:06
16 that is full of legalisms, and if you want to depose
17 somebody on it, it ought -- ought to be the school,
18 about what the school -- school's view is on this form.

19 What her form -- her views on this form are
20 seem to me to be completely irrelevant, and I'm not 03:36:19
21 sure why we're going through this. I -- I suppose you
22 can -- can do this, but it seems like a waste of time.

23 And could you just kind of enlighten me how
24 you think this is in some way relevant, especially with
25 this witness? 03:36:33

1 MR. BARR: This is the Title IX policy in a
2 case about Title IX, and I'm just curious what the
3 witness's understanding of Title IX is.

4 MR. TRYON: But it doesn't matter what this
5 witness's understanding of Title IX is. That is in 03:36:45
6 fact the legal dispute across the country about what
7 Title IX means.

8 So how is this witness in any way relevant to
9 what Title IX --

10 MR. BARR: Mr. Tryon -- 03:36:56

11 MR. TRYON: -- actually means?

12 MR. BARR: Mr. Tryon, do you want to have this
13 discussion off the record, or no?

14 MR. TRYON: No, I wanted it on the record so I
15 can understand what you're doing -- 03:37:04

16 MR. BARR: Okay. And --

17 MR. TRYON: -- and why we're going to spend an
18 hour talking about a form that she just can't possibly
19 give a legal interpretation on.

20 MR. BARR: I'm not asking for a legal 03:37:13
21 interpretation. I have every right to ask about this,
22 as you acknowledged. So if we're going to stay on the
23 record, let's just keep going.

24 MR. TRYON: I didn't really acknowledge that,
25 but go ahead. So you're not -- you can't justify to me 03:37:18

1 why we're doing this?

2 MR. BARR: I just told you why we're doing
3 this.

4 MR. TRYON: Yeah, but she can't -- she's not
5 competent -- she's not a competent witness to talk 03:37:27
6 about this policy. And anything you get from her is
7 going to be completely irrelevant at trial.

8 Can't we just cut this part out and move on?

9 MR. BARR: No, Mr. Tryon, we cannot.

10 MR. TRYON: All right. Well, I'm -- 03:37:43

11 MR. BARR: I recall there is --

12 MR. TRYON: -- making my objection on the
13 record for any further questions on this, for this
14 witness.

15 MS. HOLCOMB: I'll likewise object. 03:37:51

16 If we're ready, I'll have her brought back in.

17 MR. BARR: Thank you.

18 (Lainey Armistead entered the room.)

19 BY MR. BARR:

20 Q Sorry for all the up-and-down, Ms. Armistead. 03:38:44

21 If you could scroll down to section 23,
22 please. And inside 23, go to the definition of
23 Title IX. It's maybe four pages after the section
24 starts.

25 A Okay. 03:39:22

1 MR. TRYON: I'm sorry, where are we?

2 MR. BARR: Mr. Tryon, we are looking at the
3 definition of Title IX in section 23 of Exhibit 43.

4 BY MR. BARR:

5 Q Ms. Armistead -- 03:39:38

6 MR. TRYON: Thank you.

7 BY MR. BARR:

8 Q Ms. Armistead, do you see that it says (as
9 read):

10 "'Title IX' means Title IX of the 03:39:40

11 Education Amendments of 1972.

12 Title IX prohibits discrimination on

13 the basis of sex in education programs

14 or activities receiving federal

15 financial assistance"? 03:39:49

16 Did I read that correctly?

17 A Yes.

18 Q Okay. So let's stay in section 23. Scroll up

19 just a little bit, and you'll see a definition for on

20 the basis of sex. Tell me when you're there. 03:40:04

21 A Got it.

22 Q (As read):

23 "'On the Basis of Sex' or 'Based on

24 Sex' means gender, gender identity,

25 including transgender status, sexual 03:40:17

1 orientation and/or stereotypical
2 notions of what is female/feminine
3 versus male/masculine or a failure to
4 conform to those gender stereotypes."

5 Did I read that correctly? 03:40:30

6 A Yes.

7 Q Scroll up just a little bit further and you'll
8 see a definition for education program or activity.

9 Tell me when you see that.

10 A Got it. 03:40:53

11 Q (As read):

12 "'Education Program or Activity'

13 includes locations, events, or

14 circumstances over which the

15 University exercises substantial 03:41:00

16 control" --

17 I'm going to skip through the next part and

18 then go to "athletic programs."

19 Do you see that?

20 A Yes. 03:41:10

21 Q Did I read that correctly, knowing that I
22 excerpted part of that definition?

23 A Yes.

24 Q So let's scroll back down to the definition of

25 Title IX, the first definition you looked at. 03:41:27

1 Do you see that?

2 A Yes.

3 Q So according to this policy, Title IX
4 prohibits discrimination on the basis of sex.

5 We just looked at what the definition of basis 03:41:44
6 of sex is, and it includes transgender status, doesn't
7 it?

8 MS. HOLCOMB: Object to form.

9 MR. TRYON: Objection.

10 THE WITNESS: That was -- 03:41:52

11 BY MR. BARR:

12 Q We can scroll up -- I'm sorry, I didn't mean
13 to cut you off. What did you say?

14 A That was written on -- what I read, yes.

15 Q Okay. So according to this policy, on the 03:42:06
16 basis of sex includes transgender status; is that
17 correct?

18 A That is what I read.

19 Q And according to this policy, on the basis of
20 sex includes gender identity; right? 03:42:22

21 MR. TRYON: I'm objecting to any further
22 questions on this document for this witness. Will you
23 give me a standing objection for that, please?

24 MR. BARR: Noted.

25 THE WITNESS: I don't know. 03:42:46

1 BY MR. BARR:

2 Q Do you want to go back up and look at the
3 definition on the basis of sex again?

4 A That's not necessary.

5 Q Do you agree with me that on the basis of sex, 03:42:54
6 as it relates to this policy, includes transgender
7 status and gender identity?

8 MS. HOLCOMB: Object to form.

9 THE WITNESS: That's what I read.

10 BY MR. BARR: 03:43:07

11 Q And that education programs or activities
12 includes school-sponsored athletics; right?

13 MS. HOLCOMB: Object to form.

14 THE WITNESS: It could mean that.

15 BY MR. BARR: 03:43:22

16 Q We just looked at the definition of education
17 programs and activities, and it included
18 school-sponsored athletics; right?

19 MS. HOLCOMB: Object to form.

20 THE WITNESS: That was the definition that was 03:43:37
21 presented.

22 BY MR. BARR:

23 Q So using the definitions that were presented
24 in this policy, Title IX prohibits discrimination on
25 the basis of transgender status or gender identity and 03:43:55

1 school-sponsored athletics receiving federal financial
2 assistance; right?

3 MS. HOLCOMB: Object to form.

4 THE WITNESS: I'm not really sure exactly what
5 the policy is talking about. 03:44:17

6 BY MR. BARR:

7 Q Would you agree with me that I read that
8 correctly, using the definitions provided in the
9 policy?

10 A I heard what you said based on the document 03:44:23
11 that you presented.

12 Q Did I say it correctly based on the document
13 that I presented?

14 A Yes.

15 Q Isn't that exactly what you are seeking to do 03:44:43
16 in this lawsuit?

17 MS. HOLCOMB: Object to form.

18 MR. TRYON: Objection.

19 THE WITNESS: No.

20 BY MR. BARR: 03:45:10

21 Q How isn't it?

22 MS. HOLCOMB: Object to form.

23 MR. TRYON: Objection.

24 THE WITNESS: I don't know.

25 ///

1 BY MR. BARR:

2 Q If you win in this lawsuit, wouldn't that mean
3 that B.P.J. would be excluded on the basis of her
4 transgender status and gender identity from
5 participating on the school-sponsored girls' team? 03:45:48

6 MS. HOLCOMB: Object to form.

7 MR. TRYON: Objection.

8 THE WITNESS: I'm not a lawyer, so I can't
9 answer that.

10 BY MR. BARR: 03:46:05

11 Q In any of the discovery responses that you've
12 prepared for this case, did you acknowledge that
13 B.P.J. would be excluded from the girls' team at her
14 school because of H.B. 3293?

15 MS. HOLCOMB: Object to form. 03:46:24

16 THE WITNESS: I don't know.

17 BY MR. BARR:

18 Q Did you review the discovery responses before
19 they were sent over to us?

20 A Yes. 03:46:35

21 Q Do you recall any discovery responses
22 regarding whether B.P.J. would be excluded from her --
23 her school's girls' cross-country team?

24 A I don't recall.

25 Q Let's keep talking about B.P.J. We earlier 03:46:53

1 discussed that B.P.J. participated in several
2 cross-country events in the fall of 2021.

3 Do you remember that?

4 A I remember what you said about that.

5 Q And if I remember what you said, you didn't 03:47:19
6 have a -- an understanding of whether B.P.J.
7 participated, how many times she participated or how
8 she did. Is that accurate?

9 A Correct.

10 Q And, in fact, you didn't have an understanding 03:47:35
11 of what B.P.J. had done at all as it relates to
12 athletics, if I understood you correctly?

13 A I don't know anything -- I don't really know
14 B.P.J., the plaintiff, so I can't comment on her
15 personal -- their personal successes or how they do in 03:47:58
16 events.

17 Q Okay. I'm not asking you to accept my
18 terminology here, okay?

19 Will you accept that B.P.J. is a transgender
20 girl who played on a girls' team, just for the purposes 03:48:17
21 of this question? I'm not asking you to understand or
22 agree with my terminology.

23 MS. HOLCOMB: Object to form.

24 MR. TRYON: Objection.

25 ///

1 BY MR. BARR:

2 Q I'll just ask the question. I'm not trying to
3 be tricky. I just want to make sure that you
4 understand what I'm asking.

5 Given that B.P.J. is a transgender girl, do 03:48:38
6 you expect that she won the events that she
7 participated in?

8 MS. HOLCOMB: Object to form.

9 THE WITNESS: I --

10 MR. TRYON: Objection. 03:48:52

11 THE WITNESS: -- don't know.

12 BY MR. BARR:

13 Q What's your expectation based on what you told
14 me earlier about advantages?

15 MS. HOLCOMB: Same objection. 03:49:01

16 MR. TRYON: Objection.

17 THE WITNESS: I don't know how B.P.J.
18 performed, and I wouldn't be expected to know how
19 she -- they performed.

20 BY MR. BARR: 03:49:20

21 Q Would you be surprised if B.P.J. got last
22 place?

23 MR. TRYON: Objection.

24 MS. HOLCOMB: Object to form.

25 THE WITNESS: I don't know. 03:49:32

1 BY MR. BARR:

2 Q I realize you don't know how B.P.J. placed,
3 and I'm not asking that question.

4 My question is, would you be surprised if
5 B.P.J. got last? 03:49:48

6 A I understood your question, and again, I don't
7 know.

8 Q So you have no -- nothing would surprise you,
9 whether B.P.J. got first or last or something in
10 between? 03:50:00

11 MS. HOLCOMB: Object to form.

12 MR. TRYON: Objection.

13 THE WITNESS: That's not what I said.

14 BY MR. BARR:

15 Q Okay. What did you say? 03:50:38

16 A I just said I don't know, from your question.
17 In general, I would think that -- I believe that
18 biological males have advantages, but does that mean in
19 all cases that happens? Maybe; maybe not.

20 But I don't really know the specifics or what 03:51:00
21 to be expected from B.P.J. because I don't know that
22 person.

23 Q Okay. You raised a good question.

24 Do you expect that there might be exceptions
25 to these advantages that you've talked about? 03:51:13

1 middle school cross-country and B.P.J. participating on
2 the girls' team?

3 MS. HOLCOMB: Object to form.

4 THE WITNESS: I don't know.

5 BY MR. BARR: 03:53:00

6 Q When it comes to fairness, what fairness are
7 you concerned about?

8 A In general, biological males are faster than
9 biological women.

10 Q So I'm not putting words in your mouth. 03:53:32

11 Is the concern that the transgender girl would
12 win the race to the detriment of the cisgender girl?

13 Is that the fairness concern?

14 MR. TRYON: Objection.

15 MS. HOLCOMB: Object to form. 03:53:44

16 THE WITNESS: That is not the only concern.

17 BY MR. BARR:

18 Q What are the other concerns?

19 A It's just not fair for biological males to
20 compete with biological women in any sports. 03:54:31

21 Q I heard you say that. I'm trying to
22 understand why you believe that.

23 MS. HOLCOMB: I'm sorry, was there a question?

24 MR. BARR: Yes.

25 ///

1 BY MR. BARR:

2 Q Why do you believe that?

3 A I believe I already answered that question.

4 Q Could you tell me it again because I certainly

5 didn't hear it. I'm trying to understand why you 03:55:03

6 believe that B.P.J. creates a fairness issue running

7 middle school cross-country on the girls' team?

8 MS. HOLCOMB: Objection to form.

9 MR. TRYON: Objection.

10 THE WITNESS: Because, in general, biological 03:55:23

11 males are stronger, fitter, faster than biological

12 women.

13 BY MR. BARR:

14 Q And if I understand you, the concern would be

15 that transgender girls would win and cisgender girls 03:55:38

16 would not because of these advantages you're talking

17 about; is that right?

18 MS. HOLCOMB: Objection to form.

19 THE WITNESS: I'm aware of my blessings and

20 opportunities that I was able to have because of the 03:55:57

21 fair playing that I have seen throughout my life, and I

22 want to make sure that I fight for that for other

23 women, to make sure that they are not having to compete

24 with biological males, in whatever sport that they do.

25 ///

1 BY MR. BARR:

2 Q I understand. And you've told me that you
3 want to do that for two reasons, safety and fairness;
4 is that right?

5 A Yes. 03:56:27

6 Q And we talked about safety with middle school
7 cross-country, and you stated you don't know what the
8 safety issue is with B.P.J. running cross-country on
9 the girls' team; right?

10 MS. HOLCOMB: Object to form. 03:56:49

11 THE WITNESS: I don't know.

12 BY MR. BARR:

13 Q Right. So the two things that you're
14 concerned about, safety and fairness, we've talked
15 about safety, and now I'm trying to understand what 03:57:04
16 would be unfair about B.P.J. running cross-country on
17 the girls' team at her middle school.

18 MR. TRYON: Objection.

19 MS. HOLCOMB: Objection to form.

20 THE WITNESS: H.B. 3293 is to promote equality 03:57:31
21 for all women in all sports, so I think that that
22 answers my -- your question.

23 BY MR. BARR:

24 Q Perhaps I'm just not following. I don't know
25 how that answers the question about what fairness issue 03:57:53

1 arises with B.P.J. running on the girls' cross-country
2 team at her middle school.

3 MS. HOLCOMB: I'm going to object as asked and
4 answered multiple times.

5 MR. BARR: Attorney Holcomb, if you can tell 03:58:07
6 me what the answer is, I'll be happy to move on. I
7 haven't heard an answer yet.

8 MS. HOLCOMB: I think she's answered your
9 question at least three times to the best of her
10 ability. So it's asked and answered. 03:58:17

11 MR. BARR: I'll -- I'll try it a different
12 way.

13 BY MR. BARR:

14 Q Ms. Armistead, can you point to any specific
15 fairness issue you're concerned about as it relates to 03:58:25
16 B.P.J. running on the girls' cross-country team at her
17 middle school?

18 MS. HOLCOMB: Objection to form.

19 THE WITNESS: I am not certain for specifics
20 on her -- on B.P.J., but I do know that this law 03:59:04
21 promotes fairness and equality for all women, including
22 those who run cross-country at age 11 and college
23 athletes in a contact sport, such as myself.

24 BY MR. BARR:

25 Q Okay. Just to make sure that I've understood 03:59:26

1 you, you -- do not have a specific fairness issue to
2 point to based on my last question. Did I understand
3 that correctly?

4 MS. HOLCOMB: Object to form.

5 MR. TRYON: Objection. 03:59:37

6 THE WITNESS: That's not what I said. I just
7 said overall it's -- it wouldn't be fair for all women.

8 BY MR. BARR:

9 Q But specifics, there's no specific thing you
10 can point to for B.P.J.; right? 03:59:50

11 A I don't know.

12 MR. BARR: I -- I've introduced an exhibit.
13 It's actually previously marked as Exhibit 39. Let me
14 know when you have it.

15 THE WITNESS: Got it. 04:00:35

16 BY MR. BARR:

17 Q Have you ever heard of the Doddridge
18 Invitational cross-country meet?

19 A No.

20 Q If you would like to read the e-mail and look 04:00:45
21 at the exhibit, please let me know; otherwise, I'll
22 just ask my question. It's whatever is best for you.

23 A I read it.

24 Q Okay. If you could scroll down to page 2,
25 please, you'll see two tables. The table on the left 04:01:13

1 says "BMS XC-Boys," and the table on the right says

2 "BMS XC-Girls."

3 Do you see that?

4 A Yes.

5 Q Do you know what BMS references? 04:01:32

6 A I do not.

7 Q I'll represent to you that it's Bridgeport

8 Middle School.

9 Have you ever heard of Bridgeport Middle

10 School? 04:01:46

11 A No.

12 Q Okay. And then on the table on the right, it

13 also says "BMS," which, again, is Bridgeport Middle

14 School.

15 Do you know what XC-Girls means? 04:01:56

16 A Yes.

17 Q What does that mean?

18 A Cross-country girls.

19 Q Okay. So let's focus on the table on the

20 right. 04:02:12

21 Do you see that there are approximately 20

22 names -- or 20 times listed? The names have been

23 redacted for privacy reasons. Do you see that?

24 A Yes.

25 Q And you see that one name has not been 04:02:29

1 redacted, and that's B [REDACTED] P [REDACTED]-J [REDACTED].

2 Do you see that?

3 A Yes.

4 Q I'm going to represent to you that

5 B [REDACTED] P [REDACTED]-J [REDACTED] is B.P.J., the plaintiff in this 04:02:39
6 case, okay?

7 A Okay.

8 Q What do you think this table that is entitled

9 "BMS XC-Girls" is telling us?

10 MS. HOLCOMB: Object to form. 04:02:57

11 THE WITNESS: I don't know.

12 BY MR. BARR:

13 Q Does it look like it may be a listing of

14 individual students' times at the

15 Doddridge Invitational on Thursday, September 16th? 04:03:15

16 A Yes.

17 Q And if we look at that table on the right, it

18 has three columns, one for distance, one for actual

19 time and one for pace per mile.

20 Do you see that? 04:03:30

21 A Yes.

22 Q And this table on the right, we're just

23 talking about girls; right?

24 MS. HOLCOMB: Object to form.

25 THE WITNESS: That is what the document says. 04:03:49

1 BY MR. BARR:

2 Q Okay. How did B.P.J. do at the
3 Doddridge Invitational, according to this table?

4 A B.P.J. ran 1.9 miles in 21 minutes and
5 50 seconds. 04:04:18

6 Q B.P.J. finished towards the back of the
7 Bridgeport Middle School girls; right?

8 MS. HOLCOMB: Object to form.

9 THE WITNESS: B.P.J. wasn't in the lead, no.

10 BY MR. BARR: 04:04:46

11 Q In fact, B.P.J. finished in 13th of 16
12 finishes; right?

13 MS. HOLCOMB: Object to form.

14 THE WITNESS: That might be what the table
15 shows. 04:05:13

16 BY MR. BARR:

17 Q Do you see on the table how a few of the times
18 are highlighted yellow and the rest are white?

19 A Yes.

20 Q What does that yellow highlighting mean? 04:05:29

21 MS. HOLCOMB: Object to form.

22 THE WITNESS: I don't know.

23 BY MR. BARR:

24 Q Do you know how middle school cross-country
25 team times are determined? 04:05:45

1 A No.

2 Q Would you have any basis to state that
3 B.P.J. impacted the team time --

4 MS. HOLCOMB: Object to form.

5 Sorry, I didn't mean to cut you off. 04:06:05

6 THE WITNESS: I don't know.

7 BY MR. BARR:

8 Q You don't know how the team time is
9 determined?

10 A Correct. 04:06:18

11 Q And, therefore, you would have no basis to
12 state whether B.P.J.'s times impacted the
13 Bridgeport Middle School team time; correct?

14 A I don't know.

15 Q I just want to make sure we're clear on the 04:06:37
16 record.

17 You don't know what?

18 A What was your question again?

19 Q I'm asking if you have any basis to state
20 whether B.P.J. impacted the Bridgeport Middle School 04:06:54
21 team time at the Doddridge Invitational.

22 MS. HOLCOMB: Object to form.

23 THE WITNESS: I don't know.

24 BY MR. BARR:

25 Q You don't know whether B.P.J. did or didn't 04:07:15

1 impact it?

2 MS. HOLCOMB: Object to form.

3 THE WITNESS: I don't know.

4 BY MR. BARR:

5 Q So you wouldn't be in a position to state that 04:07:31
6 B.P.J. led to some other student's time not being
7 included in the team time; right?

8 A Can you say that again, please?

9 Q Sure. You're not in a position to state one
10 way or the other whether B.P.J.'s time impacted another 04:07:56
11 student's time included on the team time at the
12 Doddridge Invitational?

13 MS. HOLCOMB: Object to form.

14 THE WITNESS: Correct. I don't run
15 cross-country. I do know about soccer, though. 04:08:17

16 MR. BARR: I've introduced another exhibit.
17 It's previously been marked as Exhibit 40. Please let
18 me know when it appears.

19 THE WITNESS: Got it.

20 MS. HOLCOMB: I'm sorry, give me one moment. 04:09:02
21 Mine is still attempting to refresh.

22 MR. BARR: No problem. Tell me when you're
23 ready.

24 MS. HOLCOMB: All right. I'm ready. Thank
25 you. 04:09:22

1 MR. BARR: Sure.

2 BY MR. BARR:

3 Q Ms. Armistead, Exhibit 40, do you see tables
4 similar to the tables we just saw on Exhibit 39?

5 A They look similar. 04:09:31

6 Q But in this case, the right-hand table says
7 "BMS," which we've discussed is Bridgeport Middle
8 School, "XC-Girls," cross-country girls, for the
9 Ritchie County event on Saturday, October 1st.

10 Do you see that? 04:09:53

11 A Yes.

12 Q Do you have any understanding of what the
13 highlighted parts of this table mean?

14 A No.

15 Q How did B.P.J. do in this event? 04:10:07

16 MS. HOLCOMB: Object to form.

17 THE WITNESS: According to the table, she
18 didn't place -- B.P.J. didn't place in the top half.

19 BY MR. BARR:

20 Q And I'm happy for you to look at the rest of 04:10:45
21 Exhibit 40, and you can take as much time as you would
22 like, but I'll represent to you that B.P.J. never has
23 times that are highlighted in this exhibit.

24 But my understanding is you don't have an
25 understanding whether the highlighting has some 04:11:03

1 indication one way or the other; is that right?

2 MS. HOLCOMB: Object to form.

3 THE WITNESS: As stated, I am not a
4 cross-country runner, so no, I don't know.

5 BY MR. BARR: 04:11:27

6 Q If you could scroll to the last page of
7 Exhibit 40.

8 Are you there?

9 A Yes.

10 Q You'll see at the top it says "Time Trial 04:11:42
11 Comparison."

12 Did I read that correctly?

13 A You did.

14 Q And then in the two columns to the right of
15 that, there's the cross-country time trial at 04:11:56
16 Bridgeport City Park on October 7th, 2021, and the
17 column to the right of that is the cross-country time
18 trial, Bridgeport City Park, on August 24th, 2021.

19 Do you see that?

20 A Yes. 04:12:12

21 Q Inside those columns, on the far left side,
22 there's a subcolumn that says "TT Place."

23 Do you see that?

24 A Yes.

25 Q What do you think TT Place means? 04:12:27

1 MR. TRYON: Objection.

2 MS. HOLCOMB: I'm going to object to form.

3 THE WITNESS: I have no idea.

4 BY MR. BARR:

5 Q If I told you it meant time trial place, would 04:12:43
6 you be willing to accept that for purposes of this
7 exhibit?

8 MS. HOLCOMB: Object to form.

9 MR. TRYON: Objection.

10 THE WITNESS: Yes. 04:12:54

11 BY MR. BARR:

12 Q On October 7th, 2021, what place did
13 B.P.J. earn?

14 MS. HOLCOMB: Object to form.

15 THE WITNESS: According to this document, 04:13:21
16 24th.

17 BY MR. BARR:

18 Q How many participants are indicated to have
19 participated, on this document?

20 A 28. 04:13:29

21 Q So on October 7, 2021, according to
22 Exhibit 40, B.P.J. got 24th of 28 participants; is that
23 right?

24 A That's what the document indicates.

25 Q And let's move over to August 24th. 04:13:52

1 it's unfair for B.P.J. to have participated?

2 MS. HOLCOMB: Object to form.

3 MR. TRYON: Objection.

4 THE WITNESS: Based on this document, I don't

5 know. 04:15:49

6 BY MR. BARR:

7 Q Do you still believe B.P.J. has superior speed

8 compared to her classmates, having seen these

9 documents?

10 MR. TRYON: Objection. 04:16:05

11 MS. HOLCOMB: Objection to form.

12 THE WITNESS: This document doesn't really

13 give a fair comparison.

14 BY MR. BARR:

15 Q Why not? 04:16:15

16 A As I said, B.P.J. is competing with people in

17 sixth, seventh and eighth grade. And in my experience,

18 whenever I was in sixth grade, playing soccer, I was

19 having difficulties against the seventh- and

20 eighth-graders. 04:16:40

21 MR. BARR: Attorney Holcomb, we've been going

22 for about an hour. Do you want a break, or do you want

23 to keep going?

24 MS. HOLCOMB: Would you like a break, Lainey?

25 THE WITNESS: Let's go. 04:17:01

1 MS. HOLCOMB: Andrew, any estimate of how much
2 longer you plan to go?

3 MR. BARR: No, sorry. Some of these questions
4 that I expected to go quick have taken a little longer
5 than anticipated. So I would hate to give any false 04:17:18
6 expectations there.

7 MS. MORGAN: Andrew, this is Kelly Morgan.
8 I'm just asking because of family obligations again
9 here. Are we looking at an hour or two --

10 THE VIDEOGRAPHER: Are we going to go off -- 04:17:29

11 MR. BARR: Let's go off the record.

12 THE VIDEOGRAPHER: Are we going to --

13 MR. BARR: Yeah, let's go off the record.

14 THE VIDEOGRAPHER: Okay. One moment.

15 We're going off the record. The time is 04:17:34
16 4:18 p.m., and this is the end of Media Unit No. 4.

17 (Recess.)

18 THE VIDEOGRAPHER: All right. We are back on
19 the record at 4:37 p.m., and this is the beginning of
20 Media Unit No. 5. 04:37:25

21 Please go ahead.

22 BY MR. BARR:

23 Q Ms. Armistead, I was going through my notes
24 and realized I didn't ask you the question I thought
25 was most important, which is, what's your favorite 04:37:34

1 soccer team? Do you have one?

2 A Chelsea.

3 Q Kind of going through some tough times with
4 ownership of Chelsea at the moment, but -- okay. So
5 you do follow professional soccer? 04:37:48

6 A A little bit, yes.

7 Q Do you -- do you follow any women's
8 professional teams?

9 A I keep up with the U.S. women's national team
10 a little bit. 04:38:01

11 Q But other than the national team?

12 A No.

13 Q I'm a Liverpool fan, so I had to ask.

14 Okay. So, clearly, you love soccer. I
15 understand all that. I want to understand why you love 04:38:19
16 soccer. And, specifically, what do you get out of it?

17 A I get an opportunity to compete and -- I get
18 so much out of soccer. It keeps me in shape. I have
19 the ability to make great friends and lasting
20 connections with my teammates. And I'm still friends 04:38:46
21 with teammates from high school and club teams. And
22 I've learned a lot about perseverance and teamwork,
23 cooperation. There's so much that soccer has taught me
24 throughout my life, and I wouldn't be the person I am
25 today without it. 04:39:06

1 Q I know you focused on soccer, but do you think
2 that would be true of most athletes' experience, having
3 played sports in a -- you know, as a child or adult?

4 MS. HOLCOMB: Object to form.

5 THE WITNESS: I believe that a lot of people 04:39:29
6 probably have the same experiences as I do, but I can't
7 speak for sure on other people's experiences.

8 BY MR. BARR:

9 Q Understood. You said you played club -- club
10 soccer. Did I hear that right? 04:39:41

11 A Yes.

12 Q Do you still play club stocker?

13 A No. I'm unable to do so due to being a
14 college athlete.

15 Q When did you start playing club soccer? 04:39:57

16 A Probably around seven or eight years old.

17 Q Did your school offer a soccer team when you
18 were seven or eight years old?

19 A I don't believe so. I just played club until
20 I was able to play in middle school. 04:40:21

21 Q When did your stop playing club soccer?

22 A My senior year of high school.

23 Q Were you ever invited to an ODP program,
24 Olympic developmental program?

25 A Yes. 04:40:43

1 Q Did you attend?

2 A I attended for a little bit before moving
3 school -- or before moving across the state, so...

4 Q Where were you living before Owensboro?

5 A I am from Owensboro, and then I moved to 04:41:03
6 Louisville, Kentucky, and then I moved back to
7 Owensboro.

8 Q And those two cities are far enough apart you
9 had to change club teams as part of that move?

10 A Yes. 04:41:27

11 Q And did I understand that one of those teams
12 offered the ODP and the other one did not; is that
13 right?

14 A ODP is more of a state -- a state development
15 program. So I could have continued to do so, but where 04:41:40
16 I moved, it would have been three hours to drive
17 instead of just right beside my hometown.

18 Q How long did you participate in the ODP?

19 A I don't recall. Not long.

20 Q Not long? 04:42:08

21 Did you have the opportunity to do any
22 traveling for ODP?

23 A Not ODP, but I had the opportunity to travel
24 for my club team.

25 Q What -- what was the name of your club team? 04:42:21

1 A Kentucky Fire.

2 Q Was that the -- did you have a different club
3 team when you moved and what was the name of that?

4 A Owensboro.

5 Q And it was when you were on Kentucky Fire that 04:42:39
6 you had the ODP opportunities; is that right?

7 A Yes.

8 Q How old were you when that happened?

9 A I don't remember.

10 Q I'm -- was it seven or eight when you started? 04:42:58
11 Was it when you were 18 as --

12 A Probably middle school.

13 Q Did you benefit from the ODP?

14 A I did not benefit from ODP, but I definitely
15 benefitted from club. 04:43:18

16 Q Did any of your schools offer a women's soccer
17 team before West Virginia State?

18 A High schools?

19 Q Sure. Did your high school have a women's
20 soccer team? 04:43:37

21 A Yes.

22 Q Did you play on it?

23 A I did.

24 Q Was your club team or your high school team
25 better? 04:43:54

1 MS. HOLCOMB: Object to form.

2 THE WITNESS: I would probably say my club
3 team was better.

4 BY MR. BARR:

5 Q That's generally true, right, the club team is 04:44:06
6 a more select group of athletes than any particular
7 school, as a general matter?

8 A In general, yes.

9 Q Any of your club teammates play college
10 soccer? 04:44:28

11 MS. HOLCOMB: Object to form.

12 THE WITNESS: Yes.

13 BY MR. BARR:

14 Q Any of them playing with or against you in
15 Mountain East Conference? 04:44:41

16 A No.

17 Q Do you think those athletes benefitted from
18 soccer similarly to the way you did?

19 MS. HOLCOMB: Object to form.

20 THE WITNESS: I can't speak on their 04:44:59
21 experiences.

22 MR. TRYON: Excuse me, sorry to interrupt, but
23 Kelly just texted me, and she said she's in the waiting
24 room trying to get in, if the court reporter could let
25 her in. 04:45:17

1 THE REPORTER: Ms. Morgan, are you in?

2 MS. MORGAN: Yes, I am. Thank you.

3 THE REPORTER: Okay. Sorry about that.

4 BY MR. BARR:

5 Q Do you have any social media accounts? 04:45:47

6 A Yes.

7 Q I admittedly don't, so please bear with me in
8 clunky language, but what platforms do you have an
9 account with?

10 A I have an account with Twitter, Instagram, 04:46:02
11 Facebook, Snapchat. And those are the only ones that I
12 use.

13 BY MR. BARR:

14 Q Do you use them daily?

15 A Most days. 04:46:24

16 Q Have people ever reached out to you on those
17 platforms to talk about this law or your participation
18 in the lawsuit?

19 A Yes.

20 Q Does it happen regularly? 04:46:52

21 A No.

22 Q Has it happened one time? five times? ten
23 times?

24 A I'm not sure. Not very many times.

25 Q More than once, less than 20; is that fair? 04:47:12

1 A Yes.

2 Q More than five times, less than 20?

3 A I would probably just say less than ten, and
4 that's as close as I would feel comfortable getting.

5 Q Do you remember if that was via Facebook or 04:47:30
6 one of the other platforms you described?

7 A I think it was on Facebook and Twitter.

8 Q Have you ever sent a message or reached out to
9 people about this lawsuit or the law using one of those
10 social media accounts? 04:48:02

11 A No.

12 Q Has anyone ever e-mailed you about this law,
13 other than your attorneys?

14 A I don't think so.

15 Q Have you ever e-mailed anyone about this law? 04:48:22

16 A I shared information with a friend who was
17 interested in intervening.

18 Q Is that one of the friends you told me about
19 earlier, Sinead or Brooklyn?

20 A Yes. Sinead. 04:48:55

21 Q Are you familiar with the NCAA's image and
22 likeness policy?

23 A I am.

24 Q What's your understanding of how the -- is it
25 okay if I call it the NIL policy? 04:49:13

1 A Yes.

2 Q What's your understanding of the NIL policy?

3 A My understanding is that athletes can benefit
4 from their name; and, two, they are -- sign contracts
5 with companies and be a name for a -- for a brand and 04:49:37
6 get paid for doing so.

7 Q Is it okay with you if I reference what you
8 just described as an endorsement?

9 A If that's how you want to reference it, sure.

10 Q We can call it whatever you'd like. I just am 04:49:59
11 trying to use a faster word than that whole
12 description.

13 A That's fine.

14 Q Are you currently under an endorsement deal
15 with anyone? 04:50:13

16 A No.

17 Q Do you have any plans to be under an
18 endorsement deal?

19 A I'm not sure. I would like to try. That
20 would be something I would be interested in. Of 04:50:31
21 course, it was just a very recent law that was created,
22 a new -- a new policy, so I haven't really looked into
23 it too much yet.

24 Q Is it accurate to say you'd be interested in
25 it, but sitting here today, you don't have any specific 04:50:54

1 plans to enter into an endorsement deal?

2 A Yes.

3 Q Have you ever been interviewed related to this
4 lawsuit by someone other than your attorney?

5 A No. 04:51:16

6 Q No reporters, TV appearances, anything like
7 that?

8 A No.

9 Q Do you know who Selina Soule is?

10 A No. 04:51:39

11 Q Do you know who Chelsea Mitchell is?

12 A No.

13 Q Do you know who Christina Mitchell is?

14 A No.

15 Q Do you know who Alanna Smith is? 04:52:00

16 A No.

17 Q Do you know who Lanay Sultz is?

18 A No.

19 Q Do you know who Margaret O'Neil is?

20 A No. 04:52:13

21 Q Do you know who Cynthia Monteleone is?

22 A No.

23 Q Do you know who Madison Kenyon is?

24 A No.

25 Q Do you know who Mary Kate Marshall is? 04:52:26

1 A No.

2 Q Do you know who Darcy Ashoff is?

3 A No.

4 Q Do you know anyone on the University of

5 Pennsylvania's women's swimming or diving team? 04:52:41

6 A I do not.

7 Q Do you know who Haley Tan is?

8 A No.

9 Q And just to make sure I'm being fair with you,

10 there's a chance the last name is Tani. 04:53:00

11 So do you know anyone named Haley Tani?

12 A No.

13 Q Do you know anyone who claims to have been

14 harmed by a transgender girl or woman playing on a

15 girls' team, specifically? 04:53:17

16 MS. HOLCOMB: Object to form.

17 THE WITNESS: No, I don't know personally.

18 BY MR. BARR:

19 Q Have you spoken with any of the people I just

20 named? 04:53:30

21 A No, I don't think so. No.

22 Q I have a list of about 25 more people. I can

23 cut that short if I just understand that you haven't

24 spoken to anyone who's claimed to have been harmed by a

25 transgender woman's participation on a girls' team. Is 04:53:51

1 that accurate?

2 MS. HOLCOMB: Object to form.

3 THE WITNESS: I don't -- I don't know the
4 names -- I don't know how to give you that information
5 without -- 04:54:10

6 BY MR. BARR:

7 Q I'll just go through them. That's fine. I
8 was just trying to make this --

9 A I -- I wouldn't know the names. I've talked
10 to two girls that were clients of Christiana's, but I 04:54:18
11 don't know -- or recall their names.

12 Q Are those two girls a party to this lawsuit?

13 A No.

14 Q When did you speak to them?

15 A After I decided to intervene, probably. Maybe 04:54:40
16 before.

17 Q How did you locate these two girls?

18 MS. HOLCOMB: And I'll just object generally
19 to the extent it calls for attorney-client privileged
20 communications. 04:55:01

21 You may answer.

22 THE WITNESS: Just by Christiana.

23 BY MR. BARR:

24 Q What did you discuss with these two girls?

25 A They just told me about their experiences that 04:55:24

1 they've had in their lawsuits, and that was the extent
2 of it.

3 Q Did you ask to speak with them, or did they
4 ask to speak with you?

5 MS. HOLCOMB: Object to form. 04:55:45

6 THE WITNESS: I don't know how to answer that
7 without divulging client-attorney privilege.

8 BY MR. BARR:

9 Q I'll -- I'll ask a different way because I
10 certainly don't want any privileged communications. 04:55:59

11 Did you ask to be put in touch with these two
12 girls?

13 A I could have. I don't recall.

14 Q You don't know their names?

15 A I do not recall their names. 04:56:23

16 Q And if I'm understanding correctly, you found
17 these two girls through your counsel?

18 A Yes.

19 Q Did these two girls encourage you to intervene
20 in this case? 04:56:51

21 A They just told me about their experiences.

22 Q What experiences are you talking about?

23 A Their experience with their lawsuits.

24 Q What did they tell you?

25 A I don't recall specifics of the conversation, 04:57:20

1 but it was encouraging, what they told me. That's what
2 I remember from it.

3 Q What do you mean it was encouraging, what they
4 told you? Encouraging what?

5 A It wasn't encouraging anything specifically. 04:57:36
6 It was just encouraging to me what they were saying.

7 Q I understood. I misunderstood.

8 So you found the conversation encouraging.

9 I -- I feel like I might have misunderstood
10 that. 04:57:52

11 So is that what you're saying, you found the
12 conversation encouraging?

13 A Yes.

14 Q And you don't remember if this happened before
15 or after you decided to intervene? 04:58:02

16 MS. HOLCOMB: Objection to form.

17 THE WITNESS: I do not recall.

18 BY MR. BARR:

19 Q Was it before or after you were put in touch
20 with your attorney? 04:58:17

21 MS. HOLCOMB: Objection to form.

22 THE WITNESS: Well, I said -- I already
23 answered that.

24 BY MR. BARR:

25 Q Maybe I misunderstood. 04:58:32

1 A Savanna and Haley.

2 Q Anyone else?

3 A My extended family, when they visited for the
4 holidays.

5 Q What was the nature of those discussions? 05:00:03

6 A I wanted to keep them updated on my life, and
7 I told them about H.B. -- the law -- 3293, and all of
8 my family was encouraging and supportive.

9 Q And just so you know, if you say "the law," I
10 understand you're talking about H.B. 3293. It's very 05:00:30
11 hard for me to remember the number, so I'm very
12 sympathetic to that.

13 Did you write an op-ed?

14 A I'm sorry?

15 Q Did you write an opinion piece for a 05:00:55
16 newspaper?

17 A I -- I don't know what you're talking about.

18 Q Okay. So sitting here today, everything we've
19 talked about, do you object to B.P.J. playing on the
20 Bridgeport Middle School girls' cross-country team? 05:01:15

21 MS. HOLCOMB: Objection to form.

22 THE WITNESS: I don't know.

23 MR. BARR: Okay. That's it for me. I'm happy
24 to turn it over to everyone else. I do want a couple
25 of minutes just to make sure that my notes are clean. 05:01:32

1 So I do reserve that right, but I'm happy to pass it to
2 Mr. Tryon or whoever else is in line.

3 And -- and, Ms. Armistead, thank you for your
4 time today. I apologize for a long day on a Friday,
5 but hopefully you're able to make whatever -- whatever 05:01:47
6 plans you had tonight still.

7 THE WITNESS: Thank you.

8 MR. TRYON: Hello, Ms. Armistead. How are
9 you?

10 THE WITNESS: I'm good. How are you? 05:02:03

11 MR. TRYON: I'm good. So thank you so much
12 for your time. We always appreciate when deponents
13 come in and take their time to participate in these --
14 these situations.

15 And I have no questions, so thank you for your 05:02:14
16 time.

17 MS. DENIKER: This is Susan Deniker. I have
18 no questions. Thank you.

19 MS. MORGAN: This is Kelly Morgan. I don't
20 have any questions. Thank you, Lainey. 05:02:34

21 MS. ROGERS: This is Shannon Rogers. I don't
22 have any questions. Thank you.

23 MR. TRYON: So can we go off the record now?
24 Are we done?

25 MR. BARR: I believe Attorney Holcomb may or 05:02:59

1 may not have questions. I just want to make sure that
2 it's clear.

3 MS. HOLCOMB: I do not have any questions.

4 Thank you. Just wanted to confirm there were no

5 further defendants. 05:03:09

6 MR. BARR: And with -- we -- we can go off the

7 record. And there's too many people on the same thing

8 to understand who is going to speak next, so I -- I

9 understand that.

10 THE VIDEOGRAPHER: So we -- are we done for 05:03:15

11 the day, then, or are we going to come back on?

12 MR. BARR: I -- I believe we're finished

13 unless I hear otherwise --

14 THE VIDEOGRAPHER: Okay.

15 MR. BARR: -- from counsel. 05:03:22

16 THE VIDEOGRAPHER: So I'm -- I'm going go

17 close the record then. All right?

18 Okay. We are off the record at 5:04 p.m., and

19 this ends today's testimony given by Lainey Armistead.

20 The total number of media used was five and 05:03:35

21 will be retained by Veritext Legal Solutions.

22 (TIME NOTED: 5:03 p.m.)

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I, LAINEY ARMISTEAD, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this ____ day of _____,
20____, at _____, _____.
(City) (State)

LAINEY ARMISTEAD

VOLUME I

1 RE: BPJ vs. WEST VIRGINIA STATE BOARD OF EDUCATION
2 LAINEY ARMISTEAD (JOB NO. 5082427)

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LAINEY ARMISTEAD

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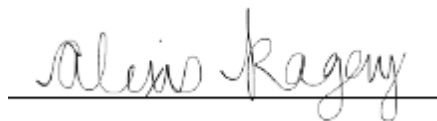
I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: March 25, 2022



ALEXIS KAGAY

CSR NO. 13795

Exhibit 22

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

B.P.J. by her next friend and mother,)
HEATHER JACKSON,)
Plaintiff,)
v.)

Civil Action No. 2:21-cv-00316

Hon. 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)

LAINEY ARMISTEAD,)

*Defendant-)
Intervenor.*)

DECLARATION AND EXPERT REPORT OF DEANNA ADKINS, MD

1. I have been retained by counsel for Plaintiff as an expert in connection with the above-captioned litigation.

2. I intend to provide my expert opinion on: (1) the nature and impact of treatment protocols for transgender youth; and (2) the different biological characteristics of sex and the ways in which they may not align within a person.

3. I have knowledge of the matters stated in this declaration and expert report and have collected and cite to relevant literature concerning the issues that arise in this litigation in the body of this declaration.

4. In preparing this declaration and expert report, I reviewed the text of House Bill 3293 at issue in this matter. I also relied on my scientific education and training, my research experience, and my knowledge of the scientific literature in the pertinent fields. The materials I have relied upon in preparing this declaration and expert report are the same types of materials that experts in my field of study regularly rely upon when forming opinions on these subjects. I may wish to supplement these opinions or the bases for them as a result of new scientific research or publications or in response to statements and issues that may arise in my area of expertise.

BACKGROUND AND QUALIFICATIONS

5. I received my medical degree from the Medical College of Georgia in 1997. I served as the Fellowship Program Director of Pediatric Endocrinology at Duke University School of Medicine for fourteen years and am currently the Director of the Duke Center for Child and Adolescent Gender Care.

6. I have been licensed to practice medicine in the state of North Carolina since 2001.

7. I have extensive experience working with children with endocrine disorders and I am an expert in the treatment of children with differences or disorders of sex development and in the treatment of children with gender dysphoria.

8. I am a member of the American Academy of Pediatrics, the North Carolina Pediatric Society, the Pediatric Endocrine Society, and The Endocrine Society. I am also a

member of the World Professional Association for Transgender Health (“WPATH”), the leading association of medical and mental health professionals in the treatment of transgender people.

9. I am the founder of the Duke Center for Child and Adolescent Gender Care (“Gender Care Clinic”), which opened in 2015. I currently serve as the director of the clinic. The Gender Care Clinic treats children and adolescents aged 7 through 22 with gender dysphoria and/or differences or disorders of sex development. I had been caring for these patients in my routine practice for many years prior to opening the clinic.

10. I currently treat approximately 400 transgender and intersex young people from North Carolina and across the Southeast at the Gender Care Clinic. I have treated approximately 500 transgender and intersex young people in my career.

11. As part of my practice, I stay familiar with the latest medical science and treatment protocols related to differences or disorders of sex development and gender dysphoria.

12. I am regularly called upon by colleagues to assist with the sex assignment of infants who cannot be classified as male or female at birth due to a range of variables in which sex-related characteristics are not completely aligned as male or female.

13. I have testified twice as an expert at trial or deposition in the past four years.

TREATMENT PROTOCOLS FOR TRANSGENDER PEOPLE

14. A transgender person has a gender identity that differs from the person’s sex assigned at birth.

15. A person’s gender identity refers to a person’s inner sense of belonging to a particular gender, such as male or female. Everyone has a gender identity.

16. Children usually become aware of their gender identity early in life.

17. For some people, their gender identity does not align with the sex they are assigned at birth. This misalignment can create significant distress, known as gender dysphoria, for people with this experience and can be felt in children as young as 2 years old.

18. A person's gender identity (regardless of whether that identity matches other sex-related characteristics) cannot be voluntarily changed, and is not undermined or altered by the existence of other sex-related characteristics that do not align with it.

19. According to the American Psychiatric Association's Diagnostic & Statistical Manual of Mental Disorders ("DSM V"), "gender dysphoria" is the diagnostic term for the condition where clinically significant distress results from the lack of congruence between a person's gender identity and the sex they are designated at birth. In order to be diagnosed with gender dysphoria, the incongruence must have persisted for at least six months and be accompanied by clinically significant distress or impairment in social, occupational, or other important areas of functioning.

20. Gender dysphoria is a serious medical condition that, if left untreated, can result in severe anxiety and depression, self-harm, and suicidality.¹

21. Before receiving treatment, many people with gender dysphoria have high rates of anxiety, depression, and suicidal ideation. I have seen in my patients that without appropriate treatment, this distress impacts every aspect of life.

¹ Spack NP, Edwards-Leeper L, Feldmain HA, et al. Children and adolescents with gender identity disorder referred to a pediatric medical center. *Pediatrics*. 2012; 129(3):418-425. Olson KR, Durwood L, DeMeules M, McLaughlin KA. Mental health of transgender children who are supported in their identities. *Pediatrics*. 2016; 137:1-8.

22. Experiences of discrimination and gender-minority stress associated with rejection and non-affirmation are correlated with suicidal ideation and suicidality, respectively.² The only treatment to avoid this serious harm is to recognize the gender identity of patients with gender dysphoria and follow appropriate treatment protocols to affirm gender identity and alleviate distress.

23. When appropriately treated, gender dysphoria is easily managed. I currently treat hundreds of transgender patients. All of my patients have suffered from persistent gender dysphoria, which has been alleviated through clinically appropriate treatment.

24. The Endocrine Society and the World Professional Association for Transgender Health have published widely accepted standards of care for treating gender dysphoria,³ including the forthcoming Standards of Care Version 8. The precise treatment for gender dysphoria depends on each person's individualized need, and the medical standards of care differ depending on whether the treatment is for a pre-pubertal child, an adolescent, or an adult.

25. The medical treatment for gender dysphoria is to eliminate the clinically significant distress by helping a transgender person live in alignment with their gender identity. This treatment is sometimes referred to as "gender transition," "transition related care," or

² World Prof'l Ass'n for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Chapter Draft for Public Comment-Mental Health (8th Version, forthcoming 2022).

https://www.wpath.org/media/cms/Documents/SOC%20v8/SOC8%20Chapters%20for%20Public%20Comment/SOC8%20Chapter%20Draft%20for%20Public%20Comment%20-%20Mental%20Health.pdf?_t=1638409644

³ Hembree WC, et al. Endocrine treatment of gender-dysphoria/gender incongruent persons: An Endocrine Society clinical practice guideline. *J Clin Endocrinol Metab* 2017; 102: 3869–3903; World Prof'l Ass'n for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People (7th Version, 2011), https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English2012.pdf?_t=1613669341

“gender affirming care.” The American Academy of Pediatrics agrees that this care is safe, effective, and medically necessary for the health and wellbeing of children and adolescents suffering from gender dysphoria.⁴

26. The Endocrine Society Guidelines were developed through rigorous scientific processes which “followed the approach recommended by the Grading of Recommendations, Assessment, Development, and Evaluation group, an international group with expertise in the development and implementation of evidence-based guidelines.” The guidelines affirm that patients with gender dysphoria often must be treated with “a safe and effective hormone regimen that will (1) suppress endogenous sex hormone secretion determined by the person’s genetic/gonadal sex and (2) maintain sex hormone levels within the typical range for the person’s affirmed gender.”

27. Before puberty, treatment does not include any drug or surgical intervention. For this group of patients, treatment is limited to “social transition,” which means allowing a transgender child to live and be socially recognized in accordance with their gender identity. This can include allowing children to wear clothing that aligns with their gender identity, to cut or grow their hair, to use new or different names and pronouns, and to access activities in line with their gender identity instead of the sex assigned to them at birth. Social transition is a critical part of treatment of patients with gender dysphoria of all ages and it is the only treatment for pre-pubertal children. There are no known risks to social transition or to affirming

⁴ Rafferty J, Committee on Psychosocial Aspects of Child and Family Health, Committee on Adolescence and Section on Lesbian, Gay, Bisexual, and Transgender Health and Wellness, *Pediatrics* October 2018; 142(4): 2018-2162.

transgender youth who have been properly diagnosed with gender dysphoria by competent medical providers.

28. It undermines social transition – a critical part of gender dysphoria treatment – to force a person with gender dysphoria to live in a manner that does not align with the person’s gender identity. For example, requiring a girl who is transgender to participate in single-sex activities for boys can be deeply harmful and disruptive to treatment. In the context of activities like athletics, which are typically separated by sex, I know from experience with my patients that it can be extremely harmful for transgender youth to be excluded from the team consistent with their gender identity.

29. For many transgender youth, going through endogenous puberty can cause extreme distress. Puberty blocking treatment allows transgender youth to avoid going through their endogenous puberty thereby avoiding the heightened gender dysphoria and permanent physical changes that puberty would cause.

30. Puberty blocking treatment works by pausing endogenous puberty at whatever stage it is at when the treatment begins. This has the impact of limiting the influence of a person’s endogenous hormones on the body. For example, after the initiation of puberty blocking treatment, a girl who is transgender will experience none of the impacts of testosterone that would be typical if she underwent her full endogenous puberty.

31. When treating a transgender young person, when medically indicated, I prescribe puberty blocking treatment at the Tanner 2 stage of puberty. For girls who are transgender, this means that puberty is put on pause usually around the time that the patient has circulating testosterone at a level of 50 ng/dL or 1.735 nMol/L. If managed appropriately, a patient that undergoes puberty blocking treatment at this stage and then proceeds to gender-affirming

hormone therapy will never have circulating testosterone above what is typical of girls who are not transgender.

32. Under the Endocrine Society Clinical Guidelines, once a transgender youth establishes further maturity and competence to make decisions about additional treatment along with their parent and/or guardian, it may then be medically necessary and appropriate to provide gender-affirming hormone therapy to initiate puberty consistent with gender identity. For girls who are transgender, this means administering both testosterone suppressing treatment as well as estrogen to initiate hormonal puberty consistent with the patient's female gender identity. For boys who are transgender, this means administering testosterone.

33. Hormone therapy and social transition can significantly change a transgender youth's physical appearance. For example, boys who are transgender and treated with puberty blockers and gender affirming hormones will receive the same amount of testosterone during puberty that non-transgender boys generate with their testes. They will grow darker and thicker facial and body hair, experience fat distribution away from the hips, have decreased breast growth, and develop lower vocal pitch. Likewise, girls who are transgender and treated with puberty blockers and gender affirming hormones will receive the same amount of estrogen during puberty that non-transgender girls generate endogenously. They will develop breast tissue, fat will be distributed to their hips, their skin will soften, and their vocal pitch will not deepen further.

34. Treatment for transgender youth is safe, effective, and essential for their well-being. My patients who receive medically appropriate hormone therapy and who are treated consistent with their gender identity in all aspects of life experience significant improvement in their health.

35. For many patients, social transition and hormone therapy are sufficient forms of treatment for gender dysphoria. Others also need one or more forms of surgical treatment to alleviate gender dysphoria. Boys who are transgender may receive chest reconstruction surgery no earlier than 16. Genital surgery for women and men who are transgender is not performed until the person has reached the age of at least 18. Genital surgery for women who are transgender can result in a vulva and vagina—external genitalia typical of women—as well as removal of the testes, which eliminates the need for medical testosterone suppression. Because surgery does not produce ovaries, women who are transgender who have had this form of surgery typically continue to need estrogen therapy.

36. Consistent with extensive research literature, my clinical experience with my patients has been that they suffer and experience worse health outcomes when they are ostracized from their peers through policies that exclude them from spaces and activities that other girls and boys are able to participate in consistent with gender identity.

SEX ASSIGNMENT AND BIOLOGICAL SEX CHARACTERISTICS

37. HB 3293 requires school athletics to be separated based on “biological sex” defined as “an individual’s physical form as a male or female based solely on the individual’s reproductive biology and genetics at birth.” W. Va. Code §18-2-25d(b)(1). In addition to being counter to medical science, the notion of a singular “biological sex,” is inherently flawed.

38. When a child is born, a sex assignment is usually made based on the infant’s externally visible genitals. This designation is then recorded and usually becomes the sex designation listed on the infant’s birth certificate.

39. Usually, though not always, a person’s gender identity aligns with the sex designation based on the person’s genitals at birth.

40. For people who are transgender and people with differences of sex development (DSDs), however, there is not complete alignment between gender identity and physical sex-related characteristics.

41. Sex-related characteristics include external genitalia, internal reproductive organs, gender identity, chromosomes, and secondary sex characteristics. These biological sex-related characteristics do not always align as completely male or completely female in a single individual. And none of these characteristics exists in a binary. As the Endocrine Society guidelines explain, the terms “[b]iological sex, biological male or female . . . are imprecise and should be avoided.” Generally speaking, “[t]hese terms refer to physical aspects of maleness and femaleness [but] these may not be in line with each other (e.g., a person with XY chromosomes may have female-appearing genitalia).”⁵

42. Although we generally label infants as “male” or “female” based on observing their external genitalia at birth, external genitalia are not always clearly identifiable as typically male or typically female. And external genitalia do not account for the full spectrum of sex-related characteristics nor are they alone a proxy for how we understand sex.

⁵ Hembree, Wiley C., et al., Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline, *J Clin Endocrinol Metab*, Vol. 102, Issue 11, 1 November 2017, 3869–3903.; Berenbaum S., et al., Effects on gender identity of prenatal androgens and genital appearance: Evidence from girls with congenital adrenal hyperplasia. *J Clin Endocrinol Metab* 2003; 88(3): 1102-6; Dittmann R, et al., Congenital adrenalhyperplasia. I: Gender-related behavior and attitudes in female patients and sisters. *Psychoneuroendocrinology* 1990; 15(5-6): 401-20; Cohen-Kettenis P. Gender change in 46,XYpersons with 5alpha-reductase-2 deficiency and 17beta-hydroxysteroid dehydrogenase-3 deficiency. *Arch Sex Behav* 2005; 34(4): 399-410; Reiner W, Gearhart J. Discordant sexual identity in some genetic males with cloacal exstrophy assigned to female sex at birth. *N Engl J Med* 2004; 350(4): 333-41.

43. In one out of every 1,000 live births, the infant's genitals are not typically male or female.

44. For people with DSDs, sex assignment at birth can involve the evaluation of the chromosomes, the external genitalia, the internal genitalia, hormonal levels, and sometimes, specific genes. There are also cases in which the appearance of the external genitalia can change at puberty as well as variations in the appearance of secondary sex characteristics that may signal a difference in sex development in a person.

45. When assignment of sex of an infant with a DSD is made at birth, that assignment is temporary until the individual can express their gender identity. In cases where the initial designation was incorrect, appropriate medical protocols instruct that the sex should be updated to align with the individual's gender identity. Similarly, if the sex designation of an infant without a DSD turns out to be inconsistent with the individual's gender identity, as for transgender people, the sex should be updated to align with the individual's gender identity.

46. Where surgery has been done on children with DSDs before the child's understanding and expression of their gender identity, significant distress can result. Many of these children have had to endure further surgeries to reverse earlier surgical intervention because their gender identity did not match the initial sex designation.

47. At least one out of every 300 people in the world has an intersex variation, meaning that the person's sex characteristic do not all align as typically male or typically female.

48. Some examples of these variations include:

- a. People with Complete Androgen Insensitivity (CAIS) have 46-XY chromosomes, and internal testes that produce testosterone, but do not have the tissue receptors that respond to testosterone or other androgens. The body,

therefore, does not develop a penis, thicker facial hair, or other secondary sex characteristics more commonly associated with men. At birth, based on the appearance of the external genitalia, people with CAIS are generally assigned female. If their testes are left in place, the body will convert the hormones into estrogen. Many do not find out they have XY chromosomes or testes until they do not start menstruating at the expected age.

- b. Androgen Insensitivity can also be partial (known as PAIS). People with PAIS have XY chromosomes, testes, and some (but still lower than typical) response to testosterone. They may be born with genitals that appear like a typical penis, a typical vulva, or somewhere in between.
- c. People with Swyer Syndrome have XY chromosomes and “streak” gonads (gonadal tissue that did not develop into testes or ovaries). Externally, a child with Swyer Syndrome usually develops a vulva. Because their gonads do not produce hormones, they will not develop most secondary sex characteristics without hormone treatment.
- d. People with Klinefelter Syndrome have 47,XXY chromosomes and internal and external genitalia typically associated with males, however, their testicles may have reduced testosterone production. This may lead to breast development, low muscle mass and body hair, and infertility.
- e. People with Turner Syndrome have 45,XO chromosomes which means they have one fewer copy of the X chromosome than expected. In utero, they form sex characteristics typically associated with females, including internal structures like a uterus and fallopian tubes, but the ovaries may degenerate

before birth (or in some cases, not until young adulthood), leading to an inability to make estrogen. Many people with Turner Syndrome will not go through puberty without hormone therapy.

- f. People with Mosaicism have different sets of chromosomes in different cells. Mosaic karyotypes happen as a result of atypical cell division early in embryonic development and could involve various combinations among XX, XY, XO, XXY, and other chromosome patterns. Configuration of gonadal tissue, genitals, and hormone production and response can all vary.
- g. People with ovotestes (sometimes known as Ovotesticular DSD) have gonads that contain both ovarian and testicular tissue. Their chromosomes may be XX, XY, or Mosaic. Genital appearance at birth can be male-typical, female-typical, or something else.
- h. Congenital Adrenal Hyperplasia (CAH) can occur in people with XX or XY chromosomes. People with CAH and 46,XX chromosomes have ovaries, a uterus, and a higher-than-typical production of androgens in utero that can lead to the development of genital differences at birth – such as an enlarged clitoris that may look like a penis, or the lack of a vaginal opening. CAH can also cause the development of typically masculine features like increased muscle mass and body hair.
- i. People with 5-alpha reductase deficiency (5-ARD) have XY chromosomes, but they have an enzyme deficiency that inhibits conversion of testosterone to dihydrotestosterone (the active form of testosterone) to varying degrees. This can impact genital development, and at birth, people with 5-ARD may have

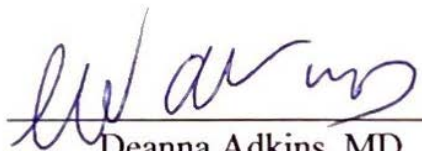
genitals that appear female-typical, neither male-typical nor female-typical, or mostly male-typical with differences like hypospadias (where the urethra is located somewhere other than the tip of the penis). During puberty, hormonal changes allow them to make more dihydrotestosterone, causing the development of some secondary sex characteristics typically associated with males, as well as genital masculinization.

49. As the examples above underscore, from a medical perspective, chromosomes, reproductive anatomy, and endogenous hormones alone do not determine a person's sex, nor does a single sex-related characteristic.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on

1/21/2022



Deanna Adkins, MD

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DUKE UNIVERSITY MEDICAL CENTER

CURRICULUM VITAE

Date Prepared: January 21, 2022

Name:	Deanna Adkins, BS, MD
Primary Academic Appointment:	Associate Professor of Pediatrics, Career Track
Primary Academic Department :	Pediatrics
Secondary Appointment :	n/a
Present Academic Rank and Title :	Associate Professor
Date and Rank of First Duke Faculty Appointment:	July 1, 2004 Clinical Associate
Medical Licensure:	Since March 15, 2001
License #:	200100207 NC
Date:	06/29/2022 expires
Specialty Certification(s) and Dates:	10/16/2001-2018 General Pediatrics 8/18/2003 and current-Pediatric Endocrinology
Date of Birth:	06/29/1970
Place:	Albany, GA USA
Citizen of:	USA
Visa Status:	n/a

Education	Institution	Date (Year)	Degree
High School	Tift County High School	1988	Graduated with High Honors
College	Georgia Institute of Technology	1993	BS Applied Biology/Genetics High Honors

Education	Institution	Date (Year)	Degree
Graduate or Professional School	Medical College of Georgia	1997	MD

Professional Training and Academic Career

Institution	Position/Title	Dates
University of North Carolina Hospitals, Chapel Hill, North Carolina	Pediatrics Resident	1997-2000
University of North Carolina Hospitals, Chapel Hill, North Carolina	Pediatric Endocrine Fellow	2000-2004
Duke University Medical Center, Durham, North Carolina	Clinical Associate/Medical Instructor	2004-2008
Duke University Medical Center, Durham, North Carolina	Assistant Professor Track IV	2008-2020
Duke University Medical Center, Durham, North Carolina	Fellowship Program Director Pediatric Endocrinology- Associate PD-	2008-2010 & 2014-12/2019 2010-2014
Duke University Medical Center, Durham, North Carolina	Director Duke Child and Adolescent Gender Care Clinic	July 2015-present
Duke University Medical Center, Durham, North Carolina	Medical Director-Duke Children's Specialty of Raleigh	3/2017-1/2022
Duke University Medical Center, Durham, North Carolina	Associate Professor Pediatrics	1/2020-present
Duke University Medical Center, Durham, North Carolina	Co-Director Duke Sexual and Gender Health and Wellness Program	10/2021-present

Publications

Refereed Journals

Original Manuscripts:

1. Zeger M, **Adkins D**, Fordham LA, White KE, Schoenau E, Rauch F, Loechner KJ. ” Hypophosphatemic rickets in opsismodysplasia,” J Pediatr Endocrinol Metab. 2007 Jan;20(1):79-86. PMID: 17315533
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Non Author publications

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Editorials

- a. Editorial Charlotte News and Observer-“**NC pediatric specialists say HB2 ‘flawed’ and ‘harmful,’ call for repeal**”; April 18, 2016; authors: Deanna

Adkins, Ali Calikoglu, Nina Jain, Michael Freemark, Nancie MacIver, Robert Benjamin, Beth Sandberg, etc.

- b. Editorial Raleigh News and Observer-“**Beverly Gray: Repeal HB2**” May 2016: authors Beverly Gray, Deanna Adkins, Judy Sidenstein, Jonathan Routh, Haywood Brown, Clayton Afonso, William Meyer, Kristen Russell, Caroline Duke, Nancy Zucker, Kevin Weinfurt, Jennifer St. Claire, Angela Annas, Katherine Keitcher

Chapters in Books

1. Endocrinology Chapter writer and editor in **Fetal and Neonatal Physiology for the Advanced Practice Nurse**; Editors: Amy Jnah DNP, NNP-BC, Andrea Nicole Trembath MD, MPH, FAAP. December 21, 2018 ISBN-10 0826157319
2. Chapter in **Dental Clinics of North America Adolescent Oral Health Edition** Understanding and Caring for LGBTQ+ Youth for the Oral Health Care Provider; Authors Joshua Raisin, DDS, Deanna Adkins MD, Scott B. Schwartz, DDS, MPH. 2021
3. Intersex Identity and Gender Assignment; Encyclopedia of Adolescent Health; Editor Brian Eichner, MD; Author Deanna Adkins MD 2021-pending

Selected Abstracts:

1. Redding-Lallinger RC, **Adkins DW**, Gray N: The use of diaries in the study of priapism in sickle cell disease. Poster Abstract in Blood November 2003
2. **Adkins, D.W.** and Calikoglu, A.S.: Delayed puberty due to isolated FSH deficiency in a male. Pediatric Research Suppl. 51: Abstract #690. page 118A, 2004
3. Zeger, M.P.D., **Adkins, D.W.**, White, K., Loechner, K.L.: Opsismodysplasia and Hypophosphatemic Rickets. Pediatric Research Suppl.-from PAS 2005
4. Kellee M. Miller¹, David M. Maahs², **Deanna W. Adkins**³, Sureka Bollepalli⁴, Larry A. Fox⁵, Joanne M. Hathway⁶, Andrea K. Steck², Roy W. Beck¹ and Maria J. Redondo⁷ for the T1D Exchange Clinic Network; Twins Concordant for Type 1 Diabetes in the T1D Exchange -poster at ADA scientific sessions 6/2014
5. Laura Page, MD; Benjamin Mouser, MD; Kelly Mason, MD; Richard L. Auten, MD; **Deanna Adkins, MD** CHOLESTEROL SUPPLEMENTATION IN SMITH-LEMLI-OPITZ: A Case of Treatment During Neonatal Critical Illness; - poster 06/2014
6. Lydia Snyder, MD, **Deanna Adkins, MD**, Ali Calikoglu, MD; Celiac Disease and Type 1 Diabetes: Evening of Scholarship UNC Chapel Hill 3/2015 poster
7. **Deanna W. Adkins, MD**, Kristen Russell, LCSW, Dane Whicker, PhD, Nancy Zucker, Ph. D: Departments of Pediatrics and Psychiatry, Duke University Medical Center; Evaluation of Eating Disturbance and Body Image Disturbance in the Trans Youth Population; WPATH International Scientific Meeting June 2016; Amsterdam, The Netherlands
8. Rohit Tejwani, **Deanna Adkins**, Brian J. Young, Muhammad H. Alkazemi, Steven Wolf³, John S. Wiener, J. Todd Purves, and Jonathan C. Routh; Contemporary Demographic and

- Treatment Patterns for Newborns Diagnosed with Disorders of Sex Development; Poster presentation at AUA meeting 2016
9. S.A. Johnson, **D.W. Adkins**, Case Report: The Co-diagnosis of Hypopituitarism with Klinefelter in a patient with short stature; Pediatric Academic Society Meeting 2018
 10. Lapinski J, Dooley R, Russell K, Whicker D, Gray, B, **Adkins DW**; **Title:** Developing a Pediatric Gender Care Clinic at a Major Medical Setting in the South; Workshop Philadelphia Trans Wellness Conference 2018
 11. Jessica Lapinski, DO, Deanna Adkins, MD, Tiffany Covas, MD, MPH, Kristen Russell, MSW, LCSW; An Interdisciplinary Approach to Full Spectrum Transgender Care; WPATH Conference Buenos Aires, Argentina, November 3, 2018
 12. Leigh Spivey, MS, Nancy Zucker, PhD, Erik Severiede, B.S., Kristen Russell, LCSW, Deanna Adkins, MD; USPATH Washington, DC Sept. 2019. Platform presentation; “Psychological Distress Among Clinically Referred Transgender Adolescents: A latent Profile Analysis”

Non-Refereed Publications

- i. Print
 - i. Editorial Charlotte News and Observer-“**NC pediatric specialists say HB2 ‘flawed’ and ‘harmful,’ call for repeal**”; April 18, 2016
 - ii. Editorial News and Observer-HB2 May 2016 -“**Beverly Gray: Repeal HB2**” May 2016
- ii. Digital
 - i. Supporting and Caring for Transgender Children-HRC guide 2017
 - ii. Initial endocrine workup and referral guidelines for primary care Providers- Pediatric Endocrine Society Education Committee Website Publication
 - iii. Only Human Podcast August 2, 2016; <https://www.wnycstudios.org/podcasts/onlyhuman/episodes/id-rather-have-living-son-dead-daughter>
- iii. Media and Community Interviews
 - i. Greensboro News and Record Community Forum October 2017-*Transgender Panel Moderator*
 - ii. Playmakers Repertory Company-Chapel Hill: *Draw the Circle* Transgender Community Panel 2017
 - iii. Duke Alumni Magazine
 - iv. Duke Stories
 - v. DukeMed Alumni Magazine
 - vi. NPR Podcast Only Human piece on caring for transgender youth and follow up piece 1 year later
 - vii. ABC11, WRAL, WNCN News Coverage
 - viii. News and Observer: Charlotte and Raleigh
 - ix. Duke Chronicle and Daily Tarheel Article
 - x. Huffington Post Article
 - xi. <https://www.businessinsider.com/the-olympics-uses-testosterone-to-treat-trans-athletes-like-cheaters-2021-7>

- xii. <https://www.wral.com/top-transgender-doctor-warns-teen-treatment-ban-could-be-deadly/19618762/>
- xiii. <http://www.ncpolicywatch.com/2021/04/07/experts-bills-targeting-trans-people-get-the-science-wrong/>

Published Scientific Reviews for Mass Distribution

Position and Background Papers

Other Publications

Editorial Experience

Editorial Boards

Ad Hoc scientific review journals

Hormone Research, Lancet, NC Medical journal, Journal of Pediatrics, Pediatrics, Transgender Health, International Journal of Pediatric Endocrinology, Journal of Adolescent Health

Consultant Appointments

North Carolina Newborn Screening Committee

Human Rights Campaign Transgender Youth Advisory Board

Scholarly Societies

Professional Awards and Special Recognitions

ESPE Fellows Summer School, 2001

NIH Loan Repayment Program Recipient

Lawson Wilkins AstraZeneca Research Fellow,
2003-2004

HEI 2017 Leaders in LGBTQ Healthcare
Equality

Inside Out Durham Appreciation Award

Duke Health System Diversity and Inclusion
Award January 2018

America's Top Doctor's 2020, 2021

Duke Health System Diversity and Inclusion
Award January 2020- CDHD Course Team

Teaching for Equity Fellow 2021

Organizations and Participation

Organization	Role	Dates
American Academy of Pediatrics	Member Council on Information Technology Member Reviewer COCIT Member Section on Endocrinology	1998 to present 2004 to present
Pediatric Endocrine Society	Member Member Education Committee SIG member-Transgender, DSD, liaison to Advocacy SIG Writer Web Publication for Pediatricians	2000 to present
NC Pediatric Society	Member	1998 to present
Endocrine Society	Member	2000 to present
WPATH-International Transgender Society	Member	2014 to present

External Support

<u>Approximate Duration</u>	<u>PI</u>	<u>% Effort</u>	<u>Purpose</u>	<u>Amount Duration</u>
<u>Past</u>	<u>JAEB Center- Deanna Adkins</u>	0.5%	<u>Type 1 diabetes research</u>	<u>\$ 5yr</u>
<u>Past</u>	<u>Josiah Trent Foundation Grant-Deanna Adkins</u>	0.5%	<u>Transgender and eating disorder research</u>	<u>\$5000 3 yr</u>
<u>Pending: Submitted</u>	<u>NIH-Kate Whetten</u>	0.1%	<u>Analysis of TransgenderHealth in Adolescents in Rural Africa, India, and Thailand</u>	<u>Consultant</u>

<u>Approximate Duration</u>	<u>PI</u>	<u>% Effort</u>	<u>Purpose</u>	<u>Amount Duration</u>
<u>Re-Submitting June 2021</u>	<u>NIH R21 Deanna Adkins</u>	2%	Development of New Gender Dysphoria Measures in Youth	<u>Co PI</u>
<u>ReSubmitting June 2021</u>	<u>NIH R21 Sarah Legrand</u>	2%	Glow and Grow	<u>consultant</u>
<u>Submitted November 2020</u>	<u>CMS-Deanna Adkins and Rob Benjamin</u>	1%	<u>Innovations Grant</u>	<u>Co PI</u>
<u>Submitted Sept 2020</u>	<u>Kate Whetten</u>	2%	SAHMSA Grant for development of multidisciplinary LGBTQ education	<u>Co PI</u>
<u>Gifts</u>	<u>Private Family</u>			

Mentoring Activities

Faculty	
Fellows, Doctoral, Post docs	Nancie MacIver-fellow
	Dorothee Newbern-fellow
	Krystal Irizarry-fellow
	Kelly Mason-fellow
	Laura Page-fellow
	Elizabeth Sandberg fellow UNC
	Dane Whicker-psychology post doc
	Leigh Spivey-psychology post doc
	Joey Honeycutt, Chaplain Intern
	Kathryn Blew-research mentor
Residents	Yung-Ping Chin-mentor
	Kristen Moryan-mentor
	Jessica Lapinski-mentor
	Kathryn Blew-research mentor
	Matthew Pizzuto, Briana Scott-Coach, Laura Hampton Coach

Medical students	Tulsi Patel-continuity clinic mentor Sonali Biswas-research mentor 3rd year project Katha Desai-research mentor 3rd year project
Undergraduates	Erik Severeide-Duke University Lindsay Carey-Dickinson College Jeremy Gottlieb-Duke University Jay Zussman-Duke University Beles Abebe-Duke University
High School Students	Aeryn Colton-Intern Apex High School
Graduate Student MBS program	Nicholas Hastings
UNC Gillings School of Public Health MPH students	Lauren Frey, Emily Dake, Alexandra Carle, Lindsay Woodcock, Hunter McGuire
Nurse Practitioners	ECU, Duke-multiple
DNP candidates	Ethan Cicero-PhD committee member Amanda Lund-PhD committee member
Pediatric Dental Fellow UNC	Joshua Raisin-research associate

Education / Teaching Activities

Didactic classes

High School

- c. Cary Academy: Work Experience Program 2021

Undergraduate

1. Creating Excellence and Ambulatory Nursing 2008
2. Profile in Sexuality Research Series at Duke CGSD 2016
3. Duke School of Nursing BSN Course on Sexual and Gender Health guest lecturer: fall 2017, spring 2018, fall 2018, spring 2019, fall 2019, spring 2020, fall 2020, spring 2021, fall 2021
4. Duke School of Nursing Lecture on Transgender Care-recorded for reuse
5. Duke Physician Assistant Program guest lecturer; fall 2017, spring 2018
6. Duke Global Health Course guest lecturer fall 2016
7. Duke Neuroscience course on Gender and Sex guest lecturer fall 2016
8. Duke Ethics Interest group guest lecturer fall 2018, 2020
9. Duke EMS group lecture fall 2018
10. Duke Physician Assistant Program LGBTQ+ Rotation Educator 2019 to present
11. Global Health Sexual and Gender Minority Seminar Lecturer 2020

UME:

1. Cultural Determinants of Health and Health Disparities Course: Facilitator and developed one class; 2017-18 and 2018-19, 2019-20, 2020-21, 2021-22; Steering Committee member for course development
2. UNC School of Medicine Lecturer for LGBTQ Health series 2016-recorded for reuse
3. Duke Pediatrics Interest Group lecture Nov 2020
4. Duke Med Pediatrics Interest Group lecture fall 2018, 2020
5. Lecturer Body and Disease Course MS1 2019, 2020, 2021 Clinical Correlation Differences of Sex Development
6. Lecturer Body and Disease Course MS1 2020, 2021 Transgender Medicine
7. Lecture on Cancer in Transgender and Intersex Individuals April 14, 2021 Mount Sinai School of Medicine
8. Lecture on Transgender Medicine Univ. of Tenn. Health Science Center School of Medicine May 7, 2021

Graduate School Courses:

1. Master of Biomedical Science Program-guest lecturer on Transgender Medicine fall 2016
2. School of Nursing Graduate Intensive Course Lecturer on Sexual and Gender Health; fall 2017, spring 2018, fall 2018, spring 2019, Fall 2019
3. Fuqua School of Business Med Pride Panel and presentation fall 2017
4. Master of Biomedical Science Program Mentor 2019-2020
5. Endocrinology for Nurse Practitioners Duke Neonatal Nurse Practitioner Program August 2021

DUHS Employee Education

1. Annual Duke Human Resources Lunch and Learn on Gender Diversity 2016, 2017, 2018
2. Over 100 lectures across the institution on gender including CHC front desk/nursing staff, hospital wide social work/case management, radiology, PDC clinic front desk/nursing staff
3. Steering Committee for Sexual and Gender Identity Epic Module development and Educational module development
4. DCRI Pride invited speaker
5. Duke Children's staff update 2021

GME:

1. Adult Endocrinology Fellows every year on growth and/or gender
2. Pediatric Residency Noon conferences on Growth and Gender-yearly
3. Reproductive Endocrinology Noon Conferences every 2 to 3 years
4. Psychiatry Noon Conferences periodically
5. Family Practice Noon Conference periodically
6. Pediatric Endocrine Fellow lectures twice a year or more
7. Pediatrics grand rounds: Vitamin D, Type 2 diabetes, Pubertal Development, Gender Diverse Youth

8. Duke Urology Grand Rounds 2016
9. Duke Ob/Gyn Grand Rounds 2017
10. Webinar for Arkansas Children's Hospital on transgender care 2018
11. Reproductive Challenges for Transgender people-Reproductive Endocrinology-2020
12. Metabolic Bone Disease in Neonates-NICU fellows 2019
13. Duke Psychiatry Grand Rounds 2017
14. Duke Pathology Grand Rounds fall 2020
15. Duke Family Medicine Community Rotation Educator 2019 to present
16. NC NAPNAP Symposium Keynote Speaker October 10, 2020
17. Duke Internal Medicine LEADS program speaker; Transgender Care 8/3/2021
18. Equity and Social Justice Webinar: Clinical Advocacy and Care of Transgender and Gender Diverse Youth October 27, 2021Harvard Equity and Social Justice Webinar

Development of Courses Educational programs

1. Pituitary Day October 2019-full day multispecialty seminar for caregivers of patients with hypopituitarism-Organized and developed the curriculum
2. Development of Gender Diversity Education for Health System education
3. Steering Committee for Cultural Determinants and Health Disparities Course
4. Helping to Adapt Resident Coaching Program to Pediatric Fellowships
5. Developed half day course for Duke Student Health on Care of the Gender Diverse Student with multiple disciplines included
6. Course Director: American Diabetes Association Camp Carolina Trails rotation for fellows and residents: 2009, 2011 – 2019
7. Medical Education for Camp Morris 2019, 2021

Development of Assessment Tools and Methods

1. Currently under development with Population Health Sciences-method to assess gender dysphoria; received Brief High Intensity Production (BHIP) grant for this collaboration; NIH grant Submitted March 2020; I am writing the portion of grant giving background on the population and the need for better measures.
2. Collaborating with the Duke Chaplain group to develop a spiritual assessment tool for gender diverse children and their families. Completed 2019

Educational leadership roles

1. Fellowship Program Director Pediatric Endocrinology 2008-2019
2. Course Director: American Diabetes Association Camp Carolina Trails rotation for fellows and residents: 2009, 2011 to 2019

Educational Research

1. Working with coaching program for residents modified and applied in pediatric fellows
2. Worked with the Council on Pediatric Subspecialties EPA study

Invited Lectures and Presentations

1. NC Peds Conference: Pubertal Development 2016

2. Trent Center for Ethics Lecture May 2017: Transgender Medicine: a Wealth of Ethical Issues
3. Visiting Professorship: ECU Brody School of Medicine Invited Professor October 2017
4. College of Diplomates-pediatric dentistry society-Webinar on transgender care 4/1/2020
5. NAPNAP keynote speaker Annual Meeting October 2020
6. Wake County Duke CME program: Type 2 diabetes treatments in pediatrics 2019
7. Lecture on Cancer in Transgender and Intersex Individuals April 14, 2021 Mount Sinai School of Medicine
8. Lecture on Transgender Medicine Univ. of Tenn. Health Science Center School of Medicine May 7,2021
9. Equity and Social Justice Webinar: Clinical Advocacy and Care of Transgender and Gender Diverse Youth October 27, 2021Harvard Equity and Social Justice Webinar

International Meetings

1. WPATH Amsterdam 2016
2. WPATH Buenos Aires 2018

National Scientific Meetings (invited)

1. Transgender SIG Developing a Patient Registry
2. Patient Advocacy for Transgender Youth Philadelphia 2018

Instructional Courses, Workshops, Symposiums (National)

1. Time to Thrive Arkansas Children's Hospital April 2018
2. National Transgender Health Summit UCSF Jan 2018: Providers as Advocates Workshop
3. Magic Foundation-Chicago, IL Annual Speaker on Precocious Puberty, Adrenal Insufficiency, and Growth Hormone at National Conference 2016, 2017, 2019, 2020, 2021
4. The Seminar-Fort Lauderdale, FL Invited Speaker on Care of Transgender Youth 2017

Regional Presentations and Posters

- a. North Carolina Pediatric Society: Pubertal Development Presentation–Pinehurst, NC 2017
- b. North Carolina Psychiatric Association: Caring for Transgender Children Presentation and Workshop on key concepts in care of transgender child-Asheville, NC 2017
- c. ECU Campus Health Presentation Caring for Transgender Patients 2018
- d. Radiology Technology Symposium Presentation on Caring for Transgender Patients 2018
- e. Duke CME in Wake County-Update on Type 2 Diabetes Treatments Feb 2019
- f. Hilton Head Pediatric CME Course-Update on Type 2 Diabetes, Short Stature, and Caring for Transgender Patients June 2019
- g. Wake County Duke Pediatrics CME Type 2 diabetes treatments Feb 2019
- h. NAPNAP Annual Meeting Keynote Speaker 2020

- i. Sexual and Gender Minorities Research Symposium Duke Feb 2020; speaker and organizer

Local Presentations

1. Grand Rounds: 2016 to present-Duke Pediatrics twice, Moses Cones Pediatrics, ECU Ob/Gyn, Duke Ob/Gyn, Duke Psychiatry, Duke Urology, Duke Adult Endocrinology, Duke Pathology
2. Prior to 2016-Rex Grand rounds: Salt and Water balance, New treatments in Pediatric Diabetes, Adrenal Insufficiency, Duke peds grand rounds Bone Health, Type 2 Diabetes Mellitus
3. Duke Women's Weekend 2018 hosted by Duke Alumni Association
4. NCCAN Social Work Training 2016
5. NAPNAP lecture 2016 and 2018 and 2020
6. Profiles in Sexuality Research Presentation at Duke Center for Sexual and Gender Diversity 2017
7. Duke LGBTQ Alumni Weekend Presentation 2017
8. UNC Chapel Hill Campus Health Presentation 2018
9. Duke Student Health Presentation 2017, 2018, 2019 (workshop)

Clinical Activity

1. Duke Consultative Services of Raleigh-2.5 days per week in endocrinology and diabetes
2. Duke Child and Adolescent Gender Care Clinic 1.2 day per week at the CHC
3. Inpatient Consult Service Pediatric Endocrinology 1 week per month

Administrative and Leadership Positions

1. Medical Director Duke Children's and WakeMed Consultative Services of Raleigh
2. Director Duke Child and Adolescent Gender Care Clinic
3. Pediatric Endocrinology Fellowship Program Director 2008-2019

Committees

1. Graduate Medical Education Committee-2008-2019
2. School of Medicine Sexual and Gender Diversity Council 2015 to present
3. Pediatrics Clinical Practice Committee-2015? To present
4. Pediatric Diversity and Inclusion Committee

Community

1. Test proctor local schools
2. Guest lecture GSA multiple years
3. Diabetes Camp over 10 years
4. 100 Women who give a hoot
5. Collaborated to bring "Becoming Johanna" to Duke along with multiple screenings with the director and the lead actor
6. Teddy Bear Hospital volunteer both years

Exhibit 23

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

* * * * *

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

Plaintiffs

vs.

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,
and DORA STUTLER in her official
capacity as Harrison County
Superintendent, PATRICK MORRISEY in*

*
*
* Case No.
* 2:21-CV-00316

VIDEOTAPED DEPOSITION OF

DEANNA ADKINS, M.D.

March 16, 2022

Any reproduction of this transcript
is prohibited without authorization
by the certifying agency.

1 his official capacity as Attorney *
2 General, and THE STATE OF WEST *
3 VIRGINIA, *
4 Defendants *

5 * * * * *

6
7 VIDEOTAPED DEPOSITION OF
8 DEANNA ADKINS, M.D.
9 March 16, 2022

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DEPOSITION
OF
DEANNA ADKINS, M.D., taken on behalf of the Intervenor
herein, pursuant to the Rules of Civil Procedure, taken
before me, the undersigned, Lacey C. Scott a Court
Reporter and Notary Public in and for the Commonwealth
of Pennsylvania, taken via videoconference, on
Wednesday, March 16, 2022 at 9:06 a.m.

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A P P E A R A N C E S

JOSHUA BLOCK, ESQUIRE
American Civil Liberties Union Foundation
125 Broad Street
New York, NY 10004
COUNSEL FOR PLAINTIFF

KATHLEEN R. HARTNETT, ESQUIRE
ANDREW BARR, ESQUIRE
JULIE VEROFF, ESQUIRE
ZOE HELSTROM, ESQUIRE
KATELYN KANG, ESQUIRE
ELIZABETH REINHARDT, ESQUIRE
Cooley, LLP
3 Embarcadero Center
20th Floor
San Francisco, CA 94111-4004
COUNSELS FOR PLAINTIFF

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A P P E A R A N C E S (cont'd)

SRUTI SWAMINATHAN, ESQUIRE

TARA BORELLI, ESQUIRE

Lambda Legal

120 Wall Street

19th Floor

New York, NY 10005-3919

COUNSEL FOR PLAINTIFF

DAVID TRYON, ESQUIRE

State Capitol Complex

Building 1, Room E-26

Charleston, WV 25305

COUNSEL FOR STATE OF WEST VIRGINIA

ROBERTA F. GREEN, ESQUIRE

Shuman McCuskey Slicer, PLLC

1411 Virginia Street East

Suite 200

Charleston, WV 25301

COUNSEL FOR WEST VIRGINIA SECONDARY SCHOOL

ACTIVITIES COMMISSION

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A P P E A R A N C E S (cont'd)

SUSAN DENIKER, ESQUIRE

Steptoe & Johnson

400 White Oaks Boulevard

Bridgeport, WV 26330

COUNSEL FOR HARRISON COUNTY BOARD OF EDUCATION and

HARRISON COUNTY SUPERINTENDENT DORA STUTLER

KELLY C. MORGAN, ESQUIRE

Bailey Wyant

500 Virginia Street East

Suite 600

Charleston, WV 25301

COUNSEL FOR WEST VIRGINIA BOARD OF EDUCATION and

SUPERINTENDANT W. CLAYTON BURCH

TIMOTHY D. DUCAR, ESQUIRE

Law Office of Timothy D. Ducar

7430 East Butherus Drive

Suite E

Scottsdale, AZ 85260

COUNSEL FOR INTERVENOR, LAINEY ARMISTEAD

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A P P E A R A N C E S (cont'd)

ROGER BROOKS, ESQUIRE

LAURENCE WILKINSON, ESQUIRE

HAL FAMPTON, ESQUIRE

CHRISTIANA HOLCOMB, ESQUIRE

JOHNATHAN SCRUGGS, ESQUIRE

RACHEL CSUTOROS, ESQUIRE

Alliance Defending Freedom

15100 North 90th Street

Scottsdale, AZ 85260

COUNSEL FOR INTERVENOR, LAINEY ARMISTEAD

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I N D E X

DISCUSSION AMONG PARTIES	14 - 17
<u>WITNESS:</u> DEANNA ADKINS, M.D.	
EXAMINATION	
By Attorney Brooks	17 - 300
EXAMINATION	
By Attorney Tryonn	301 - 322
CERTIFICATE	323

1	<u>EXHIBIT PAGE</u>		
2			
3			<u>PAGE</u>
4	<u>NUMBER</u>	<u>IDENTIFICATION</u>	<u>IDENTIFIED</u>
5	1	Report of Deanna Adkins, M.D.	17
6	2	Curriculum Vitae	17
7	3	Rebuttal Report	18
8	4	2017 Endocrine Society Guidelines	42
9	5	2009 Endocrine Society Guidelines	48
10	6	2017 Lapinski Article	58
11	7	2021 Endocrine Society Scientific	
12		Statement	65
13	8	NIH Sex/Gender Infographic	87
14	9	World Health Organization Webpage	96
15	10	1/10/22 Washington Post Article	131
16	11	1/9/22 Out Sports Article	142
17	12	Duke Journal of Gender Law and Policy	
18		Article	148
19	13	2020 Hilton and Lundberg Article	156
20	14	2016 Podcast Summary	170
21	15	2016 Podcast Transcript	170
22	16	2021 Washington Post Article	213
23	17	Anderson Interview	216
24	18	Declaration of Deanna Adkins, M.D.	225

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EXHIBIT PAGE

<u>NUMBER</u>	<u>IDENTIFICATION</u>	<u>PAGE</u>	<u>IDENTIFIED</u>
19	2020 Herbert Health Publishing Article	228	
20	Turban, DeVries and Zucker Article	254	
21	NIMH Information Sheet	286	

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OBJECTION PAGE

ATTORNEY

PAGE

Borelli 19, 19, 20, 20, 20, 21, 21, 21, 21, 22,
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34, 34, 36, 36, 36, 37, 37, 39, 39, 40, 40, 40, 40, 41,
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	<u>OBJECTION PAGE</u>
<u>ATTORNEY</u>	<u>PAGE</u>
Borelli	166, 167, 167, 168, 168, 169, 170, 171,
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OBJECTION PAGE

ATTORNEY

PAGE

Borelli 285, 286, 287, 287, 288, 288, 289, 289,
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S T I P U L A T I O N

(It is hereby stipulated and agreed by and between
counsel for the respective parties that reading,
signing, sealing, certification and filing are not not
waived.)

P R O C E E D I N G S

VIDEOGRAPHER: Good morning. We're now
on the record. My name is Jacob Stock. I'm a Certified
Legal Video Specialist employed by Sargent's Court
Reporting Services. Today's date is March 16th, 2022
and the current time is 9:06 a.m. Eastern Standard Time.
This video is being taken place remotely by video
conference. The caption of this case is in the United
States District Court for the Southern District of West
Virginia, Charleston Division, B.P.J., et al. V. West
Virginia State Board of Education, et al. Civil Action
Number 2:21-CV-00316. The name of the witness is Deanna
Adkins. Will the attorney present state their names and
the parties they represent for the record?

ATTORNEY BROOKS: Roger Brooks taking the
deposition with Alliance Defending Freedom and

1 representing the intervenor.

2 ATTORNEY HOLCUMB: Christina Holcumb for
3 intervenor.

4 ATTORNEY DUCAR: Timothy Ducar for
5 intervenor.

6 ATTORNEY CSUTOROS: Rachel Csutoros for
7 intervenor.

8 ATTORNEY TRYON: David Tryon at the
9 Attorney General's Office in West Virginia, and I
10 represent the State of West Virginia.

11 ATTORNEY MORGAN: Kelly Morgan with
12 Bailey and Wyant on behalf of West Virginia Board of
13 Education and Superintendent Burch.

14 ATTORNEY DENIKER: Good morning,
15 everyone. Susan Deniker representing Defendant Harrison
16 County Board of Education and Superintendent Doris
17 Stutler.

18 ATTORNEY GREEN: Roberta Green, Shuman
19 McCuskey Slicer. I'm here on behalf of West Virginia
20 Secondary School Activities Commission.

21 ATTORNEY BORELLI: And this is Tara
22 Borelli with Lambda Legal on behalf of the Plaintiff,
23 B.P.J..

24 ATTORNEY SWAMINATHAN: This is Sruti

1 Swaminathan also from Lambda Legal also on behalf of
2 Plaintiff.

3 ATTORNEY HARTNETT: And this is Kathleen
4 Hartnett from Cooley on behalf of the Plaintiff.

5 ATTORNEY BARR: Andrew Barr, also from
6 Cooley on behalf of the Plaintiff.

7 ATTORNEY REINHARDT: This is Elizabeth
8 Reinhardt, also with Cooley, also for Plaintiff.

9 ATTORNEY BLOCK: Josh Block from ACLU on
10 behalf of Plaintiff.

11 VIDEOGRAPHER: If that is everybody, then
12 can I ask the notary to swear in the witness?

13

14

DEANNA ADKINS, M.D.,

15 CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND

16 HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS

17 FOLLOWS:

18

19 VIDEOGRAPHER: And at this time the
20 notary may be dismissed and we can begin.

21 ATTORNEY BROOKS: Thank you, ma'am.

22 NOTARY:

23 Thank you. Have a good day everybody.

24

EXAMINATION

BY ATTORNEY BROOKS:

Q. For convenience --- good morning, Dr. Adkins,

A. Good morning.

Q. --- and thank you for your time here today.

ATTORNEY BROOKS: For convenience, let me start out by marking three exhibits. As Adkins Exhibit Number 1, I would like to mark the Declaration and expert report of Deanna Adkins, which in the file will be made available to the court reporter is tab two. And I have copies for the witness and for counsel. I would also like to mark as Adkins Exhibit 2 what we have provided as tab three, which is the CV of the witness, Deanna Adkins.

(Whereupon, Adkins Exhibit 1, Report of Deanna Adkins, M.D., was marked for identification.)

(Whereupon, Adkins Exhibit 2, Curriculum Vitae, was marked for identification.)

THE WITNESS: If you don't mind, it's

1 Deanna (corrects pronunciation).

2 ATTORNEY BROOKS: Deanna. I certainly
3 don't mind. I want to get that right. Sorry about
4 that.

5 THE WITNESS: Thank you.

6 ATTORNEY BROOKS: And I would like to
7 admit as Exhibit 3 the rebuttal report submitted by Dr.
8 Adkins. I will provide copies of that to the witness.
9 Just write the number on it.

10 THE WITNESS: Thank you.

11 ATTORNEY BROOKS: We'll have occasion to
12 come back to those.

13 ---

14 (Whereupon, Adkins Exhibit 3, Rebuttal
15 Report, was marked for identification.)

16 ---

17 BY ATTORNEY BROOKS:

18 Q. Dr. Adkins, let me ask you to find amongst the
19 three documents I have given you Exhibit 2, which is
20 your Curriculum Vitae.

21 VIDEOGRAPHER: Counsel, do you want that
22 pulled up on the shared screen?

23 ATTORNEY BROOKS: That's up to the
24 remote. You should certainly make it available.

1 Obviously, everybody here in the deposition room has it.

2 BY ATTORNEY BROOKS:

3 Q. Dr. Adkins, let me ask you to turn to page two
4 of Exhibit 2, your Curriculum Vitae. And you have there
5 a list headed professional training and academic career.
6 Do you see that?

7 A. Yes.

8 Q. Am I right that you have done either residencies
9 or fellowships in the field of pediatrics and
10 endocrinology?

11 ATTORNEY BORELLI: Objection, form.

12 THE WITNESS: I've done both, yes,
13 residency and fellowship in pediatrics followed by
14 endocrinology, yes.

15 BY ATTORNEY BROOKS:

16 Q. And you have not done either a residency nor a
17 fellowship in psychiatry. Have you?

18 ATTORNEY BORELLI: Objection to form.

19 THE WITNESS: No.

20 BY ATTORNEY BROOKS:

21 Q. And you don't have any degree in child or
22 adolescent developmental psychology, do you?

23 A. No.

24 Q. Do you consider yourself trained and

1 professionally competent in using the American
2 Psychiatric Association Diagnostic and Statistical
3 Manual to make child and adolescent mental illness or
4 psychiatric diagnoses generally outside the scope of
5 gender dysphoria?

6 ATTORNEY BORELLI: Objection, form.

7 THE WITNESS: In pediatrics, we're
8 trained to make some of the diagnoses that are
9 appropriate for a pediatrics provider to treat.

10 BY ATTORNEY BROOKS:

11 Q. So is that a --- do you consider yourself
12 generally competent in making diagnosis of child or
13 adolescent mental illness according to the standards of
14 DSM-V?

15 ATTORNEY BORELLI: Objection, form.

16 THE WITNESS: For the things I was
17 trained in and have continued to get CME in, I do.

18 BY ATTORNEY BROOKS:

19 Q. And you do not have any training in sports
20 physiology, do you?

21 ATTORNEY BORELLI: Objection, form.

22 THE WITNESS: Nothing specific.

23 BY ATTORNEY BROOKS:

24 Q. You would consider that to be outside your field

1 of professional expertise. Am I right?

2 ATTORNEY BORELLI: Objection, form.

3 THE WITNESS: There is probably some over
4 lap given that physiology and endocrinology are very
5 important and tied and interlinked, but I couldn't tell
6 you since I don't know where the overlap might be.

7 BY ATTORNEY BROOKS:

8 Q. You yourself have not done any research related
9 to sports physiology, have you?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: Not myself, no.

12 BY ATTORNEY BROOKS:

13 Q. Nor have you done any research relating to the
14 impact of hormones on athletic capability?

15 ATTORNEY BORELLI: Objection, form.

16 THE WITNESS: Not personally.

17 BY ATTORNEY BROOKS:

18 Q. Do you consider yourself to be an expert in any
19 sense in the question of what is or is not fair?

20 ATTORNEY BORELLI: Objection, form.

21 THE WITNESS: Well, that's a broad
22 question. That's ---.

23 BY ATTORNEY BROOKS:

24 Q. Do you consider yourself an expert in the

1 concept of fairness?

2 ATTORNEY BORELLI: Objection.

3 THE WITNESS: I believe that I can
4 recognize fairness and have a concept that would be
5 appropriate for someone of my age.

6 BY ATTORNEY BROOKS:

7 Q. Do you believe that you have expertise and
8 fairness beyond that from ordinary human experience?

9 ATTORNEY BORELLI: Objection, form.

10 THE WITNESS: I would have to see what
11 that would look like to say yes or no to that question.

12 BY ATTORNEY BROOKS:

13 Q. All right.

14 Let's look at your list of publications, which
15 is on page three of Exhibit 2, your curriculum vitae.
16 And under the --- the page three and continuing onto
17 page four is a section titled Refereed Journal.

18 Correct?

19 A. Yes.

20 Q. And by Refereed Journal --- we'll both have to
21 remember that. And also the court reporter may from
22 time to time tell one of us to slow down. These all
23 just ordinary parts of the process, just forgetting to
24 speak up or to go slow enough to be transcribed.

1 Can you explain for the record what you mean by
2 refereed journal, what the significance of that heading
3 is?

4 A. Yes. So for those journals they are reviewed by
5 an editor, and those are peer reviewed as well.

6 Q. So these --- this would be the list of your
7 publications that would --- you would consider to be
8 peer reviewed publications?

9 ATTORNEY BORELLI: Objection, form.

10 THE WITNESS: Looking at the date on the
11 front of this one, yes.

12 BY ATTORNEY BROOKS:

13 Q. And that date is January 21st of this year,
14 2022.

15 Right?

16 A. Yes.

17 Q. And have you had any peer reviewed publication
18 appear since January 21st of this year?

19 A. I have one that is --- that's in press for next
20 month.

21 Q. And what is the title of that?

22 A. I would have to review the title in my e-mail.
23 It's Clinical Simulation for Education of Nurse
24 Anesthesia in Gender Affirming Care.

1 Q. Thank you.

2 A. Roughly.

3 Q. Roughly?

4 I see an article here, number three on the
5 list, Tejawani, from Tejawani, et al, and you are one of
6 the authors shown from year 2017. Do you see that?

7 A. Yes.

8 Q. And that relates to disorders of sexual
9 development.

10 Am I correct?

11 A. Yes.

12 Q. And am I correct that that article has ---
13 doesn't speak at all to the questions of gender.

14 Does it?

15 ATTORNEY BORELLI: Objection to form.

16 THE WITNESS: That, no.

17 BY ATTORNEY BROOKS:

18 Q. Not correct?

19 A. I'm sorry, no, it doesn't speak.

20 Q. Just to be clear for the record, the Tejawani et
21 al. article which you are a co-author does not speak at
22 all to questions of gender identity.

23 Correct?

24 ATTORNEY BORELLI: Objection, form.

1 THE WITNESS: Correct.

2 BY ATTORNEY BROOKS:

3 Q. And I see here a Lapinski, et al. article, the
4 4th item, from 2018, entitled Best Practices in
5 Transgender Health: A Clinician's Guide for Primary
6 Care.

7 Do you see that?

8 A. Yes.

9 Q. Am I correct that that article does not report
10 on any regional research by the authors?

11 ATTORNEY BORELLI: Objection to form.

12 THE WITNESS: I believe that's true.

13 BY ATTORNEY BROOKS:

14 Q. Are you the author of any peer reviewed papers
15 that report original clinical research relating to
16 gender identity or for transgender therapies?

17 ATTORNEY BORELLI: Objection to form.

18 ATTORNEY BROOKS: I don't know who spoke
19 to the witness.

20 THE WITNESS: So gosh, I have a lot of
21 things that are in process. Let me give it a second.

22 ATTORNEY BORELLI: Take the time you need
23 to review that to answer the question fully.

24 THE WITNESS: Could you repeat the

1 question?

2 BY ATTORNEY BROOKS:

3 Q. Yes. Are you the author of any published peer
4 reviewed papers that report original clinical research
5 relating to gender identity or transgender therapies?

6 ATTORNEY BORELLI: Objection to form.

7 THE WITNESS: The item on number six
8 would be the closest. And it is talking with patients
9 about the gender identity and their experience of
10 transgender care, yes.

11 BY ATTORNEY BROOKS:

12 Q. The --- that paper in particular is essentially
13 calling for research.

14 Am I correct?

15 ATTORNEY BORELLI: Objection to form.

16 THE WITNESS: Yes.

17 BY ATTORNEY BROOKS:

18 Q. It is not reporting on accomplished clinical
19 research, is it?

20 ATTORNEY BORELLI: Objection, form.

21 THE WITNESS: So in that study we
22 actually did interview individuals as part of the study,
23 so it has --- it's done as a --- oh, Lord, words. I'm
24 going to find the word in a second. Not in like ---

1 more of a public health-based research approach where
2 you do not actual like counting of things like you would
3 do sort of --- search, but more around interviewing and
4 looking at quantitate versus qualitative. That's the
5 word I'm looking for. It's a qualitative study which is
6 typically done in public health programs or other public
7 health research.

8 Q. All right.

9 Am I correct, Dr. Adkins, that you, yourself,
10 have not treated nor personally examined Plaintiff,
11 B.P.J.?

12 ATTORNEY BORELLI: Objection, form.

13 THE WITNESS: That's correct.

14 BY ATTORNEY BROOKS:

15 Q. And you don't have any direct knowledge as to at
16 what Tanner stage B.P.J. began puberty blockers.

17 Am I correct?

18 A. I don't recall seeing that in any of the
19 documentation.

20 Q. And you don't have any knowledge as to how
21 B.P.J.'s physiology or athletic capabilities compare to
22 a genetic female of a similar age, do you?

23 ATTORNEY BORELLI: Objection, form.

24 THE WITNESS: I haven't assessed the

1 particular patient, person.

2 BY ATTORNEY BROOKS:

3 Q. Let me take you again to Exhibit 2 and page two
4 ---?

5 ATTORNEY MORGAN: May I interrupt for a
6 moment.

7 ATTORNEY BROOKS: I'm sorry. Who's
8 speaking?

9 ATTORNEY MORGAN: Sure. This is Kelly
10 Morgan. I'm having a terrible time understanding the
11 witness. So before we go on is there any way to see if
12 we can --- it sounds extremely muffled. I'm only
13 catching like maybe half of the words.

14 ATTORNEY BROOKS: Most --- most of the
15 voice is coming through very clear on our end. I'm
16 going to move speaker so that paper shuffling is not as
17 likely to shuffle it. Beyond that, I think everybody in
18 this room will agree that we're speaking slowly and
19 clearly and, frankly, loudly. So I'm not sure there's
20 more we can do.

21 ATTORNEY BORELLI: And Kelly, for what it
22 is worth, I think I caught maybe half of your words. I
23 wonder if there is a connection issue on your end that
24 might be worth investigating.

1 ATTORNEY HARTNETT: I will just say for
2 the record, and others should speak up too because we
3 obviously want all counsel to hear the deposition. I
4 have been able to hear Mr. Brooks, the witness, and the
5 objections have been a bit more faint, but we have been
6 able to make them out so far.

7 ATTORNEY TRYON: This is Dave Tryon. I
8 share Kelly's frustration. I'm having difficulty
9 understanding the witness, so ---.

10 ATTORNEY BROOKS: And similarly, Dave,
11 when we hear you, you're a little bit more muffled than
12 some of the other voices. So the issue, perhaps the
13 mics and speakers on the other end, but there's nothing
14 more we can do at this end.

15 ATTORNEY GREEN: This is Roberta Green,
16 and I'm also having trouble hearing. And I'm
17 considering maybe --- you know, maybe muting my computer
18 and calling in on my phone and see if I can hear better.
19 I think when the doctor looks down to look at documents
20 we lose some of that. So I'll report in if calling in
21 on my phone is a breakthrough, but I appreciate you all.
22 Thank you.

23 ATTORNEY DENIKER: Yes. Thank you. I'm
24 also having trouble. And I'm curious if the court

1 reporter is having trouble. And if she's not, that's
2 good, but I just want to make sure that we --- that
3 everybody can hear.

4 COURT REPORTER: So my biggest issue is
5 people not saying their names when they're speaking. So
6 we just had a bunch of people and I really have no idea
7 who is sayin anything. I don't know who is making the
8 objections. And ma'am, with the mask on, it is hard to
9 understand you at times. I'm really like having to
10 really focus in on you. And the objections are coming
11 in quick. And I mean, there are definitely some
12 challenges, but I don't know.

13 ATTORNEY BORELLI: Well, in case this is
14 helpful, so this is Tara Borrelli with Lambda Legal on
15 behalf of the Plaintiff. I am the person defending the
16 deposition, so the objections will be coming from me, in
17 case that's helpful going forward.

18 COURT REPORTER: Yes.

19 ATTORNEY HARTNETT: This is Kathleen
20 Hartnett for the Plaintiff from Cooley. I was the first
21 person that spoke after someone raised the issue. I
22 believe Miss --- Ms. Morgan had raised the issue of the
23 ability to hear. And I would just say for the record
24 this is an in person deposition that was scheduled where

1 we had proposed it to be remote if parties saw fit to do
2 that. We're not objecting to it being in person. We're
3 --- obviously they're defending. And all parties had
4 the ability to attend in person if they chose to.

5 ATTORNEY BROOKS: And I --- I will ---
6 this is Roger Brooks taking the deposition. I will
7 suggest that we just agree by voice acclimation that
8 we're not going to cycle through all the names and try
9 to identify all the people who have chatted with us
10 about their reception and simply move on with the
11 deposition unless anybody objects to that.

12 ATTORNEY MORGAN: I have no objection to
13 that. This is Kelly Morgan. But is there any
14 possibility that the witness would be able to remove her
15 mask if everyone else is masked other than the
16 questioner? Like I --- I'm not having trouble hearing
17 anyone else other than the witness, and it just seems to
18 get muffled.

19 ATTORNEY BORELLI: I'm sorry, but I --- I
20 don't believe that's going to be an option. I mean,
21 this --- this is partly why a remote deposition would
22 have been our --- our preference, but Dr. Adkins
23 obviously has to take precautions because she is
24 continuing to see and treat patients. And so she needs

1 to protect her health.

2 ATTORNEY BROOKS: And we did agree to
3 proceed in whatever way the witness wanted when it comes
4 to that, so we'll all just have to live with that as
5 part of these days.

6 May we proceed?

7 ATTORNEY TRYON: Yes.

8 BY ATTORNEY BROOKS:

9 Q. If you have Exhibit 2 and on page two of that we
10 have professional training and academic career, which
11 towards the bottom includes your current two
12 appointments associated with Duke University.

13 Am I correct?

14 A. Three.

15 Q. I apologize. I see that. One is you're an
16 Associate Professor of Pediatrics.

17 Correct?

18 A. Correct.

19 Q. And you are the Director of the Duke Child and
20 Adolescent Gender Care Clinic?

21 A. Correct.

22 Q. And you are a Co-Director of the Duke Sexual and
23 Gender Health and Wellness Program.

24 Correct?

1 A. Correct.

2 Q. What is the total compensation you receive in
3 connection with those three appointments with Duke
4 University?

5 ATTORNEY BORELLI: Objection, form.

6 THE WITNESS: Well, you want a number or
7 ---?

8 BY ATTORNEY BROOKS:

9 Q. I do.

10 A. I'm going to have to give an approximation.

11 Q. And that's fine?

12 A. Approximately, \$173,000 per year.

13 Q. And that is your total compensation on a W-2
14 from Duke University?

15 A. No. Duke University only pays me \$20,000 per
16 year. I work for the private Diagnostic Clinic, which
17 is our private practice, and they pay me the balance.

18 Q. Okay.

19 And do you receive any other compensation in
20 connection with your work with patients in connection
21 with the Duke Child and Adolescent Gender Care Clinic?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: No.

24 BY ATTORNEY BROOKS:

1 Q. Can you tell me what you earned in speaking fees
2 in 2021, approximately?

3 ATTORNEY BORELLI: Objection, form.

4 THE WITNESS: In 2021? Is that what you
5 said?

6 BY ATTORNEY BROOKS:

7 Q. I did.

8 A. Let's see. I'm losing track of dates. I think
9 only like \$500.

10 Q. And what were the total expert fees that you
11 received in 2021 in connection with serving as an expert
12 in litigation?

13 ATTORNEY BORELLI: Objection, form.

14 THE WITNESS: Nothing.

15 BY ATTORNEY BROOKS:

16 Q. And in 2021 did you receive any payments for any
17 reasons from any pharmaceutical company?

18 ATTORNEY BORELLI: Objection, form.

19 THE WITNESS: No.

20 BY ATTORNEY BROOKS:

21 Q. Let me ask you to look at Exhibit 1, which is
22 your expert report. And if you would turn --- if you
23 would turn to paragraph 37 of that report, paragraph 38.
24 And there you say when a child is born a sex assignment

1 is usually made based on the infant's externally visible
2 genitals. This designation is then recorded and usually
3 becomes the sex designation listed on the infant's birth
4 certificate. Do you see that language?

5 A. I do.

6 Q. And as a trained physician, can you tell us how
7 a sex assignment is usually made based on the infant's
8 external visible genitals?

9 A. Yes. In most cases the external genitals will
10 have a form that looks typical to a male versus typical
11 to a female. And if there is a question, then I get
12 consulted, if there's something different.

13 Q. And by typical to a male, for instance, you mean
14 what?

15 A. So male external genitalia at birth typically
16 has a phallic structure, penis that is, of a certain
17 length most of the time. And then there's scrotum and
18 then there are usually testicles, although sometimes
19 they can be up or down in the scrotum.

20 Q. And do you, yourself, have children?

21 A. I do.

22 Q. And you're aware that for quite a number of
23 years now, in fact, parents often learn of the sex of
24 their child before birth.

1 Correct?

2 ATTORNEY BORELLI: Objection, form.

3 THE WITNESS: I have been aware that
4 ultrasonographers often tell people what they think they
5 are. And I'm also the one that has to tell the parents
6 that it is different when they're born and it is not
7 exactly accurate.

8 BY ATTORNEY BROOKS:

9 Q. That is as a result of the quality of imaging on
10 ultrasound sometimes the wrong call is made on that?

11 ATTORNEY BORELLI: Objection, form.

12 THE WITNESS: Possibly the quality of
13 imaging, the skill of the person. There are also
14 sometimes variations that aren't easily visible on
15 ultrasound.

16 BY ATTORNEY BROOKS:

17 Q. You're aware, are you not, that the genetic
18 sex of infant is, in fact, determinable by genetic
19 testing as early as the first trimester of pregnancy?

20 ATTORNEY BORELLI: Objection to form.

21 THE WITNESS: The typical testing for
22 that is chromosomes, which are broad view and not
23 specific for the hundreds of genes that can change the
24 sex of the individual.

1 BY ATTORNEY BROOKS:

2 Q. Well, my question was you are aware, are you
3 not, that the chromosomal sex of the infant is
4 determinable as early as the first trimester of
5 pregnancy?

6 ATTORNEY BORELLI: Objection, form.

7 THE WITNESS: I'm sorry. I didn't hear
8 you say chromosomal. I thought you said biological. I
9 apologize.

10 BY ATTORNEY BROOKS:

11 Q. I can't swear what I said the first time.

12 ATTORNEY BROOKS: Let's ask the reporter
13 to read back the second question I asked. Is the court
14 reporter muted perhaps?

15 COURT REPORTER: One minute.

16 ATTORNEY BROOKS: Okay.

17 COURT REPORTER: You said genetic
18 testing. Do you want me to read the whole question?

19 ATTORNEY BROOKS: I do.

20 COURT REPORTER: You are aware, are you
21 not, that the genetic sex of an infant is determinable
22 by genetic testing as early as the first trimester of
23 pregnancy?

24 ATTORNEY BORELLI: Objection to form.

1 COURT REPORTER: And again I just want to
2 say that the witness is hard to understand. There is
3 definitely a lot of muffling words coming through, you
4 know, just like in the sentence there might be two words
5 that I just have to like really --- I'm just struggling
6 over here with this mask. I can't see your lips moving,
7 so it's really hard, but --.

8 THE WITNESS: I'll slow down, but I was
9 sick earlier this week, and I'd really rather not share
10 that with anyone in the room. And I don't think that
11 they would like that, so ---.

12 BY ATTORNEY BROOKS:

13 Q. Don't consider yourself pressured to take off
14 your mask. Just do what you can to speak clearly into
15 the microphone.

16 ATTORNEY BORELLI: Thank you. And we
17 just moved the mic closer to the witness as well, so we
18 --- we hope that that will help make a difference.

19 ATTORNEY HARNETT: Excuse me. This is
20 Kathleen Hartnett from Cooley. I would like to ask
21 whether the videotaping that's happening now will allow
22 further transcription after the deposition?

23 VIDEOGRAPHER: Yes, that's --- the
24 videotape is picking up everything that --- I'm having

1 no troubles on my side, so it's picking up all of the
2 audio and everything.

3 ATTORNEY HARTNETT: Thank you very much.

4 VIDEOGRAPHER: You're welcome.

5 ATTORNEY BROOKS: And rather than
6 re-reading the question, I'm just going to forget all
7 that and ask you a new question.

8 BY ATTORNEY BROOKS:

9 Q. You are aware, are you not, that the chromosomal
10 sex of an infant nowadays can be determined as soon as
11 the first trimester of pregnancy?

12 ATTORNEY BORELLI: Objection to form.

13 THE WITNESS: You can obtain the baseline
14 chromosomes, yes.

15 BY ATTORNEY BROOKS:

16 Q. And that will tell you the chromosomal sex of
17 that infant?

18 ATTORNEY BORELLI: Objection, form.

19 THE WITNESS: The --- not really a term
20 that is really precise as there's hundreds of genes that
21 can change that.

22 BY ATTORNEY BROOKS:

23 Q. So you are not able to answer my question yes or
24 no?

1 ATTORNEY BORRELLI: Objection to form.

2 THE WITNESS: I'm not able to answer the
3 question yes or no.

4 BY ATTORNEY BROOKS:

5 Q. You would agree that the genetic sex of an
6 infant is determined at the instant of conception?

7 ATTORNEY BORELLI: Objection to form.

8 THE WITNESS: The actual Y chromosomes
9 are at that time, yes.

10 BY ATTORNEY BROOKS:

11 Q. That's not something that a doctor has any
12 choice or could change at the time of birth?

13 ATTORNEY BORELLI: Objection, form.

14 THE WITNESS: The chromosomes, no.

15 BY ATTORNEY BROOKS:

16 Q. And you understand what I think we all learned
17 in perhaps sixth grade biology that an individual with
18 two X chromosomes, provided that there is no chromosomal
19 abnormality, is female female and an individual free of
20 abnormalities who has an X and a Y chromosome is male.

21 Correct?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: Free of any abnormalities,
24 yes.

1 BY ATTORNEY BROOKS:

2 Q. And you also understand that in humans, like all
3 mammals, a gamete from a male and a gamete from a female
4 are necessary to create a fertilized egg in a new
5 individual?

6 ATTORNEY BORELLI: Objection, form.

7 THE WITNESS: Can you read the very first
8 part of the question again, please?

9 BY ATTORNEY BROOKS:

10 Q. You understand that in humans, as in all
11 mammals, a gamete from a male and a gamete from a female
12 are necessary to create a fertilized egg and a new
13 individual?

14 ATTORNEY BORELLI: Same objection.

15 THE WITNESS: Yes.

16 BY ATTORNEY BROOKS:

17 Q. Now, if you look at paragraph 41 in your
18 declaration ---

19 A. Yes.

20 Q. --- in paragraph 41 you state, quote, biological
21 sex, biological male or female are imprecise and should
22 be avoided. Do you see that?

23 A. Yes.

24 Q. And it is your view that the terms biological

1 male, biological female and biological sex are so
2 imprecise as to be not useful from a medical point of
3 view?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: In my practice we have to
6 be more careful than that because I see quite a lot of
7 individuals where that wouldn't be a very precise
8 answer.

9 BY ATTORNEY BROOKS:

10 Q. My question is is it your expert opinion, are
11 you offering expert opinion in terms of biological sex,
12 biological male and biological female are so imprecise
13 as to not be medically useful?

14 ATTORNEY BORELLI: Objection, form.

15 THE WITNESS: Yes.

16 ATTORNEY BROOKS: Let me mark as Exhibit
17 4 what is tab 5, and that is the Endocrine Society
18 Guidelines dated 2017, but the number of authors. The
19 first name is Wiley Hembree.

20 ---

21 (Whereupon, Adkins Exhibit 4, 2017
22 Endocrine Society Guidelines, was marked
23 for identification.)

24 ---

1 ATTORNEY BROOKS: I'm handing that to the
2 witness and to opposing counsel.

3 BY ATTORNEY BROOKS:

4 Q. Dr. Adkins, this is a document that you cite in
5 your expert report.

6 Correct?

7 A. Correct.

8 Q. And with which you are quite familiar?

9 A. Correct.

10 Q. Do you know Dr. Hembree?

11 A. I spoke with him on the phone.

12 Q. You would agree, would you not, that he's been
13 prominent in the field of transgender medicine for
14 decades?

15 ATTORNEY BORELLI: Objection, form.

16 THE WITNESS: His publications, yes.

17 BY ATTORNEY BROOKS:

18 Q. And another author is Peggy Cohen-Kettenis. Do
19 you see that? She's the second author.

20 A. Yes.

21 Q. And likewise, she has been prominent in the
22 field for at least 20 years?

23 ATTORNEY BORELLI: Objection.

24 THE WITNESS: I've seen publications in

1 that date range, yes.

2 BY ATTORNEY BROOKS:

3 Q. Have you met Dr. Cohen-Kettenis?

4 A. No.

5 Q. And she is associated with a highly respected
6 institute in Amsterdam.

7 Am I right?

8 A. I am not certain. I would have to look that up.

9 Q. You don't know. You weren't invited to serve on
10 the committee that drafted these guidelines, were you?

11 ATTORNEY BORELLI: Objection, form.

12 THE WITNESS: There is an invitation
13 extended to all Endocrine Society members. I did find a
14 time. That was early in my work with this at that time.

15 BY ATTORNEY BROOKS:

16 Q. If you look down on page one, about five lines
17 from the bottom ---.

18 A. Say it again.

19 Q. Page one, five lines from the bottom?

20 A. Yes.

21 Q. Actually, let's go two more up and begin a
22 sentence. There's a sentence that begins they require a
23 safe and effective hormone regimen that will, one,
24 suppress endogenous sex hormone secretion determined by

1 the person's genetic/gonadal sex. Do you see that?

2 A. I do.

3 Q. And do you think you understand what's referred
4 to by the term genetic/gonadal sex?

5 ATTORNEY BORELLI: Objection, form.

6 THE WITNESS: Yes.

7 BY ATTORNEY BROOKS:

8 Q. And what is your understanding of what that
9 refers to?

10 A. So that would include both the chromosomes as
11 mentioned before, the broad XY, and it should include
12 all of the other genetic mutations as well as what
13 actual gonads are present in the person.

14 Q. And this committee, these prominent researchers
15 at least considered genetic/gonadal sex to be a
16 meaningful and readily understandable binary
17 classification.

18 Correct?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: That's not clear there and
21 it is different from what you said before.

22 BY ATTORNEY BROOKS:

23 Q. I try to make each question somewhat different
24 from the one before, so yes. Let me ask a new question.

1 This committee considered --- the committee that drafted
2 these guidelines considered genetic/gonadal sex to be a
3 meaningful and readily understandable classification.

4 Correct?

5 ATTORNEY BORELLI: Objection, form.

6 THE WITNESS: Yes. They didn't use the
7 word chromosomal sex. And they included gonads which
8 are also a part of the broad development of human
9 reproductive biology.

10 BY ATTORNEY BROOKS:

11 Q. And in fact, you, yourself, quoted this language
12 in your expert report, did you not?

13 A. Yes.

14 Q. And genetic sex, in your understanding, what is
15 the meaning of genetic sex?

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: Well, in most patients, in
18 most people, it is whether you received an X or a Y
19 chromosome and all of your body parts include an XY
20 containing or an XX containing cell. There are cases
21 where you can have mosaicism or different parts of a
22 human at different sex chromosomes where a part is XX, a
23 part is XY, part is XO. And then there is also some
24 mutations that can occur in lots of other locations that

1 can determine whether or not a patient's, you know,
2 likely to have the rest of their human development
3 appear as what we would more typically see in a male
4 human or a female human.

5 BY ATTORNEY BROOKS:

6 Q. Well, in every human individual who is healthy
7 and free of disorder of sexual development, genetic sex
8 and gonadal sex are --- directly correspond.

9 Correct?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: Typically, yes.

12 BY ATTORNEY BROOKS:

13 Q. So in a healthy individual free of genetic
14 defect every individual who is chromosomally XX is going
15 to have female gonads and female genitalia.

16 Correct?

17 ATTORNEY BORELLI: Objection to form.

18 THE WITNESS: My only concern is I would
19 not use defect as a language. There's --- you know, we
20 see variation across humans and we --- you know, there
21 are variations that are normal and variations that are
22 typical versus rare. So I would not call it necessarily
23 a defect, maybe a variation would be the word I would
24 use.

1 BY ATTORNEY BROOKS:

2 Q. The relationship between chromosomal sex and
3 gonads are not separate things that can vary in healthy
4 individuals, are they?

5 ATTORNEY BORELLI: Objection to form.

6 THE WITNESS: Well, I have healthy
7 individuals who have XY chromosomes and external
8 genitalia that are completely female.

9 ATTORNEY BROOKS: Let me mark as Exhibit
10 5 the prior edition guidelines put out by the Endocrine
11 Society in 2009, eight years earlier.

12

13

(Whereupon, Adkins Exhibit 5, 2009

14

Endocrine Society Guidelines, was marked
15 for identification.)

16

17 BY ATTORNEY BROOKS:

18 Q. And the primary author is on --- the first
19 author on the 2009 guidelines are the same individuals,
20 Dr. Hembree and Cohen-Kettenis?

21 Correct?

22 A. Correct.

23 ATTORNEY BORELLI: Objection, form.

24 BY ATTORNEY BROOKS:

1 Q. In fact, you, yourself, were familiar with and
2 regularly consulted these guidelines.

3 Am I correct?

4 ATTORNEY BORELLI: Objection to form.

5 THE WITNESSS: Prior to 2017?

6 BY ATTORNEY BROOKS:

7 Q. Correct.

8 A. I used these guidelines.

9 Q. And did you find them to be incomprehensible?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: No.

12 BY ATTORNEY BROOKS:

13 Q. If you look with me on page marked 3134, which
14 is the third page of the document, second column three
15 quarters of the way down is the definition of --- under
16 the heading of definitions is a definition of
17 transsexual or transsexual people.

18 Do you see that?

19 A. I see it.

20 Q. It says there that a transsexual person refers
21 to a biological male who identifies as or desires to be
22 a female --- a member of the female gender or vice
23 versa.

24 Do you see that?

1 A. Yes.

2 Q. And so in 2009 these prominent authors in the
3 field considered biological male to be a scientifically
4 useful and adequately clear term for them to use in
5 these guidelines issued by the Endocrine Society.

6 Correct?

7 ATTORNEY BORELLI: Objection, form.

8 THE WITNESS: It's written that way in
9 this paper, yes.

10 BY ATTORNEY BROOKS:

11 Q. And you in that time period 2009 to just 2017
12 used these guidelines and were able to understand them.

13 Correct?

14 ATTORNEY BORELLI: Objection, form.

15 THE WITNESS: You know, I would have to
16 spend some time looking to see what else is in here. It
17 has been a long time since I've used these particular
18 and pulled out. And it is a single location. It can
19 sometimes be misleading if you're aware --- if you've
20 read many medical articles.

21 BY ATTORNEY BROOKS:

22 Q. So you don't recall whether you found these
23 guidelines to be comprehensible and useful for your
24 purposes in the years between 2009 and 2017?

1 ATTORNEY BORELLI: Objection, form.

2 THE WITNESS: Generally they were useful.

3 BY ATTORNEY BROOKS:

4 Q. If you look just a little lower is --- the next
5 definition is transition.

6 Do you see that?

7 A. Yes.

8 Q. And it refers to a period of time during which
9 transsexual persons change their physical, social and
10 legal characteristics to the gender opposite that of
11 their biological sex.

12 Do you see that?

13 A. I do.

14 Q. And again, these authors used the term
15 biological sex, did they not?

16 A. They did.

17 Q. And they indicated their understanding that
18 biological sex is binary in referring to opposite of a
19 biological sex.

20 Correct?

21 ATTORNEY BORELLI: Objection, form.

22 THE WITNESS: In this older version they
23 do use more binary terms. As you know, language changes
24 over time. In the new guidelines they don't talk as

1 much about binary.

2 BY ATTORNEY BROOKS:

3 Q. Is it your belief that the underlying biology
4 has changed since 2009?

5 ATTORNEY BORELLI: Objection, form.

6 THE WITNESS: Our understanding of a lot
7 of things in this area is growing rapidly. It's a rapid
8 area of research.

9 BY ATTORNEY BROOKS:

10 Q. Let me ask you to turn in this document to page
11 3141.

12 A. Same document, 3141?

13 Q. Yes.

14 A. Thank you.

15 Q. And here we're in a discussion of the use of
16 GRNH analogs, which is to say puberty blockers.

17 Am I correct?

18 A. Which section?

19 Q. Well, the heading is 2.3, evidence, and it is
20 talking about in the second paragraph treatment with
21 GRNH analogs?

22 ATTORNEY BORELLI: Counsel, can we give
23 the witness one moment to look at this?

24 ATTORNEY BROOKS: Of course.

1 ATTORNEY BORELLI: Thank you.

2 THE WITNESS: Yes, that appears to be
3 what is discussed in this section.

4 BY ATTORNEY BROOKS:

5 Q. Here the authors in the 2009 Endocrine Society
6 guidelines describe the effect of treatment with puberty
7 blockers.

8 Correct?

9 ATTORNEY BORELLI: Objection, form.

10 THE WITNESS: Yes.

11 BY ATTORNEY BROOKS:

12 Q. And they say among other things that, quote, in
13 girls breast development will become atrophic and menses
14 will stop. And they continue, quote, in boys
15 verilization will stop and testicular volume will
16 decrease.

17 Do you see those quotes?

18 A. I do.

19 Q. Again, in 2009, the Endocrine Society didn't
20 think there was ambiguity or imprecision as to what is a
21 girl and what is a boy for purposes of development in
22 puberty, did they?

23 ATTORNEY BORELLI: Objection to form.

24 THE WITNESS: As I said, the language

1 would be different and likely is different in
2 conversations around this because it is not as precise
3 as I would use or my colleagues would use.

4 BY ATTORNEY BROOKS:

5 Q. In 2009 the Endocrine Society in publishing
6 these guidelines didn't think there was any ambiguity or
7 imprecision as to what is a girl and what is a boy for
8 purposes of the effect of puberty.

9 Correct?

10 ATTORNEY BORELLI: Objection to form.

11 THE WITNESS: I would have to read the
12 article up to this point to see what their
13 clarifications are with regard to those phrases.
14 Oftentimes in the beginning of articles they will
15 clarify what they mean by a particular phrase, and
16 taking it out of context is a little bit difficult for
17 me to just say it is true right here on the spot.

18 ATTORNEY BORELLI: I would also just
19 object to the extent that we're asking about select
20 definitions without having given the witness an
21 opportunity to review the entire definition and section
22 of the document and asking her to draw conclusions about
23 the larger document.

24 ATTORNEY BROOKS: Counsel, I think that

1 you are supposed to under the Rules to confine your
2 objections to stating objection.

3 BY ATTORNEY BROOKS:

4 Q. In your practice today with respect to
5 individuals who do not suffer from any disorder of
6 sexual development you don't have any trouble telling
7 girls from boys, do you?

8 ATTORNEY BORELLI: Objection to form.

9 THE WITNESS: I do not have trouble
10 deciding who was assigned female at birth versus those
11 who were assigned male at birth.

12 BY ATTORNEY BROOKS:

13 Q. We have already talked about how that assignment
14 is done based on observation of genitalia, which depend
15 on underlying genetic sex.

16 Right?

17 ATTORNEY BORELLI: Objection, form.

18 THE WITNESS: So the typical manner of
19 assignment we have discussed. Sometimes those things
20 change over time with --- absent of course a difference
21 of sex development or intersex conditions. Typically
22 they would match.

23 BY ATTORNEY BROOKS:

24 Q. And if you are, for instance, getting ready to

1 prescribe cross sex hormones for a patient in patients
2 who are free of any disorder of sexual development you
3 don't have any trouble determining which patients need
4 testosterone as a cross sex hormone versus which
5 patients need estrogen as a cross sex hormone, do you?

6 ATTORNEY BORELLI: Objection, form.

7 THE WITNESS: My mouth is getting dry. I
8 don't have any trouble with that.

9 BY ATTORNEY BROOKS:

10 Q. And that's because absent rare and unusual
11 disorders of sexual development it's really easy for all
12 of us to tell girls from boys, isn't it?

13 ATTORNEY BORELLI: Objection to form.

14 THE WITNESS: With regard to their sex
15 assignment at birth, yes.

16 BY ATTORNEY BROOKS:

17 Q. Now, you've mentioned a couple times when I
18 asked you questions about the 2009 guidelines that
19 perhaps a language that's used has changed.

20 Am I right?

21 A. Yes.

22 Q. You are not contending that how human biology
23 works has changed?

24 ATTORNEY BORELLI: Objection, form.

1 THE WITNESS: Our understanding of human
2 biology at this time is accelerating greatly, especially
3 in the area of genetics. We can now look at someone's
4 whole exome, whole chromosome, and it's --- I mean in
5 this timeframe there's an amazing amount of information
6 that's become more clear.

7 BY ATTORNEY BROOKS:

8 Q. So is it your --- are you asserting that the
9 more recent Endocrine Society policy statement should be
10 accepted as a more precise Scientific statement?

11 ATTORNEY BORELLI: Objection, form.

12 THE WITNESS: The goal is for that to be,
13 yes, when you are writing those. And it's also been
14 sometimes since this was published as well.

15 BY ATTORNEY BROOKS:

16 Q. Since the 2017 guidelines?

17 A. Correct.

18 Q. But in general, is it your view the more recent
19 statements of the Endocrine Society that touch on issues
20 of the definition of gender and sex are --- we should
21 consider more accurate or reliable than earlier
22 statements?

23 ATTORNEY BORELLI: Objection, form.

24 THE WITNESS: In the correct context,

1 yes. Sometimes when they're taken out of context and
2 applied to not the exact same population, they may or
3 may not be as precise.

4 BY ATTORNEY BROOKS:

5 Q. They may or may not be. That is you don't
6 maintain that generally more recent statements of the
7 Endocrine Society relating to definitions of gender and
8 sex are more reliable than earlier statements?

9 ATTORNEY BORELLI: Objection to form.

10 THE WITNESS: Their goal and our goal as
11 a community is to be as precise as possible. Sometimes
12 that works and sometimes it doesn't.

13 ATTORNEY BROOKS: Let me mark as Exhibit
14 --- what are we at, 6. Exhibit 6. What is tab 4 in the
15 materials provided to the court reporter, an article
16 Lapinski, et al., which Dr. Adkins is a coauthor from
17 2017. Pardon me, 2017.

18 ---
19 (Whereupon, Adkins Exhibit 6, 2017
20 Lapinski Article, was marked for
21 identification.)

22 ---

23 BY ATTORNEY BROOKS:

24 Q. And this is your only or perhaps one of only two

1 peer reviewed articles on which you were an author that
2 relate to transgender patients.

3 Correct?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: I'm going to refer back to
6 my ---.

7 BY ATTORNEY BROOKS:

8 Q. Please do, and that's Exhibit 2.

9 A. I apologize --- I'm sorry. I was thinking of
10 the book chapter. Yes, I was thinking of the book
11 chapter I've written there. So those are also peer
12 reviewed. So if you just falling manuscript of joint
13 articles, that's true, but I also have one book chapter
14 published and one that is in process.

15 Q. Well, at any rate, this article was published in
16 2017, the same year as the more recent guidelines from
17 the Endocrine Society.

18 Correct?

19 A. Correct.

20 Q. And in this article --- let me ask you to turn
21 to page 692. And looking at a paragraph that actually
22 runs over from 689 because of a long intervening table.
23 Paragraph is headed understanding the meaning of
24 transitioning for transgender patients.

1 Do you see that?

2 A. Yes.

3 Q. And the paragraph continues on to page 692 and
4 the language I want to call your attention to is there,
5 but of course feel free to look at the paragraph?

6 ATTORNEY BORELLI: Counsel, for clarity
7 of the record, I'm showing that the heading is on page
8 689.

9 ATTORNEY BROOKS: Correct. That's where
10 the paragraph begins and then there's a two-page table
11 breaks up the paragraph and now we're on 692.

12 ATTORNEY BORELLI: Thank you.

13 THE WITNESS: Just that paragraph.

14 BY ATTORNEY BROOKS:

15 Q. Yes.

16 A. Okay.

17 Q. In 2017, writing a guide for clinicians as to
18 what you considered to be best practices in transgender
19 health you and your coauthors thought that it was clear
20 and useful to refer to, quote, the opposite biological
21 sex, closed quote, did you not?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: The language would be
24 reflective of the original publications.

1 BY ATTORNEY BROOKS:

2 Q. Dr. Adkins, what do you mean by that answer?

3 A. When you're putting something into a journal
4 article and you're reporting that original article's
5 information, it would be inappropriate to change the
6 language. So the original report that states this
7 particular information used those words.

8 Q. Well, you didn't put this in quotation marks in
9 your article, did you?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: We don't necessarily have
12 to put them in quotation marks. In medically referred
13 journals you can just put the reference.

14 BY ATTORNEY BROOKS:

15 Q. And in fact, there is no footnote to this, is
16 there, there is no reference?

17 ATTORNEY BORELLI: Objection, form.

18 THE WITNESS: Not right at the end of
19 that sentence.

20 BY ATTORNEY BROOKS:

21 Q. What that sentence says to get it into the
22 record, I'm referring to sexual orientation, it says,
23 quote, this fluctuation tends to occur more commonly
24 with individuals who are attracted to the opposite

1 biological sex before transitioning, closed quotes.

2 Have I read that language correctly?

3 A. Correct.

4 Q. And publishing this guideline for clinicians in
5 2017, is it your testimony that even if you thought that
6 language was inaccurate and confusing you would not have
7 clarified it?

8 ATTORNEY BORELLI: Objection, form.

9 THE WITNESS: I can't change what the
10 publication states. It would be inappropriate for me to
11 make a statement that was different from what the
12 publication states. And there are people that fall on
13 the binary and people who fall in the middle, and that
14 particular study investigated people who identified on
15 each end of the binary spectrum of individuals
16 identification of gender identity.

17 BY ATTORNEY BROOKS:

18 Q. So you believe as a scientist and an author that
19 writing in 2017, even if you thought the term biological
20 sex was misleading and inaccurate, you --- it was
21 nevertheless appropriate for you to use that term in a
22 best practices guide that you were writing for
23 clinicians?

24 ATTORNEY BORELLI: Objection, form.

1 THE WITNESS: So if you would read the
2 entirety of the article, I would hope that we would be
3 clear and it would be understood in that isolated
4 paragraph, again I, have to use what language was used
5 in the original publication. Otherwise, I'm
6 misrepresenting the original publication and I would not
7 want to do that.

8 BY ATTORNEY BROOKS:

9 Q. Well, if you thought the original publication
10 was inaccurate and misleading you wouldn't want to cite
11 and rely on it, would you?

12 ATTORNEY BORELLI: Objection, form.

13 THE WITNESS: As it's stated, it's not
14 inaccurate. And if you infer things from a sentence it
15 could be misleading. If you read it straight for what
16 it says, it's accurate to what the report gave in the
17 initial publication.

18 BY ATTORNEY BROOKS:

19 Q. Are you familiar, Dr. Adkins, with a NIH policy
20 that requires research supported by NIH grants that
21 involves animal or human clinical work to consider what
22 NIH refers to as, quote, sex as a biological variable,
23 closed quote?

24 ATTORNEY BORELLI: Objection, form.

1 THE WITNESS:S I have seen that policy
2 and also seen the policies that are presented by the NIH
3 which uses sex assigned at birth as well as gender
4 identity and in addition, as variables that should be
5 included in their research.

6 BY ATTORNEY BROOKS:

7 Q. My question is precise. Are you familiar with
8 the NIH policy that requires grant supported research in
9 sales or clinical work to, quote, consider sex as a
10 biological variable?

11 ATTORNEY BORELLI: Objection, form.
12 Counsel, if you are going to continue questioning her
13 about the policy, we'd request a copy be placed in front
14 of the witness.

15 ATTORNEY BROOKS: At the moment I'm just
16 asking the witness if she's familiar with that policy.

17 ATTORNEY BORELLI: My objection stands.

18 THE WITNESS: I haven't read the entire
19 policy. I have seen that within the documents that you
20 have presented, so I can't accurately state if it is
21 true.

22 BY ATTORNEY BROOKS:

23 Q. Have you, yourself, ever submitted any grant
24 proposal that was subject to that NIH policy?

1 VIDEOGRAPHER: Going off the record. The
2 current time reads 10:08 a.m.

3 OFF VIDEO

4 ---

5 (WHEREUPON, A PAUSE IN THE RECORD WAS HELD.)

6 ---

7 ON VIDEOTAPE

8 VIDEOGRAPHER: We're back on the record.

9 Current time reads 10:21 a.m. Eastern Standard Time.

10 ATTORNEY BROOKS: And this is Roger
11 Brooks resuming the questioning. I have put in front of
12 the witness what is marked Exhibit 7, which is a, quote,
13 scientific statement from the Endocrine Society that is
14 entitled Considering Sex as a Biological Variable in
15 Basic and Clinical Studies: An Endocrine Society
16 Scientific Statement, closed quote. Do you see that?

17 A. Pardon me. Yes.

18 Q. So this is --- document, this statement is from
19 2021, just last year. And four more years --- recent
20 four more years of science available as compared to the
21 2017 guidelines we looked at earlier.

22 Correct?

23 A. It is that --- yes, as far as the date goes, I
24 mean, one would think they would be up-to-date.

1 Q. And let me just ask, obviously the Endocrine
2 Society is a large organization, but do you know, either
3 personally or by reputation, any of the authors listed
4 on this document?

5 ATTORNEY BORELLI: Objection, form.

6 THE WITNESS: Excuse me. Walter Miller
7 by reputation.

8 BY ATTORNEY BROOKS:

9 Q. And Walter Miller is at the University of
10 California, San Francisco, according to the footnote
11 there?

12 A. Let's see. That's what it looks like.

13 Q. And just looking down, the University of
14 California, San Francisco, is a highly prestigious
15 research institution, is it not?

16 A. It has a good reputation.

17 Q. And farther down, halfway down the block of
18 institutions that these authors are associated with, I
19 see University of California, Los Angeles. Do you see
20 that?

21 A. Yes.

22 Q. And UCLA, to use its abbreviation, is also a
23 highly respected research university, is it not?

24 A. You know, there is some variability there. And

1 yes, there are some folks there who do a nice job.

2 Q. And maybe four lines from the bottom of that
3 block I see a reference to the National Institute of
4 Mental Health.

5 Do you see that?

6 A. Yes.

7 Q. And that's a highly respected governmental
8 research laboratory.

9 Correct?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: Yes.

12 BY ATTORNEY BROOKS:

13 Q. And let me ask you to turn here in this document
14 to the second page, which is page 220. And this is, in
15 fact, the beginning of the text after the abstract on
16 the previous page. And there it begins, quote, sex is
17 an important biological variable that must be considered
18 in the design and analysis of human and animal research.
19 The terms sex and gender should not be used
20 interchangeably. Sex is dichotomous with sex
21 determination in the fertilized zygotes stemming from
22 unequal expression of sex chromosomal genes, closed
23 quote.

24 Do you see that language?

1 A. I do.

2 Q. Do you understand the meaning of the word
3 dichotomous?

4 A. I do.

5 Q. What does it mean?

6 A. Two options.

7 Q. There are two options. And do you think you
8 understand the significance of the statement that,
9 quote, sex is an important biological variable?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: I understand that it ---
12 yes.

13 BY ATTORNEY BROOKS:

14 Q. In fact, I believe you testified earlier that in
15 the human body every body part, every cell either has XX
16 chromosomes or XY chromosomes depending on the
17 chromosomal sex of the individual.

18 Is that right?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: Some individuals have a
21 mixture.

22 BY ATTORNEY BROOKS:

23 Q. And those would be genetic abnormalities.

24 Am I correct?

1 ATTORNEY BORELLI: Objection, form.

2 THE WITNESS: Again, I don't like the
3 word abnormalities. It is a variation in presentation
4 of a human.

5 BY ATTORNEY BROOKS:

6 Q. You would agree, would you not, that any
7 deviation from having either XX or XY chromosomes is
8 widely considered to be an abnormality?

9 ATTORNEY BORELLI: Objection, form.

10 THE WITNESS: Again, I don't prefer that
11 language.

12 BY ATTORNEY BROOKS:

13 Q. Dr. Adkins, I didn't ask you what you prefer. I
14 understand your preference. My question is you would
15 agree, would you not, within the scientific community it
16 is widely held view that any chromosomal arrangement
17 other than having XX or XY is abnormal?

18 ATTORNEY BORELLI: Objection, form.

19 THE WITNESS: Not in my experience in my
20 group of people that I practice with, they would not
21 describe it that way.

22 BY ATTORNEY BROOKS:

23 Q. Would you agree that sex is determined to use
24 the language that I have directed you to, quote, in the

1 fertilized zygote, closed quote?

2 A. I'm sorry. Can you re-read the question or
3 repeat the question?

4 Q. Yes. I'm referring to the language that
5 references sex determination in the fertilized zygote.
6 And my question is do you agree that the sex of an
7 individual is determined, quote, in the fertilized
8 zygote, closed quote?

9 ATTORNEY BORELLI: Objection, form.

10 THE WITNESS: Again, they're not being
11 very specific in that particular sentence about what
12 they mean by sex.

13 BY ATTORNEY BROOKS:

14 Q. You're not able to say whether this opening
15 language in this 2021 statement from the Endocrine
16 Society is in your view accurate or in accurate?

17 ATTORNEY BORELLI: Objection to form.

18 THE WITNESS: Taking one statement, I
19 can't. This is a very long document.

20 BY ATTORNEY BROOKS:

21 Q. I'm asking you now, do you agree or disagree the
22 sex is determined in the fertilized zygote?

23 ATTORNEY BORELLI: Objection, form.

24 THE WITNESS: XX and XY components are

1 determined in fertilized zygote. That doesn't
2 necessarily equal sex that's assigned at birth.

3 BY ATTORNEY BROOKS:

4 Q. Absent any disorder of sexual development, the
5 determination the zygote that you just described will,
6 in fact, dictate 100 percent reliability the sex
7 observed at birth.

8 Correct?

9 ATTORNEY BORELLI: Objection, form.

10 THE WITNESS: Well, I can't --- you know,
11 in medicine we don't say anything is 100 percent. If
12 you use the absent any --- any difference of sex
13 development even an unknown one that we might not know
14 about, that --- that is what we know to be true.

15 BY ATTORNEY BROOKS:

16 Q. You mentioned earlier that dichotomous means
17 there are two alternatives and only two alternatives.

18 Right?

19 ATTORNEY BORELLI: Objection, form.

20 BY ATTORNEY BROOKS:

21 Q. That's just what the word means?

22 ATTORNEY BORELLI: Same objection.

23 THE WITNESS: That's what the word means.

24 BY ATTORNEY BROOKS:

1 Q. And in this important statement from the
2 Endocrine Society published just last year drafted by a
3 whole committee of prominent endocrinologists they say
4 that sex is an important biological variable, closed
5 quote. Do you disagree with this statement from the
6 Endocrine Society?

7 ATTORNEY BORELLI: Objection, form.

8 THE WITNESS: In reading that particular
9 statement I would agree if they had used the word sex
10 assigned at birth or something more precise in that
11 sentence.

12 BY ATTORNEY BROOKS:

13 Q. Well, what they said precisely is sex is a
14 biological variable. Do you see that language?

15 A. Yeah.

16 Q. Do you agree with that?

17 ATTORNEY BORELLI: Objection, form.

18 THE WITNESS: So in the context of
19 medicine, when we're talking about sex and we're talking
20 about --- that's very imprecise. I really think that it
21 is --- I would --- it's hard for me to use that word
22 because it is imprecise, as I have mentioned before.

23 BY ATTORNEY BROOKS:

24 Q. So you think this statement from last year from

1 the Endocrine Society in its opening language is so
2 imprecise that you can't tell me whether you think it is
3 accurate or not?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: I would have to read the
6 entirety of the report and take it within context as I
7 would with any other language used.

8 BY ATTORNEY BROOKS:

9 Q. Sitting here right now, you're unable to answer
10 my question as to whether you think it is an accurate
11 statement that sex is a biological concept?

12 ATTORNEY BORELLI: Objection, form.

13 THE WITNESS: Sex is a biological
14 concept, yes.

15 BY ATTORNEY BROOKS:

16 Q. And let me take you, in fact, to page 221 of
17 this document, first column. And there you will see a
18 heading that begins biological sex, the definition of
19 male and female.

20 Do you see that?

21 A. Yes.

22 Q. And it begins sex is a biological concept. And
23 you just said that you think that's a scientifically
24 true statement.

1 Right?

2 ATTORNEY BORELLI: Objection, form.

3 Could --- could she have an opportunity to read this
4 section before we continue questioning?

5 ATTORNEY BROOKS: Yes. But I'll ask you
6 not to coach the witness. I have not denied any
7 requests, but the witness should make them, not counsel.

8 ATTORNEY BORELLI: The objection stands.
9 It is appropriate to ask that a witness be able to read
10 a section of a document before being asked to opine
11 about the larger meaning of the document.

12 ATTORNEY BROOKS: I believe the witness
13 threw some more language in this paragraph so that's a
14 good idea.

15 BY ATTORNEY BROOKS:

16 Q. If you will tell us when you have read that
17 paragraph.

18 A. Yes. Sorry.

19 Q. You have?

20 A. No, I will tell you.

21 ATTORNEY TYRON: Jake, could you scroll
22 down a bit, please?

23 THE WITNESS: Okay.

24 BY ATTORNEY BROOKS:

1 Q. In the first paragraph under the heading
2 biological sex, directing your attention to the
3 statement did you discuss the statement sex is a
4 biological concept. Do you see that language?

5 A. I do.

6 Q. And you believe that to be a scientifically
7 accurate statement?

8 ATTORNEY BORELLI: Objection to form.

9 THE WITNESS: Yes.

10 BY ATTORNEY BROOKS:

11 Q. And in the next sentence this Endocrine Society
12 statement tells us that, quote, all mammals have two
13 distinct sexes, closed quote. Do you believe that is
14 true or scientifically inaccurate?

15 ATTORNEY BORELLI: Objection, form.

16 THE WITNESS: Excuse me. I'm sorry. I'm
17 trying to find that language.

18 BY ATTORNEY BROOKS:

19 Q. Third line of that paragraph, all mammals have
20 two distinct sexes. My question is do you believe that
21 is inaccurate or accurate scientific ---?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: I still think it is
24 imprecise.

1 BY ATTORNEY BROOKS:

2 Q. Have you finished your answer?

3 A. Yes. Sorry. My allergies are making me ---.

4 Q. Any time you need a drink.

5 A. Yeah. Sorry about that.

6 Q. Few lines down it says, quote, the classical
7 biological definition of the two sexes is that females
8 have ovaries and make larger female gametes, eggs,
9 whereas the males have testes and male smaller gametes,
10 sperm. Do you see that language?

11 A. I do.

12 Q. Do you agree that is a fair statement of the
13 classical biological definition of the two sexes?

14 ATTORNEY BORELLI: Objection, form.

15 THE WITNESS: When you use the word
16 classical it describes what you would see typically, so
17 I agree with that statement. It allows for there to be
18 some variations that may not be classical.

19 BY ATTORNEY BROOKS:

20 Q. And it is accepted as a classical definition
21 because it is accurate in the overwhelming percentage of
22 cases.

23 Is that true?

24 ATTORNEY BORELLI: Objection, form.

1 THE WITNESS: So you know, as I mentioned
2 before in my papers that I submitted, it --- you know,
3 the percentage of people with differences of sex
4 development is low and those would be the individuals
5 that would not follow typically within this.

6 BY ATTORNEY BROOKS:

7 Q. And those individuals are the overwhelming
8 majority.

9 Correct?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: They are the majority.

12 BY ATTORNEY BROOKS:

13 Q. Well more than 99 percent.

14 Correct?

15 ATTORNEY BORELLI: Objection, form.

16 THE WITNESS: I would have to do the math
17 but that sounds accurate.

18 BY ATTORNEY BROOKS:

19 Q. Let me ask you to turn to page 228. In the
20 second column, the final paragraph begins on that page,
21 it reads, quote, sex is an essential part of vertebrate
22 biology, but gender is a human phenomenon, semicolon.
23 Sex often influences gender, but gender cannot influence
24 sex. Do you see that language.

1 A. What is the first word in the sentence again so
2 I can find it?

3 Q. It's on the second column, the final paragraph.

4 A. Okay.

5 Q. I'm really just calling your attention to the
6 first sentence.

7 A. Yep, read it.

8 Q. Is there anything in that sentence that you
9 believe to be inaccurate scientifically?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: Again, I think they're
12 imprecise as primates have gender roles and gendered
13 activity, so it's not exactly precise.

14 BY ATTORNEY BROOKS:

15 Q. Anything else about that statement that you want
16 to say is less than scientifically accurate?

17 ATTORNEY BORELLI: Objection, form.

18 THE WITNESS: You know, again they use
19 the word sex without being very specific as to sex
20 assigned at birth. That's my only other caveat.

21 BY ATTORNEY BROOKS:

22 Q. If we read that to refer to what the Endocrine
23 Society determined used in the 2017 Endocrine Society
24 statement that we looked at, that is, quote,

1 genetic/gonadal sex, then do you you consider this
2 statement to be accurate?

3 ATTORNEY BORELLI: Objection, form.

4 THE WITNESS: That's not what it says, so
5 I'll ask you to repeat the question for me.

6 BY ATTORNEY BROOKS:

7 Q. If we assume hypothetically --- I will ask you
8 to assume that sex as used in this Endocrine Society
9 2021 document, has the meaning that you, in fact,
10 explained from the term used in the 2017 Endocrine
11 Society document that is, quote, genetic/gonadal sex,
12 closed quote, then you believe this to be --- the
13 language that I have read to you from the 2021 document
14 to be accurate?

15 ATTORNEY BORELLI: Objection, form.

16 THE WITNESS: So I believe when I
17 answered that question --- I believe when I answered
18 that question sex, gonadal, you know, those are two
19 parts of it. They have not included the full range of
20 hormonal or external genitalia to be specific. In my
21 line of work I would need all of that information to
22 really pin down things.

23 BY ATTORNEY BROOKS:

24 Q. So your testimony now is that the term

1 genetic/gonadal '17 guidelines is too imprecise for you
2 really to understand?

3 ATTORNEY BORELLI: Objection, form.

4 THE WITNESS: I think you asked that
5 question before.

6 BY ATTORNEY BROOKS:

7 Q. And I thought you had said you did understand.
8 You seem to be changing your testimony.

9 ATTORNEY BORELLI: Objection.

10 THE WITNESS: You can read it back to me
11 if you --- I think that there's multiple things that are
12 left out of that particular phrase to describe, you
13 know, individuals. I can't say something that is, you
14 know, in my experience and in the literature and in
15 patients with intersex conditions that are --- that
16 could be different from that. There --- yeah.

17 BY ATTORNEY BROOKS:

18 Q. If we for a moment focus on individuals who do
19 not suffer from any disorder of sexual development, then
20 do you believe the following quote from Endocrine
21 Society 2021 document is true, and that is, quote, sex
22 is an essential part of vertebrate biology, but gender
23 is a human phenomenon, semicolon, sex often influences
24 gender, comma, but gender cannot influence sex, closed

1 quote?

2 ATTORNEY BORELLI: Objection, form.

3 THE WITNESS: Trying to think, make sure
4 --- I can't think of an instance right now that makes me
5 disagree with that statement.

6 BY ATTORNEY BROOKS:

7 Q. Let me take you to the first column on page 228
8 and there's a heading there that says considering sex
9 and/or gender as variables in health and disease.

10 Do you see that?

11 A. No. What page are you on?

12 Q. 228 ---

13 A. Yes.

14 Q. --- first column, the heading towards the bottom
15 of the page.

16 A. Okay.

17 Q. And here they're specifically mentioning sex on
18 one hand and gender on the other. Do you see that?
19 This paragraph begins, quote, women and men differ in
20 many physiological and psychological variables.

21 Do you see that?

22 A. Yes.

23 Q. Do you believe that to be a scientifically
24 accurate statement?

1 ATTORNEY BORELLI: Objection, form.

2 THE WITNESS: I think if I were to add
3 typical, it's saying there is variability.

4 BY ATTORNEY BROOKS:

5 Q. Well, it is saying specifically that women and
6 men differ from each other in physiological and
7 psychological ways.

8 Correct?

9 ATTORNEY BORELLI: Objection, form.

10 THE WITNESS: That's what it says.

11 BY ATTORNEY BROOKS:

12 Q. And do you believe that to be a scientifically
13 true statement?

14 ATTORNEY BORELLI: Objection, form.

15 THE WITNESS: Again, you know, you have
16 to interpret these in their context of what they are
17 saying. Statements.

18 BY ATTORNEY BROOKS:

19 Q. Do you believe it to be true or false that women
20 and men differ in many physiological and psychological
21 variables?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: All people are different.

24 BY ATTORNEY BROOKS:

1 Q. Dr. Adkins, do you believe it to be true or
2 false that women and men as women and men differ from
3 each other in many physiological and psychological
4 variables?

5 ATTORNEY BORELLI: Objection to the form.

6 THE WITNESS: So women and men are a
7 gender assignment, not the biological sex which you
8 mentioned before. And gender is not necessarily a way
9 that I would necessarily think is a scientifically
10 precise way to place that if you're talking about this
11 particular statement.

12 BY ATTORNEY BROOKS:

13 Q. Is it your belief that the Endocrine Society in
14 this document in the terms women and men is referring to
15 gender identity other than biological --- what does the
16 word physiological mean to you as a doctor?

17 A. The method of function and interaction of all
18 the parts of the body.

19 Q. It refers to biology, not to the statement of
20 mind or identity.

21 Correct?

22 ATTORNEY BORELLI: Objection to form.

23 THE WITNESS: I would just agree with
24 that statement.

1 BY ATTORNEY BROOKS:

2 Q. Let me ask you to turn to page 229.

3 Q. The first full paragraph begins, quote, despite
4 the fact that biological sex is such a fundamental
5 source of interest specific variation in anatomy and
6 physiology, much basic and clinical science has tended o
7 focus studies on one sex, typically male, closed quote.

8 Do you see that language?

9 A. I do.

10 Q. And do you understand what is meant by
11 intraspecific variation? Let me offer a suggestion. Do
12 you understand it to refer to variations within the
13 human species?

14 ATTORNEY BORELLI: Objection to form.

15 THE WITNESS: I think you know again in
16 context I would need to intraspecific --- intraspecific
17 could be between me and you. Isolated in this one
18 sentence, I would need to take a moment to see if it
19 better explains it if I were to read further.

20 BY ATTORNEY BROOKS:

21 Q. Do you disagree or agree that biological sex is
22 a fundamental source of variation in anatomy and
23 physiology within the human species?

24 ATTORNEY BORELLI: Objection, form.

1 THE WITNESS: I'm sorry. I got
2 sidetracked in my brain. Could you please read the
3 question?

4 BY ATTORNEY BROOKS:

5 Q. Yes, I can. Do you agree or disagree that
6 biological sex is the fundamental source of variation in
7 anatomy and physiology within the human cease species?

8 ATTORNEY BORELLI: Objection, form.

9 THE WITNESS: There is lots of other
10 parts of physiology that are completely unrelated to
11 your reproductive system that is more fundamental.

12 BY ATTORNEY BROOKS:

13 Q. Dr. Adkins, do you agree or disagree that
14 biological sex is a fundamental source of variation in
15 anatomy and physiology with human species?

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: It is one of the variables
18 within variations.

19 ATTORNEY BROOKS: Let me mark as Exhibit
20 8 an infographic, if I can use that term. Exhibit 8?

21 VIDEOGRAPHER: Excuse me, Counsel. You
22 cut out right after Exhibit 8. I didn't hear which
23 document that was.

24 ATTORNEY BROOKS: It is tab 9 and it is a

1 one page infographic, if I may, put out by the National
2 Institute of Health titled How Sex and Gender Influence
3 Sex and Disease.

4

5

(Whereupon, Adkins Exhibit 8, NIH

6

Sex/Gender Infographic, was marked for

7

identification.)

8

9

BY ATTORNEY BROOKS:

10

Q. And first let me ask, Dr. Adkins, are you

11

familiar with the National Institute of Health as an

12

organizations?

13

A. Yes.

14

Q. That is a government research institute?

15

A. Yes.

16

Q. And major grant --- major source of grants,

17

grant making in the health sciences?

18

A. Yes.

19

Q. And are you --- were you aware that it has

20

within it an Office of Research on Women's Health?

21

A. No.

22

Q. Do you see that this is published by the

23

National Institute of Health, Office of Research on

24

Women's Health?

1 A. Okay.

2 Q. In the box at the top it says, and I quote, sex
3 is a biological classification included in our DNA.
4 Males have XY chromosomes and females have XX
5 chromosomes. Sex makes us male or female. Do you see
6 that language?

7 A. I do.

8 Q. And it continues, every cell in your body has a
9 sex making up tissues and organs like your skin, brain,
10 heart and stomach. Each cell is either male or female
11 depending on whether you are a man or a woman, closed
12 quote.

13 Do you see that?

14 A. I do.

15 Q. And then it continues under that with a
16 definition of gender. So my question is --- begins
17 here, the opening statement in this NIH publication says
18 that sex is a biological classification. Do you agree
19 or disagree with that?

20 ATTORNEY BORELLI: Objection, form.

21 THE WITNESS: You know, there is a whole
22 literature on --- on this --- the differences in --- in
23 sex. I --- so biological as opposed to another type of
24 classification, I agree with that statement.

1 BY ATTORNEY BROOKS:

2 Q. It says a little further along that, quote,
3 every cell in your body has a sex, closed quote. Do you
4 agree or disagree with that?

5 ATTORNEY BORELLI: Objection to the form.

6 THE WITNESS: I agree. And each cell can
7 be different.

8 BY ATTORNEY BROOKS:

9 Q. Are you saying that within an individual --- a
10 specific individual each cell can have a different sex?

11 A. Yes.

12 Q. This NIH publication tells us that, quote, each
13 cell is either male or female, closed quote. And I take
14 it you simply believe the NIH is wrong about that?

15 ATTORNEY BORELLI: Objection, form.

16 THE WITNESS: I think that the nuances
17 are something that you can't publish in a one-page
18 documentation when they're not talking about an entire
19 population.

20 BY ATTORNEY BROOKS:

21 Q. Under this initial box is a heading that says
22 examples of sex and gender influences. Do you see that?

23 A. I do.

24 Q. And it has various categories of things that may

1 be influenced on one end by sex, which is defined in
2 this document as a biological classification, and
3 gender. Do you see that structure of this document?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: Yeah.

6 BY ATTORNEY BROOKS:

7 Q. And it says if we go down to cardiovascular risk
8 one of the differences that is identified as based on
9 sex is that, quote, blood vessels in a woman's heart are
10 smaller in diameter and much more intricately branched
11 than those of a man, closed quote. Do you see that?

12 A. Under cardiovascular risk, yeah. Okay.

13 Q. And the NIH gives this as an example of a
14 physical measurable biological difference that depends
15 on biological sex.

16 Correct?

17 ATTORNEY BORELLI: Objection, form.

18 THE WITNESS: Well, actually the words
19 they're using are gender --- gender words, not the words
20 we would use for sex, you know, female or male or a
21 variation in between. So I would --- if I were editing
22 this document, I probably wouldn't have used the word
23 woman.

24 BY ATTORNEY BROOKS:

1 Q. You would have said a female?

2 A. Typical female.

3 Q. Because what --- how the blood vessels in your
4 heart are structured depend on your sex, not on your
5 gender identity. Am I correct?

6 ATTORNEY BORELLI: Objection, form.

7 THE WITNESS: There is many variables
8 that can affect these things and what --- that is one of
9 them.

10 BY ATTORNEY BROOKS:

11 Q. To your knowledge, gender identity is not a
12 variable that affects how the blood vessels in one's
13 heart are structured, does it?

14 ATTORNEY BORELLI: Objection, form.

15 THE WITNESS: Not that I'm aware of.

16 BY ATTORNEY BROOKS:

17 Q. Under the last item here is knee arthritis. Do
18 you see that heading?

19 A. Yes.

20 Q. I'm sure we'll have the same terminology
21 discussion, but the language there says, quote, women
22 and girls are more likely to injure their knees when
23 playing sports, closed quote. Do you see that language?

24 A. I do.

1 Q. And if we use the term --- substitute the term
2 females for women and girls and say females are more
3 likely to injure their knees when playing sports, do you
4 believe that to be a scientifically accurate statement?

5 ATTORNEY BORELLI: Objection to form.

6 THE WITNESS: You have to leave some
7 room. Again, in medicine we're not like 100 percent.
8 But I agree that portions of females that are typical in
9 research have been reported to have more frequent knee
10 injuries.

11 BY ATTORNEY BROOKS:

12 Q. Okay.

13 Let me ask you to find your report, Exhibit 1,
14 and let's turn to paragraph 15. And there you wrote,
15 quote, a person's gender identity refers to a person's
16 inner sense of belonging to a particular gender such as
17 male or female. And you continue every one has a gender
18 identity, closed quote. Do you see that language?

19 A. I do.

20 Q. Let me direct your attention to the Endocrine
21 Society guidelines from 2007, which is Exhibit 4. And
22 we're going to come back --- if you can make a stack of
23 most of these, but the 2017 guidelines we will come back
24 to with some frequency. But we're ---

1 A. Keeping it on top?

2 Q. --- keeping it on top.

3 A. Okay.

4 Q. And there I want to call your attention to page
5 3873.

6 A. 3873.

7 Q. Right. And in the second column there's a
8 section headed introduction. And it begins with a
9 historical review of the concept of gender. And I'm
10 going to ask you a question beginning with the language
11 that is two inches from the bottom, two and a half
12 inches from the bottom that begins these early
13 researchers. So if you want to kind of glide through
14 what comes before that, let me know and I'll begin my
15 questioning.

16 A. Yes, I'll look over it. Thank you.

17 I have read that section.

18 Q. I want to call your attention to a sentence
19 which my understanding is contrasting against or the
20 history that begins, quote, some experience themselves
21 as having both a male and female gender identity whereas
22 others completely renounce any gender classification,
23 closed quote. Do you see that language?

24 A. I do.

1 Q. And in your expert opinion, is that an accurate
2 statement?

3 ATTORNEY BORELLI: Objection, form.

4 THE WITNESS: In my clinical experience I
5 have met individuals who are --- identify as agender
6 which would in my mind be similar to this definition,
7 but I typically ask the patient what their gender means
8 to them.

9 BY ATTORNEY BROOKS:

10 Q. Well, do you have any opinion as to whether some
11 individuals experience both a male and female gender
12 identity?

13 ATTORNEY BORELLI: Objection, form.

14 THE WITNESS: I have patients that do
15 that, yes.

16 BY ATTORNEY BROOKS:

17 Q. And I think you said that --- I don't want to
18 puts words in your mouth. Do you have an opinion
19 whether some individuals report not having any gender,
20 not fitting any gender classification?

21 ATTORNEY BORELLI: Objection, form.

22 THE WITNESS: I do have patients that
23 match that description.

24 BY ATTORNEY BROOKS:

1 Q. And this goes on the next sentence to say,
2 quote, there are also reports of individuals
3 experiencing a continuous and rapid involuntary
4 alternation between a male and female identity, closed
5 quote.

6 Do you see that?

7 A. I do.

8 Q. And do you believe that to be an accurate
9 statement?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: I have not had that
12 clinical experience. I would have to rely on the, you
13 know, medical report with that in particular, and I
14 would probably look at the evidence that was available
15 ---

16 BY ATTORNEY BROOKS:

17 Q. Well ---

18 A. --- prior to making a decision.

19 Q. --- do you as a practitioner consider it
20 reasonable to rely on that assertion in this 2017
21 Endocrine Society statement guideline?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: I would rely on it to be
24 something I should at least consider.

1 ATTORNEY BROOKS: Let me mark as Exhibit
2 9 what is tab 10, and that is a one-page statement from
3 a World Health Organization's website titled Gender and
4 Health.

5 ---
6 (Whereupon, Adkins Exhibit 9, World
7 Health Organization Webpage, was marked
8 for identification.)

9 ---
10 THE WITNESS: Thank you.

11 BY ATTORNEY BROOKS:

12 Q. Are you familiar with the World Health
13 Organization as an organization?

14 A. I am.

15 Q. And do you consider the World Health
16 Organization to be generally a respected source of
17 information on medical and health topics?

18 ATTORNEY BORELLI: Objection to form.

19 THE WITNESS: My general experience so
20 far to date is they're reliable.

21 BY ATTORNEY BROOKS:

22 Q. Well, I will represent to you that this document
23 came off of a World Health Organization website and the
24 web address is at the bottom of the page. I see on the

1 copy in front of you --- I'll stand by my representation
2 of why mine has it ---.

3 A. Okay.

4 Q. This document titled Gender and Health begins
5 gender refers to the characteristics of women, men,
6 girls and boys that are socially constructed, closed
7 quote. Do you see that?

8 A. I do.

9 Q. And is that a definition of gender per se that's
10 consistent with how you are used to seeing the term
11 used?

12 ATTORNEY BORELLI: Objection, form.

13 THE WITNESS: So you know, social
14 constructs change regularly, so I would say that, you
15 know, that wouldn't be completely inclusive of current
16 socially constructed genders, in my experience.

17 BY ATTORNEY BROOKS:

18 Q. Well, let me direct --- why don't you read that
19 whole first paragraph, which is just three sentences,
20 because I think the World Health Organization raises
21 exactly that point. So I'll ask you to read that?

22 A. Sure. Sure.

23

24 (WHEREUPON, WITNESS REVIEWS DOCUMENT.)

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THE WITNESS: Okay.

BY ATTORNEY BROOKS:

Q. So extending into that paragraph, that three-sentence paragraph, just that explanation of the concept of gender fit with how you are used to seeing the term used in your professional experience?

ATTORNEY BORELLI: Objection, form.

THE WITNESS: So in reading that, my understanding of what they are using those specific words, men, women, girls and boys are examples. They don't comment on other societies. Just so --- in that assessment, yes.

BY ATTORNEY BROOKS:

Q. All right.

If we skip down to the third paragraph it begins gender interacts with but is different from sex, which refers to the different biological and psychological characteristics of females, males and intersex persons, such as chromosomes, hormones and reproductive organs, closed quote. Do you see that language?

A. I would like to read it, too, though, if you don't mind.

1 Q. Sure.

2 A. Yeah. Okay. I have read it.

3 Q. So first, backing up to the statement, opening
4 paragraph, that gender is socially constructed, do you
5 believe that to be an accurate statement?

6 ATTORNEY BORELLI: Objection, form.

7 THE WITNESS: Gender is a social
8 construct, yes.

9 BY ATTORNEY BROOKS:

10 Q. And then in the third paragraph it states that
11 gender identity refers to a person's deeply felt
12 internal and individual experience of gender. Do you
13 see that?

14 A. I do.

15 Q. So gender identity refers to an individual's
16 experience in relation to gender, which is a social
17 construct.

18 Right?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: I see it, and I would ask
21 you to read the question one more time. I just want to
22 make sure I'm answering you accurately.

23 BY ATTORNEY BROOKS:

24 Q. As I think I see in this document really the

1 question is as you understand it ---.

2 A. I think that you have to also include ---.

3 COURT REPORTER: Excuse me. I need to
4 interrupt. Excuse me. I'm sorry to interrupt, but
5 Counsel, your full question didn't come through on this
6 end.

7 ATTORNEY BROOKS: I'll re-ask it. Pardon
8 me.

9 ATTORNEY BORELLI: Actually, why don't we
10 just address one housekeeping matter. Would you be able
11 to identify for the record the URL that appears on your
12 copy and whether there is a date of the document or date
13 of access just so we have it on the record?

14 ATTORNEY BROOKS: There is no date of
15 access. That access is within the last two months. The
16 address is
17 www.who.int/health-topics/gender#tabequalstab, underline
18 one.

19 ATTORNEY BORELLI: Thank you.

20 ATTORNEY BROOKS: I'm glad it wasn't one
21 of these four line ones.

22 BY ATTORNEY BROOKS:

23 Q. And I will re-ask my question.

24 A. Okay.

1 Q. The question is, Dr. Adkins, is it consistent
2 with your understanding that gender identity refers to a
3 person's individual experience of gender, which is in
4 turn a social construct?

5 ATTORNEY BORELLI: Objection, form.

6 THE WITNESS: That doesn't sound to me to
7 be a full explanation. Just doesn't sound accurate to
8 me. I'm having a hard time.

9 BY ATTORNEY BROOKS:

10 Q. Then let me not take more time on that.

11 A. Okay.

12 Q. You would agree that gender is a social
13 construct that can change over time.

14 Am I right?

15 ATTORNEY BORELLI: Objection, form.

16 THE WITNESS: Gender --- so it's a social
17 construct, it's true. Gender is, you know, how you ---
18 I mean, it's complicated. It involves more things than
19 --- and so, you know, if you're talking about gender
20 expression, that's different. Someone's gender as they
21 understand it for their gender identity is different. I
22 mean, I have patients who are assigned a particular sex
23 and the family and the physicians assign a gender that
24 is more typically correlated with that sex. And then

1 over time those individuals sometimes don't identify
2 with that gender, and they may change their gender
3 marker, for example, because their identity really just
4 doesn't match what we assigned them at birth. I'm not
5 sure how to give a clearer answer. I'm trying.

6 BY ATTORNEY BROOKS:

7 Q. Well, so if an individual comes into your office
8 and asserts a gender identity of, let's say, man or
9 both, either one of those, how can a clinician verify
10 whether that individual is accurately understanding his
11 own or their own subjective feelings?

12 ATTORNEY BORELLI: Objection, form.

13 THE WITNESS: And you know, a gender
14 again is something that's assigned at birth and it is
15 what you work with in your life, and so you know, I
16 would ask them and they could tell me how they were
17 proceeding in life with regard to their gender
18 behaviors. That would be how I would probably assess
19 their gender.

20 BY ATTORNEY BROOKS:

21 Q. How do you ascertain whether that individual who
22 claims identity of man or both is telling you, the
23 clinician, the truth?

24 ATTORNEY BORELLI: Objection, form.

1 THE WITNESS: So in general, you know,
2 in pediatrics we have a parental report, and it depends
3 on the clinical situation. We may or may not have
4 another health provider's report or a mental health
5 provider's report. If we have questions, we start to
6 dig deeper and look at other areas.

7 BY ATTORNEY BROOKS:

8 Q. Let me call your attention to paragraph 19 in
9 your expert report, Exhibit 1. And there you refer to
10 DSM-V definition of gender dysphoria.

11 Do you see that?

12 A. What paragraph?

13 Q. Paragraph 19?

14 A. Yeah.

15 Q. And you mention that among other things the
16 diagnostic criteria under DSM-V for gender dysphoria
17 includes, quote, clinically significant distress. Do
18 you see that?

19 A. I do.

20 Q. And in fact, it includes clinically significant
21 distress that, quote, impairs important areas of
22 functioning, closed quote.

23 Am I correct? Do you recall that in DSM-V?

24 ATTORNEY BORELLI: Objection. Objection

1 to form.

2 THE WITNESS: That is how I recall that.

3 BY ATTORNEY BROOKS:

4 Q. Paragraph right?

5 A. Yeah. I want to reserve the right to look at it
6 to be certain. That sounds correct to me at this
7 moment.

8 Q. And what does clinically significant distress
9 that impairs important areas of functioning look like in
10 a child?

11 ATTORNEY BORELLI: Objection, form.

12 THE WITNESS: Yeah. So you know, it
13 depends on what they are coming in with. I mean, for
14 some of my patients, you know, who are, you know,
15 hyperthyroid, for example, their brain's run really
16 fast, they can't focus during school, and that would be
17 impairment in their ability to do their main job, which
18 is to be in school and learn. So that's one area where
19 you can have some impairment in their --- it varies from
20 patient to patient and in each thing we're talking
21 about.

22 BY ATTORNEY BROOKS:

23 Q. The example you just gave was impairment
24 resulting from a hyperthyroid condition.

1 Am I correct?

2 A. Correct.

3 Q. What I asked was impairment due to ---
4 attributable to what gender dysphoria looks like in a
5 child.

6 A. Oh.

7 ATTORNEY BORELLI: I don't want to
8 interrupt. I think there may have been a misreading of
9 the language in the paragraph, and I just want to make
10 sure the record is correct that the final sentence of
11 that paragraph says in order to be diagnosed with gender
12 dysphoria, incongruence must persist for at least six
13 months and be accompanied by clinically significant
14 distress or impairment in social, occupational or other
15 important area of functioning.

16 BY ATTORNEY BROOKS:

17 Q. I, on the other hand, will ask a question that I
18 believe is more closely tracked to the DSM-V language,
19 which is what is clinically significant distress that
20 impairs important area of functioning look like in a
21 young child?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: Okay. I misheard you. I'm
24 sorry. I didn't hear the gender dysphoria part. I

1 apologize. So in patients with gender dysphoria
2 sometimes it can be anxiety that keeps them from going
3 to school. Sometimes it can be anxiety that keeps them
4 from using public restrooms. Sometimes it is depression
5 so that they can't get out of bed to function.
6 Sometimes it's just feeling really uncomfortable and ---
7 with how they are being treated and what they're allowed
8 to do in a way that makes it more difficult for them
9 than a person without gender dysphoria.

10 BY ATTORNEY BROOKS:

11 Q. In your practice is a full diagnosis of gender
12 dysphoria under the DSM-V criteria a precondition for
13 recommending or supporting social transitioning?

14 ATTORNEY BORELLI: Objection, form.

15 THE WITNESS: So in my practice the
16 majority of my patients have socially transitioned
17 before they come to see me in order to improve their
18 gender dysphoria. In general, that is something that
19 their family and their mental health provider decides.
20 Each individual patient is different and we talk through
21 whether that is appropriate for each patient.

22 BY ATTORNEY BROOKS:

23 Q. In your practice is a full DSM-V diagnosis of
24 gender dysphoria a precondition for recommending social

1 transition?

2 ATTORNEY BORELLI: Objection, form.

3 THE WITNESS: No.

4 BY ATTORNEY BROOKS:

5 Q. And in your practice is a full DSM-V gender
6 dysphoria diagnosis a precondition for prescribing
7 puberty blockers?

8 ATTORNEY BORELLI: Objection, form.

9 THE WITNESS: I use puberty blockers for
10 more than one indication.

11 BY ATTORNEY BROOKS:

12 Q. Let me ask a better question. In your practice
13 is a full DSM-V gender dysphoria diagnosis a
14 precondition for prescribing puberty blockers as a
15 treatment for gender dysphoria?

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: So my patients are
18 evaluated by mental health providers outside the clinic
19 and inside the clinic. The objective of using puberty
20 blockers can be used to relieve dysphoria and give them
21 time to consider their gender identity.

22 BY ATTORNEY BROOKS:

23 Q. In your practice is a full diagnose of gender
24 dysphoria under the DSM-V criteria a precondition for

1 prescribing puberty blocker for believed gender
2 dysphoria?

3 ATTORNEY BORELLI: Objection to form.

4 THE WITNESS: Well, in the way that you
5 stated it, you're saying that the patient already has
6 gender dysphoria, so yes.

7 BY ATTORNEY BROOKS:

8 Q. In your practice is the full diagnosis of gender
9 dysphoria under the DSM-V criteria a precondition for
10 prescribing puberty blockers as a therapy for gender
11 dysphoria or gender incongruity?

12 ATTORNEY BORELLI: Objection, form.

13 THE WITNESS: Yes.

14 BY ATTORNEY BROOKS:

15 Q. And in your practice is a full diagnosis of
16 gender dysphoria according to the DSM-V criteria a
17 precondition for prescribing cross sex hormones?

18 ATTORNEY BORELLI: Objection, form.

19 THE WITNESS: They are used to relieve
20 dysphoria. Typically that would be what we would use
21 them to do, is to relieve that dysphoria so they would
22 have that diagnosis. On occasion in my practice the
23 incongruence does not necessarily cause dysphoria per
24 se, and yet they still have significant issues that are

1 impairing their ability to move forward in their lives
2 in a happy, healthy way. And I might use medications
3 such as gender-affirming hormones in those cases.

4 BY ATTORNEY BROOKS:

5 Q. So if I understand correctly, you're saying that
6 at least some cases in your practice you are willing to
7 prescribe cross sex hormones for individuals who do not
8 suffer from gender dysphoria according to the criteria
9 spelled out in DSM-V?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: Every patient is different.
12 Most of my patients have gender dysphoria. All of them
13 have a transgender identity, and I would treat either of
14 those.

15 BY ATTORNEY BROOKS:

16 Q. I think this question can be answered yes or no.
17 Do you prescribe cross sex hormones for some patients
18 who do not suffer from gender dysphoria according to the
19 DSM-V criteria?

20 ATTORNEY BORELLI: Objection, form.

21 THE WITNESS: I don't think so. I mean,
22 gender-affirming hormones --- I use hormones for a lot
23 of different things. Whether you call them gender
24 affirming or not is --- you know, what is kind of a

1 thing here. I mean, for people with Klinefelter's, who
2 are clinically significantly depressed because they have
3 low testosterone, I prescribe testosterone to improve
4 their mood, their libido, their muscle strength. For
5 people who have dysphoria or who have a transgender
6 identity, I do prescribe those medications. I think
7 that to be precise in my answers I cannot say it as a
8 yes or no answer.

9 Q. Let me ask you to turn to paragraph ten of your
10 report. There you say I have treated approximately 500
11 transgender and intersex young people in my career.

12 Do you see that?

13 A. No, that's not how it's written.

14 Q. I apologize. I was reading to you the second
15 sentence of paragraph ten, and I believe I read that
16 ---.

17 A. Okay.

18 I'm sorry. I was starting at the beginning.

19 Q. I understand.

20 A. Yes.

21 Q. And let's break that out. Of those 500,
22 approximately how many suffered from some form of DSD?

23 ATTORNEY BORELLI: Objection, form.

24 THE WITNESS: So the --- that I know of,

1 because we don't evaluate every person necessarily for
2 an intersex condition, probably --- gosh, it's hard to
3 estimate. So I think at least 60 in my clinic and then
4 probably in the hospital at least 10, 15 a year. At
5 least one a month or so.

6 BY ATTORNEY BROOKS:

7 Q. Of the 500 transgender intersexual young people
8 that you treated in your career, how many would you
9 estimate suffered from some form of disorder of sexual
10 development?

11 ATTORNEY BORRELLI: Objection, form.

12 THE WITNESS: Off the top of my head I
13 can think of one. I have reviewed a referral for a
14 second one. Gosh. With that many patients, that's the
15 best I can do. Sorry.

16 BY ATTORNEY BROOKS:

17 Q. And I take it then that the overwhelming
18 majority, almost all the children that you have seen and
19 treated for gender dysphoria did not suffer from any
20 disorder of sexual development?

21 A. So at the time of my evaluation of them they
22 weren't showing any signs of an intersex condition. I
23 don't necessarily test for intersex conditions on every
24 person that comes in. Insurance is really kind of funny

1 about paying for that sort of thing because they don't
2 think it is appropriate to do. So I can't evaluate them
3 unless they have a symptom of an intersex condition.
4 Those can present even into your 30s and not be evident
5 until you are trying to get pregnant. So I think to be
6 accurate, that's ---.

7 Q. To your knowledge, almost all of the children
8 that you have treated for gender dysphoria did not show
9 signs of any intersex condition or disorder of sexual
10 development?

11 ATTORNEY BORELLI: Objection, form.

12 THE WITNESS: To best of my knowledge.

13 BY ATTORNEY BROOKS:

14 Q. Let me call your attention to page three of your
15 report, which is on page five. And you say there in the
16 second sentence, quote, all of my patients have suffered
17 from persistent gender dysphoria.

18 Do you see that?

19 A. Uh-huh (yes).

20 Q. Now, I just don't understand that because a few
21 minutes ago you explained to me that some of your
22 patients suffer from gender dysphoria and some of them
23 don't. So can you explain to me what you meant by that
24 statement?

1 ATTORNEY BORELLI: Objection, form.

2 THE WITNESS: Yeah. I learn more and
3 more every day about the patients who come into my
4 clinic. I did state that most of my patients have
5 gender dysphoria. I am finding individuals currently in
6 my practice who aren't necessarily to the point of
7 having that clinically significant criteria that is
8 mentioned in the --- for dysphoria that have a
9 transgender identification. The majority I would say do
10 have dysphoria.

11 BY ATTORNEY BROOKS:

12 Q. You would now say the majority rather than all?

13 ATTORNEY BORELLI: Objection, form.

14 THE WITNESS: I can't think of --- yeah,
15 I would say the majority. There would be a very rare
16 instance and that's why I mentioned it before.

17 ATTORNEY BORELLI: Counsel, just a quick
18 question about timing and a potential break because
19 we've been going for a little while.

20 ATTORNEY BROOKS: Right. I'm inclined to
21 go --- like from my experience, if you stop early for
22 lunch, then it's an awful long afternoon. So I'd be
23 inclined to go until 12:30 or so and then break for
24 lunch.

1 ATTORNEY BORELLI: Does that work for
2 you? Would you like a break now before we later break
3 for lunch or what is best for you, Dr. Adkins?

4 THE WITNESS: Well, since I'm not a
5 breakfast eater, I would prefer to go a little bit
6 earlier if we can.

7 ATTORNEY BROOKS: We can do it. I just
8 warn you it gets to be a long afternoon.

9 THE WITNESS: I understand.

10 ATTORNEY BROOKS: Let me finish up the
11 line of questioning. Well, should we target noon to
12 stop for lunch?

13 THE WITNESS: That's fine. Thank you.

14 BY ATTORNEY BROOKS:

15 Q. Let me take you back to the Endocrine Society
16 statement on --- back to the biological variable, which
17 is Exhibit 7. If you would find that, please. And I'll
18 ask you to turn to page 225, second column towards the
19 bottom with the heading that reads biological basis of
20 diversity and sexual/gender development and orientation.

21 Do you see that?

22 A. I do.

23 Q. And it reads at the beginning given the
24 complexities of the biology of sexual determination and

1 differentiation, comma, it is not surprising that there
2 are dozens of examples of variations or errors in these
3 pathways associated with genetic mutations that are now
4 well known to endocrinologists and geneticists. In
5 medicine these situations are generally termed disorders
6 of sexual development or differences in sexual
7 development, closed quote.

8 Do you see that?

9 A. Yes.

10 Q. Now, in your opinion, a transgender identity is
11 not a disorder.

12 Am I right?

13 A. It is a normal variation, in my opinion, of huma
14 --- of humans in general.

15 Q. It's not a mental disorder?

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: So you know, they have in
18 the past included it in the DSM, which is categorized as
19 those sorts of things. As far as like psychological,
20 there's such over lap between psychological and the
21 physical --- I guess the best word I can use, but that
22 it's hard to --- it's hard to say. You know, I think
23 people are moving more towards that it is more of a
24 medical problem that is occurring within the person that

1 is giving them psychological symptoms that we see, which
2 is really common in medicine. We see lots of different
3 medical conditions caused psychological symptoms. I
4 already mentioned one with hypothyroidism.

5 Q. In the overwhelming number of cases, transgender
6 identification is not associated with any physical
7 disorder that you as a doctor have become aware of?

8 ATTORNEY BORELLI: Objection, form.

9 THE WITNESS: I'm sorry. I got
10 distracted. Can you repeat it?

11 BY ATTORNEY BROOKS:

12 Q. Yes. In the overwhelming majority of patients
13 that you have seen, the transgender identity is not
14 associated with any physical disorder that you are aware
15 of.

16 Correct?

17 ATTORNEY BORELLI: Objection, form.

18 THE WITNESS: I mean, I'm going to need a
19 minute to think because I have seen so many patients
20 that I don't --- I guess it sort of depends on how you
21 define that, right. I am --- distress is physical and
22 psychological. The difference is physical in that
23 they're biologically assigned sex and those
24 characteristics associated are different from their

1 gender identity. So it's a bit of a mixture.

2 BY ATTORNEY BROOKS:

3 Q. Many individuals who suffer from disorder of
4 sexual development do not experience gender identity
5 that is discordant with their chromosomal sex.

6 Correct?

7 ATTORNEY BORELLI: Objection, form.

8 THE WITNESS: Some do, yes. That is true
9 for some.

10 BY ATTORNEY BROOKS:

11 Q. Many individuals who experience a transgender
12 identity --- I'm sorry. Many individuals who suffer
13 from a disorder of sexual development do not experience
14 a gender identity that is discordant with their
15 chromosomal sex.

16 Correct?

17 ATTORNEY BORELLI: Objection to form.

18 THE WITNESS: So there's, you know, like
19 100 different variations. Some are more likely to have
20 questions about their gender identity than others. It
21 varies by diagnosis.

22 BY ATTORNEY BROOKS:

23 Q. Okay.

24 But my question is a high level one. It is

1 true, is it not, that many individuals who suffer from a
2 disorder of sexual development do not experience gender
3 identity that is discordant with their chromosomal sex?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: In the medical literature
6 the reports vary. Some of the conditions are 90 of them
7 their identity matches with their chromosomal sex and in
8 some cases it's like 30 to 40 percent.

9 BY ATTORNEY BROOKS:

10 Q. And as you have testified, many individuals who
11 experience transgender identity do not suffer from any
12 identified disorders of sexual development?

13 ATTORNEY BORELLI: Objection, form.

14 THE WITNESS: I answered that question
15 already, yeah.

16 BY ATTORNEY BROOKS:

17 Q. The answer is yes?

18 A. Yes, I answered the question already.

19 Q. For clarity I would like you to answer it again.

20 ATTORNEY BORELLI: Objection, form.

21 THE WITNESS: Can you repeat it then?

22 BY ATTORNEY BROOKS:

23 Q. Yes. Many individuals who experience a
24 transgender identity do not suffer from any known

1 disorder of sexual development?

2 ATTORNEY BORELLI: Objection, form.

3 THE WITNESS: In my experience that is
4 true.

5 BY ATTORNEY BROOKS:

6 Q. You have no knowledge as to the number of
7 children who suffer from a disorder of sexual
8 development who presently attend schools or colleges in
9 West Virginia, do you?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: I can only rely on the
12 prevalence that's recorded in the medical literature and
13 then assume that West Virginia has the population base
14 that is similar to those medical reports.

15 BY ATTORNEY BROOKS:

16 Q. You, yourself, don't have any actual knowledge
17 either way on that.

18 Correct?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: I have not been given a
21 list of the number of individuals, no.

22 BY ATTORNEY BROOKS:

23 Q. And you are not opining that B.P.J. suffers from
24 any disorder of sexual development, are you?

1 ATTORNEY BORELLI: Objection, form.

2 THE WITNESS: I don't know B.P.J.. I
3 have not evaluated B.P.J.. I can't say that about
4 B.P.J..

5 BY ATTORNEY BROOKS:

6 Q. And in fact, you don't know whether any child
7 who is chromosomally XY but suffers from a disorder of
8 sexual development has ever sought to compete in female
9 athletics in West Virginia, do you?

10 ATTORNEY BORELLI: Objection to form.

11 THE WITNESS: There are so many people
12 who have competed or tried to compete over the years. I
13 have not seen a documentation specifically of West
14 Virginia. It's common in athletics.

15 BY ATTORNEY BROOKS:

16 Q. You are not aware of a single case that has ever
17 occurred in West Virginia of a chromosomally XY child
18 seeking to compete in female athletics based on a ---
19 let me ask that question again. You're not aware of any
20 specific instance in which an X --- chromosomally XY
21 child who suffers from a disorder of sexual development
22 has sought to compete in female athletics in West
23 Virginia up to the present?

24 ATTORNEY BORELLI: Objection to form.

1 THE WITNESS: So some people die with
2 chromosomes XY and look completely female and never
3 knew. So I can't say that anyone could definitely say
4 that, including myself.

5 BY ATTORNEY BROOKS:

6 Q. Well, my question was you are not aware of any
7 case of an XY individual who suffered from a disorder of
8 sexual development seeking to compete in female
9 athletics in West Virginia.

10 Right?

11 ATTORNEY BORELLI: Objection to form.

12 THE WITNESS: Correct.

13 BY ATTORNEY BROOKS:

14 Q. And so let me ask you --- a substantial portion
15 of your expert report goes into all sorts of detail
16 about disorders of sexual development.

17 Correct?

18 A. Correct.

19 Q. In your understanding, what is the point? What
20 does that have to do with any opinion you are offering
21 about issues in this case?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: So the folks who have
24 differences of sex development have really been our tool

1 within medicine to understand gender identity and how it
2 developed over time, especially when there may be some
3 difference in the effects of the chromosomes, the
4 hormonal expression and the biological external
5 reproductive genitalia. And it elicits --- kind of
6 shows us that there can be some variations that identity
7 that you might have --- I'm sorry, sex that you might
8 assign at birth based on one of these categorical things
9 or a mixture of them may not be exactly what a person
10 identifies at birth.

11 For example, there are individuals who
12 are born who never had any hormones, they don't have
13 external genitalia at all when they're born, and so how
14 do you decide what sex to assign that person and thus
15 what gender to assign that person, and so it --- it
16 helps us understand that there are lots of different
17 things that go into determining a gender identity and
18 you may not know it right at birth, certainly not at
19 conception, but you may begin to understand it as the
20 person grows older.

21 And so it's important to know that
22 because when there are differences between those two
23 things it can cause significant distress and harm to the
24 individual as they get older if those two are not

1 matching.

2 BY ATTORNEY BROOKS:

3 Q. Let me take you to paragraph 28 of your expert
4 report. At the end of that paragraph you state I know
5 from experience with my patients that it can be
6 extremely harmful for transgender youth to be excluded
7 from the team consistent with their transgender
8 identity. Do you see that?

9 A. It actually says with their gender identity.

10 Q. If I misspoke, I apologize. For the record, let
11 me just do it again. Quote, I know from experience with
12 my patients that it can be extremely harmful for
13 transgender youth to be excluded from the team
14 consistent with their gender identity, closed quote.

15 Do you see that language?

16 A. I do.

17 Q. Let me just ask were you a varsity high school
18 or college athlete yourself?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: I was.

21 BY ATTORNEY BROOKS:

22 Q. Now, let me ask what you understand to be the
23 significance of that statement, that is are you offering
24 an opinion in this litigation that the West Virginia law

1 is unreasonable to the extent that it prevents even a
2 single transgender youth from playing in a division
3 consistent with their gender identity?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: I'm sorry. That wasn't
6 clear. Can you ---?

7 BY ATTORNEY BROOKS:

8 Q. Are you offering an opinion that the West
9 Virginia law is unreasonable to the extent it prevents
10 even a single transgender youth from playing in the
11 division consistent with their gender identity?

12 ATTORNEY BORELLI: Objection, form.

13 THE WITNESS: Yes.

14 BY ATTORNEY BROOKS:

15 Q. Are you offering an opinion that West Virginia
16 does not have a strong interest in ensuring fair and
17 safe competition for females in their schools and
18 universities?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: I think that would require
21 me to have to, you know, talk with them about that and
22 understand a little bit better. I would hope it would
23 be every one that they were trying to keep safe.

24 BY ATTORNEY BROOKS:

1 Q. Are you offering an opinion that West Virginia
2 law is not a reasonable measure to ensure fair and safe
3 competition for females in schools and colleges?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: Again, the language is ---
6 it's not really clear with the female who uses the word
7 female. It's like using the word sex. It's just not
8 clear.

9 BY ATTORNEY BROOKS:

10 Q. Dr. Adkins, I used the word female because
11 earlier in one of these papers where it said woman you
12 said it would work if they said female as a sex
13 indicator to be distinguished from gender identity.

14 Do you recall that testimony?

15 A. I do.

16 Q. Let me ask the question again using the term
17 female in the way that you meant in that earlier
18 testimony. Are you offering an opinion that the West
19 Virginia law is not a reasonable measure to ensure fair
20 and safe competition for females in schools and colleges
21 in West Virginia?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESSS: Yes.

24 BY ATTORNEY BROOKS:

1 Q. Can you tell me the examples that you had in
2 mind when you said I know from experience that it can be
3 extremely harmful for transgender youth to be excluded
4 from the team consistent with their gender identity?

5 A. I can.

6 Q. Please do.

7 A. I have patients who have participated in sports
8 with the teams that they identify as. Their fellow
9 students only know them as the gender that they identify
10 with and that they express. If they were asked to
11 participate on a team that matched their sex assigned at
12 birth, then these individuals would, for one, would be
13 on the boys' team and then everyone in school would know
14 that they were transgender. They don't have to know
15 that. It is not any of their business.

16 Once they are identified as transgender, they
17 are at high risk for being bullied, harassed, sexually
18 assaulted, and leaving school, which leads to poor jobs,
19 poor insurance, homelessness. There are any number of
20 reasons that I would want my patient to be able to
21 participate on the team that identifies with their
22 gender identity to keep them healthy.

23 Q. Dr. Adkins, your answer said if they were
24 required to play on the team corresponding to their I'll

1 say chromosomal sex, their natal sex, which suggests you
2 have not actually seen it happen. Is there a single
3 case you can point me to in which you have observed a
4 patient harmed by being excluded from the team
5 consistent with their gender identity?

6 A. Yes.

7 Q. Can you tell me that area?

8 ATTORNEY BORELLI: Objection, form.

9 THE WITNESS: Well, one of my patients
10 who had been on middle school sports teams that matched
11 their gender identity was then asked to change. And
12 they didn't feel comfortable going with the other
13 individuals because their identity would be discovered,
14 their --- individuals would know that they were
15 transgender. No one at the time knew and still to this
16 day don't know because they chose not to participate
17 rather than be on the team that didn't match their
18 gender identity.

19 BY ATTORNEY BROOKS:

20 Q. And when and what state did these events occur?

21 A. North Carolina.

22 ATTORNEY BORELLI: Objection to form.

23 BY ATTORNEY BROOKS:

24 Q. That's where, when? That's your Counsel's

1 objection.

2 A. North Carolina in --- for this particular
3 patient, three years ago. I have patients that come in
4 every day who this applies.

5 Q. Dr. Adkins, given that you're testifying under
6 oath and trying to be accurate, is it true that you have
7 patients come in every day that this applies to?

8 ATTORNEY BORELLI: Objection, form.

9 BY ATTORNEY BROOKS:

10 Q. Aren't we getting a little carried away here?

11 ATTORNEY BORELLI: Objection, form.

12 THE WITNESS: I do like to be precise.

13 BY ATTORNEY BROOKS:

14 Q. Thank you.

15 A. In clinic, most days when I'm in clinic I see a
16 patient who doesn't participate in athletics because of
17 the requirement that they go to participate in an area
18 that is for their assigned sex at birth. Most days I'm
19 in a gender clinic.

20 Q. And what you state in your document, in your
21 report here, is that you know from experience that being
22 excluded from the team consistent with their gender
23 identity can be, quote, extremely harmful to transgender
24 youth. You have described to me students who choose not

1 to participate in athletics. Beyond that, can you give
2 me examples of extreme harm that has resulted from such
3 policies?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: You know, some of that
6 would require a bit of speculation because I wouldn't
7 know what would happen to those individuals if they
8 remain in the sport.

9 BY ATTORNEY BROOKS:

10 Q. I'm not asking you to speculate.

11 A. So can you re-ask the question so I can kind of
12 figure out how to answer it better.

13 Q. I'll re-ask it and maybe that you're not able to
14 answer it, but can you identify for me specific extreme
15 harm that individual patients have suffered as a result
16 of not being able to participate in the team consistent
17 with their gender identity?

18 ATTORNEY BORELLI: Objection, form.

19 THE WITNESS: So I have had patients who
20 have no longer participated in sports, gained weight,
21 become obese and developed type two diabetes. I have
22 seen that around --- I can think of at least two
23 examples. And then, you know, that's a chronic life
24 long disease that can lead to amputation and all kinds

1 of other harms. And let's see, what other things.

2 I have seen patients with --- who were no
3 longer happy at their school and because the time that
4 they were identified as transgender were asked to leave
5 their sport, their friend groups changed. And you know,
6 it's tough in school. There are kids who have --- and
7 that kind of can push them down the slope of suicidal
8 ideation and depression and those sorts of things. I
9 mean, I have to think longer for other examples. Those
10 are two.

11 BY ATTORNEY BROOKS:

12 Q. Rather than starting something else, should we
13 break now for lunch?

14 ATTORNEY BORELLI: That works.

15 VIDEOGRAPHER: Going off the record. The
16 current time reads 11:54 a.m. Eastern Standard Time.

17 OFF VIDEO

18 ---

19 (WHEREUPON, A PAUSE IN THE RECORD WAS HELD.)

20 ---

21 ON VIDEO

22 VIDEOGRAPHER: We're back on the record.

23 Current time reads 12:57 p.m. Eastern Standard Time.

24 BY ATTORNEY BROOKS:

1 Q. Okay.

2 Dr. Adkins, welcome back from lunch. On we go.
3 We're going to have a long afternoon. Let me mark as
4 Exhibit 10 what we have previously identified as tab 16,
5 which is an article dated January 10, 2022 from the
6 Washington Post entitled A Transgender College Swimmer
7 is Shattering Records, Sparking a Debate Over Fairness.

8 ---

9 (Whereupon, Adkins Exhibit 10, 1/10/22
10 Washington Post Article, was marked for
11 identification.)

12 ---

13 BY ATTORNEY BROOKS:

14 Q. Dr. Adkins, let me just ask generally, you're
15 aware of recent events in the news involving Leah
16 Thomas's competition in NCAA swimming.

17 Correct?

18 ATTORNEY BORELLI: Objection, form.

19 THE WITNESS: I am aware of various
20 pieces of that.

21 BY ATTORNEY BROOKS:

22 Q. And I'm not going to try to turn you into an
23 expert on Lia Thomas, but you're just aware of that
24 narrative. Are you generally aware that at least until

1 recently the NCAA policy for a decade at the collegiate
2 level was that XX --- XY individuals, males, to use that
3 terminology, could compete based on gender identity in
4 women's divisions only after they had suppressed
5 testosterone for at least a year?

6 ATTORNEY BORELLI: Objection, form.

7 THE WITNESS: I don't know the details of
8 NCAA. I just don't.

9 BY ATTORNEY BROOKS:

10 Q. Are you aware generally that some athletic
11 leagues have a requirement that biological males may
12 compete in women's athletics based on gender identity
13 only after suppressing testosterone for some period of
14 time?

15 ATTORNEY BORELLI: Objection, form.

16 THE WITNESS: I have heard that there are
17 individuals who are allowed to participate based on
18 their gender identity and that there's some comment
19 about hormone suppression.

20 BY ATTORNEY BROOKS:

21 Q. And do you have college-age transgender patients
22 yourself?

23 A. I do.

24 Q. Does your statement that we looked at in

1 paragraph 28 of your report that it can be extremely
2 harmful for transgender youth to be excluded from the
3 team consistent with their gender identity hold true in
4 your opinion at to collegiate level? And I was quoting
5 from paragraph 29.

6 ATTORNEY BORELLI: To clarify, you just
7 said 29 --- 28, paragraph 28?

8 ATTORNEY BROOKS: It is paragraph 28. I
9 apologize.

10 ATTORNEY BORELLI: Thank you. I can't
11 remember if I lodged an objection. Objection to form.

12 THE WITNESS: And the question was?

13 BY ATTORNEY BROOKS:

14 Q. The question was does your assertion in
15 paragraph 28 of your report that you know from
16 experience the patients --- that it can be extremely
17 harmful for transgender youth to be excluded from the
18 team consistent with their gender identity apply to
19 college-age individuals as well as high school or
20 younger individuals?

21 ATTORNEY BORELLI: Objection, form.

22 THE WITNESS: In my experience, that ---
23 yes.

24 BY ATTORNEY BROOKS:

1 Q. Do you have any opinion as to whether a policy
2 that requires biologically male athletes to suppress
3 testosterone for a certain period of time or to a
4 certain level of testosterone prior to competing in
5 women's or girls' athletics is reasonable or
6 unreasonable?

7 ATTORNEY BORELLI: Objection, form.

8 THE WITNESS: So you're asking me if
9 that's my opinion? I'm sorry. Could you just repeat
10 the question?

11 BY ATTORNEY BROOKS:

12 Q. Do you have an opinion --- do you have an
13 opinion as to whether a policy that requires
14 biologically male athletes to suppress testosterone
15 either for a certain period of time or down to a certain
16 level before they can be eligible to compete in women's
17 athletics based on gender identity is reasonable or
18 unreasonable?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: It gets tricky. I am ---
21 you know, when you start throwing in sort of people with
22 PCOS and people with intersex conditions and --- it gets
23 tricky. So it's harder for me to answer.

24 I think the question was do I have an

1 opinion if it's reasonable or not reasonable? Is that
2 the question?

3 BY ATTORNEY BROOKS:

4 Q. That is.

5 A. Okay.

6 In some cases it might be reasonable and some
7 cases it might not be reasonable.

8 Q. If we put on one side and exclude from
9 consideration individuals who suffer from any form of
10 disorder of sexual development, do you believe that a
11 policy that requires biologically male athletes to
12 suppress testosterone either for a certain period of
13 time or down to a certain level before they can be
14 eligible to play in women's athletics based on gender
15 identity is reasonable or unreasonable?

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: So you know, for those who
18 are assigned male at birth, it depends on where they
19 are, you know, and what sport they're doing and what's
20 involved. There are a number of caveats that could be
21 thrown in there along those lines.

22 BY ATTORNEY BROOKS:

23 Q. Is it you don't know what you think about that?

24 ATTORNEY BORELLI: Objection to form.

1 THE WITNESS: I think you misunderstood
2 the answer that I gave. It would really depend on a
3 specific case.

4 BY ATTORNEY BROOKS:

5 Q. Well, let's look at a specific case. I have put
6 in front of you Exhibit 10, this Washington Post article
7 from January 10, 2022 about Lia Thomas, who, according
8 to the headline, is shattering records. Let me ask you
9 to turn in that article to page three. And there it ---
10 if we look at the third paragraph, the one that begins
11 her fastest 200 yard freestyle, and the second sentence
12 --- or the third sentence says that's the fastest time
13 by any female college swimmer this year, .64 seconds
14 faster than Olympian Torri Huske. And it continues,
15 quote, Thomas has also posted the nation's best 500 yard
16 freestyle, timed this season at four minutes, 34.06
17 seconds, nearly three seconds faster than Olympian
18 Brooke Forde.

19 Do you see that?

20 A. Uh-huh (yes).

21 Q. And these records were set after Lia Thomas had
22 qualified under the NCAA requirement of testosterone
23 suppression for one year. So my question on the
24 specific sport for you is, is it your view that a policy

1 that permits Thomas to compete in the women's division
2 against competitors who are biologically female is fair?

3 ATTORNEY BORELLI: Objection, form.

4 THE WITNESS: So you will note in the
5 paragraph above it also says that her time slowed down
6 once she had this happened and she was suppressing her
7 testosterone. You know, I --- I don't want to use that
8 word. There are so many things that go into athletic
9 performance and your time that's not totally related to
10 your sex assignment at birth or your current hormonal
11 status, practice, you know, training, whether you had an
12 opportunity to get started at a young age, a lot of
13 variables that aren't related to their current hormones.

14 BY ATTORNEY BROOKS:

15 Q. Do you have an opinion as to whether a policy
16 that permits Lia Thomas to compete against those born
17 female in swimming is fair?

18 ATTORNEY BORELLI: Objection to form.

19 Counsel, I think we're starting to get outside the
20 scope. The witness can answer this question if she can,
21 but we're treading on that territory.

22 THE WITNESS: So in that there are very
23 few transgender individuals who are involved and there
24 are lots and lots and lots of opportunities for those

1 assigned female at birth to compete, I think it is fair.

2 BY ATTORNEY BROOKS:

3 Q. And let me call your attention two paragraphs
4 down where it begins everybody wants, and quoting
5 Michael Joyner, who identifies as a physiologist at the
6 Mayo Clinic. Are you familiar with the reputation of
7 the Mayo Clinic?

8 A. Yes.

9 Q. It is a high reputation.

10 Am I correct?

11 ATTORNEY BORELLI: Objection, form.

12 THE WITNESS: In general, people think it
13 has a good reputation.

14 BY ATTORNEY BROOKS:

15 Q. If you read this paragraph, Dr. Joyner says,
16 quote, everybody wants to maximize each individual's
17 opportunity to participate and be as inclusive as
18 possible, one of the researchers, Michael Joyner, a
19 physiologist at the Mayo Clinic, said in an interview.
20 And his quote continues, but how do you balance that
21 inclusion at the individual level with the fairness to
22 the entire field? That's really the split the baby
23 question, closed quote.

24 Do you see that language?

1 A. I do.

2 Q. Do you agree that the question of fairness that
3 Dr. Joyner addresses there is, in fact, a tough question
4 on which reasonable people could disagree?

5 ATTORNEY BORELLI: Objection, form. And
6 counsel, I need to renew my objection as to scope.

7 ATTORNEY BROOKS: You can have a standing
8 objection as to scope, but I can pursue this line of
9 questioning.

10 THE WITNESS: I would like to take a
11 moment to read the whole article, please.

12 ATTORNEY BORELLI: Counsel, can you point
13 me to the portion of the report where she offers
14 opinions about things?

15 ATTORNEY BROOKS: She has offered the
16 opinion in the report that denying participation is
17 extremely harmful. She has testified on the record that
18 in her view, a policy that permits even one transgender
19 individual from playing according to their gender
20 identity, that she has an opinion, but she is offering
21 an opinion that that is an unreasonable policy. I
22 intend to examine that thoroughly. Scope is not tightly
23 limited on expert depositions, I assure you.

24 ATTORNEY BORELLI: I'm going to stand on

1 my objection. We'll see where the line of questioning
2 goes and we'll confer again if we need to.

3 ATTORNEY TRYON: This is Dave Tryon. I
4 would ask that if there are further speaking objections
5 or discussions about scope, it be done outside the
6 presence of the witness.

7 BY ATTORNEY BROOKS:

8 Q. Let me ask you this without taking the time ---
9 without reading the entire document, do you agree or
10 disagree with Doctor Joyner that the question of whether
11 a biologically male individual such as Lia Thomas should
12 be permitted to compete in the women's division against
13 biological females is a tough question that reasonable
14 people can differ?

15 ATTORNEY BORELLI: Objection to form.

16 ATTORNEY BROOKS: That's enough. That's
17 all you may say.

18 ATTORNEY BORELLI: Excuse me. Counsel,
19 the witness has ---.

20 ATTORNEY BROOKS: You may say objection
21 to form.

22 ATTORNEY BORELLI: The witness has ---
23 the witness asked to read the entire document.

24 ATTORNEY BROOKS: I am asking a question

1 free and apart from the document. And I'm entitled to
2 do that.

3 ATTORNEY BORELLI: I'm not persuaded that
4 this is free and apart from the document.

5 ATTORNEY BROOKS: I will make it 100
6 percent apart from the document.

7 ATTORNEY BORELLI: Can you please restate
8 the question to do that? Thank you.

9 BY ATTORNEY BROOKS:

10 Q. Dr. Adkins, do you agree that the question of
11 whether a biological male such as Lia Thomas should be
12 permitted to compete against biological females in the
13 collegiate level is a tough question on which reasonable
14 people can differ?

15 ATTORNEY BORELLI: Objection, form.
16 Counsel, you just put an article ---.

17 ATTORNEY BROOKS: That's enough of the
18 speaking objection. I can take the article back away
19 from the witness. My question makes no reference to the
20 article.

21 ATTORNEY BORELLI: Your question makes
22 reference to ---.

23 ATTORNEY BROOKS: Counsel, that's enough
24 speaking objections. You are violating the Federal

1 Rules.

2 ATTORNEY BORELLI: I strongly disagree
3 with that characterization. I don't think that's
4 correct. You're asking questions about a subject of the
5 article. Physically removing the article from the
6 witness doesn't remove that question from the subject of
7 the article.

8 ATTORNEY BROOKS: I don't have to show
9 the witness every article about a topic. The witness is
10 aware of Lia Thomas. I'm asking a question about Lia
11 Thomas and competitive swimming. The witness can
12 answer.

13 ATTORNEY BORELLI: I stand on my
14 objection.

15 ATTORNEY BROOKS: You can do so.

16 THE WITNESS: Sorry. Thank you.

17 You know, everybody has their opinion
18 based on their experience and their knowledge and
19 they're allowed to state that and confer with others
20 about it. Whether or not it is reasonable is a whole
21 other question, and that involves perspective and
22 background. So with that caveat, I could see people
23 having different opinions on this particular matter.

24 BY ATTORNEY BROOKS:

1 Q. Thank you.

2 ATTORNEY BROOKS: Can we mark as Exhibit
3 11 a document previously identified as tab 17, article
4 from the publication named Out Sports that is dated
5 January 9, 2022.

6 ---
7 (Whereupon, Adkins Exhibit 11, 1/9/22
8 Out Sports Article, was marked for
9 identification.)

10 ---

11 BY ATTORNEY BROOKS:

12 Q. Dr. Adkins, have you heard the name Iszac Henig?

13 A. No.

14 Q. Did you hear any news items that a transgender
15 male competing in the female division that is genetic
16 female, male identity, transgender male competing in the
17 female division, beat Lia Thomas, a transgender female
18 competing in the female division, in certain races?
19 Have you heard that?

20 A. No.

21 ATTORNEY BORELLI: Objection, form.

22 BY ATTORNEY BROOKS:

23 Q. All right.

24 You stated in paragraph 28 that it can be

1 harmful for patients, deeply harmful, for transgender
2 youth to be excluded from the team consistent with their
3 gender identity. In your view is a policy that requires
4 transgender youth who are biologically male to suppress
5 testosterone before they can be eligible to compete on a
6 team consistent with their gender identity extremely
7 harmful to youth?

8 ATTORNEY BORELLI: Objection, form.

9 THE WITNESS: I was trying to catch up
10 with you with finding the page.

11 BY ATTORNEY BROOKS:

12 Q. That was a complicated question. I will ask it
13 again.

14 A. Thank you.

15 Q. In your view is a policy that requires a
16 biological male who experiences a female gender identity
17 to suppress testosterone prior to becoming eligible to
18 compete in the women's division extremely harmful?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: Suppression of the
21 testosterone for my practice isn't the --- you know, the
22 harm. It is the exclusion that does most of the harm.
23 I think I answered that.

24 BY ATTORNEY BROOKS:

1 Q. Let me try to --- in light of what you just
2 said, let me ask a better question. In your view, is a
3 policy that excludes a biological male who identifies as
4 a woman from competition in the women's division unless
5 and until that biological male has suppressed
6 testosterone extremely harmful?

7 ATTORNEY BORELLI: Objection to form.

8 THE WITNESS: So the sex assigned at
9 birth for this person would be male and would need time
10 to suppress testosterone, which takes time and leads to
11 limitations in participation of sports, in competition.
12 I think that disadvantages most athletes if they have to
13 take time off for any kind of medical treatment for
14 their preparation. In that fashion it would be harmful
15 to the athlete.

16 BY ATTORNEY BROOKS:

17 Q. And I believe you testified you don't have any
18 simple single opinion as to whether it would
19 nevertheless be reasonable despite being harmful to that
20 athlete?

21 ATTORNEY BORELLI: Objection to form.

22 THE WITNESS: I don't think that's what I
23 said.

24 BY ATTORNEY BROOKS:

1 Q. All right.

2 Then I'll ask a different to avoid
3 unclarity. Do you have an opinion as to whether,
4 despite the harm that you have described, a policy that
5 requires suppression of testosterone in order for such
6 an individual to be eligible to compete in a women's
7 division is reasonable?

8 ATTORNEY BORELLI: Objection to form.

9 THE WITNESS: That's complicated. I
10 apologize for not answering yes or no. I just ---
11 sometimes you get lost in your question. So I don't
12 think it's reasonable to ask them not to participate.
13 They need time to practice and participate like all
14 their peers that are practicing and competing at the
15 time.

16 BY ATTORNEY BROOKS:

17 Q. So your testimony as you sit here today is that
18 even as a biologically male athletes, natal male
19 athletes who have not suppressed testosterone at all, it
20 is not reasonable to exclude them from participation in
21 the women's division?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: To those who are assigned
24 female at birth, you're again going to cause them harm

1 by not allowing them to participate and not be affirmed
2 in their gender. That --- part of it is a big part of
3 what it means to improve their overall health and what
4 we do to care for these individuals. You're also
5 marking them by saying that they are, you know,
6 transgender and that is going to cause all kinds of
7 kerfuffle and people are not nice to them. It can cause
8 extreme harm to them in that way.

9 BY ATTORNEY BROOKS:

10 Q. In the beginning of your answer you referred to
11 individuals identified as female at birth.

12 A. Assigned female at birth.

13 Q. And I think that your answer was speaking to
14 individuals who are assigned male at birth.

15 A. Applies to both.

16 ATTORNEY BORELLI: Objection, form.

17 BY ATTORNEY BROOKS:

18 Q. Then let me re-ask my question because I asked
19 about individuals assigned male at birth. As to those
20 individuals, is it your opinion that a policy that
21 requires them to suppress testosterone prior to becoming
22 eligible for participation in the women's division or
23 high school level girls division is unreasonable?

24 ATTORNEY BORELLI: Objection, form.

1 THE WITNESS: For an assigned male at
2 birth, suppressing testosterone, so we're clear because
3 you used the word they in that particular question, I
4 think it is unreasonable for them to be taken out of
5 their sport. I think it causes harm. We see evidence
6 that it causes harm with regard to depression, anxiety,
7 suicidality. It also causes metabolic harm, changes in
8 the performance.

9 ATTORNEY BROOKS: Let me mark this
10 Exhibit 11, an article by Duke Professor Doriane
11 Lambelet Coleman, Michael Joyner and Donna Lopiano, the
12 Duke Journal of Gender Law and Policy.

13 ---
14 (Whereupon, Adkins Exhibit 11, Duke
15 Journal of Gender Law and Policy
16 Article, was marked for identification.)

17 ---
18 VIDEOGRAPHER: Counsel, I didn't fully
19 catch which document that was? Did you say it was tab
20 19?

21 ATTORNEY BROOKS: It is tab 19, that's
22 correct.

23 VIDEOGRAPHER: Thank you.

24 BY ATTORNEY BROOKS:

1 Q. Dr. Adkins, let me ask whether you have before
2 now been aware of this article by Duke Professor Coleman
3 and others?

4 A. I have heard of an article, yes.

5 Q. Do you know Professor Coleman?

6 A. I met Professor Coleman once.

7 Q. And have you ever seen this article before
8 today?

9 A. I haven't looked at it.

10 Q. Probably my questioning about it will be very
11 short. Let me ask you to turn to page 88. At the very
12 bottom of page 88 is a sentence that runs over into 89
13 that reads as follows. If elite sport were coed or
14 competition were open, even the best female would be
15 rendered invisible by the sea of men and boys who would
16 surpass her, closed quote. Do you see that language?

17 A. I do.

18 Q. Do you have the expertise to evaluate whether
19 that is true or false?

20 ATTORNEY BORELLI: Object to form.

21 THE WITNESS: The --- well, again, you
22 are picking one sentence out of a whole article. And I
23 know that Dr. Coleman has actually called into question
24 some of the information from this report in particular.

1 And without knowing which things I can't really rely on
2 this document to say whether it's true. And that's not
3 --- that's her expertise.

4 BY ATTORNEY BROOKS:

5 Q. Well, that's my question. Do you believe that
6 it is within your expertise to evaluate that sort of
7 question about sporting performance?

8 ATTORNEY BORELLI: Object to the form.

9 THE WITNESSS: Again, you are picking one
10 sentence. I have some professional experience with
11 assisting people in improving their physiology with
12 regard to, you know, muscle mass, fat mass. Sport would
13 be outside what I would have to say --- this
14 specifically.

15 BY ATTORNEY BROOKS:

16 Q. I'm not sure that was a compete sentence, let me
17 ask a follow-up question. Is it the case that it is ---
18 you consider it outside your professional expertise to
19 evaluate the truth or falsity of this supposed assertion
20 that, quote, if elite sport were coed or competition
21 were open, even the best female would be rendered
22 invisible by the sea of men and boys who would surpass
23 her, closed quote?

24 ATTORNEY BORELLI: Object to form.

1 THE WITNESS: That's not been my
2 experience. That's not what we're seeing in sports. I
3 can't say anything else about whether or not I could
4 assess it. That would be my only way to assess it based
5 on my experience.

6 BY ATTORNEY BROOKS:

7 Q. What is your professional training or research
8 that qualifies you to evaluate the impact that would be
9 experienced in athletics on biological women if sport
10 were coed or competition were open?

11 ATTORNEY BORELLI: Objection to form.

12 THE WITNESS: Yeah. I don't study
13 sports.

14 BY ATTORNEY BROOKS:

15 Q. You are an endocrinologist by training.

16 Is that correct?

17 A. I am.

18 Q. Do you have an expert opinion as to what lasting
19 or legacy --- strength and athletic capability if any
20 way natal males continue to enjoy over natal females
21 after suppressing testosterone?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: So there's a lack of
24 research in this area. I feel like we need more

1 information regarding this. I don't think that there's
2 a way to answer that question with the data that we have
3 at this time.

4 BY ATTORNEY BROOKS:

5 Q. Is it true in your practice that most of your
6 biologically male patients present at your clinic let's
7 say after age 13?

8 ATTORNEY BORELLI: Object to form.

9 THE WITNESS: Most of my patients who are
10 assigned which at birth did you say?

11 BY ATTORNEY BROOKS:

12 Q. Male.

13 A. After age what again?

14 Q. I chose 13.

15 ATTORNEY BORELLI: Same objection.

16 THE WITNESS: I would agree with that.

17 BY ATTORNEY BROOKS:

18 Q. And implications of that are that those
19 individuals have already experienced --- well, let me
20 ask it differently. In your experience or based on your
21 training, either one, on average what Tanner stage are
22 boys at by the time they have finished their 13th year?

23 ATTORNEY BORELLI: Objection, form.

24 THE WITNESS: So assigned male at birth?

1 BY ATTORNEY BROOKS:

2 Q. Correct.

3 A. The average at 13 is Tanner 3.

4 Q. By the end of age 13 you would say Tanner 3?

5 A. It is really 13 and a half is what the published
6 literature says.

7 Q. So presumably by the end of their 13th year,
8 when they're older than 13 they're either in a later
9 stage of Tanner stage 3 or moving into Tanner stage 4?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: On average, but there is
12 such a wide variety of --- they can present with puberty
13 from 9 to 14. And they all move differently at
14 different rates and different times, so there's a lot of
15 variety in the 13 and a half year olds I see in my
16 clinic who are assigned male at birth.

17 BY ATTORNEY BROOKS:

18 Q. And my question was about averages. So on
19 average, by the end of the 13th year the patients you
20 see would be towards the end of Tanner stage 3 or
21 entering into Tanner stage 4?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: On average, yeah.

24 BY ATTORNEY BROOKS:

1 Q. And by that time those biologically male who
2 have under gone effects on skeleton, on height, on
3 musculature, typical of or sometimes referred to as
4 verilization.

5 Correct?

6 ATTORNEY BORELLI: Objection, form.

7 THE WITNESS: So at 13 and a half the
8 average assigned male at birth is dead center their
9 growth spurt, so they've only gone through about half of
10 it. They still have about half of it left.

11 BY ATTORNEY BROOKS:

12 Q. Okay.

13 And do you have any knowledge as to whether
14 they have also undergone changes in heart and lung size
15 and bone strength that are typical of male puberty?

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: So I can't comment about
18 the heart and the lung. The lung size is typically
19 proportioned to the body size. So in that way, halfway.
20 Bone strength, however, there's more information about.
21 And you know, people don't get their peak bone mass
22 until they're 30, so they have a long way to go starting
23 from 13 and a half before they reach that.

24 BY ATTORNEY BROOKS:

1 Q. Have, on average, males experienced significant
2 bone densification by age --- by the end of their 13th
3 year?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: Depends on your definition
6 of significant. Clinically significant, medically
7 significant? Is it, you know, significant with regard
8 to the biological assay. Is it you're talking about
9 which would --- Dexus scans?

10 BY ATTORNEY BROOKS:

11 Q. I will take clinically significant.

12 ATTORNEY BORELLI: Objection to form.

13 THE WITNESS: Can you repeat your
14 question with that?

15 BY ATTORNEY BROOKS:

16 Q. Yes. On average, have biological males
17 experienced clinically significant bone densification by
18 the end of their 13th year?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: Over their life span they
21 do continue to increase their bone density. The peak of
22 bone density is much later, so every person is different
23 as to where they are in that density scale. At the
24 middle of puberty, I mean, I would be guessing if I said

1 anything specific.

2 BY ATTORNEY BROOKS:

3 Q. Well, as I tell witnesses I am defending I don't
4 know is always a great conversation stopper. Is it your
5 testimony that you don't actually know how much bone
6 densification has occurred by the end of the 13th year
7 in those in biological males?

8 ATTORNEY BORELLI: Objection, form.

9 THE WITNESS: I haven't looked at it ---
10 I haven't looked at it recently. There are --- that's
11 an --- interpretations that we use and it comes with our
12 reports and I would have to look at that to rely on it.

13 BY ATTORNEY BROOKS:

14 Q. Have you heard the name Joanna Harper?

15 A. No.

16 Q. Let me see tab 24.

17 ATTORNEY BROOKS: Marking 13, what was
18 previously designated tab 24, article published December
19 2020 by Emma Hilton and Tommy Lundberg, titled
20 Transgender Women in the Female Category of Sport:
21 Perspectives on Testosterone Suppression and Performance
22 Advantage.

23

24

(Whereupon, Adkins Exhibit 13, 2020

1 Hilton and Lundberg Article, was marked
2 for identification.)

3 ---

4 BY ATTORNEY BROOKS:

5 Q. And Dr. Adkins, let me ask again whether you
6 know the name Emma Hilton or Tommy Lundberg.

7 A. No.

8 Q. Can I take it then you have not seen this
9 article before?

10 A. I wouldn't say that one equals the other. I'm
11 terrible with names, to be quite honest.

12 Q. Let me ask --- therefore, I retract that
13 question. Do you recall seeing this article before
14 today?

15 A. No.

16 Q. Okay.

17 Then again, we will be short. You see the
18 title. I understand you have not seen it. Let me ask
19 you to turn to page 201. About an inch down in the
20 first column, summarizing other research the authors of
21 this paper write an extensive review of fitness from
22 over 85,000 Australian children age 9 to 17 years old
23 show that, compared with 9 year old females, 9 year old
24 males were faster over short sprints, 9.8 percent, and

1 one mile, 16.6 percent. Could jump 9.5 percent further
2 from a standing start, a test of explosive power.
3 Quote, could complete 33 more push ups in 30 seconds and
4 had 13.8 percent stronger grip, closed quote. Do you
5 see that language?

6 A. Yeah.

7 Q. And my question for you is you have yourself any
8 knowledge as to whether the facts recited there are
9 scientifically accurate or inaccurate?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: So whenever I'm reviewing
12 an article, and again, I have not seen the full article,
13 it's reporting on population from Australia, which I
14 usually use the population that I'm talking about when I
15 am using that information to help guide my practice. So
16 I'm not completely sure that would be a thing that would
17 come into my mind when looking at this. Is this the
18 same population in Australia you we're seeing here?
19 That's one of my first questions about it.

20 BY ATTORNEY BROOKS:

21 Q. And I understand that everybody in Australia is
22 upside down, but my question simply was do you have any
23 knowledge as to whether, as a matter of science, these
24 assertions are true or false?

1 ATTORNEY BORELLI: Objection, form.

2 THE WITNESS: They have published it in a
3 peer reviewed journal I think. I would have to look if
4 this is a peer reviewed journal because some are not.
5 If those things are true, the assumption we make in
6 medicine is that they are true.

7 BY ATTORNEY BROOKS:

8 Q. You are a very trusting person to peer reviewed
9 journals.

10 A. They get redacted all the time. So again, my
11 previous thing is you got to look at all of the pieces,
12 et cetera.

13 Q. In general --- in general, do you consider that
14 your expertise extends to the question of how much
15 athletic advantage biological males enjoy over
16 biological females prior to puberty, if any?

17 ATTORNEY BORELLI: Objection, form.

18 THE WITNESS: I know limited amount of
19 that information. We all learn a little bit, but I
20 wouldn't say that I could say, you know, I know
21 everything that exists.

22 BY ATTORNEY BROOKS:

23 Q. What is your source of information in that area?

24 ATTORNEY BORELLI: Objection, form.

1 THE WITNESS: Generally education in
2 medical school and then looking at hormonal effects in
3 muscle and bone and those things. But not in particular
4 these specific tests.

5 BY ATTORNEY BROOKS:

6 Q. Do you have any opinion as to whether prior to
7 puberty natal males have strength, speed or other
8 athletic advantages over natal females on average?

9 ATTORNEY BORELLI: Objection, form.

10 THE WITNESS: Gosh, there's such a wide
11 variety of humans. And I know you are asking on
12 average. I don't think I feel comfortable answering the
13 question.

14 BY ATTORNEY BROOKS:

15 Q. All right.

16 You have offered the opinion --- we can go back
17 to paragraph 28, I keep referring to the same, that
18 refusing to permit a transgender individual to
19 participate in a sport category corresponding to their
20 gender identity can be or is extremely harmful. From
21 your medical point of view, what do you consider to be
22 the implications of that opinion when it comes to
23 individuals who claim both a male and a female gender
24 identity?

1 ATTORNEY BORELLI: Objection, form.

2 BY ATTORNEY BROOKS:

3 Q. Must they be permitted to play in either
4 category according to their choice.

5 ATTORNEY BORELLI: Objection, form.

6 THE WITNESS: That is a good question. I
7 would have to talk to the individual person to really
8 know what harm they might think --- feel that they are
9 having if they were kept from one versus the other. I
10 think that would be a very individualized question. I
11 can't answer it with my experience.

12 BY ATTORNEY BROOKS:

13 Q. All right.

14 Would you have the same answer with regard to
15 an individual who experiences neither gender identity,
16 neither male or female?

17 ATTORNEY BORELLI: Objection, form.

18 THE WITNESS: So people who identify as a
19 agender, you know, there is such a wide variety there of
20 their life experience, their pubertal experience, their
21 current hormones and what things they might be taking or
22 not taking, where their levels are. I think it --- and
23 you know, again, I think --- you would have to look at
24 the individual person.

1 BY ATTORNEY BROOKS:

2 Q. Is it your opinion, Dr. Adkins, that the only
3 reasonable policy for schools, colleges or athletic
4 leagues would be to consider eligibility for transgender
5 individuals on a case by case basis, taking into account
6 all of the types of complexities you just described?

7 ATTORNEY BORELLI: Objection, form.

8 THE WITNESS: I think that that is
9 completely possible for them to do given the small
10 population that we're talking about. And I think it is
11 reasonable for them to take the time to do that with
12 each individual human.

13 BY ATTORNEY BROOKS:

14 Q. Do you think that such a policy is the only
15 reasonable policy?

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: Yeah, I'm going to venture
18 that, yes.

19 BY ATTORNEY BROOKS:

20 Q. In your view --- as you've testified earlier a
21 bit about the category of gender fluid individuals. You
22 mentioned the term. Are you familiar with that
23 category, concept of gender fluid individuals?

24 ATTORNEY BORELLI: Objection, form.

1 THE WITNESS: I'm aware of the concept.

2 BY ATTORNEY BROOKS:

3 Q. Can you explain for the court what the concept
4 of --- what a gender fluid individual is or what that
5 person experiences?

6 ATTORNEY BORELLI: Objection to form.

7 THE WITNESS: So my experience is that
8 every gender fluid person is different, and I have to
9 actually dig deep when I'm talking to someone who is
10 gender fluid as to what that means. It could mean a
11 wide variety of different experiences.

12 BY ATTORNEY BROOKS:

13 Q. You're not able to describe at all what it mean
14 to be gender fluid?

15 ATTORNEY BORELLI: Objection, form.

16 THE WITNESS: I can give you an example.
17 I can give you more than one example.

18 BY ATTORNEY BROOKS:

19 Q. I'll take an example.

20 A. Okay.

21 For a patient I'm bringing to mind, for that
22 individual they generally might be expressing their
23 gender identity variably on a particular day. Their
24 understanding of their identity is that it shifts a

1 little bit. They sometimes are frilly, like me, very
2 feminine-ish, and on days --- and feel that --- and
3 other days they might wear a suit and tie. And that
4 gender expression may align with their gender identity I
5 guess, to express themselves a different way. It's just
6 a matter that, you know, some days I feel like a girl
7 and some days I don't. And I actually also sometimes
8 have that feeling of, you know, a more girly one day
9 than the other. I don't know. I'm not implying that
10 I'm gender fluid, but that particular person is an
11 example of what might happen for someone who's gender
12 fluid.

13 Q. Let me ask you to find. I told you we'd dig for
14 it again, the Endocrine Society 2017 Guidelines, which
15 are Exhibit 4.

16 A. I'm not saying my experience is the one and
17 only, one all be all.

18 Q. And I'll call your attention to page five,
19 column two?

20 A. I'm sorry, what is that again?

21 Q. Page five, column two. Language looks like
22 this. That's on page five. That's fine.

23 ATTORNEY TRYON: This is Dave Tryon. I
24 think both of you are starting to trail off at times and

1 speak less loudly and it's getting a little bit harder
2 to hear you. If you can both remember to keep your
3 voices up, it would be helpful to me.

4 ATTORNEY BROOKS: We will do our best.
5 Wait until 6:30.

6 BY ATTORNEY BROOKS:

7 Q. Page 3873, column two. And towards the bottom
8 is a discussion of the continuum and individuals who
9 experience both or neither and then a reference that we
10 looked at before about reports of individuals
11 experiencing a continuous and rapid involuntary
12 alternation between a male and female gender identity.
13 Do you see that? It's about eight lines from the
14 bottom.

15 A. On the right?

16 Q. Yes.

17 A. Yeah.

18 Q. And I'm going to focus you on the rapid
19 involuntary alternation between male and female
20 identity. And is it your view --- is it your opinion
21 that unless school or league policy allows such gender
22 fluid individuals to play in the league according to
23 their present gender identity, whatever that might be,
24 that it will do extreme harm to those individuals?

1 ATTORNEY BORELLI: Objection, form.

2 THE WITNESS: So I think that unless you
3 are working with that individual person to do what works
4 for them based on their gender identity, you are likely
5 to do harm.

6 BY ATTORNEY BROOKS:

7 Q. And am I correct that it is your opinion that
8 avoiding harm to students who experience a transgender
9 identity, perhaps a gender fluid identity, is a higher
10 priority than ensuring fairness in competition for those
11 born female?

12 ATTORNEY BORELLI: Objection to form.

13 THE WITNESS: So doing a harm to
14 individuals that are transgender can lead directly to
15 their death. So we're talking about a life and death
16 experience for these individuals. What you are
17 referring to with regard to sports participation in my
18 vision of all of the sports athletics is a rarity of
19 someone dying, and it is not because of the harm policy
20 --- of transgender person.

21 BY ATTORNEY BROOKS:

22 Q. What's the answer to my question?

23 COURT REPORTER: Excuse me.

24 ATTORNEY BORELLI: Objection.

1 COURT REPORTER: I just want to interrupt
2 because the witness cut out during her answer.

3 BY ATTORNEY BROOKS:

4 Q. Well, I'm going to re-ask the question. And
5 we'll both try to speak up and perhaps to some extent
6 the transcript will have to be, you know, cleaned up
7 from the recording. We'll do the best we can. Is it
8 your opinion that avoiding harm to transgender
9 individuals, potentially including gender fluid
10 individuals, is a value that is more important than
11 protecting the fairness and safety for girls and women
12 for those born female in sport?

13 ATTORNEY BORELLI: Objection, form.

14 THE WITNESS: So when we're talking about
15 life and death, that is the ultimate outcome. And I
16 still say that if you're talking about a policy that
17 could cause the death of a human being, that, in my
18 judgment, does rank higher than fairness at that time.

19 BY ATTORNEY BROOKS:

20 Q. And you talked earlier about your assertion that
21 you had patients who have experienced harm as a result
22 of not being permitted to play according to their gender
23 identity. Do you recall that testimony?

24 ATTORNEY BORELLI: Objection, form.

1 THE WITNESS: I do.

2 BY ATTORNEY BROOKS:

3 Q. And do you have specific examples of such
4 patients who experienced increased suicidal ideation
5 specifically as a result of not being permitted to play
6 in athletics according to their gender identity?

7 ATTORNEY BORELLI: Objection, form.

8 THE WITNESS: I do.

9 BY ATTORNEY BROOKS:

10 Q. Tell us about that.

11 ATTORNEY BORELLI: Objection, form.

12 THE WITNESS: Yeah. So one of my
13 patients, for example, had played football. This
14 patient was assigned female at birth, identifying as
15 male in middle school. Really wanted to play in high
16 school and was eventually not allowed to do so, and
17 their depression deepened. They had not had any
18 suicidal ideation before. They had been well affirmed.
19 They were living in their gender identity in every other
20 aspect of their life.

21 And they ended up having to go on
22 medication to make sure that --- to treat that
23 depression in addition to all of the support in the
24 family and teachers were giving with their gender

1 identity.

2 BY ATTORNEY BROOKS:

3 Q. And do you have any knowledge as to whether that
4 individual would have faced serious safety injury risks
5 had that individual, natal female, been permitted to
6 play football at high school level as your patient's
7 male peers matured into full male stature?

8 ATTORNEY BORELLI: Objection to form.

9 THE WITNESS: This particular patient was
10 within the normal range for a male of that age as far as
11 height, weight and BMI, so there wasn't a great
12 disparity with regard to that. That can come up at
13 times with regards to sports participation in
14 consideration with injury. So this particular patient,
15 I would not have had any concern there. Lots of
16 assigned females at birth who are not transgender also
17 play football in high school.

18 BY ATTORNEY BROOKS:

19 Q. Tab 25. Dr. Adkins, do you recall permitting
20 the reporting of and being part of a WNYC podcast back
21 in 2016?

22 A. Yes.

23 Q. Let me mark as Exhibit 14 a two-page kind of
24 introductory page off the WNYC website describing this

1 podcast. The document itself, the posting is dated
2 August 2, 2016. Give me one moment here.

3

4

(Whereupon, Adkins Exhibit 14, 2016

5

Podcast Summary Webpage, was marked for
6 identification.)

7

8

ATTORNEY BROOKS: And let me also mark as

9

Exhibit 15 the transcript of that podcast downloaded off
10 of the WNYC website.

11

12

(Whereupon, Adkins Exhibit 15, 2016

13

Podcast Transcript, was marked for
14 identification.)

15

16

BY ATTORNEY BROOKS:

17

Q. And that --- the title apparently of the podcast

18

is, quote, I'd Rather Have a Living Son than a Dead

19

Daughter. Do you see that?

20

A. I do.

21

Q. And you allowed a reporter from WNYC to come

22

into your office and record various conversations.

23

Am I correct?

24

ATTORNEY BORELLI: Objection, form.

1 THE WITNESS: With the permission of ---
2 the --- everyone involved.

3 BY ATTORNEY BROOKS:

4 Q. To participate and they waived the privacy with
5 regard to anything that wasn't included in the podcast.

6 Am I correct?

7 ATTORNEY BORELLI: Objection to form.

8 THE WITNESS: That would be standard.

9 BY ATTORNEY BROOKS:

10 Q. At least as far as yourself, do you recall doing
11 that?

12 ATTORNEY BORELLI: Objection to form.

13 THE WITNESS: I don't recall. I suspect
14 I would have.

15 BY ATTORNEY BROOKS:

16 Q. And did you yourself review the podcast before
17 it was released for any privacy or accuracy concerns?

18 ATTORNEY BORELLI: Objection, form.

19 THE WITNESS: I don't remember. That's
20 been so long ago.

21 BY ATTORNEY BROOKS:

22 Q. It has been a while. This was 2016. And you
23 had been practicing in this area about how long in 2016?

24 A. In North Carolina?

1 Q. I'm sorry. In this field of treatment of gender
2 --- of individuals suffering gender dysphoria?

3 ATTORNEY BORELLI: Objection, form.

4 THE WITNESS: I started caring for
5 patients who are transgender in --- I think around 2013.

6 BY ATTORNEY BROOKS:

7 Q. Okay.

8 So between two and three years before the time
9 this was recorded.

10 Okay.

11 Let me ask you to look at Exhibit 15, which is
12 to say the transcript. And first page, it indicates and
13 I'll just --- it deals with two clients with names, at
14 least for purposes of the podcast, of Drew Adams and
15 Mark. Do you recall that?

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: I would have to verify.
18 Probably accurate, but ---.

19 BY ATTORNEY BROOKS:

20 Q. Martin shows up on page 13. A couple inches
21 down we skip to the last patient at the end of a long
22 day and then it says recalling this patient Martin.

23 A. I see that.

24 Q. Let's go back and just look at issues relating

1 to Drew Adams. Drew is, if I understand correctly,
2 natal female, identifying at the time of this recording
3 as ---?

4 A. Drew was assigned female at birth and identified
5 as male at this time.

6 Q. And so far as you understand, based on your
7 medical evaluation, Drew is somebody who was
8 chromosomally female.

9 Correct?

10 ATTORNEY BORELLI: Objection to form.

11 THE WITNESS: I don't get to verify their
12 chromosomes. We don't do that.

13 BY ATTORNEY BROOKS:

14 Q. At the time this was recorded, you did have an
15 understanding, did you not, that Drew had female
16 reproductive biology?

17 ATTORNEY BORELLI: Objection, form.

18 THE WITNESS: On my exam at that time
19 Drew had external genitalia that appeared female and
20 secondary sex characteristics typical of someone
21 assigned female at birth.

22 BY ATTORNEY BROOKS:

23 Q. Well, in fact, somebody biologically female.

24 Correct?

1 ATTORNEY BORELLI: Objection.

2 THE WITNESS: Assigned female at birth.

3 BY ATTORNEY BROOKS:

4 Q. Well, let me ask you this. You prescribed
5 hormones for Drew.

6 Am I correct?

7 A. Yes.

8 Q. And you didn't do that without a high level of
9 confidence in your mind as to the biology of Drew's
10 body.

11 Am I correct?

12 ATTORNEY BORELLI: Objection to form.

13 BY ATTORNEY BROOKS:

14 Q. You weren't just based on what somebody happened
15 to be assigned at birth. You believed that Drew was
16 biologically female, did you not?

17 ATTORNEY BORELLI: Objection, form.

18 THE WITNESS: So at the beginning, prior
19 to treating patients, we do look at where their baseline
20 hormones are. So I did have that information as well as
21 an external exam. I didn't have chromosomes or an
22 ultrasound.

23 BY ATTORNEY BROOKS:

24 Q. My question is at the time you prescribed

1 hormones for Drew you believed that Drew was
2 biologically female firmly, did you not?

3 ATTORNEY BORELLI: Objection, form.

4 THE WITNESS: I had no reason at that
5 time with the data in front of my to identify Drew as
6 anything other than assigned female at birth.

7 BY ATTORNEY BROOKS:

8 Q. And you just didn't care what Drew's biology was
9 as you chose hormones to prescribe?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: I investigated what is
12 necessary to move ahead with that prescription and make
13 it safe for the patient.

14 BY ATTORNEY BROOKS:

15 Q. What was necessary was to determine that
16 biologically Drew was female.

17 Am I correct?

18 ATTORNEY BORELLI: Objection, form.

19 BY ATTORNEY BROOKS:

20 Q. You are going to tell the court that you didn't
21 try to determine whether Drew was biologically male or
22 female?

23 ATTORNEY BORELLI: Objection, form.

24 THE WITNESS: I obtained baseline blood

1 work like I do with every patient, which is recommended
2 by the Endocrine Society that you get baseline hormone
3 levels. I did a physical exam. Not every patient gets
4 to have an ultrasound, a karyotype or a full exon
5 analysis. It's not the way you can practice medicine.

6 BY ATTORNEY BROOKS:

7 Q. Turn with me to page three of the transcript.
8 Two, two and a half inches down, MH, who I believe is
9 the reporter, not somebody working for you but the
10 reporter, says, quote, this is Drew's second time here,
11 closed quote. Do you see that, just two inches down?

12 A. Yeah.

13 Q. It's been quite a few years. Do you believe
14 that that was accurate that what the events that were
15 recorded here were on Drew's second visit to your
16 clinic?

17 ATTORNEY BORELLI: Objection, form.

18 THE WITNESS: It has been so long. To
19 verify it is true I would have to look back at my clinic
20 notes as well as if I even still had it recorded when
21 they were in clinic or not.

22 BY ATTORNEY BROOKS:

23 Q. And do you know, as you sit here today, whether
24 prior to this perhaps second meeting with Drew any

1 psychologist or psychiatrist associated with your new
2 clinic had personally evaluated Drew to confirm the
3 diagnosis of gender dysphoria?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: Before we start treatment
6 we have our mental health team do an assessment of the
7 patient with regard to finding out their --- any
8 psychological challenges that they may be having and
9 confirm if they have gender dysphoria and confirm the
10 criteria from the DSM --- God, my brain is just tired.
11 From the DSM criteria. And in addition to that, we have
12 a person who is a local mental health provider also
13 perform any evaluation and develop a relationship with
14 the patient prior to starting the treatment.

15 BY ATTORNEY BROOKS:

16 Q. Well, let me break that out. Do you require
17 that a psychologist or psychiatrist associated with Duke
18 confirm a diagnosis of gender dysphoria before you
19 proceed with hormonal interventions?

20 ATTORNEY BORELLI: Objection, form.

21 THE WITNESS: I have a team of mental
22 health providers who work with me and do that
23 assessment. That is part of their standard job. And
24 every patient is evaluated by that team. Sometimes it

1 is a psychiatrist, psychologist. Sometimes it is a
2 different kind of mental health provider.

3 BY ATTORNEY BROOKS:

4 Q. Well, if it is not a psychologist or
5 psychiatrist, on what type of mental health --- what
6 qualifications of mental health providers do you rely to
7 make such a diagnosis before prescribing hormonal
8 interventions?

9 ATTORNEY BORELLI: Objection, form.

10 THE WITNESS: You know, there are
11 Licensed Clinical Social Workers that we work with that
12 are used by Duke in a number of capacities with regard
13 to mental healthcare.

14 BY ATTORNEY BROOKS:

15 Q. Is it your testimony --- I want to be careful on
16 this. Is it your testimony that you are willing to rely
17 on a diagnosis by a social worker with no medical,
18 psychological degree before prescribing a hormonal
19 intervention?

20 ATTORNEY BORELLI: Objection, form.

21 THE WITNESS: So the mental health
22 providers that I use have master's degree education in
23 care for patients in this area and have ongoing
24 continuing medical education with regard to their

1 ability to asses the mental health of a patient in front
2 of them.

3 BY ATTORNEY BROOKS:

4 Q. That would be a --- a Master's in social work.
5 Correct?

6 A. Often it's a Master's in social work. Also have
7 people who have Master's in public health in addition I
8 should say.

9 Q. And so if such any evaluations was done by a
10 mental health professional associated with Duke, that
11 would have been at Drew's first visit, not at the visit
12 that was the subject of this podcast recording?

13 ATTORNEY BORELLI: Objection, form.

14 THE WITNESS: At that time it could have
15 been done physically at the first visit. Sometimes we
16 have had them come on a different day than their visit
17 with me. So it is possible it could have been a
18 different day. I just don't remember.

19 BY ATTORNEY BROOKS:

20 Q. Okay.

21 Do you ever rely on the diagnosis of an
22 individual's mental health worker not associated with
23 Duke as an adequate basis to prescribe hormonal
24 interventions?

1 ATTORNEY BORELLI: Objection, form.

2 THE WITNESS: Our clinic policy is to
3 have someone outside of Duke as well as someone inside
4 of Duke.

5 BY ATTORNEY BROOKS:

6 Q. So you may recall --- do you recall that Drew
7 and his mother had driven up from Florida for this
8 meetings?

9 ATTORNEY BORELLI: Objection, form.

10 THE WITNESS: I do remember that.

11 BY ATTORNEY BROOKS:

12 Q. And do you sometimes consider diagnosis given by
13 mental --- for purposes of proceeding with hormonal
14 interventions?

15 ATTORNEY BORELLI: Objection, form.

16 THE WITNESS: If they are licensed to
17 practice in that area or certified in their state, that
18 is what we rely on.

19 BY ATTORNEY BROOKS:

20 Q. At the top of page two --- and again, this is
21 the voice of the reporter, so I want to check it with
22 you. It says, the end of the first full paragraph, that
23 Drew and his mom are driving eight hours from
24 Jacksonville, Florida, to get here because North

1 Carolina is also home to one of the only clinics in the
2 south that treats transgender kids. Do you see that?

3 A. I do.

4 Q. And in your understanding was that true in 2016,
5 that you here had one of the only clinics in the south
6 that treated transgender kids?

7 ATTORNEY BORELLI: Objection, form.

8 THE WITNESS: We were one of a few.

9 BY ATTORNEY BROOKS:

10 Q. And they had driven all the way to North
11 Carolina from Florida precisely because whatever mental
12 health providers they were seeing in Florida didn't have
13 expertise in this area.

14 Is that correct?

15 ATTORNEY BORELLI: Objection, form.

16 THE WITNESS: They didn't drive here to
17 see a mental health provider. They drove here to see me
18 as an endocrinologist.

19 BY ATTORNEY BROOKS:

20 Q. I apologize. Whatever professionals were
21 advising them in Florida didn't have expertise in this
22 area?

23 ATTORNEY BORELLI: Objection, form.

24 THE WITNESS: With regard to hormonal

1 management.

2 BY ATTORNEY BROOKS:

3 Q. What steps, if any, did you take to give
4 yourself comfort that any comorbidities that might be
5 --- might confound the diagnosis of transgenderism had
6 been appropriately addressed before you prescribed
7 hormones for Drew?

8 ATTORNEY BORELLI: Objection to form.

9 THE WITNESS: I mean, I would have to
10 look back at my notes specifically to see exactly what
11 we had in the record. Our policy again is to have
12 someone who has had a relationship with the patient
13 outside of Duke Clinic that states that they have well
14 managed issues with regard to their mental health and
15 are prepared and safe to move forward with gender
16 affirming hormones.

17 BY ATTORNEY BROOKS:

18 Q. As a matter of policy in your clinic do you
19 insist on a diagnosis that will tell you whether or not
20 this patient suffers from autism of any sort?

21 ATTORNEY BORELLI: Objection, form.

22 THE WITNESS: We do require that they
23 have a screening that is performed within our clinic for
24 any potential signs or symptoms of autism.

1 BY ATTORNEY BROOKS:

2 Q. And if you identify that a patient does have
3 some signs or symptoms of autism what significance does
4 that have as to how quickly or whether you are willing
5 to proceed with hormonal interventions?

6 ATTORNEY BORELLI: Objection to the form.

7 THE WITNESS: So again, every patient is
8 different. Autism is a spectrum, as it's described
9 autism spectrum disorder, and so you have to figure out
10 each patient's understanding of their gender identity,
11 what's going on in their life and if they're ready.

12 BY ATTORNEY BROOKS:

13 Q. Do you have any professional opinion as to
14 whether autism itself can cause a patient to feel
15 uncomfortable with their identity?

16 ATTORNEY BORELLI: Objection to form.

17 THE WITNESS: Their whole identity?

18 BY ATTORNEY BROOKS:

19 Q. Yes.

20 A. I ---.

21 ATTORNEY BORELLI: Objection ---.

22 THE WITNESS: Yeah, I don't know if I
23 have seen any reports about their whole identity being
24 called into question just because they have autism.

1 BY ATTORNEY BROOKS:

2 Q. Do you have any professional opinion as to
3 whether autism itself can cause individuals to feel
4 alienated from or disassociated with their gender
5 identity ---

6 ATTORNEY BORELLI: Objection, form.

7 BY ATTORNEY BROOKS:

8 Q. --- or I should say the gender identity
9 associated with their natal sex?

10 ATTORNEY BORELLI: Objection to form.

11 THE WITNESS: With the information that I
12 have worked with on our autism team at Duke is that, you
13 know, it can take a little longer for people with autism
14 to truly understand their gender identity. So we do
15 take care there. That's why we screen.

16 BY ATTORNEY BROOKS:

17 Q. I would like to play a clip from this podcast
18 that includes your voice, the reporter's voice, Drew's
19 voice. I think it will come through loud and clear.
20 I'm optimistic --- for those of you ---.

21 ATTORNEY BORELLI: While you're settling
22 this, will the words from the recording, do they appear
23 in the transcription.

24 ATTORNEY BROOKS: They do. I was about

1 to say that for everybody's benefit.

2 ATTORNEY BORELLI: Thank you, Counsel.

3 ATTORNEY BROOKS: Now, I'm thinking.

4 That has to be live. All right. So that's unmuted.

5 VIDEOGRAPHER: You said one?

6 ATTORNEY BROOKS: What's that?

7 VIDEOGRAPHER: You said one?

8 ATTORNEY BROOKS: But I need to say on
9 the record and tell people --- can the court reporter
10 here me.

11 COURT REPORTER: Yes.

12 ATTORNEY BROOKS: The clip that I'm about
13 to play appears on page four of the transcript that is
14 marked Exhibit 15 and it makes up kind of the center
15 two-thirds of the transcript. All the words that you
16 will hear or perhaps won't hear very well appear on the
17 transcript. We're going to listen to clip one here.

18 ---

19 (WHEREUPON, PODCAST AUDIO WAS PLAYED.)

20 ---

21 BY ATTORNEY BROOKS:

22 Q. The narrator says that Drew's only question was,
23 quote, when can I start testosterone, and you responded
24 today, sound good, yeah, all right. Is that consistent

1 with your recollection of what happened that day?

2 ATTORNEY BORELLI: Objection, form.

3 THE WITNESS: Yes.

4 BY ATTORNEY BROOKS:

5 Q. Was that your voice?

6 A. That was my voice.

7 Q. Okay.

8 And did you know before you came into the room
9 that Drew's goal was to walk out with a testosterone
10 injection or a prescription for a testosterone
11 injection?

12 ATTORNEY BORELLI: Objection to form.

13 THE WITNESS: You know, I don't remember.
14 I don't remember what I knew before in walked in the
15 door. Sometimes I do. Sometimes I don't.

16 BY ATTORNEY BROOKS:

17 Q. Now, I want to be fair. This is --- these are
18 clips and they're carefully done, so I can't be sure
19 whether there are things in between.

20 A. Correct.

21 Q. Do you have any recollection as to any
22 discussion or any further evaluation that happened
23 between, hey, how are you, and your voice, and answering
24 the question when can I start, today?

1 ATTORNEY BORELLI: Objection, form.

2 THE WITNESS: So most typically, before I
3 walk into a room I have reviewed the patient's medical
4 record. I have reviewed their letter from their mental
5 health provider. And I have reviewed any laboratory
6 evaluation that I have received from them prior and
7 generally review their records. So I would come into a
8 visit with that sort of fresh in my mind.

9 BY ATTORNEY BROOKS:

10 Q. So it is consistent with your recollection that
11 on Drew's second meeting with you, you walked into the
12 room having made up your mind to give Drew testosterone?

13 ATTORNEY BORELLI: Objection, form.

14 THE WITNESS: Based on the words that are
15 here, that would be --- I would have reviewed the
16 information that I needed to know that that would be
17 safe.

18 BY ATTORNEY BROOKS:

19 Q. And in between walking in the room and telling
20 Drew today, yay, all right, did you make any further
21 inquiry about whether Drew in the last --- since he last
22 saw you had been suffering from any sort of depression?

23 ATTORNEY BORELLI: Objection to form.

24 THE WITNESS: So typically that is part

1 of our visit. It's not necessarily part that I would
2 do. And we also have forms that they fill out that does
3 an assessment of depression prior to me walking in the
4 room.

5 BY ATTORNEY BROOKS:

6 Q. Did you ensure that an assessment had been done
7 that evaluated the strengths and weaknesses of Drew's
8 relationship with Drew's family?

9 ATTORNEY BORELLI: Objection, form.

10 THE WITNESS: The mental health
11 evaluation does include walking through parent
12 relationships, school relationships, teacher
13 relationships and finding out where those are.

14 BY ATTORNEY BROOKS:

15 Q. Did you feel that you, yourself, needed to have
16 any understanding, for instance, of Drew's relationship
17 with Drew's father before you proceeded to prescribe
18 cross sex hormones?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: I would want to know where
21 their relationships are.

22 BY ATTORNEY BROOKS:

23 Q. So Drew's mother attended. What steps did you
24 take to find out what Drew's relationship with Drew's

1 father was?

2 ATTORNEY BORELLI: Objection, form.

3 THE WITNESS: I don't remember. I would
4 have to look back.

5 BY ATTORNEY BROOKS:

6 Q. And does your clinic before prescribing hormonal
7 interventions make sure that an overall psychotherapy
8 treatment plan has been prepared to diagnose and address
9 any other psychological or social difficulties suffered
10 by the patient?

11 ATTORNEY BORELLI: Objection to form.

12 THE WITNESS: So you know, I follow the
13 guidelines that say that we should have any of the
14 mental health issues well managed and that's why we use
15 --- have our patients have a mental health provider and
16 that's why we have them tell us that in writing.

17 BY ATTORNEY BROOKS:

18 Q. So I'm going to play a second clip that picks up
19 exactly where we left off on the transcript, that is at
20 the very bottom of page five and continuing halfway ---
21 I'm sorry, the very bottom of page four and continuing
22 halfway down page five. If you would.

23

24

1 (WHEREUPON, PODCAST AUDIO WAS PLAYED.)

2 ---

3 ATTORNEY BROOKS: That was background
4 noise. I thought it was coming through here. I
5 apologize. Just start it again. My mistake.

6 ---

7 (WHEREUPON, PODCAST AUDIO WAS PLAYED.)

8 ---

9 BY ATTORNEY BROOKS:

10 Q. Dr. Adkins, do you believe that the basic
11 narrative here accurately describes what happened, that
12 you came in, you spoke with Drew, you went out, and
13 while you were out one of your aides read risk
14 disclosures for consent to Drew and Drew's mother?

15 ATTORNEY BORELLI: Objection, form.

16 THE WITNESS: That is part of it.

17 BY ATTORNEY BROOKS:

18 Q. And the narrator said at the beginning
19 explaining this process that there were still, as of
20 2016, a lot of unknowns about what these hormones will
21 do long term. Was that an accurate statement at the
22 time in your opinion?

23 ATTORNEY BORELLI: Objection, form.

24 THE WITNESS: We've learned a lot more.

1 We have got however many more years, what, five more
2 years at least of information since then. You can't
3 know what every single thing that every drug is going to
4 do forever.

5 BY ATTORNEY BROOKS:

6 Q. One of the things that you included at that time
7 in your cautions or disclosures was that taking these
8 cross sex hormones might prevent a patient who had ---
9 was a natal female from ever being able to get pregnant,
10 even if Drew stopped taking testosterone in the future.

11 Correct?

12 ATTORNEY BORELLI: Objection, form. One
13 other just piece of clarity for the record, I want to
14 make sure that it is clear that the transcript and
15 recording is not a complete recording of the entire
16 visit.

17 ATTORNEY BROOKS: I have made that clear
18 I think.

19 ATTORNEY BORELLI: Thank you, Counsel.

20 BY ATTORNEY BROOKS:

21 Q. My question is one of your disclosures in 2016
22 was that the administration of testosterone to a natal
23 female might mean that that individual would not ever be
24 able to get pregnant even should the patient stop taking

1 testosterone at a future date.

2 Correct?

3 ATTORNEY BORELLI: Objection, form.

4 THE WITNESS: Correct.

5 BY ATTORNEY BROOKS:

6 Q. And that is still part of your disclosure today;
7 is that correct?

8 A. That's part of it. We actually have more
9 studies that show actually an equal fertility rate for
10 our transgender males who have been on testosterone and
11 come off and choose to get pregnant as their cisgender
12 peers, their assigned females at birth who've never been
13 through any testosterone treatment.

14 Q. Because of the present science you still make
15 exactly the same caution in your warnings to patients
16 before prescribing testosterone.

17 Correct?

18 ATTORNEY BORELLI: Objection to form.

19 THE WITNESS: I do.

20 BY ATTORNEY BROOKS:

21 Q. And so the sequence is that you said with regard
22 to administering testosterone, which you cautioned or
23 clinic cautioned could be potentially sterilizing, you
24 as the doctor said to Drew, sound good, yeah, all right.

1 And then you left the room while somebody else read
2 warnings and disclosures.

3 Is that right?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: That doesn't --- is that
6 what the sequence was in this report? It looks like
7 that I also make sure that the patients have adequate
8 time to answer questions. I usually give them this form
9 ahead of the visit so they can review it and in case
10 their reading is their better method versus verbal.
11 That's why we do it in two different ways as far as
12 their learning style. We make every effort to help make
13 sure that our patients understand.

14 ATTORNEY BORELLI: We have been going a
15 while. Can we take a break soon? I think we should.

16 ATTORNEY BROOKS: Fairly soon. We'll
17 finish this line of questioning and this clip.

18 BY ATTORNEY BROOKS:

19 Q. You yourself didn't ever sit down and talk
20 through known or potential side effects with either the
21 child or the mother in this case, did you?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: I don't remember it
24 specifically every visit from 2016 and exactly what

1 happened.

2 BY ATTORNEY BROOKS:

3 Q. As a matter ---.

4 ATTORNEY BORELLI: Counsel, I'm sorry, I
5 think I heard the witness say a moment ago that a break
6 would be good. Why don't we break here? Can we come
7 back in say ten minutes?

8 ATTORNEY BROOKS: We can say that or I
9 can finish this paragraph.

10 ATTORNEY BORELLI: Why don't we break
11 now. We've been going a while. Thank you.

12 VIDEOGRAPHER: Going off the record. The
13 current time reads 2:27 p.m. Eastern Standard Time.

14 OFF VIDEO

15

16 (WHEREUPON, A PAUSE IN THE RECORD WAS HELD.)

17

18 ON VIDEO

19 VIDEOGRAPHER: We're back on the record.
20 Current time reads 2:43 p.m. Eastern Standard Time.

21 BY ATTORNEY BROOKS:

22 Q. Dr. Adkins, in dealing with Drew, you have a
23 social worker read the disclosures, the warnings. Did
24 you, yourself, ever present to Drew options for

1 fertility preservation?

2 ATTORNEY BORELLI: Objection, form.

3 THE WITNESS: Yes, that is a conversation
4 I have with my patients.

5 BY ATTORNEY BROOKS:

6 Q. You, yourself, have that conversation?

7 A. I do.

8 Q. Let's --- and did you explain --- I see that the
9 disclosure --- we heard the disclosure that it's ---
10 using testosterone to appear more masculine is off label
11 use. Is that part of your standard disclosures?

12 ATTORNEY BORELLI: Objection, form.

13 BY ATTORNEY BROOKS:

14 Q. Do you explain to your patients that the fact
15 that it is off label means that no studies that
16 establish safety of use of testosterone for that purpose
17 at the level as would be required for FDA approval have
18 been done?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: No, that wouldn't be an
21 accurate statement. Those studies can be done. They
22 just haven't been presented by the company manufacturing
23 the medication to the FDA to try and get that
24 certification from the FDA.

1 BY ATTORNEY BROOKS:

2 Q. Have you, yourself, ever participated as a
3 physician in a so-called phase one clinica trial?

4 ATTORNEY BORELLI: Objection to form.

5 THE WITNESS: So phase one typically is
6 dose related. I have not done those. I have done phase
7 two, phase three and then after market.

8 BY ATTORNEY BROOKS:

9 Q. Phase one is, among other things, required to
10 establish safety.

11 Am I correct?

12 ATTORNEY BORELLI: Objection, form.

13 THE WITNESS: That is part of the
14 objective of a phase one study.

15 BY ATTORNEY BROOKS:

16 Q. And indeed, it is a required part of the
17 objective.

18 Right?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: Yes.

21 BY ATTORNEY BROOKS:

22 Q. And to your knowledge, has any study of safety
23 of administering testosterone for the purpose of
24 appearing more masculine in natal females ever been done

1 at a level of rigor that could satisfy FDA requirements?

2 ATTORNEY BORELLI: Objection, form.

3 THE WITNESS: So I don't have the FDA
4 standards right in front of me. I have, you know, read
5 articles that report outcomes and side effects and
6 safety profiles. There are other testosterone --- there
7 are testosterone products on the market that are FDA
8 approved for using cisgender females.

9 BY ATTORNEY BROOKS:

10 Q. Do you know whether any safety study has ever
11 been done for administration of testosterone to natal
12 females for the purpose of appearing more masculine at a
13 level of rigor that could satisfy FDA requirements?

14 ATTORNEY BORELLI: Objection, form.

15 THE WITNESS: I can't answer the question
16 without, you know --- I would have to really look at the
17 indications, the FDA rules.

18 BY ATTORNEY BROOKS:

19 Q. Okay.

20 Let's listen to a third and final clip. This
21 one begins with a sentence the last one ended with on
22 page five and runs just onto page six, I believe. End
23 of page five. Let's hear that.

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(WHEREUPON, PODCAST AUDIO WAS PLAYED.)

BY ATTORNEY BROOKS:

Q. All right.

My impression, correct me or tell me if you agree, that clip is just a single unbroken bit of conversation, not pieced together from different things. Is that consistent with what you heard and what you recall?

ATTORNEY BORELLI: Objection, form.

THE WITNESS: You know, I don't remember.

BY ATTORNEY BROOKS:

Q. Okay.

You come back in the room with a prescription in your hand, the warnings have been read while you were outside. You ask, guess what I have in my hand. You heard the clip and I see what it says there. Is the voice that says happy drugs Drew's voice or your voice?

ATTORNEY BORELLI: Objection, form.

THE WITNESS: Mine. My voice.

BY ATTORNEY BROOKS:

Q. The voice that says happy drugs is your voice.

And the voice that says yay, yay, s also your voice? If

1 you want to hear it again you can.

2 A. It's not labeled that way.

3 Q. Well, yay, yay is labeled you?

4 A. Yay, yay is labeled me? Okay.

5 Q. Doctor A?

6 A. It's really confusing because it's ---.

7 Q. Let's do this. Let's listen to this one more
8 time.

9 A. There is confusion.

10 Q. I want you to listen --- don't trust the labels.
11 Listen to the voice on happy drugs. They may be ---.

12 ---

13 (WHEREUPON, PODCAST AUDIO WAS PLAYED.)

14 ---

15 BY ATTORNEY BROOKS:

16 Q. Whose voice says happy drugs?

17 A. That sounded like Drew.

18 Q. Okay.

19 So the labeling you believe is correct. I just
20 wanted to double check that.

21 Are you, as a physician, in light of all of the
22 disclosures that have just been made about potential
23 side effects, potential harmful effects, were you
24 comfortable with the child referring to cross sex

1 hormones as happy drugs?

2 ATTORNEY BORELLI: Objection, form.

3 THE WITNESS: So if you will recall, we
4 use the medication to decrease dysphoria, which is a
5 discomfort, and to improve depression. So any
6 medication that would relieve those things could be
7 described as a happy drug. I'm okay with that.

8 BY ATTORNEY BROOKS:

9 Q. And after Drew says happy drug you said yay,
10 yay. Are you comfortable that's consistent with your
11 role as a doctor in light of potential downsides and
12 side effects of this treatment and this child's life to
13 serve the role of a cheerleader saying yay, yay?

14 ATTORNEY BORELLI: Objection. Counsel, I
15 just want to note for the record it's not clear from
16 that recording that both yays are in the same voice.
17 That's actually not what I heard.

18 ATTORNEY BROOKS: If you have an
19 objection you can raise it later.

20 ATTORNEY BORELLI: I need to make my
21 record now, Counsel.

22 ATTORNEY BROOKS: No, you need to raise
23 your objection now. You get to discuss it further in
24 front of the court.

1 BY ATTORNEY BROOKS:

2 Q. I will re-ask my question. Do you consider it
3 consistent with your role as a physician, in light of
4 the potential downsides and side effects from cross sex
5 hormones for this child, for you to play the role of
6 cheerleader saying yay?

7 ATTORNEY BORELLI: Objection, form.

8 THE WITNESS: So in my job as a physician
9 I often am helping motivate my patients improve their
10 overall health. And in that way I often sound like I am
11 a cheerleader and I am trying to help them believe in
12 themselves and understand and feel good moving forward
13 with medication treatments to have the best likelihood
14 of success. So I may say yay.

15 VIDEOGRAPHER: Excuse me. You got cut
16 out there in the middle of that --- in the middle of
17 your answer.

18 THE WITNESS: Okay.

19 Do you want me to start over?

20 ATTORNEY BROOKS: Who was that?

21 ATTORNEY WILKINSON: That was the court
22 reporter. I can make a recording if everyone is happy
23 with my phone just on the table so we could refer to
24 that later if that's useful if we're concerned about the

1 audio cutting out.

2 ATTORNEY BROOKS: There is no harm in a
3 backup recording. Voices will be identifiable. If you
4 want to set it there by that speaker.

5 ATTORNEY WILKINSON: If you're
6 comfortable.

7 ATTORNEY BORELLI: I just want to check
8 --.

9 COURT REPORTER: Who is talking right
10 now. I'm sorry, who is --- who is talking about their
11 phone. I don't understand. Like, I don't know who's
12 speaking.

13 ATTORNEY BROOKS: Just now my colleague
14 Lawrence Wilkinson is proposing to set his iPhone on
15 record by the speaker here so there will be a backup
16 onsite recording in case anything is dropped over the
17 internet. And that will be made available both to those
18 who are listening and to the court reporter service.
19 Address some of the concerns. So let's fire that up and
20 it will be there.

21 BY ATTORNEY BROOKS:

22 Q. I will continue with my questioning. Did it
23 cause you any concern that in referring --- by referring
24 to a testosterone injection as happy drugs that that was

1 an indication that young Drew was not taking seriously
2 the 20 minutes' worth of cautions and warnings that had
3 just been read?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: So given that the
6 medication is used to decrease dysphoria and improve
7 depressive symptoms, in that way it does make someone
8 happier. And I have no issue with a patient who is
9 using a general reference as happy drugs in that that is
10 part of what will happen with the medication. I didn't
11 have any concerns with regard to the fact that Drew may
12 not have gotten everything he needed to understand what
13 he was going into going forward with this medication.

14 BY ATTORNEY BROOKS:

15 Q. Let's back up to page four of the transcript.
16 And we're not going to listen to any ore clips.
17 Everybody will be happy to know perhaps.

18 ATTORNEY BORELLI: It's unstable.

19 THE WITNESS: There we go.

20 BY ATTORNEY BROOKS:

21 Q. Okay.

22 And towards the top of page four, the second
23 paragraph, the narrator --- and this is not you speaking
24 and it is not Drew's mother speaking. The narrator says

1 she doesn't like talking about what Drew's life was like
2 before he started transitioning. But when I asked her
3 how she knew living as a boy was the right choice for
4 Drew, she was blunt. She said I'd rather have a living
5 son than a dead daughter. Do you see that?

6 A. I do.

7 Q. Did you ever tell Drew's mother that that was
8 the choice that she faced, between a living son and a
9 dead daughter?

10 ATTORNEY BORELLI: Objection to form.

11 THE WITNESS: I would not have used that
12 phrase. I would have discussed the risk of suicidality.

13 BY ATTORNEY BROOKS:

14 Q. Did you ever hear Drew's mother say she
15 understood that was the choice she faced, between a
16 living son and a dead daughter?

17 ATTORNEY BORELLI: Objection, form.

18 THE WITNESS: You know, I have heard it
19 since then because of the podcast, so I can't remember
20 if I heard it before then or not. I don't recall
21 hearing it before then.

22 BY ATTORNEY BROOKS:

23 Q. When you saw the title to the podcast did you
24 call WNYC and express any concern that that title could

1 be misleading?

2 ATTORNEY BORELLI: Objection, form.

3 THE WITNESS: I did not.

4 BY ATTORNEY BROOKS:

5 Q. Have you ever consulted research on the rate of
6 suicide among preadolescents for any purpose?

7 ATTORNEY BORELLI: Objection to form.

8 BY ATTORNEY BROOKS:

9 Q. In any category?

10 A. Repeat the question, please.

11 Q. Have you ever consulted research or data about
12 the rate of suicide among preadolescents, period?

13 ATTORNEY BORELLI: Objection, form.

14 THE WITNESS: Preadolescents, have I
15 consulted research on suicidality on preadolescents, so
16 before puberty. Not in a while.

17 BY ATTORNEY BROOKS:

18 Q. You are aware, are you not, that incidences of
19 actual suicide are extremely rare in individuals of all
20 categories before puberty?

21 ATTORNEY BORELLI: Objection, form.

22 THE WITNESS: That sounds consistent with
23 the leading causes that I recall for death before
24 puberty.

1 BY ATTORNEY BROOKS:

2 Q. And you, yourself, are not aware of a single
3 case of suicide by a preadolescent gender dysphoria
4 patient that has come to your clinic?

5 ATTORNEY BORELLI: Objection, form.

6 THE WITNESS: No.

7 BY ATTORNEY BROOKS:

8 Q. And have you consulted any research on the rate
9 of actual suicide by children suffering from gender
10 dysphoria under the age of 15?

11 ATTORNEY BORELLI: Objection, form.

12 THE WITNESS: Have I? Yes.

13 BY ATTORNEY BROOKS:

14 Q. And what did that --- what source do you have in
15 mind when you say that?

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: Again, I have trouble with
18 remembering and there is a wide variety of reports, some
19 as --- from 25 to 30 percent, some as high as 40
20 percent. And those are suicide attempts, as I recall,
21 which means that the folks that died wouldn't have even
22 been identified.

23 BY ATTORNEY BROOKS:

24 Q. Well, you are aware that there's a very wide

1 statistical gap between suicide attempts and suicides.

2 Correct?

3 ATTORNEY BORELLI: Objection to form.

4 THE WITNESS: There is some variation
5 between suicide attempts and what was the word, suicide
6 ideation, yeah.

7 BY ATTORNEY BROOKS:

8 Q. No. What I said is there is a very wide gap
9 between suicide attempts and actual completed suicide?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: There is a gap between.
12 Not every one who attempts. Otherwise, there wouldn't
13 be a difference in the name.

14 BY ATTORNEY BROOKS:

15 Q. In fact, you know as a matter of professional
16 expertise that it is a very wide gap, do you not?

17 ATTORNEY BORELLI: Objection.

18 THE WITNESS: I would have to look at the
19 literature, at what the numbers look like and describing
20 it why is an opinion.

21 BY ATTORNEY BROOKS:

22 Q. Has any patient of the 500 under your care ever
23 committed suicide at an age younger than 14?

24 ATTORNEY BORELLI: Objection, form.

1 THE WITNESS: Excuse me. No.

2 BY ATTORNEY BROOKS:

3 Q. Have you followed up so that you have current
4 information about Drew's mental, physical and social
5 health as of today, which would be about age 21?

6 ATTORNEY BORELLI: Objection, form.

7 THE WITNESS: Drew's no longer my
8 patient, has transitioned to adult care. That's not
9 what I do, so I don't have access to that.

10 BY ATTORNEY BROOKS:

11 Q. What procedures do you have in place, if any, in
12 your clinic to follow up long term with those whom you
13 have prescribed puberty blockers or cross sex hormones
14 for?

15 ATTORNEY BORELLI: Objection, form.

16 THE WITNESS: So you know, here at Duke
17 we have a multidisciplinary team. As --- I don't know
18 if I mentioned them before. It includes a wide variety
19 of individuals. And that group discusses every month
20 our patients, any concerns or questions. In addition,
21 that group has put together a registry that starts when
22 they come to my clinic and we follow their health, their
23 mental health through the time that they are in our
24 clinic and then when --- oops. Sorry. And then when

1 they are adults transitioning to our adult care team.
2 And in that way I'm able to keep up with those patients
3 who remain at Duke for adult care.

4 BY ATTORNEY BROOKS:

5 Q. So you have been practicing this field I think
6 you said since about 2013. And the patients that you
7 saw let's say in 2013, 2014, 2015, I think you said most
8 of your patients presented older than age --- I don't
9 recall exactly. Your average presentation is older than
10 13?

11 ATTORNEY BORELLI: Object to the form.

12 THE WITNESS: Yes.

13 ATTORNEY BORELLI: You got to pause so I
14 can get in an objection.

15 THE WITNESS: Oh, yeah. Yeah.

16 BY ATTORNEY BROOKS:

17 Q. So --- yeah. So those patients on average are
18 now in their upper teens or perhaps 20?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: Let's see. I have patients
21 who are older than that. I'm not sure of an average. I
22 have not calculated an average.

23 BY ATTORNEY BROOKS:

24 Q. Do you have any procedures in place to attempt

1 to monitor the mental health of your patients five years
2 after you first prescribe puberty blockers or cross sex
3 hormones?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: The patients that remain
6 within our registry do have regular mental health
7 follow-up. We have a team on the adult side as well in
8 both of the two clinics that we work with.

9 BY ATTORNEY BROOKS:

10 Q. What percentage of your patients that you
11 yourself have authorized cross sex hormones do you have
12 access to data about their mental health five years
13 after initiation of hormone treatment?

14 ATTORNEY BORELLI: Objection, form.

15 THE WITNESS: Some are still present in
16 the clinic. I would have access to those. You know,
17 I'm not supposed to access records specifically if
18 they're no longer in my care. The provider can reach
19 out to me with concerns and have a very close
20 relationship with the adult providers and they do ask me
21 questions about some of those. So in that way I would
22 have access as well as when we calculate on a population
23 base within our registry any outcomes there.

24 BY ATTORNEY BROOKS:

1 Q. As a matter of research, has --- have you or
2 anybody associated with your clinic attempted a
3 follow-up survey or systematic series of interviews of
4 all patients who were prescribed hormones within, for
5 instance, some particular time period?

6 ATTORNEY BORELLI: Objection, form.

7 THE WITNESS: So we currently are
8 enrolling patients in that study. It's not complete.

9 BY ATTORNEY BROOKS:

10 Q. As we sit here today, you don't have any
11 systematic reasonably thorough information on the mental
12 health condition of let's say patients for whom you
13 first prescribed hormonal interventions five years ago.

14 Is that correct?

15 ATTORNEY BORELLI: Objection. Objection
16 to form.

17 THE WITNESS: I would consider, you know,
18 a registry with research based systematic method.

19 BY ATTORNEY BROOKS:

20 Q. A registry with research based ---?

21 A. That is research based is a systematic program
22 to do that and find out follow-up.

23 Q. What do you mean by registry that it is research
24 based?

1 one. It is possible.

2 BY ATTORNEY BROOKS:

3 Q. Did you read this?

4 A. I haven't read this article.

5 Q. There was a lot of conversation around a recent
6 article by Dr. Edwards Leeper and Dr. Anderson but you
7 didn't bother to read it?

8 ATTORNEY BORELLI: Objection to form.

9 THE WITNESS: I have had discussions with
10 my colleagues around the substance. I haven't had the
11 time to read it.

12 BY ATTORNEY BROOKS:

13 Q. Have you had professional interactions in the
14 past with Dr. Edwards Leeper?

15 ATTORNEY BORELLI: Objection, form.

16 THE WITNESS: It's possible that we
17 taught at a same conference once, but I don't recall
18 ever having a conversation.

19 BY ATTORNEY BROOKS:

20 Q. And have you had professional interactions with
21 Dr. Anderson?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: I have not.

24 BY ATTORNEY BROOKS:

1 Q. Are you generally aware of Dr. Edwards Leeper's
2 reputation in the field?

3 ATTORNEY BORELLI: Objection, form.

4 THE WITNESS: Yes.

5 BY ATTORNEY BROOKS:

6 Q. How would you describe that reputation at least
7 prior to publication of this article?

8 ATTORNEY BORELLI: Objection, form.

9 THE WITNESS: In general, I would not
10 necessarily say that it has changed. People have
11 respect for Dr. Edwards Leeper and her publications in
12 general. I don't know about specific ---.

13 BY ATTORNEY BROOKS:

14 Q. People generally have respect for her
15 publications?

16 A. Generally. I don't know about every one.

17 Q. Sure. Were you invited to participate as a
18 member of the committee to revise the WPATH so-called
19 standards of care relating to treatment of transgender
20 individuals?

21 ATTORNEY BORELLI: Objection, form.

22 THE WITNESS: I was.

23 BY ATTORNEY BROOKS:

24 Q. Are you doing that?

1 A. No.

2 Q. And did you participate in the task force for
3 the American Psychological Association, which developed
4 guidelines for practice guidelines for work with
5 transgender individuals?

6 ATTORNEY BORELLI: Objection, form.

7 THE WITNESS: I have not participated in
8 that, no.

9 BY ATTORNEY BROOKS:

10 Q. Okay.

11 And let me mark the next one, which is an
12 article that consists of an interview with Dr. Anderson.
13 This I will mark as Exhibit 17?

14 ---

15 (Whereupon, Adkins Exhibit 17, Anderson
16 Interview, was marked for
17 identification.)

18 ---

19 BY ATTORNEY BROOKS:

20 Q. And I believe I asked if you knew her or are you
21 familiar with the reputation of Dr. Anderson, Dr. Laura
22 Anderson?

23 ATTORNEY BORELLI: Objection, form.

24 THE WITNESS: Actually, no.

1 BY ATTORNEY BROOKS:

2 Q. So as a representation there I know that Dr.
3 Anderson is transgender, is a natal male who's been
4 living with a female gender identity for many years.
5 That you don't know about one way or the other?

6 ATTORNEY BORELLI: Objection, form.

7 THE WITNESS: I do not know that.

8 BY ATTORNEY BROOKS:

9 Q. Okay.

10 Let me take you back to Exhibit --- sorry, what
11 was the first one we marked? Was it 17 and 18 or 16 and
12 17?

13 ATTORNEY WILKINSON: Sixteen (16) and 17,
14 16 and 17.

15 BY ATTORNEY BROOKS:

16 Q. Let me take you back to Exhibit 16. And the
17 first paragraph contains a narrative. I have no idea
18 whether it is a specific narrative or kind of case study
19 narrative about this girl Patricia who told her parents
20 she was transgender at age 13. It goes on to say that a
21 year earlier she had been sexually assaulted by an older
22 girl. Do you know what percentage of natal females who
23 come to your clinic after the beginning of puberty have
24 experienced sexual assault before they present to you?

1 ATTORNEY BORELLI: Objection, form.

2 THE WITNESS: I can't give you a
3 percentage. It is something that we discuss with every
4 patient in their intake assessment.

5 BY ATTORNEY BROOKS:

6 Q. Do you believe that natal females who have
7 suffered sexual assault are disproportionately
8 represented among the population who present
9 experiencing gender dysphoria or gender incongruence?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: So those assigned female at
12 birth, I can't say that based on my review of my
13 information that they are overrepresented. And I would
14 have to have a comparison group. You know, one in four
15 cisgender women have been attacked sexually at some
16 point in their life. It's hard to get around that.

17 BY ATTORNEY BROOKS:

18 Q. Let me ask you to turn to page three of Exhibit
19 16.

20 A. I'm sorry ---.

21 Q. Page three, Exhibit 16.

22 A. Okay. Thank you. I just had a drink of water.

23 Q. Of course.

24 A. They're not labeled on my paper.

1 Q. The pages are not. You are right. I wrote them
2 on mine. You would have to count them to be sure, but
3 the third page.

4 A. I think I got it.

5 Q. These authors, Doctors Edwards Leeper and
6 Anderson, state at the end of the paragraph at the top
7 of page three that, quote, we may be harming some of the
8 young people we strive to support, people who may not be
9 prepared for the gender transitions they are being
10 rushed into, closed quote.

11 Do you see that?

12 A. Where again?

13 Q. It's the very last sentence of the partial
14 paragraph at the top?

15 A. Right. Got it. Thank you. Yeah, I see it.

16 Q. Do you share that concern expressed by Dr.
17 Edwards Leeper and Dr. Anderson that is that some young
18 people are being rushed into transitions and may be
19 harmed rather than supported as a result?

20 ATTORNEY BORELLI: Objection, form.

21 THE WITNESS: So if you're following the
22 recommendations there's at least six months of time. In
23 my general experience it is years before they even
24 present to my clinic. So I don't --- I would not say

1 that that's a rush.

2 BY ATTORNEY BROOKS:

3 Q. Well, and my question wasn't about your clinic
4 now. My question was do you share the concern of these
5 authors that looking around the practice more generally
6 that some young people are being harmed rather than
7 supported because they are being rushed into transitions
8 they may not be fully prepared for?

9 ATTORNEY BORELLI: Objection, form.

10 THE WITNESS: So within research and
11 within my conversations with my colleagues who are doing
12 similar work, we practice similarly. I don't agree that
13 they are rushing these kids.

14 BY ATTORNEY BROOKS:

15 Q. Let me ask you to turn over to the next page.
16 And there in the second paragraph from the bottom is a
17 sentence that begins in a recent study. Do you see that
18 sentence?

19 A. I must not be on the right page.

20 Q. It is the penultimate page.

21 A. In the ---.

22 Q. In the penultimate paragraph.

23 A. Providers, that one?

24 Q. In a recent study of 100 detransitioners. I

1 think it does, it begins ---.

2 A. Okay. All right.

3 Q. Within that you'll find the sentence that begins
4 in recent study.

5 A. Got it.

6 Q. And it says in a recent study 100
7 detransitioners, for instance, 38 percent reported that
8 they believed their original dysphoria have been caused
9 by something specific such as trauma, abuse or mental
10 health condition, closed quote.

11 Do you see that?

12 A. I do.

13 Q. Are you, yourself, aware of a recently published
14 survey of 100 detransitioners by Dr. Litman of Brown
15 University?

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: I have not seen that
18 report.

19 BY ATTORNEY BROOKS:

20 Q. Are you aware of that?

21 ATTORNEY BORELLI: Objection to form.

22 THE WITNESS: No, actually. Again, I
23 don't remember names, so when you ask me about an
24 article by Doctor Brown, I know 100 Doctor Brown. And I

1 have seen some articles about de-transition. So without
2 that in front of me to really say, yes, I've seen that
3 article --- it's possible. I do my best to keep up on
4 the literature.

5 BY ATTORNEY BROOKS:

6 Q. All right. I'm used to wetting my fingers ---
7 let me take you back to the previous page, the third
8 paragraph --- and the paragraph begins comprehensive
9 assessment. Do you see that paragraph?

10 A. Yes.

11 Q. And at the end of that the last sentence reads
12 the messages that teens get from Tik-Tok and other
13 sources may not be very productive for understanding
14 this constellation of issues, referring to gender
15 dysphoria-related issues. Do you see that sentence?

16 A. I do.

17 Q. Do you share the concern of these authors, young
18 people are being unduly influenced on issues of gender
19 identity by social media messages?

20 ATTORNEY BORELLI: Objection to form.

21 THE WITNESS: As a pediatrician, I have
22 my reservations about social media and their effects on
23 teens. Always reminding teens in my care that they need
24 to check their sources and that TikTok isn't, for

1 example, peer reviewed and that they should rely on, you
2 know, the knowledge of their provider. And they're free
3 to ask those questions and learn that information from a
4 reliable person within our clinic.

5 BY ATTORNEY BROOKS:

6 Q. Do you share the concern that teens are
7 particularly subject to peer pressure through social
8 media?

9 ATTORNEY BORELLI: Objection, form.

10 THE WITNESS: So you know, peer pressure
11 is a recognized phenomenon with adolescents that can
12 affect teens.

13 BY ATTORNEY BROOKS:

14 Q. Is your clinic seeing an increasing number of
15 older teens or young adults who are considering
16 de-transitioning?

17 ATTORNEY BORELLI: Objection, form.

18 THE WITNESS: I'm sorry. Repeat the very
19 first part of that.

20 BY ATTORNEY BROOKS:

21 Q. Is your clinic seeing an increasing number of
22 older teens or young adults who are considering
23 de-transitioning?

24 ATTORNEY BORELLI: Objection, form.

1 THE WITNESS: Increasing over time ---

2 BY ATTORNEY BROOKS:

3 Q. Yes.

4 A. --- or in the past? I wouldn't say the rate has
5 increased in my clinic.

6 Q. Within the last --- well, let's say within 2021
7 or whatever of 2022 there has been, how many patients
8 have raised with you or to your knowledge anyone in your
9 clinic the possibility of de-transitioning?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: In that timeframe, I would
12 have to look back exactly. Only three.

13 BY ATTORNEY BROOKS:

14 Q. Are you aware of multiple reports that the
15 proportion of young people presenting with gender
16 dysphoria or gender incongruence among teens has shifted
17 heavily towards girls over the last decade?

18 ATTORNEY BORELLI: Objection, form.

19 THE WITNESS: You will have to clarify
20 the question because girls ---.

21 BY ATTORNEY BROOKS:

22 Q. Are you aware that the proportion of teens
23 presenting at clinics with gender dysphoria or gender
24 incongruence who are natal female has increased greatly

1 over the last decade?

2 ATTORNEY BORELLI: Objection, form.

3 THE WITNESS: I have seen at least one
4 study would suggest that. It has not been my clinical
5 experience.

6 BY ATTORNEY BROOKS:

7 Q. That has not been the experience in your clinic?

8 A. No.

9 Q. Let me take you to paragraph 18 of your expert
10 report. And there you express the opinion that a
11 person's gender identity cannot be voluntarily changed
12 and is not undermined or altered by the existence of
13 other sexually related characteristics that do not align
14 with it. Do you see that?

15 A. I do.

16 Q. And let me, in fact, have the Declaration ---
17 the preliminary injunction declaration, which is tab one.

18 ATTORNEY BROOKS: I'm going to mark that
19 as Exhibit --- or did I already mark it?

20 ATTORNEY WILKINSON: Not marked.

21 ATTORNEY BROOKS: I did not. So what
22 exhibit was that?

23 ATTORNEY WILKINSON: Eighteen (18).

24 ATTORNEY BROOKS: We will mark the

1 Declaration of Deanna Adkins dated 5/21/2021 as Exhibit
2 18.

3

4

(Whereupon, Adkins Exhibit 18,

5

Declaration of Deanna Adkins, M.D., was

6

marked for identification.)

7

8 BY ATTORNEY BROOKS:

9 Q. And in this document also I want to call your
10 attention to paragraph 18. And in the declaration filed
11 in May of last year in paragraph 18 you wrote a person's
12 gender identity is fixed. Do you see that language?

13 A. I do.

14 Q. And you eliminated the word --- the assertion
15 that a person's gender identity is fixed from your
16 expert declaration submitted more recently. Do you see
17 that?

18 A. I do.

19 Q. Why did you make that omission?

20 A. I think that it's too easy to misinterpret.

21 Q. Explain.

22 A. So when I'm talking about someone's gender
23 identity it is what it is. And nothing that I do or
24 they do or their family does can change that gender

1 identity. Their understanding of that gender identity
2 may change over time. And that was my --- what I was
3 trying to say was not changeable. And when you use the
4 other word it seems that it could be misinterpreted to
5 me.

6 Q. So you don't mean to say that gender identity
7 never changes in individuals, do you?

8 ATTORNEY BORELLI: Objection, form.

9 THE WITNESS: That's not what I said. I
10 said gender identity is what it is. And your
11 understanding of it may change over time.

12 BY ATTORNEY BROOKS:

13 Q. We looked in the Endocrine Society Guidelines,
14 at the language that refers to individuals who
15 experience a continuous and rapid involuntary
16 alternation between male and female. Do you remember
17 that language?

18 A. I do.

19 Q. How does that relate --- how is that consistent
20 with your opinion that gender identity is fixed and
21 means what it is?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: So gender identity is that
24 it moves somewhat along the spectrum. That doesn't

1 change. That is their identity.

2 BY ATTORNEY BROOKS:

3 Q. That doesn't change, but you have a professional
4 opinion that individuals who experience a gender fluid
5 identity at some period in their life inevitably remain
6 gender fluid for the rest of their lives?

7 ATTORNEY BORELLI: Objection, form.

8 THE WITNESS: Understanding their gender
9 identity may change, what the identity is, is under
10 exploration throughout their lives. From the time
11 they're young they're discovering their gender identity.

12 BY ATTORNEY BROOKS:

13 Q. Well, you consider part of your professional
14 practice to believe what people tell you about their
15 gender identity, don't you?

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: The gender identity is
18 something that can only be explained by a person because
19 it is their knowledge of themselves.

20 BY ATTORNEY BROOKS:

21 Q. And if a person at one point in time feels that
22 their gender identity is fluid and another point in time
23 feels that it is not, on what basis do you say that
24 their true gender identity hasn't changed?

1 ATTORNEY BORELLI: Objection, form.

2 THE WITNESS: Everyone's gender identity
3 is how they explain it. They may understand it
4 differently over time. Just because I say I don't like
5 strawberries when I'm eight and I do like strawberries
6 now doesn't meant I never liked strawberries to begin
7 with. It means I finally had a good strawberry.

8 ATTORNEY BROOKS: Let me have tab 12.
9 Let me mark as Exhibit 20.

10 ATTORNEY WILKINSON: Nineteen (19).

11 ATTORNEY BROOKS: Let me mark as Exhibit
12 19, an article from Herbert Health Publishing by Sadra
13 Katz-Wise, entitled Gender Fluidity: What it Means and
14 Why Support Matters.

15

16 (Whereupon, Adkins Exhibit 19, 2020
17 Herbert Health Publishing Article, was
18 marked for identification.)

19

20 BY ATTORNEY BROOKS:

21 Q. First I'll ask if you have any professional
22 contact with Doctor Sadra Katz-Wise?

23 A. I don't see the name spelled out. It doesn't
24 sound familiar.

1 Q. It's just under the graphic here ahead of the
2 text. You'll see the name.

3 A. Oh, in red. That's why I didn't see it.

4 Q. Yeah, exactly. Right.

5 A. Got it. Katz-Wise. No.

6 Q. I see, when I look her up, that Dr. Katz-Wise is
7 associated with Boston Children's Hospital and Harvard
8 Medical School. That doesn't refresh your recollection
9 as to any previous professional interactions with her?

10 A. Again, I'm terrible with names.

11 Q. You're aware that Boston Children's Hospital has
12 a high reputation in the area of transgender therapy?

13 ATTORNEY BORELLI: Objection, form.

14 THE WITNESS: Well, they have been
15 involved in transgender therapy for a long time.

16 BY ATTORNEY BROOKS:

17 Q. And they have a high reputation?

18 ATTORNEY BORELLI: Objection, form.

19 THE WITNESS: In general people feel like
20 they do a good job.

21 BY ATTORNEY BROOKS:

22 Q. Let me ask you to turn to the second page. And
23 down at the bottom is a heading that says what's the
24 difference between gender fluid and transgender. Do you

1 see that?

2 A. I do.

3 Q. And the first sentence there says while some
4 people develop a gender identity early in childhood,
5 others may identify with one gender at one time and then
6 another gender later on.

7 Do you see that?

8 A. I do.

9 Q. And do you agree or disagree with that statement
10 by Dr. Sabar Katz-Wise?

11 ATTORNEY BORELLI: Objection, form.

12 THE WITNESS: So she is not saying that
13 their gender identity changes. You know, at different
14 times in your life your understanding may be that this
15 is the group that I belong with. And as you learn more
16 about your experience and your gender, that can change.

17 BY ATTORNEY BROOKS:

18 Q. Dr. Adkins, how do you as a clinician --- if you
19 have a patient who at one time identifies one way and
20 another time identifies another way, how do you as a
21 clinician determine which of those is that patient's
22 true gender identity, given that you've said that gender
23 identity is something that only the patient can express
24 to you?

1 ATTORNEY BORELLI: Objection, form.

2 THE WITNESS: So you know, we're not sort
3 of doing anything to influence that in our patients
4 until they come to us later and have had lots of time to
5 reflect on that. They by the guidelines need to have at
6 least six months of identification with and
7 understanding that gender identity is a particular way.
8 And typically gender identity is starting to consolidate
9 in adolescence and have a good understanding of your
10 identity at that time.

11 BY ATTORNEY BROOKS:

12 Q. What do you understand to be meant by the term
13 gender incongruence?

14 A. It is similar to the gender identity not
15 matching your sex assigned at birth.

16 Q. Let me ask you to find Exhibit 4, 2007 Endocrine
17 Society guidelines. And turn if you would to page 3879,
18 first column under the heading evidence, it reads in
19 most children diagnosed with GD/gender incongruence it
20 did not persist into adolescence.

21 Do you see that?

22 A. I did.

23 Q. So the point here is that these children were,
24 in fact, diagnosed with gender dysphoria or gender

1 incongruence which you just said means that their gender
2 identity doesn't match their gender assigned at birth.
3 And then the Endocrine Society goes on to say that that
4 identity, that sense of incongruence does not persist
5 into adolescence.

6 Do you see that?

7 ATTORNEY BORELLI: Objection, form.

8 THE WITNESS: I do.

9 BY ATTORNEY BROOKS:

10 Q. And how do you reconcile that with your
11 previously expressed opinion that gender identity is,
12 quote, fixed?

13 ATTORNEY BORELLI: Objection, form.

14 THE WITNESS: So this is a random piece
15 out of this whole publication. They are talking --- as
16 far as I can tell right here, and again I would be
17 speculating, that it is about a particular piece of
18 medical evidence. And medical evidence in this area has
19 varied. It's based on the different groups and the way
20 they were recruited, et cetera.

21 BY ATTORNEY BROOKS:

22 Q. Well, you're --- never mind on a particular
23 piece. You're well aware, are you not, that there are
24 multiple studies that indicate the substantial majority

1 of children who are diagnosed with gender dysphoria
2 desist from experiencing gender dysphoria by some stage
3 in adolescence?

4 ATTORNEY BORELLI: Objection, form.

5 BY ATTORNEY BROOKS:

6 Q. You discuss that in your report, do you not?

7 A. I'm sorry. Can you repeat the question?

8 Q. You are aware that there are multiple studies
9 that have found that children diagnosed with gender
10 dysphoria, the large majority of those individuals
11 desist from experiencing gender dysphoria by some time
12 in adolescence?

13 ATTORNEY BORELLI: Objection, form.

14 THE WITNESS: And I don't typically see
15 those patients in my clinic.

16 BY ATTORNEY BROOKS:

17 Q. But you're aware of the science that is
18 described though.

19 Right?

20 ATTORNEY BORELLI: Objection, form.

21 THE WITNESS: There are patients ---
22 there are studies that were done in the past that were
23 not well done and had a bias with the recruitment that
24 overlapped with other issues. I'm aware of those

1 studies. And children are not being treated in my
2 clinic for gender dysphoria. Adolescents are who we
3 treat in our clinic.

4 BY ATTORNEY BROOKS:

5 Q. Well, the study that the Endocrine Society chose
6 to cite for this proposition just a little lower in that
7 paragraph it says as follows. And this is 2017
8 Endocrine Society Guidelines. They say a large
9 majority, about 85 percent of prepubertal children with
10 a childhood diagnosis did not remain gender
11 dysphoric/gender incongruent into adolescence.

12 Do you see that language?

13 A. I see that language.

14 Q. And this Endocrine Society considered that
15 science worth citing rather than dismissing it as poorly
16 done, as you just attempted.

17 Correct?

18 ATTORNEY BORELLI: Objection, form.

19 THE WITNESS: In your goals in creating
20 guidelines you want to be presenting the information
21 that's available. This study is available.

22 BY ATTORNEY BROOKS:

23 Q. And the study in question is one by some of the
24 most highly respected researchers in the field.

1 Am I correct?

2 ATTORNEY BORELLI: Objection.

3 BY ATTORNEY BROOKS:

4 Q. I see you looking at the footnote?

5 A. Right.

6 Q. Those are among the most highly respected
7 researchers in the field.

8 Correct?

9 A. They are some of the --- they're some of the
10 original researchers.

11 Q. And to this very day they are among the most
12 highly respected in the field.

13 Am I right?

14 ATTORNEY BORELLI: Objection, form.

15 THE WITNESS: In general, they are doing
16 good research and publications. I can't say everything
17 they do is beautiful.

18 BY ATTORNEY BROOKS:

19 Q. Dr. Adkins, do you refuse to acknowledge that
20 Dr. Steemsma, DeVries and Cohen-Kettenis are among the
21 most highly respected researchers in your field?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: Of their work that I have
24 read and seen in general it is based on standards of

1 medical literature done well, though I have not read
2 every study. I'm not going to comment on everything
3 that they have done. A lot of the things I'm aware of
4 are done well.

5 BY ATTORNEY BROOKS:

6 Q. I didn't ask you to comment on a single one of
7 their articles. I asked you isn't their reputation
8 among the highest in your field?

9 ATTORNEY BORELLI: Objection, form.

10 THE WITNESS: If --- for gender-affirming
11 care, yes.

12 BY ATTORNEY BROOKS:

13 Q. Thank you. How does their finding in large
14 majority of children diagnosed with gender dysphoria
15 desist from experiencing gender dysphoria by some stage
16 in adolescence square with your opinion that gender
17 identity is, quote, fixed?

18 ATTORNEY BORELLI: Objection, form.

19 THE WITNESS: I'm sorry. Where are you
20 reading from and what was that again?

21 BY ATTORNEY BROOKS:

22 Q. How does their finding that large majority of
23 children diagnosed with gender dysphoria before puberty
24 desist from experiencing gender dysphoria by some stage

1 in adolescence fit with your expressed opinion that
2 gender identity is fixed?

3 ATTORNEY BORELLI: Objection, form.

4 THE WITNESS: So they are talking about
5 prepubertal children. Prepubertal children haven't gone
6 through their real under --- development of
7 understanding of their gender identity or their
8 consolidation of gender identity at that time. It's
9 kind of a false endpoint to put it that way because
10 we're not really again treating these young children and
11 we're not changing anything about them. These patients
12 wouldn't even come to my clinic.

13 BY ATTORNEY BROOKS:

14 Q. You don't see prepubertal children at your
15 clinic?

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: Very rarely.

18 BY ATTORNEY BROOKS:

19 Q. And?

20 A. Gender clinic?

21 Q. Patients you treat in any capacity?

22 ATTORNEY BORELLI: Objection to form.

23 THE WITNESS: I see all kinds of patients
24 from birth until --- I'm credentialed to 30.

1 BY ATTORNEY BROOKS:

2 Q. Do you in your professional work deal with
3 prepubertal children who are experiencing gender
4 dysphoria?

5 ATTORNEY BORELLI: Objection, form.

6 THE WITNESS: Some.

7 BY ATTORNEY BROOKS:

8 Q. Okay.

9 And do you want to revise the statement in your
10 report to say instead that after puberty gender identity
11 is fixed?

12 ATTORNEY BORELLI: Objection, form.

13 THE WITNESS: Will you point that out to
14 me?

15 BY ATTORNEY BROOKS:

16 Q. I'm sorry, point what out to you?

17 A. That particular statement in my report.

18 Q. I misspoke. You asserted in your declaration
19 that gender identity was fixed and my question is on
20 consideration would you prefer to say that gender
21 identity is fixed after puberty has occurred?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: So I didn't put that in a
24 way that --- again, we eliminated the word fixed because

1 of the easy ability to misconstrue that. People undergo
2 a period of time in life where they understand their
3 gender better than other times. And puberty is part of
4 --- part of the mix.

5 BY ATTORNEY BROOKS:

6 Q. So --- and this is the opportunity --- you're
7 here, so we're not going to misunderstand your words.
8 You signed and swore to an affidavit last year in which
9 you said gender identity is fixed. I'm giving you an
10 opportunity if you want to clarify or qualify that. And
11 my question to you is, is it now your testimony that
12 gender identity is fixed once puberty has occurred?

13 ATTORNEY BORELLI: Objection, form.

14 THE WITNESS: Again, I think we have
15 another document here that doesn't use the word fixed.
16 Would you like me to go back and read that part? I can
17 read through it and find it for you.

18 BY ATTORNEY BROOKS:

19 Q. No. I would like to work with your sworn
20 document from May of last year in which you said it was
21 fixed.

22 A. When we update documents we try to clarify
23 anything that might be confusing.

24 Q. Dr. Adkins, in May of 2021, which is not so long

1 ago, you swore under oath that it was your professional
2 opinion that gender identity was fixed. I'm entitled to
3 ask you about that. The fact that you wanted to change
4 a later document is interesting. It doesn't deprive me
5 of the right to ask you questions about that document.

6 My question for you now is do you want to revise
7 that statement to express the opinion that gender
8 identity is fixed after puberty?

9 ATTORNEY BORELLI: Objection, form. I
10 apologize, Counsel. Can we --- I'm sorry, just lost
11 track. Have you introduced the PI declaration?

12 ATTORNEY BROOKS: I have.

13 ATTORNEY BORELLI: What exhibit number is
14 it?

15 ATTORNEY BROOKS: It is 18. Paragraph
16 18.

17 ATTORNEY BORELLI: Paragraph 18. Thank
18 you. Objection to form.

19 THE WITNESS: So I don't think that my
20 description of people's understanding of gender identity
21 and the way that we understand its development has
22 changed. I can't do anything to change their identity.
23 You can't do it. Their parents can't do it. And in
24 that way I still agree with the fact that in the way

1 that that was meant to be stated, that it can't be
2 changed. Fixed is a similar word. I use that word.

3 BY ATTORNEY BROOKS:

4 Q. So and I didn't ask you about our ability to
5 change somebody else. Let me ask you a different
6 question. At which developmental stage in your
7 professional opinion does gender identity become fixed?

8 ATTORNEY BORELLI: Objection, form.

9 THE WITNESS: Again, I believe I said
10 already that gender identity is what it is from the time
11 you are young. Your understanding of that develops over
12 time based on your path through life. That --- in that
13 way you can't change it.

14 BY ATTORNEY BROOKS:

15 Q. Does that mean that if, according to Steemza and
16 Cohen-Kettenis, 85 percent of prepubertal children who
17 are diagnosed with gender dysphoria ultimately desist
18 from experiencing dysphoria, that their original
19 diagnoses were wrong?

20 ATTORNEY BORELLI: Objection to form.

21 THE WITNESS: So there are a lot of
22 individuals who have looked at that information and felt
23 that the original group of individuals didn't have a
24 transgender identity. In a young group that's hard to

1 assess at times. And so I would say in that way, you
2 know, we --- it's just not the same. And you can repeat
3 the question for me, please.

4 ATTORNEY BORELLI: We have been going an
5 hour. I'd like to take a break.

6 ATTORNEY BROOKS: Let me repeat the
7 question since I was just invited to do so.

8 BY ATTORNEY BROOKS:

9 Q. I believe you testified that it is your view
10 that one's gender identity never changes from infancy to
11 adulthood although one's understanding of it may change
12 over time. My question for you now is does that mean
13 that in every case in which a child is diagnosed as
14 gender dysphoric and they subsequently desist from
15 gender dysphoria that the original diagnosis was wrong?

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: So you know, at the time
18 that their understanding of their identity was different
19 from their sex assigned at birth when they were a child,
20 if that was the case, and it is not clear in that study
21 that that was necessarily the case, that the individuals
22 felt dysphoria about that, that is what happened to
23 them. Their understanding of their identity, if it
24 changed over time, it may relieve some of that gender

1 dysphoria. I guess that's the best way I can state it.

2 ATTORNEY BROOKS: Let's take that break.

3 THE WITNESS: Thank you.

4 VIDEOGRAPHER: Going off the record. The
5 current time reads 3:43 p.m. Eastern Standard Time.

6 OFF VIDEO

7 ---

8 (WHEREUPON, A PAUSE IN THE RECORD WAS HELD.)

9 ---

10 ON VIDEO

11 VIDEOGRAPHER:

12 We're back on the record. The current
13 time is 3:59 p.m. Eastern Standard Time.

14 ATTORNEY BROOKS: I'm just --- sorry.
15 I'm just moving that so --- make sure it's still
16 recording and I didn't muck it up. I just wanted to not
17 hit it with papers.

18 ATTORNEY WILKINSON: Yes, it's still
19 recording.

20 BY ATTORNEY BROOKS:

21 Q. Let's --- Dr. Adkins, if I can ask you to find
22 Exhibit 4 again, which is the 2017 guidelines. We are
23 again on page 3879 where we just were. And there after
24 the discussion that we looked at about desistance of

1 childhood gender dysphoria, the next sentence reads
2 right after where we stopped if children had completed
3 socially transition, the may have great difficulty in
4 returning to the original gender role upon entering
5 puberty. And it continues social transition is
6 associated with the persistence of GD/gender
7 incongruence as a child progresses into adolescence.

8 Do you see that?

9 A. Uh-huh (yes).

10 Q. At the very end of the paragraph it reads social
11 transition in addition to GD/gender incongruence has
12 been found to contribute to the likelihood of
13 persistence.

14 Do you see that?

15 A. Uh-huh (yes).

16 Q. Now, what the Endocrine Society Committee,
17 considering all the available research, says is that
18 social transition has been found to contribute to the
19 likelihood of persistence. Is that how you read their
20 language here?

21 ATTORNEY BORELLI: Objection, form.

22 THE WITNESS: That's how I read it.

23 BY ATTORNEY BROOKS:

24 Q. And social transition has to do with how the

1 people around the child treat him or her, what pronouns
2 they use, what names they use, what clothing they
3 provide, correct, is that consistent with your
4 understanding of social transition?

5 ATTORNEY BORELLI: Objection, form.

6 BY ATTORNEY BROOKS:

7 Q. It has to do with how society, how the people
8 around you treat you.

9 Correct?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: Yes.

12 BY ATTORNEY BROOKS:

13 Q. And therefore, what this is saying is how
14 parents and those around the child treat that child can
15 affect whether that child ends up identifying as
16 transgender or identifying with a gender identity
17 congruent with his or her biology.

18 Correct?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: One more time.

21 BY ATTORNEY BROOKS:

22 Q. What this is saying is that how parents --- when
23 it says that social transition has been found to
24 contribute to the likelihood of persistence what that

1 tells us is how parents and others around the child
2 treat that child can affect whether the child ends up
3 identifying as transgender or cisgender?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: That is the way that reads.
6 I would say that, you know, I don't recommend
7 necessarily --- I recommend we follow the child and
8 watch their gender developments.

9 BY ATTORNEY BROOKS:

10 Q. This Committee says that by assisting a child to
11 socially transition the available science suggests that
12 adults are contributing to the likelihood of persistence
13 rather than desistance. That's what it says.

14 Right?

15 ATTORNEY BORELLI: Objection, form.

16 THE WITNESS: I'm sorry. I'm going to
17 make you say it one more time, please. I apologize.
18 I'm just getting tired.

19 BY ATTORNEY BROOKS:

20 Q. I know the feeling. This says that by assisting
21 a child to socially transition the available science
22 suggests that adults are, quote, contributing to the
23 likelihood of persistence rather than desistance.

24 ATTORNEY BORELLI: Objection, form.

1 THE WITNESS: Gosh. So I'm not sure what
2 you say sounds right to me. That is what it says on the
3 paper.

4 BY ATTORNEY BROOKS:

5 Q. And I will give you a chance to tell us whether
6 you agree or disagree with it, because my understanding
7 is that you, in contrast, believe that external
8 influences can't affect gender identity.

9 Correct?

10 ATTORNEY BORELLI: Objection to form.

11 BY ATTORNEY BROOKS:

12 Q. Cannot?

13 A. So you know, all of your life influences your
14 identity development. You can't change what it is. You
15 can --- it can change your experience. I don't think
16 that these children were likely to have had a different
17 outcome.

18 Q. So your view is that gender identity can't
19 change and therefore any child whose gender identity
20 appears to change must have been mistaken at some state
21 of their understanding.

22 Correct?

23 ATTORNEY BORELLI: Objection, form.

24 THE WITNESS: So their understanding of

1 their gender identity can develop over time.

2 BY ATTORNEY BROOKS:

3 Q. Do you agree or disagree with this statement in
4 the Endocrine Society Guidelines that social transition
5 has been found to contribute to the likelihood of
6 persistence?

7 ATTORNEY BORELLI: Objection, form.

8 THE WITNESS: You know, they --- I
9 answered that question.

10 BY ATTORNEY BROOKS:

11 Q. I'm sorry. I perhaps didn't correctly
12 understand. So if you would answer it again, that would
13 be helpful.

14 A. So kids who --- now I've forgotten the question.

15 Q. This one is a simple one. Do you agree or
16 disagree with the statement from this committee, the
17 Endocrine Society, that social transition has been found
18 to contribute to the likelihood of persistence?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: You know, this --- it's
21 hard for me to agree with that. As a pediatrician I
22 know that people --- prepubertal children, young
23 children, explore their gender identity in a lot of
24 different ways over time, and so I don't know that I can

1 agree necessarily that the way that it's written ---
2 that I necessarily agree with the specific terms.

3 BY ATTORNEY BROOKS:

4 Q. I don't mean to suggest to you by word or tone
5 that this document was handed down on Mount Sinai. I
6 understand that there's room for scientists to disagree.
7 I am just trying to get clear on your opinion. I'm
8 pretty sure this document was not handed down on Mount
9 Sinai.

10 Let me find a copy of your rebuttal report, which
11 I believe was marked as Exhibit 3. Exhibit 3, the
12 rebuttal report. Let me ask you to turn to page 11 of
13 your rebuttal report. We can hand you another copy if
14 need be. We should have one more.

15 A. I think this is it.

16 Q. No, we're looking for your rebuttal report.
17 It's going to be a typewritten kind of something or
18 other.

19 A. Like this, right?

20 Q. Exhibit 3.

21 A. I'm sorry. No that's not --- sugar.

22 Q. I'm just going to hand you another one.

23 A. Okay. Thank you.

24 Q. No hard feelings.

1 A. I --- I know it's here because I -- there's so
2 many papers. You warned me there would be so many
3 papers.

4 Q. I did. I tried to warn you.

5 Let me ask you to turn to paragraph 11 of your
6 rebuttal report.

7 A. Oh, okay. Yeah.

8 Q. Page five.

9 A. I'm sorry, the number --- one of the numbers
10 skipped and it was just a labeling of a reference, so
11 again 11.

12 Q. Yes. The second sentence there you wrote ---
13 and this is of course a recent submission, adolescents
14 with persistent gender dysphoria after reaching Tanner
15 stage two almost always persist in their gender identity
16 in the long term. Do you see that language?

17 A. I do.

18 Q. So --- and the basis that you cite for that
19 rather specific factual proposition is an article or
20 actually a chapter by Turban, DeVries and Zucker.

21 Correct? I'm just looking at footnote three.

22 A. Yes.

23 Q. So Tanner stage two, as I understand --- or we
24 can look at the Endocrine Society note, but this is ---

1 Tanner stage two is when children first begin to exhibit
2 physically recognizable changes in puberty.

3 Right?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: Yes.

6 BY ATTORNEY BROOKS:

7 Q. So Tanner stage one, there's nothing observable.
8 And the beginning of Tanner stage two is the first
9 observable changes?

10 A. Yes.

11 ATTORNEY BORELLI: Objection, form.

12 BY ATTORNEY BROOKS:

13 Q. And I think you testified, but if you could just
14 remind us kind of the timespan that that tends to begin
15 for boys and girls.

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: Tanner two. Tanner two,
18 for those assigned female at birth can range in the
19 normal, typical development between the ages of 8 and
20 12. It does fall outside of that at times and is
21 considered early and could be a marker of a problem as
22 well as delayed could be a marker of a problem.

23 Q. For boys?

24 A. For those assigned male at birth, so usually

1 between 9 and 14. Anything earlier or later again might
2 trigger some questions that something is going on.

3 Q. So age eight is generally girls turn eight in
4 second or third grade? Third grade roughly?

5 ATTORNEY BORELLI: Objection, form.

6 THE WITNESS: That would be --- you know,
7 it varies because early starters, late starters. But
8 ---.

9 BY ATTORNEY BROOKS:

10 Q. And so for nine, for boys would be fourth grade?

11 ATTORNEY BORELLI: Objection to form.

12 THE WITNESS: That would be the typical.

13 BY ATTORNEY BROOKS:

14 Q. So we're talking grade school kids here, not
15 even the end of grade school?

16 ATTORNEY BORELLI: Objection, form.

17 BY ATTORNEY BROOKS:

18 Q. And if the type of changes that mark the
19 beginning of Tanner stage two are generally at least to
20 the layman's eye not visible on a clothed child.

21 Correct?

22 ATTORNEY BORELLI: Objection, form.

23 BY ATTORNEY BROOKS:

24 Q. That mark the beginning Tanner stage two?

1 ATTORNEY BORELLI: Objection, form.

2 THE WITNESS: I would say that some
3 assigned females at birth, especially if they're lean,
4 you can see their breast development.

5 BY ATTORNEY BROOKS:

6 Q. Just a breast bud. But in general, when we
7 speak of adolescence, we don't --- in common parlance we
8 do not include third and fourth graders, do we?

9 ATTORNEY BORELLI: Objection, form.

10 THE WITNESS: Well, the definition of
11 adolescence is the time during puberty, so they should
12 be included.

13 BY ATTORNEY BROOKS:

14 Q. In your experience as to how people use the
15 term, third and fourth graders included in adolescence?

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: It varies with regard to
18 the context. Within my medical practice that's the way
19 we use the term.

20 BY ATTORNEY BROOKS:

21 Q. At any rate, we're talking about grade school
22 ages, not junior high or middle school ages. What is
23 your basis for saying that those children who persist up
24 to the beginning of Tanner stage two almost always

1 persist transgender identity?

2 ATTORNEY BORELLI: Objection. Objection,
3 form.

4 THE WITNESS: I don't know which
5 reference it is, but I can state that in my practice
6 that's what I have seen.

7 BY ATTORNEY BROOKS:

8 Q. Let me show you the only reference you did cite
9 for that, which I will mark as Exhibit 20, the article
10 by Turban, DeVries and Zucker cited in footnote 20 of
11 your rebuttal report. I'm sorry. Don't know why I said
12 20. I'm going to hand the witness that article now.

13 A. Thank you.

14

15 (Whereupon, Adkins Exhibit 20, Turban,
16 DeVries and Zucker Article, was marked
17 for identification.)

18

19 COURT REPORTER: Excuse me, but you're
20 mumbling and I can't understand everything that you're
21 saying.

22 ATTORNEY BROOKS: At the moment I'm just
23 shuffling papers and handing out documents. And I will
24 speak up now and ask a question. Sorry about that.

1 COURT REPORTER: Well, we are on the
2 record and I need to be able to hear every single word
3 that you guys are saying.

4 ATTORNEY BROOKS: We'll do the best we
5 can.

6 COURT REPORTER: It's hard for me over
7 here.

8 BY ATTORNEY BROOKS:

9 Q. Is this, in fact, the article that you
10 referenced in your rebuttal report, Dr. Adkins, or the
11 chapter I should say?

12 A. Yeah. I mean, I'd have to take a minute to
13 review it.

14 VIDEOGRAPHER: Counsel, which tab number
15 is this?

16 THE WITNESS: I'm sorry, you broke up.

17 VIDEOGRAPHER: Which tab number is this
18 document?

19 ATTORNEY BROOKS: Tab 39. I apologize.

20 VIDEOGRAPHER: Thank you.

21 THE WITNESS: It is labeled as that.

22 BY ATTORNEY BROOKS:

23 Q. Well, do you recall recently reading this
24 article since it was cited in this document submitted

1 just last week?

2 A. I have reviewed this document. I don't remember
3 when though.

4 Q. Okay.

5 And in here --- let's look at page 638. And
6 there at the top of --- near the top of the first column
7 on 638 is a discussion of follow-up studies of
8 persisters and desisters. Do you see that discussion?

9 A. Yes.

10 Q. And it says --- four lines, five lines down it
11 begins, quote, Restoray and Skeemsma have provided the
12 most recent study of 10 follow up studies in which the
13 percentage of participants classified as persisters
14 ranged from two percent to 39 percent collapsed across
15 natal boys and girls, closed quote. Do you see that?

16 A. Yeah.

17 Q. And further down under the heading persistence
18 of gender dysphoria from adolescence to adulthood is a
19 very short paragraph that reads in its entirety in
20 contrast low rates of persistence from childhood into
21 adolescence, it appears that the vast majority of
22 transgender adolescents persist in their transgender
23 identity, closed quote.

24 Do you see is that?

1 A. Yes.

2 Q. And was that the language that you had in mind
3 when you cited this reference in footnote three of your
4 rebuttal report?

5 A. I would have to look all the way through the
6 article. It's consistent.

7 Q. And the language that I directed you to at the
8 top summarizes studies that show --- showing of
9 persistence of gender dysphoria among childhood
10 dysphorics of only two percent to 39 percent.

11 Right?

12 ATTORNEY BORELLI: Objection, form.

13 THE WITNESS: Those are two different
14 populations.

15 BY ATTORNEY BROOKS:

16 Q. They are. And I'm asking you now again about
17 what it says at the top?

18 A. Please repeat your question.

19 Q. The discussion at the top summarizes studies
20 showing persistent childhood dysphoria of only between
21 two percent and 39 percent, depending on the study?

22 ATTORNEY BORELLI: Objection to form.

23 THE WITNESS: I see that.

24 BY ATTORNEY BROOKS:

1 Q. And that is that the large majority consisted at
2 some stage before adulthood.

3 Correct?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: More than half per this.

6 BY ATTORNEY BROOKS:

7 Q. And nothing here tells us about exactly what
8 stage of adolescence before adulthood they desisted,
9 does it?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: In this literature
12 adolescence is puberty. It would have to be at least
13 Tanner two.

14 BY ATTORNEY BROOKS:

15 Q. At least. Now, my question was nothing in the
16 discussion up towards the top of the column about these
17 persistence and desistance studies tells us at what
18 stage of puberty the desisters desisted, does it?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: I would have to look at the
21 whole study. Just in that line that detail is not
22 listed.

23 BY ATTORNEY BROOKS:

24 Q. And similarly, looking at the discussion under

1 the heading persistence of gender dysphoria from
2 adolescence to adulthood not being in that sentence
3 tells us what stage of adolescence, whether it is Tanner
4 stage two or three or four is being referred to when it
5 says the majority of adolescents persist?

6 ATTORNEY BORELLI: Objection, form.

7 THE WITNESSS: It's not written right
8 there, no.

9 BY ATTORNEY BROOKS:

10 Q. Please identify for me all studies you are aware
11 of that show that those who desist from childhood gender
12 dysphoria do so by no later than beginning of Tanner
13 stage two.

14 ATTORNEY BORELLI: Objection, form.

15 THE WITNESS: I am not going to be able
16 to remember those off the top of my head.

17 BY ATTORNEY BROOKS:

18 Q. Can you remember a single one?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: I would have to have you
21 repeat the question, but I doubt it.

22 BY ATTORNEY BROOKS:

23 Q. I will repeat it. Identify all studies you're
24 aware of that show that those who desist from childhood

1 gender dysphoria do so no later than the time they first
2 reach Tanner stage two?

3 ATTORNEY BORELLI: Objection, form.

4 THE WITNESS: I don't think that I recall
5 a study that's been modeled that way.

6 BY ATTORNEY BROOKS:

7 Q. Can you tell me --- identify for me any study
8 that has examined whether what is called in the
9 literature watchful waiting combined with psychotherapy
10 results in worse outcomes for children as compared to
11 administration of puberty blockers and social outcomes?

12 ATTORNEY BORELLI: Objection, form.

13 THE WITNESS: So the experience is that
14 some patients have dysphoria that is significant enough
15 once they are in puberty to be dangerous to their life.
16 I worry about those patients. We allow them a pause
17 with puberty blockers to continue to figure out their
18 gender identity. I got lost in my answer, I apologize.

19 BY ATTORNEY BROOKS:

20 Q. Well, Dr. Adkins, I didn't ask what you were
21 worried about. I asked can you identify any study that
22 examines whether watchful waiting for children combined
23 with psychotherapy results in better or worse outcomes
24 on average than administering puberty blockers and

1 social transition?

2 ATTORNEY BORELLI: Objection, form.

3 THE WITNESS: You know, I can't remember
4 the exact study. We have studies that show that if you
5 are not helping the patients relieve their gender
6 dysphoria and psychotherapy has not been shown to do
7 that, then we would be, you know, at an unethical point
8 to do that study because it would increase risk of death
9 in those patients for us to watch and wait.

10 BY ATTORNEY BROOKS:

11 Q. So your answer is at no time since the inception
12 of this field, that is therapy for gender dysphoria, are
13 you aware of any study comparing outcomes for gender
14 dysphoric children of on the one hand watchful waiting
15 accompanied by psychotherapy and on the other hand
16 puberty blockers and social transitioning?

17 ATTORNEY BORELLI: Objection, form.

18 THE WITNESS: There's a long history of
19 individuals who were left untreated or treated with
20 psychotherapy who died in hospitals or not in hospitals
21 because they were only given those therapies which were
22 the only ones available at the time.

23 BY ATTORNEY BROOKS:

24 Q. Dr. Adkins, you are also aware, are you not,

1 that there's a long history of individuals who have
2 transitioned both socially and hormonally who have
3 committed suicide?

4 ATTORNEY BORELLI: Objection to form.

5 BY ATTORNEY BROOKS:

6 Q. That's well documented in the literature, is it
7 not?

8 ATTORNEY BORELLI: Objection, form.

9 THE WITNESS: There are individuals who
10 still struggle with depression and anxiety to the point
11 that they are --- do commit suicide and they have not
12 necessarily the reason being related to their gender
13 dysphoria. Could be. Hard to know.

14 BY ATTORNEY BROOKS:

15 Q. In fact, Skeemsma and colleagues at the
16 respected institute in Amsterdam, DeVry University, have
17 documented very high rates of successful completed
18 suicide among transgender adults, have they not?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: I would have to see the
21 study.

22 BY ATTORNEY BROOKS:

23 Q. You are not aware of that information?

24 A. I have not seen that study. I have read the

1 literature. I don't recall a study saying there was a
2 high or why. I would need a number.

3 BY ATTORNEY BROOKS:

4 Q. You read Dr. Levine's report?

5 A. Yeah, it was --- yes.

6 Q. And do you recall that he cites multiple
7 studies, including studies from DeVry University team
8 documenting high rates of successful completed suicide,
9 not studies, he's done, that clinic has done documented
10 high rates of successful suicide among transgender
11 adults?

12 ATTORNEY BORELLI: Objection, form.

13 THE WITNESS: I would need a number. I'm
14 not going to classify something as high just because ---
15 I would need a number.

16 BY ATTORNEY BROOKS:

17 Q. Have you thought that it was incumbent upon you
18 somebody assisting young people to transition and
19 prescribing hormones to thoroughly investigation and
20 question suicidality among transitioned transgender
21 individuals?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: Again, yes. I read those
24 when I can. I am not good with recalling names in

1 specific reports. I am aware that that is an issue with
2 some people who have transitioned fully.

3 BY ATTORNEY BROOKS:

4 Q. Do you believe that social transition is an
5 important part of medical care for transgender
6 individuals?

7 ATTORNEY BORELLI: Objection, form.

8 THE WITNESS: Yes.

9 BY ATTORNEY BROOKS:

10 Q. And do you also consider puberty blockers to be
11 part of treatment for children with gender dysphoria?

12 ATTORNEY BORELLI: Objection to the form.

13 THE WITNESS: I have seen results from a
14 recent study that said that there was a decrease in
15 dysphoria. I think it was anxiety and depression. I
16 would have to double check the article, with puberty
17 blockers. Our goal with puberty blockers is to pause
18 and allow people to understand their identity and figure
19 out what is going on with that understanding and what is
20 the best care for that patient is.

21 BY ATTORNEY BROOKS:

22 Q. Is the point of administering puberty blockers
23 to children who are experiencing gender dysphoria to
24 prevent puberty from occurring at the time that it

1 naturally would occur in that child?

2 ATTORNEY BORELLI: Objection, form.

3 THE WITNESS: In patients --- in patients
4 who are having early puberty it is a different
5 mechanism. For people with gender dysphoria where you
6 are trying to pause it and we keep it within the realm
7 of normal pubertal development.

8 BY ATTORNEY BROOKS:

9 Q. For individuals suffering --- children suffering
10 from gender dysphoria the precise point of administering
11 puberty blockers is to prevent puberty from occurring in
12 that child at the time it would otherwise naturally
13 occur.

14 Correct?

15 ATTORNEY BORELLI: Objection, form.

16 THE WITNESS: It would --- our pausing
17 the puberty and keeping it within the normal range of
18 pubertal development.

19 BY ATTORNEY BROOKS:

20 Q. Dr. Adkins, the purpose of administering
21 pubertal blockers to a particular child is to prevent it
22 from happening when it would otherwise happen naturally
23 in that child.

24 Correct?

1 ATTORNEY BORELLI: Objection, form.

2 BY ATTORNEY BROOKS:

3 Q. There is no other purpose?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: I'm sorry. I have to ask
6 --- you used some pronounced in there that were not real
7 clear. If you don't mind repeating the question.

8 BY ATTORNEY BROOKS:

9 Q. The purpose of administering puberty blockers to
10 a child suffering from gender dysphoria is to prevent
11 puberty from happening in that child at the time it
12 would otherwise naturally occur in that child absent the
13 blockade?

14 ATTORNEY BORELLI: Objection.

15 THE WITNESS: We are pausing their
16 puberty once it starts, putting a pause.

17 BY ATTORNEY BROOKS:

18 Q. I get to ask the questions. That means you
19 wanted to prevent puberty from happening when it would
20 naturally happen for that child apart from the
21 medication?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: Yes.

24 BY ATTORNEY BROOKS:

1 Q. Thank you.

2 You regularly tell parents that the
3 administration of puberty blockers for that purpose is,
4 quote, safe?

5 Correct?

6 ATTORNEY BORELLI: Objection, form.

7 THE WITNESS: I go through very specific
8 list of side effects and effects with my patients with
9 that medication.

10 BY ATTORNEY BROOKS:

11 Q. You regularly tell parents using the word that
12 puberty blockers are, quote, safe, do you not?

13 ATTORNEY BORELLI: Objection, form.

14 THE WITNESS: I am telling my patients
15 the risks and benefits. I am telling them I feel
16 comfortable using it.

17 BY ATTORNEY BROOKS:

18 Q. Let's find your report, which is Exhibit 1 ---
19 no --- yes, Exhibit 1. If you can find your report.
20 Apologize. Too much paper. Too long a day.

21 Dr. Adkins, do you or do you not tell parents
22 that puberty blockers are safe?

23 ATTORNEY BORELLI: Objection, form.

24 THE WITNESS: Again, I review the effects

1 and side effects and my general experience and the
2 publications that are available. Goodness gracious.
3 Boy, that lunch is getting me.

4 I explain to my patients the effects and
5 side effects and I talk with them about whether --- my
6 experience has been I have had very few patients
7 experience a problem with the medication.

8 BY ATTORNEY BROOKS:

9 Q. And if you are unwilling to sit here today and
10 admit that you tell parents that puberty blockers are
11 safe then why have you stated in your expert report to
12 the court that treatment, including puberty blockers,
13 are safe?

14 ATTORNEY BORELLI: Objection, form.

15 THE WITNESSS: Every patient is
16 individual. I have to make an individual assessment for
17 each patient. I will say it's safe for the patients
18 that that applies to.

19 BY ATTORNEY BROOKS:

20 Q. Which patients does that apply to?

21 A. Most of the patients don't have a
22 contraindication to using puberty blockers.

23 Q. Is safe a term of art to you as a doctor?

24 ATTORNEY BORELLI: Objection, form.

1 THE WITNESS: I'm not sure what you mean
2 by the word art.

3 BY ATTORNEY BROOKS:

4 Q. Does it have a precise meaning? To say a
5 pharmaceutical is safe, does that have a meaning to you
6 as a doctor?

7 A. It has a meaning.

8 Q. What is that?

9 A. So in general when we're talking about safety
10 and medicine we're talking about limiting the number of
11 negative side effects that can cause significant issues
12 for patients. I think that would --- I think that's
13 what I would say.

14 Q. Isn't it a truism you were taught in medical
15 school that every pharmaceutical has side effects?

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: So truism is a word that
18 --- sorry, that is unclear to me. Can you clarify?

19 BY ATTORNEY BROOKSS:

20 Q. Weren't you taught in medical school that every
21 pharmaceutical has side effects?

22 ATTORNEY BORELLI: Object to form.

23 THE WITNESS: Yes.

24 BY ATTORNEY BROOKS:

1 Q. And do you agree or disagree that a flat
2 assertion that any pharmaceutical is safe is not
3 consistent with accurate medical terminology?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: I would say that I work
6 with what the information is available to me about
7 safety profile. I apply that to each patient
8 individually. Sometimes I feel safer using it in one
9 patient versus another patient. Every drug is
10 different, every side effect profile is different, every
11 patient is different.

12 BY ATTORNEY BROOKS:

13 Q. Why then did you flatly assert to the court that
14 treatment for transgender youth when you were discussing
15 puberty blockers and hormone therapies is, quote, safe?

16 ATTORNEY BORELLI: Objection to form.

17 THE WITNESS: In general I have not
18 experienced nor have I seen published experiences of
19 issues with using these medications that causes a
20 significant problem for my patients.

21 BY ATTORNEY BROOKS:

22 Q. You regularly tell parents what you have said
23 several times today, that puberty blockers act merely as
24 a pause and are fully reversible, do you not?

1 ATTORNEY BORELLI: Objection, form.

2 THE WITNESS: I do.

3 BY ATTORNEY BROOKS:

4 Q. And you are aware, are you not, that the
5 Endocrine Society guidelines advise that before
6 approving puberty blockers a clinician should discuss
7 risks to fertility and the availability, the possibility
8 of fertility preservation.

9 Correct?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: I'm not sure that is in the
12 Endocrine Society guidelines with puberty blockers. It
13 may be. That it is no part of the gender affirming
14 hormone recommendation.

15 BY ATTORNEY BROOKS:

16 Q. Let's look at page 3879 in the guidelines,
17 Exhibit 4.

18 A. What exhibit again, 4?

19 Q. Exhibit 4. And I'm going to call your attention
20 to 3879. And column two is guideline 1.5 where it says,
21 quote, we recommend the clinicians inform and counsel
22 all individuals seeking gender affirming medical
23 treatment regarding options for fertility preservation
24 prior to initiating puberty suppression in adolescence.

1 Do you see that language?

2 ATTORNEY BORELLI: Objection, form.

3 THE WITNESS: I do.

4 BY ATTORNEY BROOKS:

5 Q. And what is your understanding as to why the
6 Endocrine Society advises that it's important to advise
7 about fertility preservation prior to initiating puberty
8 suppression if puberty suppression is nearly nothing but
9 a pause?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: Well, the --- you know,
12 puberty pausing is in my experience and in the reported
13 data always reversible. I have not ever had a patient
14 who didn't resume their normal puberty when they came
15 off and were on no other treatment of a puberty
16 blockade. I would think that this is being very careful
17 about young individuals getting puberty blockers.
18 Again, I haven't seen any reports. In fact, it is used
19 to preserve fertility in cancer patients.

20 BY ATTORNEY BROOKS:

21 Q. Do you, in fact, counsel all parents and
22 children about fertility preservation options before
23 administering puberty blockers?

24 ATTORNEY BORELLI: Objection, form.

1 THE WITNESS: I do.

2 BY ATTORNEY BROOKS:

3 Q. And do you have a view as to whether for
4 instance a 9 year old can even begin to understand
5 puberty, sexual development and the possibility of
6 becoming a parent so as to provide meaningfully informed
7 consent?

8 ATTORNEY BORELLI: Objection, form.

9 THE WITNESS: So those individuals also
10 have their parents who are with them to learn about
11 these thing and weigh those things. The patient is not
12 there in isolation. They get an option at the time
13 where we would stop puberty blockers or any time that
14 they are on to make a change in that. It is completely
15 reversible.

16 BY ATTORNEY BROOKS:

17 Q. You have testified at the beginning of the day
18 you had children of your own. Both as a professional
19 and as a mother do you have a view as to whether a 9
20 year old can sufficiently understand puberty, sexual
21 development and the possibility of becoming a parent to
22 enable them to provide meaningfully informed consent?

23 ATTORNEY BORELLI: Objection, form.

24 THE WITNESS: So in young kids we use

1 these --- in five year olds --- I have treated a five
2 year old this week with this medication for early
3 puberty. I trust, based on the data that is available
4 to me over the last 30 years using this medication to
5 pause puberty for central precocious puberty that it is
6 a safe medication and that the patient will be fertile.
7 Can't say 100 percent because who knows what else is
8 going on in each individual patient that may cause them
9 to have an infertility issue.

10 BY ATTORNEY BROOKS:

11 Q. Dr. Adkins, puberty blocking drugs have gone
12 through phase one, phase two, phase three clinical
13 trials submitted to the FDA, reviewed. They've been
14 approved for the indication of precocious puberty.

15 Correct?

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: Yes.

18 BY ATTORNEY BROOKS:

19 Q. None of that has been done for an indication of
20 gender dysphoria to your knowledge.

21 Correct?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: I use lots of medications
24 that aren't FDA approved for the particular indications.

1 Many drugs in pediatrics are not ever tested in
2 children. It's just within the last few years that they
3 have made a recommendation that that happen for a
4 medication. So there are many drugs that haven't been
5 FDA approved that are used in pediatrics based on
6 information for patients in a different indication or
7 adulthood.

8 Q. Puberty blockers have been tested through phase
9 one, phase two, phase three clinical trials for the
10 purpose of postponing precocious puberty until the
11 normal time period for puberty.

12 Correct? That's what has been tested?

13 ATTORNEY BORELLI: Objection to form.

14 THE WITNESS: Yes.

15 BY ATTORNEY BROOKS:

16 Q. And no such tests have been done or submitted to
17 the FDA ---?

18 COURT REPORTER: Can you repeat what you
19 said because I'm not sure that last question fully came
20 through.

21 ATTORNEY BROOKS: The last question was
22 --- and I --- I admit that my voice, as the witness's,
23 is dropping. We're trying here. And I --- Dave's
24 resting his voice for a few questions towards the end of

1 the day. I'll be glad.

2 BY ATTORNEY BROOKS:

3 Q. Just to clarify, and I don't mean to harass you,
4 but we've been asked to repeat it. Puberty blockers
5 have been put through phase one, phase two, phase three
6 clinical trials submitted to the FDA for the purpose of
7 delaying precocious puberty in children until the normal
8 time for puberty. And your answer was?

9 ATTORNEY BORELLI: Objection, form.

10 THE WITNESS: Yes.

11 BY ATTORNEY BROOKS:

12 Q. And they have not been tested for safety, for
13 efficacy in phase one, phase two or phase three clinical
14 trials for the purpose of delaying puberty from its
15 naturally occurring time in children who do not suffer
16 from precocious puberty.

17 Correct?

18 ATTORNEY BORELLI: Objection, form.

19 THE WITNESS: We use data that wasn't
20 presented to the FDA to --- to look at this to see if it
21 is safe. It's also been approved by the FDA to be used
22 in adults. Also been used and approved for fertility
23 preservation. Has lots of approvals that have verified
24 its safety over time.

1 BY ATTORNEY BROOKS:

2 Q. Well, a moment ago when I asked you if you tell
3 people they were safe you were not quite willing to say
4 that. Do you want to revise that testimony?

5 ATTORNEY BORELLI: Objection, form.

6 THE WITNESS: I believe at the end of
7 that I was saying to you that every patient is
8 different. There are some that have risks. When I feel
9 comfortable that my patient in front of me doesn't have
10 those risks based on the medical literature I feel that
11 they're safe to use. I have my experience. I have seen
12 the literature. I feel --- yes.

13 BY ATTORNEY BROOKS:

14 Q. The law that's being challenged in this lawsuit
15 doesn't restrict the use of puberty blockers so far as
16 you understand, does it?

17 ATTORNEY BORELLI: Objection, form.

18 THE WITNESS: I don't recall that being
19 part of the law.

20 BY ATTORNEY BROOKS:

21 Q. It doesn't exclude anyone for participation on
22 any team based on use of puberty blockers, does it?

23 ATTORNEY BORELLI: Objection, form.

24 THE WITNESS: Not that I recall.

1 BY ATTORNEY BROOKS:

2 Q. And you have previously testified that in your
3 view, the law is unreasonable if it excludes, prevents
4 any individuals with a transgender identity from playing
5 in the category that corresponds to their gender
6 identity.

7 Correct?

8 ATTORNEY BORELLI: Objection, form.

9 THE WITNESS: That sounds accurate.

10 BY ATTORNEY BROOKS:

11 Q. I don't want to mischaracterize your opinion.

12 Okay.

13 So what is the relevance to your opinion that
14 all the discussions in your report about puberty
15 blockers?

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: Sorry. I need some water.

18 And then, if you don't mind, while I'm doing that, could
19 you please re-read the question. Sorry.

20 BY ATTORNEY BROOKS:

21 Q. Yes. I'll even wait until you've had your
22 drink.

23 A. Sorry.

24 Q. I'm hitting the bottom myself.

1 A. It's pollen season. It's bad.

2 Q. It's just getting going.

3 A. I know.

4 Q. Given what we just walked through, ---

5 A. Yes.

6 Q. --- what is the relevance of all the discussion
7 about puberty blockers in your expert report and
8 rebuttal report to the opinions you're offering in this
9 case?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: So my part of this is to
12 talk about what care is for people who are transgender
13 and what medications they might be on and what
14 treatments might be ideal for them.

15 BY ATTORNEY BROOKS:

16 Q. You've talked about how each --- you want to
17 treat each patient differently. You want to be very
18 careful about their treatment choices, their parents'
19 treatment choices, that they understand all of the
20 considerations.

21 Would it cause you concern if West Virginia put
22 into place a law that created incentives or pressures on
23 parents and children to make decisions about puberty
24 blockers at an early stage?

1 ATTORNEY BORELLI: Objection, form.

2 THE WITNESS: I would not think it would
3 be appropriate to pressure anyone.

4 BY ATTORNEY BROOKS:

5 Q. So for instance, a law that said if you take
6 puberty blockers then you can play on the girls team and
7 if you don't you can't, that would cause you concern as
8 a doctor, would it not?

9 ATTORNEY BORELLI: Objection, form.

10 THE WITNESS: Ideally, they would be able
11 to whether or not they have the puberty blockers or not
12 play on the team that matches their gender identity.

13 BY ATTORNEY BROOKS:

14 Q. And ideally and from your perspective and in
15 fact if the law set up an incentive that says you can
16 only play on the girls' team if you take puberty
17 blockers, and if you don't, you're foreclosed from female
18 athletics, that would cause you concern as a doctor as
19 biasing the patient's and parents' decisions, would it
20 not?

21 ATTORNEY BORELLI: Objection, form.

22 BY ATTORNEY BROOKS:

23 Q. That's not a law you would want to see on the
24 books?

1 ATTORNEY BORELLI: Objection, form.

2 THE WITNESS: I don't think I would want
3 to see that on the books. Haven't thought through every
4 detail of that but I don't think so.

5 BY ATTORNEY BROOKS:

6 Q. You are aware, are you not, that all the
7 recommendations in the 2017 guidelines, also in the 2009
8 guidelines from the Endocrine Society about the
9 administration of puberty blockers is according to the
10 committee that prepares those recommendation based on
11 either low quality or very low quality evidence.

12 Right?

13 A. You know, all recommendation put together are
14 graded with evidence, and it's in the report --- we use
15 them --- not in the report, in the guidelines. And we
16 use lots of guidelines that have low quality to help
17 guide our care.

18 Q. Low quality evidence means that you, as a
19 scientist, you as a doctor, can't be very confident that
20 the recommendation will result in beneficial results.
21 That is kind of the meaning of low quality evidence.

22 Right?

23 ATTORNEY BORELLI: Objection to form.

24 THE WITNESS: I would suggest it gives us

1 a place to start and we need to be very mindful when
2 using that information as to how we apply it.

3 ATTORNEY BORELLI:

4 Why don't we go ahead and take another
5 break?

6 ATTORNEY BROOKS: Let me just ask the
7 court reporter how many --- how much more time in the
8 seven o'clock hours.

9 COURT REPORTER: We're at six hours and
10 six minutes, so 54 minutes.

11 ATTORNEY BROOKS: Okay. We'll take that
12 break. Absolutely.

13 ---
14 (WHEREUPON, A PAUSE IN THE RECORD WAS HELD.)

15 ---
16 ATTORNEY BROOKS:

17 All right. We will resume.

18 BY ATTORNEY BROOKS:

19 Q. Dr. Adkins, once again I will direct you to the
20 Endocrine Society guidelines, Exhibit 4, and ask you to
21 turn with me to page 3874 and column two --- column one,
22 I'm sorry 3874.

23 A. Column ---?

24 Q. Column one. And towards the bottom, penultimate

1 paragraph begins in the future we need. Do you see
2 that?

3 A. I do.

4 Q. And it says in the future --- this is in the
5 preliminary section. Before the specific
6 recommendations it says, quote, in the future we need
7 more rigorous evaluations of the effectiveness and
8 safety of endocrine and surgical protocols. And it goes
9 on then to say specifically endocrine protocol ---
10 specifically endocrine treatment protocols for GD/gender
11 incongruence should include the careful assessment of
12 the following. And it lists a number of things, the
13 effective prolonged delay of puberty in adolescence on
14 bone health, gonadal function and the brain, including
15 effects on cognitive, emotional --- emotional, social
16 and sexual development.

17 Have I, with various corrections, read that
18 correctly?

19 A. Yes.

20 Q. So as of 2017, in the opinion of the committee
21 that put together these guidelines ---.

22 COURT REPORTER: Excuse me. I don't know
23 if you're speaking, but I lost you at cognitive.

24 ATTORNEY BROOKS: I'm sorry?

1 COURT REPORTER: I lost you at cognitive
2 and then I didn't hear anything for like 20 seconds. So
3 I wasn't sure if you were still talking since I can't
4 see you.

5 ATTORNEY BROOKS: Of course. And I was.
6 So, golly.

7 COURT REPORTER: Thank you.

8 BY ATTORNEY BROOKS:

9 Q. So I'm going to pick up that question again.
10 In the paragraph that we're looking at in
11 column one of page 3874 the committee writes that things
12 that need to be better studied include, quote, the
13 effects of prolonged delay of puberty in adolescence on
14 bone health, gonadal function and the brain, including
15 effects on cognitive, emotional, social and sexual
16 development, closed quote.

17 Dr. Adkins, is it your understanding that the
18 committee here is saying that there's not yet adequate
19 scientific evaluation of the impact of puberty blockers
20 on the brain?

21 ATTORNEY BORELLI: Objection, form.

22 THE WITNESS: So you know, the
23 recommendation by the same group is that in some
24 patients this is the approach that --- that is used.

1 Certainly we all welcome more research. We all want to
2 know if anything is different from the information that
3 we have as mentioned before for use of this medication
4 in other areas where we're not seeing any effect on
5 these things.

6 BY ATTORNEY BROOKS:

7 Q. Is it consistent with your understanding as a
8 doctor that the development of the brain in turn affects
9 cognitive, emotional, social and sexual development?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: The brain has effects in
12 all those areas.

13 BY ATTORNEY BROOKS:

14 Q. To your knowledge, it has effects that change
15 across the course of puberty in all those areas.

16 Correct?

17 ATTORNEY BORELLI: Objection, form.

18 THE WITNESS: Yes, they're all
19 interrelated and they're occurring all at the same time.

20 ATTORNEY BROOKS: Let me mark as Exhibit
21 a document that is titled Teenage Brain: A work in
22 Progress, which is an information sheet that is
23 attributes itself to the National Institute of Mental
24 Health, which I believe we discussed earlier. Tab 32.

1 Yes, thank you. I'm sorry, I believe I said it, Exhibit
2 21.

3

4

(Whereupon, Adkins Exhibit 21, NIMH
5 Information Sheet, was marked for
6 identification.)

7

8 BY ATTORNEY BROOKS:

9 Q. So I would like to talk for a moment about the
10 impact of puberty and therefore puberty blockade on
11 brain development. On the second page at the more
12 information, we see contact information at the National
13 Institute of Mental Health. And I don't want to
14 misrepresent, did you earlier testify that is a well
15 known and respected source of information about mental
16 health therapies?

17

ATTORNEY BORELLI: Objection, form.

18

THE WITNESS: Yes.

19 BY ATTORNEY BROOKS:

20 Q. And let me take you to page one. And I'm simply
21 using this to pin down a few kind of basic points. In
22 the second column out of three, two-thirds of the way
23 down, three-quarters of the way down --- well, the
24 sentence begins halfway down. In the first such

1 longitudinal study of 145 children. Do you see that?

2 A. I see that.

3 Q. And it goes on to describe research that
4 discovered the second wave of overproduction of gray
5 matter, which it refers to as, quote, the thinking part
6 of the brain, just prior to puberty. Do you see that?

7 A. I do.

8 Q. And it goes on to say that this second
9 overproduction peaks at around age 11 in girls and 12 in
10 boys. Do you see that?

11 A. Yes.

12 Q. And according to your earlier testimony, that is
13 probably a bit into --- on average a bit into Tanner
14 stage two.

15 Correct?

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: In general.

18 BY ATTORNEY BROOKS:

19 Q. So a little later than the beginning of Tanner
20 stage two?

21 ATTORNEY BORELLI: Objection, form.

22 THE WITNESS: Based on averages, yes.

23 BY ATTORNEY BROOKS:

24 Q. So this second wave of development of the

1 thinking part of the brain happens sometime a bit after
2 the beginning of Tanner stage two according to this
3 description here?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: So let me read it myself.

6 BY ATTORNEY BROOKS:

7 Q. Sure.

8 A. What you read was --- it starts before that. So
9 I just want to read it.

10 Q. I did misspeak. Let me just re-ask my question
11 ---

12 A. Okay.

13 Q. --- because I mixed up peaks and starts, right,
14 that was the problem.

15 According to the description here this second
16 wave of development of the thinking part of the brain,
17 the gray matter, peaks at sometime after the beginning
18 of Tanner stage two?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: Peaks, yes.

21 BY ATTORNEY BROOKS:

22 Q. And is it consistent with your understanding
23 that the gray matter in the brain is the thinking part
24 of the brain or is that really outside your expertise

1 given that you're not a neurologist?

2 ATTORNEY BORELLI: Objection, form.

3 THE WITNESS: I think that that is basic
4 enough in medical school that I can agree with that.

5 BY ATTORNEY BROOKS:

6 Q. Okay.

7 And in the next column, about the same distance
8 down it reads, quote, the gray matter spurt --- growth
9 spurt just prior to puberty --- we've already talked
10 about the timing, predominates in the frontal lobe,
11 which it goes on to say is the seat of, quote, executive
12 functions, planning, impulse control, and reasoning,
13 closed quote.

14 Do you see that?

15 A. I do.

16 Q. And is it within your knowledge or not within
17 your knowledge that the frontal lobe is the seat of
18 executive functions, including planning, impulse control
19 and reasoning?

20 ATTORNEY BORELLI: Objection, form.

21 THE WITNESS: That is what my education
22 has informed me.

23 BY ATTORNEY BROOKS:

24 Q. And certainly all of us you who have raised

1 children have gratefully seen that planning, impulse
2 control and reasoning improve across the years of
3 puberty.

4 Right?

5 ATTORNEY BORELLI: Objection, form.

6 BY ATTORNEY BROOKS:

7 Q. Maybe some ups and some downs?

8 A. I'm am just happy that it continuously improves
9 the whole time.

10 Q. I won't press --- I won't pres the question.
11 Have you, yourself, attempted to make any study of the
12 timing of brain gray matter development and the role of
13 puberty hormones in promoting that development?

14 ATTORNEY BORELLI: Objection, form.

15 THE WITNESS: I have not.

16 BY ATTORNEY BROOKS:

17 Q. What study, if any, have you made of the effects
18 of blocking puberty and the increased level of hormones
19 associated with puberty on this growth spurt in the
20 thinking part of the brain that otherwise peaks at
21 around 11 in girls and 12 in boys?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: I have not done that study.

24 I don't see it here either.

1 BY ATTORNEY BROOKS:

2 Q. You said in your rebuttal report, paragraph 24,
3 that patients with gender dysphoria who are treated with
4 puberty delaying medication undergo hormonal puberty
5 with all the same brain and other bodily system
6 development. Do you recall writing that?

7 ATTORNEY BORELLI: Objection, form.

8 THE WITNESS: I'm sorry, could you ---?

9 BY ATTORNEY BROOKS:

10 Q. Right in front of you. Your rebuttal report is
11 --- Exhibit 3?

12 A. I got it.

13 Q. Paragraph 24.

14 A. Thank you for your patience.

15 Q. Here, let me just find it. Let me see here.
16 And the second sentence says, quote, patients with
17 gender dysphoria treated with puberty delaying
18 medication undergo hormonal puberty with all the same
19 brain and other bodily system development, closed quote.
20 Do you see that?

21 A. Oh, wait. I must be looking at the wrong place.

22 Q. Paragraph 24, second sentence. It runs over the
23 page?

24 A. I see. I see. Yeah. I see that.

1 Q. Now, all the same brain and bodily development
2 is a really big absolute statement, isn't it?

3 ATTORNEY BORELLI: Objection, form.

4 THE WITNESS: There are --- you know, for
5 the most part, people go through it in this manner. Of
6 course, again, with medicine you can't say 100 percent.

7 BY ATTORNEY BROOKS:

8 Q. Well, specifically, as a scientist, based on the
9 information available to you, you can't say with
10 confidence that patients who are treated with puberty
11 delaying medication undergo all the same brain and
12 bodily system development, can you?

13 ATTORNEY BORELLI: Objection, form.

14 THE WITNESS: I used the medication for
15 all of my career. I have followed patients through
16 their --- into their puberty, in their growth. When
17 they are done with their pubertal development, we have
18 not seen any definable cognitive developmental issues
19 with them. Haven't been able to identify that with any
20 of my patients, including precocious puberty. There's
21 not been any evidence in the literature over a year's
22 worth of use of this medication that there's anything
23 different happening to these individuals.

24 BY ATTORNEY BROOKS:

1 Q. Well, you also haven't done any systematic study
2 of cognitive development of those for whom you have
3 prescribed puberty blockers as compared to in a control
4 group, have you?

5 ATTORNEY BORELLI: Objection, form.

6 THE WITNESS: Not personally.

7 BY ATTORNEY BROOKS:

8 Q. And the --- the Endocrine Society, 2017 --- let
9 me ask you to turn in Exhibit 4 to page 3882. And we
10 are in the section here that discusses a recommendation
11 to use GRNH for purposes of puberty suppression when
12 puberty suppression is indicated. Do you see that?
13 That heading is on the previous page.

14 A. I see that.

15 Q. Just wanted to locate you in the discussion
16 we're talking about puberty suppression. Now, back to
17 3882. And the first thing --- the first sentence under
18 the heading side effects states that, quote, the primary
19 risks of puberty suppression in GD/gender incongruent
20 adolescents may include and then it lists a number of
21 things, one of which is, quote, unknown effects on brain
22 development, closed quote. Do you see that?

23 A. I do.

24 Q. So the committee that put together the Endocrine

1 Society guidelines thought that the potential effects of
2 puberty suppression on brain development were at 2017 at
3 least unknown. You just disagreed?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: I don't have any reason to
6 believe that there's any different effect on individuals
7 based on the research from early puberty and the studies
8 that --- I mean, sorry, my experience with those
9 patients. I would want to be watchful of those
10 individuals as I would always who use any medication for
11 potential issues.

12 BY ATTORNEY BROOKS:

13 Q. Endocrine Society thinks the effect on brain
14 development is unknown and you, though you have done no
15 systematic study, are of the view that you know that is
16 not harmful to brain development. Am I accurately
17 summarizing your testimony?

18 ATTORNEY BORELLI: Objection.

19 THE WITNESS: No.

20 BY ATTORNEY BROOKS:

21 Q. Let me ask it a different way if that was in
22 accurate.

23 A. I am trying to tell you that you are able to
24 look at the use of this medication in early pubertal

1 patients and see what happens to those individuals.
2 Those outcomes can be used to give you some inference as
3 to what might potentially happen if you use it later on
4 for the same purpose of delaying puberty. It doesn't
5 --- doesn't wholly rule out something different.

6 Q. And indeed, simply based on observation,
7 nonsystematic observations from one clinic, it's not
8 possible to rule out harmful effects on brain
9 development, is it?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: I'm not sure that there's
12 any study you could do to completely rule out any effect
13 --- any specific effect. Lots of individuals have
14 different effects.

15 BY ATTORNEY BROOKS:

16 Q. And you in your clinic haven't attempted any
17 study?

18 ATTORNEY BORELLI: Objection, form.

19 THE WITNESS: I have not done a study.

20 BY ATTORNEY BROOKS:

21 Q. Let me have tab 43. In your report you asserted
22 that those treated with gender dysphoria undergo --- I'm
23 sorry, those treated with puberty delaying medication
24 experience all the same brain and other bodily system

1 developments. The only source you cite in support of
2 that is a 2015 article by Staphorsius.

3 Correct?

4 A. I would have to look at it and verify that.

5 Q. Forty-three (43).

6 A. Which exhibit were you ---?

7 Q. I have not given it to you yet. I apologize.

8 A. No, I mean ---.

9 Q. Oh, it was paragraph 24 in your rebuttal report,
10 which is ---.

11 A. Okay.

12 Q. All right.

13 Did you carefully read the Staphorsius article
14 that you cited in paragraph 24 of your rebuttal report?

15 A. At some point in time I have read that, yes.

16 Q. Are you able to describe the experiment that is
17 --- the study that was done in this Staphorsius report
18 --- or the Staphorsius article?

19 ATTORNEY BORELLI: Objection.

20 THE WITNESS: I'm not --- familiar ---.

21 BY ATTORNEY BROOKS:

22 Q. You say also in paragraph 24 of your rebuttal
23 report that Dr. Levine's claims with regard to concern
24 about brain development is, quote, inaccurate for the

1 additional reason that some people never go through
2 hormonal puberty such as patients with Turner syndrome
3 and still have normal brain development with respect to
4 cognition and executive function. Do you see that
5 language?

6 A. Yes.

7 Q. And you don't cite anything for that. What is
8 the basis for that assertion?

9 A. So when you look at the information regarding
10 Turner syndrome within the medical literature as well as
11 the --- my work with Marsha Gavenport at UNC who runs
12 --- ran the biggest Turner syndrome registry, in that
13 experience we did not see any patients that had problems
14 with --- there may have been some that were --- had sort
15 of issues with visual spatial skills but not cognitive
16 issues. In fact, I have partners that are women with
17 Turner syndrome that practice medicine.

18 Q. You will agree with me as a scientist, will you
19 not, that kind of anecdotal information about a
20 particular person you know is not very weighty evidence
21 as to whether hormone changes associated with puberty
22 are generally important to cognitive development of
23 humans?

24 ATTORNEY BORELLI: Objection, form.

1 THE WITNESS: We can delve into Turner
2 syndrome literature.

3 BY ATTORNEY BROOKS:

4 Q. Well, Dr. Adkins, I hope you understand that
5 your obligation to prepare an expert report was to
6 provide your opinions and the basis of your opinions.
7 What literature are you relying on?

8 ATTORNEY BORELLI: Objection, form.

9 THE WITNESS: Every textbook that talks
10 about Turner syndrome with regard to these patients
11 talks about any of the issues that go along with that.
12 I --- and that's something we study in our training as a
13 pediatric endocrinologists because we see these patients
14 routinely. So that has been my experience and training.

15 BY ATTORNEY BROOKS:

16 Q. Well, can you identify --- every is not very
17 useful. Can you identify for me a single source that
18 reports based on statistically significant studies that
19 individuals who never go through puberty experience all
20 the same brain development as individuals who do go
21 through puberty?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: I would have to look back
24 in the literature on those reports because we treat

1 patients now when we realize they are not going through
2 puberty. I can't do that off the top of my head.

3 BY ATTORNEY BROOKS:

4 Q. And are you now contending that it is not widely
5 accepted that hormonal changes associated with puberty
6 drive important stages of brain growth?

7 ATTORNEY BORELLI: Objection, form.

8 THE WITNESS: I'm not saying that. What
9 I'm saying is there are some things that are specific
10 and you're generalizing my terms.

11 BY ATTORNEY BROOKS:

12 Q. Okay.

13 Well, flipping it around, you have also been
14 taught whether or not it's --- if we're speaking in the
15 area, I recognize you're not a neurologist.

16 Correct?

17 A. Correct.

18 Q. But it's your understanding that hormonal
19 changes associated with puberty do drive important
20 developmental stages in the human brain.

21 Correct?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: Yes.

24 BY ATTORNEY BROOKS:

1 Q. And those are stages that, as we looked at in
2 earlier document, include cognition, social skills,
3 sexual development?

4 ATTORNEY BORELLI: Objection, form.

5 THE WITNESS: So you know, that is what
6 is --- was written there. I agree that that can be
7 affected by those --- by puberty. I also don't see in
8 any of the literature around people who haven't gone
9 with --- through puberty any mention of any of the
10 concerning cognitive delays or other issues, again
11 visual, spatial has been mentioned.

12 BY ATTORNEY BROOKS:

13 Q. Visual spatial, can you just --- for the
14 uninitiated, the layman, can you explain what you're
15 referring to?

16 A. For the use of like driving a car, looking at
17 something and being able to estimate where it is or
18 those sorts of things, navigating with a map versus not.

19 ATTORNEY BROOKS: Let me ask the court
20 reporter how many minutes we still have on the clock.

21 COURT REPORTER: We're at six hours, 31
22 minutes, so 29.

23 ATTORNEY BROOKS: Well, I had promised to
24 hand it over with 30 minutes to go, so I have broken my

1 word. And I will stop and leave the remainder of the
2 time to counsel for the State of West Virginia, Dave
3 Tryon.

4 ---

5 EXAMINATION

6 ---

7 BY ATTORNEY TRYON:

8 Q. Hello, Dr. Adkins. Long day. I appreciate your
9 time. My name is David Tryon and I do represent the
10 State of West Virginia. I would like just to ---.

11 A. You're cutting out.

12 Q. Okay.

13 ATTORNEY BROOKS: You are going to have
14 to speak up very clearly because you are literally
15 disappearing half of the time and we have no work around
16 for that.

17 BY ATTORNEY TRYON:

18 A. Okay.

19 I will speak very loudly. Can you hear me now?

20 A. Yes.

21 Q. Okay.

22 So thank you for your time my. Name is David
23 Tryon. I am an attorney for the State of West Virginia.
24 I would like to continue with some questions about your

1 rebuttal report. Do you still have that in front of
2 you?

3 A. Yes.

4 Q. Okay.

5 First of all, you have indicated that you are
6 --- I'm still here --- give me a moment --- you run a
7 clinic.

8 Correct?

9 ATTORNEY BORELLI: Objection, form.

10 THE WITNESS: I have a clinic that I'm
11 the medical director of, yes.

12 BY ATTORNEY TRYON:

13 Q. And that is --- I'm sorry, what's the name of
14 the clinic again?

15 A. Duke Child and Adolescent Gender Clinic.

16 Q. What is a gender care clinic?

17 A. For our purposes in my clinic it includes
18 patients who are transgender people who are --- also
19 have intersex conditions as well.

20 Q. Are there other clinics that you consider gender
21 care clinics elsewhere in the country?

22 A. Yes.

23 Q. Would you be able to estimate approximately how
24 many of them there are?

1 A. That number is changing a lot. It would be
2 difficult for me to say accurately.

3 Q. Would it be over 100?

4 A. I'm not sure. I'm not sure.

5 Q. Would it be over 50?

6 A. Oh, it could be definitely over 50. It could be
7 over 100, but I'm not sure.

8 Q. And are you --- do you have any meetings with
9 those other gender care clinics?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: Yes.

12 BY ATTORNEY TRYON:

13 Q. How many --- what fashion --- are those
14 individual meetings or are they group meetings?

15 A. A bit of both.

16 Q. Are you aware of the practices of all of those
17 other gender care clinics?

18 ATTORNEY BORELLI: Objection, form.

19 THE WITNESS: We do talk about practice
20 when we meet with the ones that I meet with. Can't
21 speak to all of the others.

22 BY ATTORNEY TRYON:

23 Q. You are of course familiar with the practices in
24 your clinic.

1 Correct?

2 A. Yes.

3 Q. Are you equally familiar with the practices of
4 the other gender care clinics throughout the country?

5 ATTORNEY BORELLI: Objection, form.

6 THE WITNESS: I know a lot about them. I
7 can't say I know everything.

8 BY ATTORNEY TRYON:

9 Q. Do you know if they have the exact same
10 standards of care and practice that your clinic does?

11 ATTORNEY BORELLI: Objection, form.

12 THE WITNESS: We all have discussed that
13 we follow the Endocrine Society guidelines as well as
14 WPATH guidelines.

15 BY ATTORNEY TRYON:

16 Q. You have disagreed with some of the guidelines
17 in the WPATH guidelines that Mr. Brooks has shown to
18 you.

19 Correct?

20 ATTORNEY BORELLI: Objection, form.

21 THE WITNESS: I don't think I've seen the
22 WPATH guidelines today.

23 BY ATTORNEY TRYON:

24 Q. Sorry, the Endocrine Society guidelines?

1 ATTORNEY BORELLI: Same objection.

2 THE WITNESS: So the Endocrine Society
3 guidelines are guidelines. All of us who use guidelines
4 do vary some from those guidelines when it's appropriate
5 for the particular patient.

6 BY ATTORNEY TRYON:

7 Q. Do you know if the other clinics have the same
8 reservations about the policies or guidelines in those
9 --- in the endocrine Society's guidelines that you've
10 expressed today?

11 ATTORNEY BORELLI: Objection, form.

12 THE WITNESS: I've had some discussions
13 with people who have some reservations along the same
14 lines that I do.

15 BY ATTORNEY TRYON:

16 Q. How many clinics does that represent?

17 A. Oh, you went out. You went out. Sorry.

18 Q. How many clinics does that represent?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: It's difficult for me to
21 say because it is at our annual meeting and for some of
22 the meetings, so it could be a lot. In group meetings
23 that we have, I have some that are one on one and I have
24 some that are about five different groups.

1 BY ATTORNEY TRYON:

2 Q. So fair to say you don't know?

3 A. I'm sorry, you broke up again.

4 Q. Is it fair to say you do not know?

5 ATTORNEY BORELLI: Objection, form.

6 THE WITNESS: I do not know what?

7 BY ATTORNEY TRYON:

8 Q. You do not know which ones have the same
9 reservations that you do about the provisions you've
10 expressed reservations about today?

11 ATTORNEY BORELLI: Objection, form.

12 THE WITNESS: I know --- I know --- I
13 know off the top of my head three. The others I may or
14 may not know where an individual is from when they're
15 talking in all of our meetings. They are big meetings.

16 BY ATTORNEY TRYON:

17 Q. What are those three?

18 A. So Rady Children's in Los Angeles and in
19 Seattle, Children's and Texas, Children's.

20 BY ATTORNEY TRYON:

21 Q. Are there any gender care clinics in West
22 Virginia?

23 ATTORNEY BORELLI: Objection to form.

24 THE WITNESS: I don't know personally any

1 endocrinologists that do pediatric endocrinology or
2 gender care in West Virginia. I'm not aware.

3 BY ATTORNEY TRYON:

4 Q. In the rebuttal report, your paragraph 11, I'd
5 like to ask you some questions about that. If you would
6 turn there.

7 A. I got it.

8 Q. When did you --- well, did you write this
9 paragraph 11?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: Yes.

12 BY ATTORNEY TRYON:

13 Q. When did you write it?

14 ATTORNEY BORELLI: Objection, form.

15 THE WITNESS: I don't remember.

16 BY ATTORNEY TRYON:

17 Q. Was it after you received the expert reports
18 from the Plaintiff's experts --- excuse me, from the
19 Defendant's experts?

20 ATTORNEY BORELLI: Objection, form.

21 THE WITNESS: So we wrote the rebuttal
22 after we received the expert witnesses from --- yes.

23 BY ATTORNEY TRYON:

24 Q. Who is we?

1 A. I'm sorry. I wrote it --- I'm sorry. I'm
2 getting really tired. I apologize. I wrote it.

3 Q. In the --- I believe it is the third sentence
4 says no medical treatment is provided to transgender
5 youth until they have reached Tanner stage two. Do you
6 see that?

7 A. I do.

8 Q. When you say no medical treatment, is that ---
9 does that include affirmation therapy?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: I am not aware of anything
12 called affirmation therapy.

13 BY ATTORNEY TRYON:

14 Q. Are you aware of the term affirmation for
15 transgender individuals?

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: Gender affirming care is a
18 term I am aware of.

19 BY ATTORNEY TRYON:

20 Q. Do you consider gender affirming care to be
21 medical treatment?

22 ATTORNEY BORELLI: Objection, form.

23 THE WITNESS: So it is meant to be
24 wholistic, so part of it is medical, part of it is

1 social, part of it is surgical.

2 BY ATTORNEY TRYON:

3 Q. Is any gender affirming care provided to
4 transgender youth before they reach Tanner stage two?

5 ATTORNEY BORELLI: Objection, form.

6 THE WITNESS: So the social transition is
7 considered part of gender affirming care and some
8 individuals do socially transition before Tanner stage
9 two.

10 BY ATTORNEY TRYON:

11 Q. Do you assist them in that?

12 ATTORNEY BORELLI: Objection, form.

13 THE WITNESS: Not typically. They're not
14 usually in my clinic until they are in puberty.

15 BY ATTORNEY TRYON:

16 Q. Is there any other type of gender affirming care
17 which is conducted or provided prior to Tanner stage
18 two?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: Before Tanner stage two
21 generally it's -- no --- no. No.

22 BY ATTORNEY TRYON:

23 Q. What do you consider to be medical treatment
24 which is provided once they reach Tanner stage two?

1 ATTORNEY BORELLI: Objection, form.

2 THE WITNESS: Not every patient is
3 treated with medication. So some do, some don't.
4 Sometimes that is puberty blockers. Sometimes it is
5 not. Sometimes it is gender affirming hormones
6 depending on where they're in their development.

7 BY ATTORNEY TRYON:

8 Q. What about surgery, is that considered medical
9 treatment provided to transgender youth?

10 ATTORNEY BORELLI: Objection, form.

11 THE WITNESS: So patients who are
12 children aren't having surgeries.

13 BY ATTORNEY TRYON:

14 Q. What's the difference between youth and
15 children?

16 ATTORNEY BORELLI: Objection, form.

17 THE WITNESS: Youth in general in my mind
18 are somewhat similar to adolescents in that they have
19 started puberty.

20 BY ATTORNEY TRYON:

21 Q. At what point are --- is --- excuse me, at what
22 point or age is surgery, medical treatment, provided to
23 those who have gender dysphoria or considered to be
24 transgender?

1 ATTORNEY BORELLI: Objection, form.

2 THE WITNESS: So you cut out and could
3 you repeat the question?

4 BY ATTORNEY TRYON:

5 Q. Yes. Let me back up and make sure I understand.
6 Surgery is considered medical treatment.

7 Correct?

8 ATTORNEY BORELLI: Objection, form.

9 THE WITNESS: So I hesitate to use those
10 words. My surgical colleagues would take some offense
11 at that. They consider themselves surgeons and not
12 medicine doctors. So I think that's an opinion there.
13 So I'm not sure that that phrase is appropriate.

14 BY ATTORNEY TRYON:

15 Q. So when you refer to medical treatment in this
16 statement does that include or exclude surgery?

17 ATTORNEY BORELLI: Objection, form.

18 THE WITNESS: They do not --- yeah, that
19 would be inclusive of surgery in that particular
20 statement.

21 BY ATTORNEY TRYON:

22 Q. At what point is surgery provided to transgender
23 persons?

24 ATTORNEY BORELLI: Objection, form.

1 THE WITNESS: Well, not all individuals
2 who are transgender actually have surgery. It depends
3 on the patient. Many, many do not. Our recommendations
4 are to wait until 18. There is a caveat in the
5 Endocrine Society guidelines where some surgery could
6 happen between 16 and 18, but generally 18 and up.

7 BY ATTORNEY TRYON:

8 Q. Why wait until 18?

9 ATTORNEY BORELLI: Objection, form.

10 THE WITNESS: That is the --- as I
11 understand it, the legal time at which a person has ---
12 what is the word for it? You all are the legal people.
13 I'm probably going to say it wrong, the ability to
14 legally consent to things. Prior to that, we do get
15 what's called an assent from the patient, but it's a
16 little different than a consent from the patient if
17 we're doing a general procedure.

18 BY ATTORNEY TRYON:

19 Q. Why is that legal consent different for surgery
20 then it is for puberty blockers?

21 ATTORNEY BORELLI: Objection, form.

22 THE WITNESS: As I mentioned before,
23 puberty blockers aren't a permanent effect and surgery
24 is complicated to reverse.

1 BY ATTORNEY TRYON:

2 Q. At the point in time that you prescribe puberty
3 blockers for a natal male, that person has at that point
4 concluded that they have a gender identity of female.

5 Correct?

6 ATTORNEY BORELLI: Objection, form.

7 THE WITNESS: So for puberty blockers
8 they may not totally be clear on their gender identity.
9 They do have dysphoria with the changes that are
10 happening to their body at the time and need time to get
11 a better understanding of their gender identity.

12 BY ATTORNEY TRYON:

13 Q. At what point do we know that they have a full
14 understanding of their gender identity?

15 ATTORNEY BORELLI: Objection, form.

16 THE WITNESS: Again, we do our best to
17 take each patient as they get older and they are
18 consistent for a period of time. Again, the
19 recommendation are at least six months. Everyone is
20 different. Most of my patients' identity isn't changing
21 substantially. Their understanding of their identity
22 isn't changing substantially for longer than that before
23 one would do anything different other than puberty
24 blockers.

1 BY ATTORNEY TRYON:

2 Q. At what point --- someone comes to you and says
3 I am a biological male or assigned male at birth,
4 however you want to term that, but I identify it as a
5 --- let me rephrase that because I'm not sure I said
6 that right.

7 Someone comes to you and says I was born an
8 assigned male at birth, but I identify as a female. I
9 have identified as a female for two years now and I want
10 to move forward with any treatment possible so that I
11 can feel comfortable with my true identity as a female.
12 You accept that as their true identity?

13 ATTORNEY BORELLI: Objection, form.

14 THE WITNESS: You didn't give an age and
15 I do way that into consideration.

16 BY ATTORNEY TRYON:

17 Q. Let's say a ten year old?

18 ATTORNEY BORELLI: Objection, form.

19 THE WITNESS: So we as I mentioned in my
20 earlier testimony also use assessments from other
21 individuals with regard to the consistency of their
22 gender identity and including family as well as their
23 mental health providers and we would provide
24 individualized care based on that patient.

1 BY ATTORNEY TRYON:

2 Q. At that point do you actually give a diagnosis
3 that they are their true gender identity is female or
4 what happens?

5 ATTORNEY BORELLI:

6 Objection, form.

7 THE WITNESS: Again, gender identity is a
8 core part of their being and their understanding of it
9 at the time is their understanding of it at the time and
10 that is the only way that we can decide what someone's
11 gender identity is.

12 BY ATTORNEY TRYON:

13 Q. So at that point in time where the child is 10
14 or 12 or 14, at that point in time where they have
15 concluded my true gender identity is not my natal sex of
16 male but rather my true gender identity is a female, why
17 shouldn't that child then be able to say I want gender
18 --- I want surgery to remove my penis?

19 ATTORNEY BORELLI: Objection, form.

20 THE WITNESS: So we don't want to do
21 anything that's permanent until a person is older and
22 their cognitive development is broader. And in some
23 cases, you know --- well, I'll stop there.

24 BY ATTORNEY TRYON:

1 Q. If that child says, this is extremely harmful to
2 me to still have my penis at this age, I want it
3 removed, and you said yourself that is extremely harmful
4 to not allow this child to not play on a sports team
5 with which that child identifies, isn't having a penis
6 when the child doesn't want one even more harmful?

7 ATTORNEY BORELLI: Objection, form.

8 THE WITNESS: I think they're both ---
9 those situations could cause a risk for self harm and
10 suicide. We would not like to do something that is
11 permanent. Playing on a sports team is not something
12 that is unchangeable.

13 BY ATTORNEY TRYON:

14 Q. But you told me, you told us, that gender is
15 unchangeable and that child at that point has
16 identified as a female. And since that is not going to
17 change what is the harm in removing that child's penis?

18 A. You broke up after what is the harm in removing
19 that child.

20 Q. That child's penis?

21 ATTORNEY BORELLI: Objection, form.

22 THE WITNESS: I stated that their
23 understanding of their gender identity occurs over the
24 lifespan and so we want to be very careful with regard

1 to that --- any permanent treatment.

2 BY ATTORNEY TRYON:

3 Q. So you're saying you don't --- you're saying you
4 don't believe that that child's true identity is a
5 female, true gender identity is a female, you doubt that
6 child?

7 ATTORNEY BORELLI: Objection, form.

8 THE WITNESS: I don't doubt what my
9 patients tell me because --- what they tell me is their
10 truth and their identity. I do like --- think it is
11 important when you are making these decisions to again
12 corroborate that with other individuals who are with the
13 family --- I'm sorry, with the person. And we want to
14 make sure that that is a durable place where their
15 understanding is. Ideally, we would like for it to be
16 as understood as it might be before making a decision
17 that is a permanent decision like surgery.

18 VIDEOGRAPHER: Mr. Tryon, I sent you a
19 chat, I didn't know if you saw that. I just wanted to
20 give a five-minute warning.

21 ATTORNEY TRYON: Oh, it's five minutes
22 left? Thank you. I did not see that. One moment.

23 BY ATTORNEY TRYON:

24 Q. You are getting paid as an expert witness in

1 this case right?

2 ATTORNEY BORELLI: Objection, form.

3 THE WITNESS: Yes.

4 BY ATTORNEY TRYON:

5 Q. Are you being paid as an expert witness in
6 connection to any other litigation or testimony or any
7 other statutes --- similar statutes?

8 ATTORNEY BORELLI: Objection, form.

9 THE WITNESS: I am --- have not been
10 paid. I am involved in other --- another case, two
11 cases.

12 BY ATTORNEY TRYON:

13 Q. What are those other two cases?

14 A. I'm not going to be able to tell you the name
15 because I'm terrible with names. It involves
16 transgender care in Arkansas as well as in
17 sports-related issues with transgender youth in Florida.

18 Q. Have you testified in those cases yet?

19 A. I have not.

20 Q. You testified in other cases.

21 Right?

22 A. You broke up again. Could you repeat?

23 Q. You have testified in other cases.

24 Right?

1 A. Yes.

2 Q. Which cases are those?

3 A. The transgender-related cases were with Adams in
4 Florida. Why am I blanking?

5 Q. Connecticut?

6 A. I did not actually --- I have not been deposed
7 in --- except for Adams.

8 Q. Okay.

9 In your --- in your expert report you say that
10 I have testified twice as an expert at trial or
11 deposition.

12 A. Yeah, I was involved in another case as an
13 expert witness and was deposed for a case involving an
14 infant with fractures that were --- there was concern
15 for abuse.

16 Q. I'm sorry, you froze on me. Can you tell me
17 what that was again?

18 A. Yeah. There was a case that I was involved with
19 where the patient's parents --- they had concern for
20 abuse from the parents because the child had fractures.

21 Q. Well, I'm running out of time, so let me glance
22 through my notes and see if there is anything else. Do
23 you disagree with the policies of the other agents ---
24 excuse me, of the sporting organizations which require a

1 delay in time before a transgender female can
2 participate in those sports?

3 ATTORNEY BORELLI: Objection, form.

4 THE WITNESS: I think it would be better
5 for the patient if they did not have to delay.

6 BY ATTORNEY TRYON:

7 Q. So you --- if it was up to you, you would
8 eliminate that delay that is required by these other
9 sports organizations.

10 Is that right?

11 ATTORNEY BORELLI: Objection, form.

12 THE WITNESSS: I think it would be better
13 for my patients. Yes.

14 BY ATTORNEY TRYON:

15 Q. And you think those organizations should change
16 their policies to satisfy what your concern is?

17 ATTORNEY BORELLI: Objection, form.

18 THE WITNESS: You know, there is a lot to
19 weigh there. I am not sure that I would be able to like
20 say for their purposes. I don't know all of the things
21 that are there. For my patients what would be best for
22 them is to not to have to have that delay.

23 BY ATTORNEY TRYON:

24 Q. But would you agree with me that the State of

1 West Virginia had a lot to weigh as well when it put in
2 place its legislation before they passed the law?

3 ATTORNEY BORELLI: Objection. Objection,
4 form.

5 THE WITNESS: I would hope that every
6 piece of legislation is weighed heavily.

7 BY ATTORNEY TRYON:

8 Q. And you would agree that in this case there was
9 a lot to weigh on a number of different issues before
10 they passed the law.

11 Correct?

12 ATTORNEY BORELLI: Objection, form.

13 THE WITNESS: I would agree. And I
14 wasn't there to know what was, so I agree there should
15 be.

16 BY ATTORNEY TRYON:

17 Q. I'm sorry. I didn't catch that. You froze up.
18 Can you repeat that?

19 A. Sure. I agree there should have been. I wasn't
20 there to hear what happened with regard to the process,
21 so I don't know if they actually did that.

22 ATTORNEY TRYON:

23 Thank you. Do I have any time left,
24 Jacob?

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STATE OF WEST VIRGINIA)

CERTIFICATE

I, Lacey C. Scott, a Notary Public in and for the State of West Virginia, do hereby certify:

That the witness whose testimony appears in the foregoing deposition, was duly sworn by me on said date, and that the transcribed deposition of said witness is a true record of the testimony given by said witness;

That the proceeding is herein recorded fully and accurately;

That I am neither attorney nor counsel for, nor related to any of the parties to the action in which these depositions were taken, and further that I am not a relative of any attorney or counsel employed by the parties hereto, or financially interested in this action.

I certify that the attached transcript meets the requirements set forth within article twenty-seven, chapter forty-seven of the West Virginia Code.



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STATE OF WEST VIRGINIA
Lacey C. Scott
Sargent's Court Reporting Service, Inc.
1234 Suncrest Towne Centre Drive
Morgantown WV 26505
My Commission Expires November 26, 2026

Lacey C. Scott

Lacey C. Scott,

Court Reporter

Endocrine Treatment of Gender-Dysphoric/ Gender-Incongruent Persons: An Endocrine Society* Clinical Practice Guideline

Wylie C. Hembree,¹ Peggy T. Cohen-Kettenis,² Louis Gooren,³ Sabine E. Hannema,⁴ Walter J. Meyer,⁵ M. Hassan Murad,⁶ Stephen M. Rosenthal,⁷ Joshua D. Safer,⁸ Vin Tangpricha,⁹ and Guy G. T'Sjoen¹⁰

¹New York Presbyterian Hospital, Columbia University Medical Center, New York, New York 10032 (Retired); ²VU University Medical Center, 1007 MB Amsterdam, Netherlands (Retired); ³VU University Medical Center, 1007 MB Amsterdam, Netherlands (Retired); ⁴Leiden University Medical Center, 2300 RC Leiden, Netherlands; ⁵University of Texas Medical Branch, Galveston, Texas 77555; ⁶Mayo Clinic Evidence-Based Practice Center, Rochester, Minnesota 55905; ⁷University of California San Francisco, Benioff Children's Hospital, San Francisco, California 94143; ⁸Boston University School of Medicine, Boston, Massachusetts 02118; ⁹Emory University School of Medicine and the Atlanta VA Medical Center, Atlanta, Georgia 30322; and ¹⁰Ghent University Hospital, 9000 Ghent, Belgium

***Cosponsoring Associations:** American Association of Clinical Endocrinologists, American Society of Andrology, European Society for Pediatric Endocrinology, European Society of Endocrinology, Pediatric Endocrine Society, and World Professional Association for Transgender Health.

Objective: To update the "Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice Guideline," published by the Endocrine Society in 2009.

Participants: The participants include an Endocrine Society–appointed task force of nine experts, a methodologist, and a medical writer.

Evidence: This evidence-based guideline was developed using the Grading of Recommendations, Assessment, Development, and Evaluation approach to describe the strength of recommendations and the quality of evidence. The task force commissioned two systematic reviews and used the best available evidence from other published systematic reviews and individual studies.

Consensus Process: Group meetings, conference calls, and e-mail communications enabled consensus. Endocrine Society committees, members and cosponsoring organizations reviewed and commented on preliminary drafts of the guidelines.

Conclusion: Gender affirmation is multidisciplinary treatment in which endocrinologists play an important role. Gender-dysphoric/gender-incongruent persons seek and/or are referred to endocrinologists to develop the physical characteristics of the affirmed gender. They require a safe and effective hormone regimen that will (1) suppress endogenous sex hormone secretion determined by the person's genetic/gonadal sex and (2) maintain sex hormone levels within the normal range for the person's affirmed gender. Hormone treatment is not recommended for prepubertal gender-dysphoric/gender-incongruent persons. Those clinicians who recommend gender-affirming endocrine treatments—appropriately trained diagnosing clinicians (required), a mental health provider for adolescents (required) and mental health

professional for adults (recommended)—should be knowledgeable about the diagnostic criteria and criteria for gender-affirming treatment, have sufficient training and experience in assessing psychopathology, and be willing to participate in the ongoing care throughout the endocrine transition. We recommend treating gender-dysphoric/gender-incongruent adolescents who have entered puberty at Tanner Stage G2/B2 by suppression with gonadotropin-releasing hormone agonists. Clinicians may add gender-affirming hormones after a multidisciplinary team has confirmed the persistence of gender dysphoria/gender incongruence and sufficient mental capacity to give informed consent to this partially irreversible treatment. Most adolescents have this capacity by age 16 years old. We recognize that there may be compelling reasons to initiate sex hormone treatment prior to age 16 years, although there is minimal published experience treating prior to 13.5 to 14 years of age. For the care of peripubertal youths and older adolescents, we recommend that an expert multidisciplinary team comprised of medical professionals and mental health professionals manage this treatment. The treating physician must confirm the criteria for treatment used by the referring mental health practitioner and collaborate with them in decisions about gender-affirming surgery in older adolescents. For adult gender-dysphoric/gender-incongruent persons, the treating clinicians (collectively) should have expertise in transgender-specific diagnostic criteria, mental health, primary care, hormone treatment, and surgery, as needed by the patient. We suggest maintaining physiologic levels of gender-appropriate hormones and monitoring for known risks and complications. When high doses of sex steroids are required to suppress endogenous sex steroids and/or in advanced age, clinicians may consider surgically removing natal gonads along with reducing sex steroid treatment. Clinicians should monitor both transgender males (female to male) and transgender females (male to female) for reproductive organ cancer risk when surgical removal is incomplete. Additionally, clinicians should persistently monitor adverse effects of sex steroids. For gender-affirming surgeries in adults, the treating physician must collaborate with and confirm the criteria for treatment used by the referring physician. Clinicians should avoid harming individuals (via hormone treatment) who have conditions other than gender dysphoria/gender incongruence and who may not benefit from the physical changes associated with this treatment. (*J Clin Endocrinol Metab* 102: 3869–3903, 2017)

Summary of Recommendations

1.0 Evaluation of youth and adults

- 1.1. We advise that only trained mental health professionals (MHPs) who meet the following criteria should diagnose gender dysphoria (GD)/gender incongruence in adults: (1) competence in using the Diagnostic and Statistical Manual of Mental Disorders (DSM) and/or the International Statistical Classification of Diseases and Related Health Problems (ICD) for diagnostic purposes, (2) the ability to diagnose GD/gender incongruence and make a distinction between GD/gender incongruence and conditions that have similar features (*e.g.*, body dysmorphic disorder), (3) training in diagnosing psychiatric conditions, (4) the ability to undertake or refer for appropriate treatment, (5) the ability to psychosocially assess the person's understanding, mental health, and social conditions that can impact gender-affirming hormone therapy, and (6) a practice of regularly attending relevant professional meetings. (Ungraded Good Practice Statement)
- 1.2. We advise that only MHPs who meet the following criteria should diagnose GD/gender incongruence in children and adolescents: (1) training in child and adolescent developmental psychology and psychopathology, (2) competence in using the DSM and/or the ICD for diagnostic purposes, (3) the ability to make a distinction between GD/gender incongruence and conditions that have similar features (*e.g.*, body dysmorphic disorder), (4) training in diagnosing psychiatric conditions, (5) the ability to undertake or refer for appropriate treatment, (6) the ability to psychosocially assess the person's understanding and social conditions that can impact gender-affirming hormone therapy, (7) a practice of regularly attending relevant professional meetings, and (8) knowledge of the criteria for puberty blocking and gender-affirming hormone treatment in adolescents. (Ungraded Good Practice Statement)
- 1.3. We advise that decisions regarding the social transition of prepubertal youths with GD/gender incongruence are made with the assistance of an MHP or another experienced professional. (Ungraded Good Practice Statement).

- 1.4. We recommend against puberty blocking and gender-affirming hormone treatment in pre-pubertal children with GD/gender incongruence. (1 ⊕⊕○○)
- 1.5. We recommend that clinicians inform and counsel all individuals seeking gender-affirming medical treatment regarding options for fertility preservation prior to initiating puberty suppression in adolescents and prior to treating with hormonal therapy of the affirmed gender in both adolescents and adults. (1 ⊕⊕⊕○)

2.0 Treatment of adolescents

- 2.1. We suggest that adolescents who meet diagnostic criteria for GD/gender incongruence, fulfill criteria for treatment, and are requesting treatment should initially undergo treatment to suppress pubertal development. (2 ⊕⊕○○)
- 2.2. We suggest that clinicians begin pubertal hormone suppression after girls and boys first exhibit physical changes of puberty. (2 ⊕⊕○○)
- 2.3. We recommend that, where indicated, GnRH analogues are used to suppress pubertal hormones. (1 ⊕⊕○○)
- 2.4. In adolescents who request sex hormone treatment (given this is a partly irreversible treatment), we recommend initiating treatment using a gradually increasing dose schedule after a multidisciplinary team of medical and MHPs has confirmed the persistence of GD/gender incongruence and sufficient mental capacity to give informed consent, which most adolescents have by age 16 years. (1 ⊕⊕○○).
- 2.5. We recognize that there may be compelling reasons to initiate sex hormone treatment prior to the age of 16 years in some adolescents with GD/gender incongruence, even though there are minimal published studies of gender-affirming hormone treatments administered before age 13.5 to 14 years. As with the care of adolescents ≥16 years of age, we recommend that an expert multidisciplinary team of medical and MHPs manage this treatment. (1 ⊕○○○)
- 2.6. We suggest monitoring clinical pubertal development every 3 to 6 months and laboratory parameters every 6 to 12 months during sex hormone treatment. (2 ⊕⊕○○)

3.0 Hormonal therapy for transgender adults

- 3.1. We recommend that clinicians confirm the diagnostic criteria of GD/gender incongruence and

- the criteria for the endocrine phase of gender transition before beginning treatment. (1 ⊕⊕⊕○)
- 3.2. We recommend that clinicians evaluate and address medical conditions that can be exacerbated by hormone depletion and treatment with sex hormones of the affirmed gender before beginning treatment. (1 ⊕⊕⊕○)
- 3.3. We suggest that clinicians measure hormone levels during treatment to ensure that endogenous sex steroids are suppressed and administered sex steroids are maintained in the normal physiologic range for the affirmed gender. (2 ⊕⊕○○)
- 3.4. We suggest that endocrinologists provide education to transgender individuals undergoing treatment about the onset and time course of physical changes induced by sex hormone treatment. (2 ⊕○○○)

4.0 Adverse outcome prevention and long-term care

- 4.1. We suggest regular clinical evaluation for physical changes and potential adverse changes in response to sex steroid hormones and laboratory monitoring of sex steroid hormone levels every 3 months during the first year of hormone therapy for transgender males and females and then once or twice yearly. (2 ⊕⊕○○)
- 4.2. We suggest periodically monitoring prolactin levels in transgender females treated with estrogens. (2 ⊕⊕○○)
- 4.3. We suggest that clinicians evaluate transgender persons treated with hormones for cardiovascular risk factors using fasting lipid profiles, diabetes screening, and/or other diagnostic tools. (2 ⊕⊕○○)
- 4.4. We recommend that clinicians obtain bone mineral density (BMD) measurements when risk factors for osteoporosis exist, specifically in those who stop sex hormone therapy after gonadectomy. (1 ⊕⊕○○)
- 4.5. We suggest that transgender females with no known increased risk of breast cancer follow breast-screening guidelines recommended for non-transgender females. (2 ⊕⊕○○)
- 4.6. We suggest that transgender females treated with estrogens follow individualized screening according to personal risk for prostatic disease and prostate cancer. (2 ⊕○○○)
- 4.7. We advise that clinicians determine the medical necessity of including a total hysterectomy and oophorectomy as part of gender-affirming surgery. (Ungraded Good Practice Statement)

5.0 Surgery for sex reassignment and gender confirmation

- 5.1. We recommend that a patient pursue genital gender-affirming surgery only after the MHP and the clinician responsible for endocrine transition therapy both agree that surgery is medically necessary and would benefit the patient's overall health and/or well-being. (1 ⊕⊕○○)
- 5.2. We advise that clinicians approve genital gender-affirming surgery only after completion of at least 1 year of consistent and compliant hormone treatment, unless hormone therapy is not desired or medically contraindicated. (Ungraded Good Practice Statement)
- 5.3. We advise that the clinician responsible for endocrine treatment and the primary care provider ensure appropriate medical clearance of transgender individuals for genital gender-affirming surgery and collaborate with the surgeon regarding hormone use during and after surgery. (Ungraded Good Practice Statement)
- 5.4. We recommend that clinicians refer hormone-treated transgender individuals for genital surgery when: (1) the individual has had a satisfactory social role change, (2) the individual is satisfied about the hormonal effects, and (3) the individual desires definitive surgical changes. (1 ⊕○○○)
- 5.5. We suggest that clinicians delay gender-affirming genital surgery involving gonadectomy and/or hysterectomy until the patient is at least 18 years old or legal age of majority in his or her country. (2 ⊕⊕○○)
- 5.6. We suggest that clinicians determine the timing of breast surgery for transgender males based upon the physical and mental health status of the individual. There is insufficient evidence to recommend a specific age requirement. (2 ⊕○○○)

Changes Since the Previous Guideline

Both the current guideline and the one published in 2009 contain similar sections. Listed here are the sections contained in the current guideline and the corresponding number of recommendations: Introduction, Evaluation of Youth and Adults (5), Treatment of Adolescents (6), Hormonal Therapy for Transgender Adults (4), Adverse Outcomes Prevention and Long-term Care (7), and Surgery for Sex Reassignment and Gender Confirmation (6). The current introduction updates the diagnostic classification of “gender dysphoria/gender incongruence.” It also reviews the development of “gender identity” and summarizes its natural development. The section on

clinical evaluation of both youth and adults, defines in detail the professional qualifications required of those who diagnose and treat both adolescents and adults. We advise that decisions regarding the social transition of prepubertal youth are made with the assistance of a mental health professional or similarly experienced professional. We recommend against puberty blocking followed by gender-affirming hormone treatment of prepubertal children. Clinicians should inform pubertal children, adolescents, and adults seeking gender-confirming treatment of their options for fertility preservation. Prior to treatment, clinicians should evaluate the presence of medical conditions that may be worsened by hormone depletion and/or treatment. A multidisciplinary team, preferably composed of medical and mental health professionals, should monitor treatments. Clinicians evaluating transgender adults for endocrine treatment should confirm the diagnosis of persistent gender dysphoria/gender incongruence. Physicians should educate transgender persons regarding the time course of steroid-induced physical changes. Treatment should include periodic monitoring of hormone levels and metabolic parameters, as well as assessments of bone density and the impact upon prostate, gonads, and uterus. We also make recommendations for transgender persons who plan genital gender-affirming surgery.

Method of Development of Evidence-Based Clinical Practice Guidelines

The Clinical Guidelines Subcommittee (CGS) of the Endocrine Society deemed the diagnosis and treatment of individuals with GD/gender incongruence a priority area for revision and appointed a task force to formulate evidence-based recommendations. The task force followed the approach recommended by the Grading of Recommendations, Assessment, Development, and Evaluation group, an international group with expertise in the development and implementation of evidence-based guidelines (1). A detailed description of the grading scheme has been published elsewhere (2). The task force used the best available research evidence to develop the recommendations. The task force also used consistent language and graphical descriptions of both the strength of a recommendation and the quality of evidence. In terms of the strength of the recommendation, strong recommendations use the phrase “we recommend” and the number 1, and weak recommendations use the phrase “we suggest” and the number 2. Cross-filled circles indicate the quality of the evidence, such that ⊕○○○ denotes very low-quality evidence; ⊕⊕○○, low quality; ⊕⊕⊕○, moderate quality; and ⊕⊕⊕⊕, high quality. The task force has confidence that persons who receive care according to the strong recommendations will derive, on average, more benefit than harm. Weak recommendations require more careful consideration of the person's circumstances, values, and preferences to determine the best course of action. Linked to each recommendation is a description of the evidence and the

values that the task force considered in making the recommendation. In some instances, there are remarks in which the task force offers technical suggestions for testing conditions, dosing, and monitoring. These technical comments reflect the best available evidence applied to a typical person being treated. Often this evidence comes from the unsystematic observations of the task force and their preferences; therefore, one should consider these remarks as suggestions.

In this guideline, the task force made several statements to emphasize the importance of shared decision-making, general preventive care measures, and basic principles of the treatment of transgender persons. They labeled these “Ungraded Good Practice Statement.” Direct evidence for these statements was either unavailable or not systematically appraised and considered out of the scope of this guideline. The intention of these statements is to draw attention to these principles.

The Endocrine Society maintains a rigorous conflict-of-interest review process for developing clinical practice guidelines. All task force members must declare any potential conflicts of interest by completing a conflict-of-interest form. The CGS reviews all conflicts of interest before the Society’s Council approves the members to participate on the task force and periodically during the development of the guideline. All others participating in the guideline’s development must also disclose any conflicts of interest in the matter under study, and most of these participants must be without any conflicts of interest. The CGS and the task force have reviewed all disclosures for this guideline and resolved or managed all identified conflicts of interest.

Conflicts of interest are defined as remuneration in any amount from commercial interests; grants; research support; consulting fees; salary; ownership interests [e.g., stocks and stock options (excluding diversified mutual funds)]; honoraria and other payments for participation in speakers’ bureaus, advisory boards, or boards of directors; and all other financial benefits. Completed forms are available through the Endocrine Society office.

The Endocrine Society provided the funding for this guideline; the task force received no funding or remuneration from commercial or other entities.

Commissioned Systematic Review

The task force commissioned two systematic reviews to support this guideline. The first one aimed to summarize the available evidence on the effect of sex steroid use in transgender individuals on lipids and cardiovascular outcomes. The review identified 29 eligible studies at moderate risk of bias. In transgender males (female to male), sex steroid therapy was associated with a statistically significant increase in serum triglycerides and low-density lipoprotein cholesterol levels. High-density lipoprotein cholesterol levels decreased significantly across all follow-up time periods. In transgender females (male to female), serum triglycerides were significantly higher without any changes in other parameters. Few myocardial infarction, stroke, venous thromboembolism (VTE), and death events were reported. These events were more frequent in transgender females. However, the

quality of the evidence was low. The second review summarized the available evidence regarding the effect of sex steroids on bone health in transgender individuals and identified 13 studies. In transgender males, there was no statistically significant difference in the lumbar spine, femoral neck, or total hip BMD at 12 and 24 months compared with baseline values before initiating masculinizing hormone therapy. In transgender females, there was a statistically significant increase in lumbar spine BMD at 12 months and 24 months compared with baseline values before initiation of feminizing hormone therapy. There was minimal information on fracture rates. The quality of evidence was also low.

Introduction

Throughout recorded history (in the absence of an endocrine disorder) some men and women have experienced confusion and anguish resulting from rigid, forced conformity to sexual dimorphism. In modern history, there have been numerous ongoing biological, psychological, cultural, political, and sociological debates over various aspects of gender variance. The 20th century marked the emergence of a social awakening for men and women with the belief that they are “trapped” in the wrong body (3). Magnus Hirschfeld and Harry Benjamin, among others, pioneered the medical responses to those who sought relief from and a resolution to their profound discomfort. Although the term transsexual became widely known after Benjamin wrote “The Transsexual Phenomenon” (4), it was Hirschfeld who coined the term “transsexual” in 1923 to describe people who want to live a life that corresponds with their experienced gender vs their designated gender (5). Magnus Hirschfeld (6) and others (4, 7) have described other types of trans phenomena besides transsexualism. These early researchers proposed that the gender identity of these people was located somewhere along a unidimensional continuum. This continuum ranged from all male through “something in between” to all female. Yet such a classification does not take into account that people may have gender identities outside this continuum. For instance, some experience themselves as having both a male and female gender identity, whereas others completely renounce any gender classification (8, 9). There are also reports of individuals experiencing a continuous and rapid involuntary alternation between a male and female identity (10) or men who do not experience themselves as men but do not want to live as women (11, 12). In some countries, (e.g., Nepal, Bangladesh, and Australia), these nonmale or nonfemale genders are officially recognized (13). Specific treatment protocols, however, have not yet been developed for these groups.

Instead of the term transsexualism, the current classification system of the American Psychiatric Association uses the term gender dysphoria in its diagnosis of persons who are not satisfied with their designated gender (14). The current version of the World Health Organization's ICD-10 still uses the term transsexualism when diagnosing adolescents and adults. However, for the ICD-11, the World Health Organization has proposed using the term "gender incongruence" (15).

Treating persons with GD/gender incongruence (15) was previously limited to relatively ineffective elixirs or creams. However, more effective endocrinology-based treatments became possible with the availability of testosterone in 1935 and diethylstilbestrol in 1938. Reports of individuals with GD/gender incongruence who were treated with hormones and gender-affirming surgery appeared in the press during the second half of the 20th century. The Harry Benjamin International Gender Dysphoria Association was founded in September 1979 and is now called the World Professional Association for Transgender Health (WPATH). WPATH published its first Standards of Care in 1979. These standards have since been regularly updated, providing guidance for treating persons with GD/gender incongruence (16).

Prior to 1975, few peer-reviewed articles were published concerning endocrine treatment of transgender persons. Since then, more than two thousand articles about various aspects of transgender care have appeared.

It is the purpose of this guideline to make detailed recommendations and suggestions, based on existing medical literature and clinical experience, that will enable treating physicians to maximize benefit and minimize risk when caring for individuals diagnosed with GD/gender incongruence.

In the future, we need more rigorous evaluations of the effectiveness and safety of endocrine and surgical protocols. Specifically, endocrine treatment protocols for GD/gender incongruence should include the careful assessment of the following: (1) the effects of prolonged delay of puberty in adolescents on bone health, gonadal function, and the brain (including effects on cognitive, emotional, social, and sexual development); (2) the effects of treatment in adults on sex hormone levels; (3) the requirement for and the effects of progestins and other agents used to suppress endogenous sex steroids during treatment; and (4) the risks and benefits of gender-affirming hormone treatment in older transgender people.

To successfully establish and enact these protocols, a commitment of mental health and endocrine investigators is required to collaborate in long-term, large-scale

studies across countries that use the same diagnostic and inclusion criteria, medications, assay methods, and response assessment tools (*e.g.*, the European Network for the Investigation of Gender Incongruence) (17, 18).

Terminology and its use vary and continue to evolve. Table 1 contains the definitions of terms as they are used throughout this guideline.

Biological Determinants of Gender Identity Development

One's self-awareness as male or female changes gradually during infant life and childhood. This process of cognitive and affective learning evolves with interactions with parents, peers, and environment. A fairly accurate timetable exists outlining the steps in this process (19). Normative psychological literature, however, does not address if and when gender identity becomes crystallized and what factors contribute to the development of a gender identity that is not congruent with the gender of rearing. Results of studies from a variety of biomedical disciplines—genetic, endocrine, and neuroanatomic—support the concept that gender identity and/or gender expression (20) likely reflect a complex interplay of biological, environmental, and cultural factors (21, 22).

With respect to endocrine considerations, studies have failed to find differences in circulating levels of sex steroids between transgender and nontransgender individuals (23). However, studies in individuals with a disorder/difference of sex development (DSD) have informed our understanding of the role that hormones may play in gender identity outcome, even though most persons with GD/gender incongruence do not have a DSD. For example, although most 46,XX adult individuals with virilizing congenital adrenal hyperplasia caused by mutations in *CYP21A2* reported a female gender identity, the prevalence of GD/gender incongruence was much greater in this group than in the general population without a DSD. This supports the concept that there is a role for prenatal/postnatal androgens in gender development (24–26), although some studies indicate that prenatal androgens are more likely to affect gender behavior and sexual orientation rather than gender identity *per se* (27, 28).

Researchers have made similar observations regarding the potential role of androgens in the development of gender identity in other individuals with DSD. For example, a review of two groups of 46,XY persons, each with androgen synthesis deficiencies and female raised, reported transgender male (female-to-male) gender role changes in 56% to 63% and 39% to 64% of patients, respectively (29). Also, in 46,XY female-raised individuals with cloacal

Table 1. Definitions of Terms Used in This Guideline

Biological sex, biological male or female: These terms refer to physical aspects of maleness and femaleness. As these may not be in line with each other (e.g., a person with XY chromosomes may have female-appearing genitalia), the terms biological sex and biological male or female are imprecise and should be avoided.

Cisgender: This means not transgender. An alternative way to describe individuals who are not transgender is “non-transgender people.”

Gender-affirming (hormone) treatment: See “gender reassignment”

Gender dysphoria: This is the distress and unease experienced if gender identity and designated gender are not completely congruent (see Table 2). In 2013, the American Psychiatric Association released the fifth edition of the DSM-5, which replaced “gender identity disorder” with “gender dysphoria” and changed the criteria for diagnosis.

Gender expression: This refers to external manifestations of gender, expressed through one’s name, pronouns, clothing, haircut, behavior, voice, or body characteristics. Typically, transgender people seek to make their gender expression align with their gender identity, rather than their designated gender.

Gender identity/experienced gender: This refers to one’s internal, deeply held sense of gender. For transgender people, their gender identity does not match their sex designated at birth. Most people have a gender identity of man or woman (or boy or girl). For some people, their gender identity does not fit neatly into one of those two choices. Unlike gender expression (see below), gender identity is not visible to others.

Gender identity disorder: This is the term used for GD/gender incongruence in previous versions of DSM (see “gender dysphoria”). The ICD-10 still uses the term for diagnosing child diagnoses, but the upcoming ICD-11 has proposed using “gender incongruence of childhood.”

Gender incongruence: This is an umbrella term used when the gender identity and/or gender expression differs from what is typically associated with the designated gender. Gender incongruence is also the proposed name of the gender identity–related diagnoses in ICD-11. Not all individuals with gender incongruence have gender dysphoria or seek treatment.

Gender variance: See “gender incongruence”

Gender reassignment: This refers to the treatment procedure for those who want to adapt their bodies to the experienced gender by means of hormones and/or surgery. This is also called gender-confirming or gender-affirming treatment.

Gender-reassignment surgery (gender-confirming/gender-affirming surgery): These terms refer only to the surgical part of gender-confirming/gender-affirming treatment.

Gender role: This refers to behaviors, attitudes, and personality traits that a society (in a given culture and historical period) designates as masculine or feminine and/or that society associates with or considers typical of the social role of men or women.

Sex designated at birth: This refers to sex assigned at birth, usually based on genital anatomy.

Sex: This refers to attributes that characterize biological maleness or femaleness. The best known attributes include the sex-determining genes, the sex chromosomes, the H-Y antigen, the gonads, sex hormones, internal and external genitalia, and secondary sex characteristics.

Sexual orientation: This term describes an individual’s enduring physical and emotional attraction to another person. Gender identity and sexual orientation are not the same. Irrespective of their gender identity, transgender people may be attracted to women (gynephilic), attracted to men (androphilic), bisexual, asexual, or queer.

Transgender: This is an umbrella term for people whose gender identity and/or gender expression differs from what is typically associated with their sex designated at birth. Not all transgender individuals seek treatment.

Transgender male (also: trans man, female-to-male, transgender male): This refers to individuals assigned female at birth but who identify and live as men.

Transgender woman (also: trans woman, male-to-female, transgender female): This refers to individuals assigned male at birth but who identify and live as women.

Transition: This refers to the process during which transgender persons change their physical, social, and/or legal characteristics consistent with the affirmed gender identity. Prepubertal children may choose to transition socially.

Transsexual: This is an older term that originated in the medical and psychological communities to refer to individuals who have permanently transitioned through medical interventions or desired to do so.

exstrophy and penile agenesis, the occurrence of transgender male changes was significantly more prevalent than in the general population (30, 31). However, the fact that a high percentage of individuals with the same conditions did not change gender suggests that cultural factors may play a role as well.

With respect to genetics and gender identity, several studies have suggested heritability of GD/gender incongruence (32, 33). In particular, a study by Heylens *et al.* (33) demonstrated a 39.1% concordance rate for gender identity disorder (based on the DSM-IV criteria) in 23 monozygotic twin pairs but no concordance in 21 same-sex dizygotic or seven opposite-sex twin pairs. Although numerous investigators have sought to identify

specific genes associated with GD/gender incongruence, such studies have been inconsistent and without strong statistical significance (34–38).

Studies focusing on brain structure suggest that the brain phenotypes of people with GD/gender incongruence differ in various ways from control males and females, but that there is not a complete sex reversal in brain structures (39).

In summary, although there is much that is still unknown with respect to gender identity and its expression, compelling studies support the concept that biologic factors, in addition to environmental factors, contribute to this fundamental aspect of human development.

Natural History of Children With GD/Gender Incongruence

With current knowledge, we cannot predict the psychosexual outcome for any specific child. Prospective follow-up studies show that childhood GD/gender incongruence does not invariably persist into adolescence and adulthood (so-called “desisters”). Combining all outcome studies to date, the GD/gender incongruence of a minority of prepubertal children appears to persist in adolescence (20, 40). In adolescence, a significant number of these desisters identify as homosexual or bisexual. It may be that children who only showed some gender nonconforming characteristics have been included in the follow-up studies, because the DSM-IV text revision criteria for a diagnosis were rather broad. However, the persistence of GD/gender incongruence into adolescence is more likely if it had been extreme in childhood (41, 42). With the newer, stricter criteria of the DSM-5 (Table 2), persistence rates may well be different in future studies.

1.0 Evaluation of Youth and Adults

Gender-affirming treatment is a multidisciplinary effort. After evaluation, education, and diagnosis, treatment may include mental health care, hormone therapy, and/or surgical therapy. Together with an MHP, hormone-prescribing clinicians should examine the psychosocial impact of the potential changes on people’s lives, including mental health, friends, family, jobs, and their role in society. Transgender individuals should be encouraged to experience living in the new gender role and assess whether

this improves their quality of life. Although the focus of this guideline is gender-affirming hormone therapy, collaboration with appropriate professionals responsible for each aspect of treatment maximizes a successful outcome.

Diagnostic assessment and mental health care

GD/gender incongruence may be accompanied with psychological or psychiatric problems (43–51). It is therefore necessary that clinicians who prescribe hormones and are involved in diagnosis and psychosocial assessment meet the following criteria: (1) are competent in using the DSM and/or the ICD for diagnostic purposes, (2) are able to diagnose GD/gender incongruence and make a distinction between GD/gender incongruence and conditions that have similar features (*e.g.*, body dysmorphic disorder), (3) are trained in diagnosing psychiatric conditions, (4) undertake or refer for appropriate treatment, (5) are able to do a psychosocial assessment of the patient’s understanding, mental health, and social conditions that can impact gender-affirming hormone therapy, and (6) regularly attend relevant professional meetings.

Because of the psychological vulnerability of many individuals with GD/gender incongruence, it is important that mental health care is available before, during, and sometimes also after transitioning. For children and adolescents, an MHP who has training/experience in child and adolescent gender development (as well as child and adolescent psychopathology) should make the diagnosis, because assessing GD/gender incongruence in children and adolescents is often extremely complex.

During assessment, the clinician obtains information from the individual seeking gender-affirming treatment. In the case

Table 2. DSM-5 Criteria for Gender Dysphoria in Adolescents and Adults

-
- A. A marked incongruence between one’s experienced/expressed gender and natal gender of at least 6 mo in duration, as manifested by at least two of the following:
1. A marked incongruence between one’s experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated secondary sex characteristics)
 2. A strong desire to be rid of one’s primary and/or secondary sex characteristics because of a marked incongruence with one’s experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics)
 3. A strong desire for the primary and/or secondary sex characteristics of the other gender
 4. A strong desire to be of the other gender (or some alternative gender different from one’s designated gender)
 5. A strong desire to be treated as the other gender (or some alternative gender different from one’s designated gender)
 6. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one’s designated gender)
- B. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.
- Specify if:
1. The condition exists with a disorder of sex development.
 2. The condition is posttransitional, in that the individual has transitioned to full-time living in the desired gender (with or without legalization of gender change) and has undergone (or is preparing to have) at least one sex-related medical procedure or treatment regimen—namely, regular sex hormone treatment or gender reassignment surgery confirming the desired gender (*e.g.*, penectomy, vaginoplasty in natal males; mastectomy or phalloplasty in natal females).
-

of adolescents, the clinician also obtains information from the parents or guardians regarding various aspects of the child's general and psychosexual development and current functioning. On the basis of this information, the clinician:

- decides whether the individual fulfills criteria for treatment (see Tables 2 and 3) for GD/gender incongruence (DSM-5) or transsexualism (DSM-5 and/or ICD-10);
- informs the individual about the possibilities and limitations of various kinds of treatment (hormonal/surgical and nonhormonal), and if medical treatment is desired, provides correct information to prevent unrealistically high expectations;
- assesses whether medical interventions may result in unfavorable psychological and social outcomes.

In cases in which severe psychopathology, circumstances, or both seriously interfere with the diagnostic work or make satisfactory treatment unlikely, clinicians should assist the adolescent in managing these other issues. Literature on postoperative regret suggests that besides poor quality of surgery, severe psychiatric comorbidity and lack of support may interfere with positive outcomes (52–56).

For adolescents, the diagnostic procedure usually includes a complete psychodiagnostic assessment (57) and an assessment of the decision-making capability of the youth. An evaluation to assess the family's ability to endure stress, give support, and deal with the complexities of the adolescent's situation should be part of the diagnostic phase (58).

Social transitioning

A change in gender expression and role (which may involve living part time or full time in another gender role that is consistent with one's gender identity) may test the person's resolve, the capacity to function in the affirmed gender, and the adequacy of social, economic, and psychological supports. It assists both the individual and the clinician in their judgments about how to proceed (16). During social transitioning, the person's feelings about the social transformation (including coping with the responses of others) is a major focus of the counseling. The optimal timing for social transitioning may differ between individuals. Sometimes people wait until they

start gender-affirming hormone treatment to make social transitioning easier, but individuals increasingly start social transitioning long before they receive medically supervised, gender-affirming hormone treatment.

Criteria

Adolescents and adults seeking gender-affirming hormone treatment and surgery should satisfy certain criteria before proceeding (16). Criteria for gender-affirming hormone therapy for adults are in Table 4, and criteria for gender-affirming hormone therapy for adolescents are in Table 5. Follow-up studies in adults meeting these criteria indicate a high satisfaction rate with treatment (59). However, the quality of evidence is usually low. A few follow-up studies on adolescents who fulfilled these criteria also indicated good treatment results (60–63).

Recommendations for Those Involved in the Gender-Affirming Hormone Treatment of Individuals With GD/Gender Incongruence

- 1.1. We advise that only trained MHPs who meet the following criteria should diagnose GD/gender incongruence in adults: (1) competence in using the DSM and/or the ICD for diagnostic purposes, (2) the ability to diagnose GD/gender incongruence and make a distinction between GD/gender incongruence and conditions that have similar features (*e.g.*, body dysmorphic disorder), (3) training in diagnosing psychiatric conditions, (4) the ability to undertake or refer for appropriate treatment, (5) the ability to psychosocially assess the person's understanding, mental health, and social conditions that can impact gender-affirming hormone therapy, and (6) a practice of regularly attending relevant professional meetings. (Ungraded Good Practice Statement)
- 1.2. We advise that only MHPs who meet the following criteria should diagnose GD/gender incongruence in children and adolescents: (1) training in child and adolescent developmental psychology and psychopathology, (2) competence in using the DSM and/or ICD for diagnostic

Table 3. ICD-10 Criteria for Transsexualism

Transsexualism (F64.0) has three criteria:

1. The desire to live and be accepted as a member of the opposite sex, usually accompanied by the wish to make his or her body as congruent as possible with the preferred sex through surgery and hormone treatments.
2. The transsexual identity has been present persistently for at least 2 y.
3. The disorder is not a symptom of another mental disorder or a genetic, DSD, or chromosomal abnormality.

Table 4. Criteria for Gender-Affirming Hormone Therapy for Adults

1. Persistent, well-documented gender dysphoria/gender incongruence
2. The capacity to make a fully informed decision and to consent for treatment
3. The age of majority in a given country (if younger, follow the criteria for adolescents)
4. Mental health concerns, if present, must be reasonably well controlled

Reproduced from World Professional Association for Transgender Health (16).

purposes, (3) the ability to make a distinction between GD/gender incongruence and conditions that have similar features (*e.g.*, body dysmorphic disorder), (4) training in diagnosing psychiatric conditions, (5) the ability to undertake or refer for appropriate treatment, (6) the ability to psychosocially assess the person's understanding and social conditions that can impact gender-affirming hormone therapy, (7) a practice of regularly attending relevant professional meetings, and (8) knowledge of the criteria for puberty blocking and gender-affirming hormone treatment in adolescents. (Ungraded Good Practice Statement)

Evidence

Individuals with gender identity issues may have psychological or psychiatric problems (43–48, 50, 51, 64, 65). It is therefore necessary that clinicians making the diagnosis are able to make a distinction between GD/gender incongruence and conditions that have similar features. Examples of conditions with similar features are body dysmorphic disorder, body identity integrity disorder (a condition in which individuals have a sense that their anatomical configuration as an able-bodied person is somehow wrong or inappropriate) (66), or certain forms of eunuchism (in which a person is preoccupied with or engages in castration and/or penectomy for

Table 5. Criteria for Gender-Affirming Hormone Therapy for Adolescents

Adolescents are eligible for GnRH agonist treatment if:

1. A qualified MHP has confirmed that:
 - the adolescent has demonstrated a long-lasting and intense pattern of gender nonconformity or gender dysphoria (whether suppressed or expressed),
 - gender dysphoria worsened with the onset of puberty,
 - any coexisting psychological, medical, or social problems that could interfere with treatment (*e.g.*, that may compromise treatment adherence) have been addressed, such that the adolescent's situation and functioning are stable enough to start treatment,
 - the adolescent has sufficient mental capacity to give informed consent to this (reversible) treatment,
2. And the adolescent:
 - has been informed of the effects and side effects of treatment (including potential loss of fertility if the individual subsequently continues with sex hormone treatment) and options to preserve fertility,
 - has given informed consent and (particularly when the adolescent has not reached the age of legal medical consent, depending on applicable legislation) the parents or other caretakers or guardians have consented to the treatment and are involved in supporting the adolescent throughout the treatment process,
3. And a pediatric endocrinologist or other clinician experienced in pubertal assessment
 - agrees with the indication for GnRH agonist treatment,
 - has confirmed that puberty has started in the adolescent (Tanner stage \geq G2/B2),
 - has confirmed that there are no medical contraindications to GnRH agonist treatment.

Adolescents are eligible for subsequent sex hormone treatment if:

1. A qualified MHP has confirmed:
 - the persistence of gender dysphoria,
 - any coexisting psychological, medical, or social problems that could interfere with treatment (*e.g.*, that may compromise treatment adherence) have been addressed, such that the adolescent's situation and functioning are stable enough to start sex hormone treatment,
 - the adolescent has sufficient mental capacity (which most adolescents have by age 16 years) to estimate the consequences of this (partly) irreversible treatment, weigh the benefits and risks, and give informed consent to this (partly) irreversible treatment,
2. And the adolescent:
 - has been informed of the (irreversible) effects and side effects of treatment (including potential loss of fertility and options to preserve fertility),
 - has given informed consent and (particularly when the adolescent has not reached the age of legal medical consent, depending on applicable legislation) the parents or other caretakers or guardians have consented to the treatment and are involved in supporting the adolescent throughout the treatment process,
3. And a pediatric endocrinologist or other clinician experienced in pubertal induction:
 - agrees with the indication for sex hormone treatment,
 - has confirmed that there are no medical contraindications to sex hormone treatment.

Reproduced from World Professional Association for Transgender Health (16).

reasons that are not gender identity related) (11). Clinicians should also be able to diagnose psychiatric conditions accurately and ensure that these conditions are treated appropriately, particularly when the conditions may complicate treatment, affect the outcome of gender-affirming treatment, or be affected by hormone use.

Values and preferences

The task force placed a very high value on avoiding harm from hormone treatment in individuals who have conditions other than GD/gender incongruence and who may not benefit from the physical changes associated with this treatment and placed a low value on any potential benefit these persons believe they may derive from hormone treatment. This justifies the good practice statement.

- 1.3. We advise that decisions regarding the social transition of prepubertal youths with GD/gender incongruence are made with the assistance of an MHP or another experienced professional. (Ungraded Good Practice Statement).
- 1.4. We recommend against puberty blocking and gender-affirming hormone treatment in prepubertal children with GD/gender incongruence. (1 ⊕⊕○○)

Evidence

In most children diagnosed with GD/gender incongruence, it did not persist into adolescence. The percentages differed among studies, probably dependent on which version of the DSM clinicians used, the patient's age, the recruitment criteria, and perhaps cultural factors. However, the large majority (about 85%) of prepubertal children with a childhood diagnosis did not remain GD/gender incongruent in adolescence (20). If children have completely socially transitioned, they may have great difficulty in returning to the original gender role upon entering puberty (40). Social transition is associated with the persistence of GD/gender incongruence as a child progresses into adolescence. It may be that the presence of GD/gender incongruence in prepubertal children is the earliest sign that a child is destined to be transgender as an adolescent/adult (20). However, social transition (in addition to GD/gender incongruence) has been found to contribute to the likelihood of persistence.

This recommendation, however, does not imply that children should be discouraged from showing gender-variant behaviors or should be punished for exhibiting such behaviors. In individual cases, an early complete social transition may result in a more favorable outcome, but there are currently no criteria to identify the

GD/gender-incongruent children to whom this applies. At the present time, clinical experience suggests that persistence of GD/gender incongruence can only be reliably assessed after the first signs of puberty.

Values and preferences

The task force placed a high value on avoiding harm with gender-affirming hormone therapy in prepubertal children with GD/gender incongruence. This justifies the strong recommendation in the face of low-quality evidence.

- 1.5. We recommend that clinicians inform and counsel all individuals seeking gender-affirming medical treatment regarding options for fertility preservation prior to initiating puberty suppression in adolescents and prior to treating with hormonal therapy of the affirmed gender in both adolescents and adults. (1 ⊕⊕⊕○)

Remarks

Persons considering hormone use for gender affirmation need adequate information about this treatment in general and about fertility effects of hormone treatment in particular to make an informed and balanced decision (67, 68). Because young adolescents may not feel qualified to make decisions about fertility and may not fully understand the potential effects of hormonal interventions, consent and protocol education should include parents, the referring MHP(s), and other members of the adolescent's support group. To our knowledge, there are no formally evaluated decision aids available to assist in the discussion and decision regarding the future fertility of adolescents or adults beginning gender-affirming treatment.

Treating early pubertal youth with GnRH analogs will temporarily impair spermatogenesis and oocyte maturation. Given that an increasing number of transgender youth want to preserve fertility potential, delaying or temporarily discontinuing GnRH analogs to promote gamete maturation is an option. This option is often not preferred, because mature sperm production is associated with later stages of puberty and with the significant development of secondary sex characteristics.

For those designated male at birth with GD/gender incongruence and who are in early puberty, sperm production and the development of the reproductive tract are insufficient for the cryopreservation of sperm. However, prolonged pubertal suppression using GnRH analogs is reversible and clinicians should inform these individuals that sperm production can be initiated following prolonged gonadotropin suppression. This can be accomplished by spontaneous gonadotropin recovery after

cessation of GnRH analogs or by gonadotropin treatment and will probably be associated with physical manifestations of testosterone production, as stated above. Note that there are no data in this population concerning the time required for sufficient spermatogenesis to collect enough sperm for later fertility. In males treated for precocious puberty, spermarche was reported 0.7 to 3 years after cessation of GnRH analogs (69). In adult men with gonadotropin deficiency, sperm are noted in seminal fluid by 6 to 12 months of gonadotropin treatment. However, sperm numbers when partners of these patients conceive are far below the “normal range” (70, 71).

In girls, no studies have reported long-term, adverse effects of pubertal suppression on ovarian function after treatment cessation (72, 73). Clinicians should inform adolescents that no data are available regarding either time to spontaneous ovulation after cessation of GnRH analogs or the response to ovulation induction following prolonged gonadotropin suppression.

In males with GD/gender incongruence, when medical treatment is started in a later phase of puberty or in adulthood, spermatogenesis is sufficient for cryopreservation and storage of sperm. *In vitro* spermatogenesis is currently under investigation. Restoration of spermatogenesis after prolonged estrogen treatment has not been studied.

In females with GD/gender incongruence, the effect of prolonged treatment with exogenous testosterone on ovarian function is uncertain. There have been reports of an increased incidence of polycystic ovaries in transgender males, both prior to and as a result of androgen treatment (74–77), although these reports were not confirmed by others (78). Pregnancy has been reported in transgender males who have had prolonged androgen treatment and have discontinued testosterone but have not had genital surgery (79, 80). A reproductive endocrine gynecologist can counsel patients before gender-affirming hormone treatment or surgery regarding potential fertility options (81). Techniques for cryopreservation of oocytes, embryos, and ovarian tissue continue to improve, and oocyte maturation of immature tissue is being studied (82).

2.0 Treatment of Adolescents

During the past decade, clinicians have progressively acknowledged the suffering of young adolescents with GD/gender incongruence. In some forms of GD/gender incongruence, psychological interventions may be useful and sufficient. However, for many adolescents with GD/gender incongruence, the pubertal physical changes are unbearable. As early medical intervention may prevent

psychological harm, various clinics have decided to start treating young adolescents with GD/gender incongruence with puberty-suppressing medication (a GnRH analog). As compared with starting gender-affirming treatment long after the first phases of puberty, a benefit of pubertal suppression at early puberty may be a better psychological and physical outcome.

In girls, the first physical sign of puberty is the budding of the breasts followed by an increase in breast and fat tissue. Breast development is also associated with the pubertal growth spurt, and menarche occurs ~2 years later. In boys, the first physical change is testicular growth. A testicular volume ≥ 4 mL is seen as consistent with the initiation of physical puberty. At the beginning of puberty, estradiol and testosterone levels are still low and are best measured in the early morning with an ultrasensitive assay. From a testicular volume of 10 mL, daytime testosterone levels increase, leading to virilization (83). Note that pubic hair and/or axillary hair/odor may not reflect the onset of gonadarche; instead, it may reflect adrenarche alone.

- 2.1. We suggest that adolescents who meet diagnostic criteria for GD/gender incongruence, fulfill criteria for treatment (Table 5), and are requesting treatment should initially undergo treatment to suppress pubertal development. (2 ⊕⊕○○)
- 2.2. We suggest that clinicians begin pubertal hormone suppression after girls and boys first exhibit physical changes of puberty (Tanner stages G2/B2). (2 ⊕⊕○○)

Evidence

Pubertal suppression can expand the diagnostic phase by a long period, giving the subject more time to explore options and to live in the experienced gender before making a decision to proceed with gender-affirming sex hormone treatments and/or surgery, some of which is irreversible (84, 85). Pubertal suppression is fully reversible, enabling full pubertal development in the natal gender, after cessation of treatment, if appropriate. The experience of full endogenous puberty is an undesirable condition for the GD/gender-incongruent individual and may seriously interfere with healthy psychological functioning and well-being. Treating GD/gender-incongruent adolescents entering puberty with GnRH analogs has been shown to improve psychological functioning in several domains (86).

Another reason to start blocking pubertal hormones early in puberty is that the physical outcome is improved compared with initiating physical transition after puberty has been completed (60, 62). Looking like a man or woman when living as the opposite sex creates difficult

barriers with enormous life-long disadvantages. We therefore advise starting suppression in early puberty to prevent the irreversible development of undesirable secondary sex characteristics. However, adolescents with GD/gender incongruence should experience the first changes of their endogenous spontaneous puberty, because their emotional reaction to these first physical changes has diagnostic value in establishing the persistence of GD/gender incongruence (85). Thus, Tanner stage 2 is the optimal time to start pubertal suppression. However, pubertal suppression treatment in early puberty will limit the growth of the penis and scrotum, which will have a potential effect on future surgical treatments (87).

Clinicians can also use pubertal suppression in adolescents in later pubertal stages to stop menses in transgender males and prevent facial hair growth in transgender females. However, in contrast to the effects in early pubertal adolescents, physical sex characteristics (such as more advanced breast development in transgender boys and lowering of the voice and outgrowth of the jaw and brow in transgender girls) are not reversible.

Values and preferences

These recommendations place a high value on avoiding an unsatisfactory physical outcome when secondary sex characteristics have become manifest and irreversible, a higher value on psychological well-being, and a lower value on avoiding potential harm from early pubertal suppression.

Remarks

Table 6 lists the Tanner stages of breast and male genital development. Careful documentation of hallmarks of pubertal development will ensure precise timing when initiating pubertal suppression once puberty has started. Clinicians can use pubertal LH and sex steroid levels to confirm that puberty has progressed sufficiently before starting pubertal suppression (88). Reference

ranges for sex steroids by Tanner stage may vary depending on the assay used. Ultrasensitive sex steroid and gonadotropin assays will help clinicians document early pubertal changes.

Irreversible and, for GD/gender-incongruent adolescents, undesirable sex characteristics in female puberty are breasts, female body habitus, and, in some cases, relative short stature. In male puberty, they are a prominent Adam's apple; low voice; male bone configuration, such as a large jaw, big feet and hands, and tall stature; and male hair pattern on the face and extremities.

- 2.3. We recommend that, where indicated, GnRH analogues are used to suppress pubertal hormones. (1 ⊕ ⊕ ⊕ ⊕)

Evidence

Clinicians can suppress pubertal development and gonadal function most effectively via gonadotropin suppression using GnRH analogs. GnRH analogs are long-acting agonists that suppress gonadotropins by GnRH receptor desensitization after an initial increase of gonadotropins during ~10 days after the first and (to a lesser degree) the second injection (89). Antagonists immediately suppress pituitary gonadotropin secretion (90, 91). Long-acting GnRH analogs are the currently preferred treatment option. Clinicians may consider long-acting GnRH antagonists when evidence on their safety and efficacy in adolescents becomes available.

During GnRH analog treatment, slight development of secondary sex characteristics may regress, and in a later phase of pubertal development, it will stop. In girls, breast tissue will become atrophic, and menses will stop. In boys, virilization will stop, and testicular volume may decrease (92).

An advantage of using GnRH analogs is the reversibility of the intervention. If, after extensive exploration of his/her transition wish, the individual no longer desires transition, they can discontinue pubertal suppression. In subjects with

Table 6. Tanner Stages of Breast Development and Male External Genitalia

The description of Tanner stages for breast development:

1. Prepubertal
2. Breast and papilla elevated as small mound; areolar diameter increased
3. Breast and areola enlarged, no contour separation
4. Areola and papilla form secondary mound
5. Mature; nipple projects, areola part of general breast contour

For penis and testes:

1. Prepubertal, testicular volume <4 mL
2. Slight enlargement of penis; enlarged scrotum, pink, texture altered, testes 4–6 mL
3. Penis longer, testes larger (8–12 mL)
4. Penis and glans larger, including increase in breadth; testes larger (12–15 mL), scrotum dark
5. Penis adult size; testicular volume > 15 mL

Adapted from Lawrence (56).

precocious puberty, spontaneous pubertal development has been shown to resume after patients discontinue taking GnRH analogs (93).

Recommendations 2.1 to 2.3 are supported by a prospective follow-up study from The Netherlands. This report assessed mental health outcomes in 55 transgender adolescents/young adults (22 transgender females and 33 transgender males) at three time points: (1) before the start of GnRH agonist (average age of 14.8 years at start of treatment), (2) at initiation of gender-affirming hormones (average age of 16.7 years at start of treatment), and (3) 1 year after “gender-reassignment surgery” (average age of 20.7 years) (63). Despite a decrease in depression and an improvement in general mental health functioning, GD/gender incongruence persisted through pubertal suppression, as previously reported (86). However, following sex hormone treatment and gender-reassignment surgery, GD/gender incongruence was resolved and psychological functioning steadily improved (63). Furthermore, well-being was similar to or better than that reported by age-matched young adults from the general population, and none of the study participants regretted treatment. This study represents the first long-term follow-up of individuals managed according to currently existing clinical practice guidelines for transgender youth, and it underscores the benefit of the multidisciplinary approach pioneered in The Netherlands; however, further studies are needed.

Side effects

The primary risks of pubertal suppression in GD/gender-incongruent adolescents may include adverse effects on bone mineralization (which can theoretically be reversed with sex hormone treatment), compromised fertility if the person subsequently is treated with sex hormones, and unknown effects on brain development. Few data are available on the effect of GnRH analogs on BMD in adolescents with GD/gender incongruence. Initial data in GD/gender-incongruent subjects demonstrated no change of absolute areal BMD during 2 years of GnRH analog therapy but a decrease in BMD z scores (85). A recent study also suggested suboptimal bone mineral accrual during GnRH analog treatment. The study reported a decrease in areal BMD z scores and of bone mineral apparent density z scores (which takes the size of the bone into account) in 19 transgender males treated with GnRH analogs from a mean age of 15.0 years (standard deviation = 2.0 years) for a median duration of 1.5 years (0.3 to 5.2 years) and in 15 transgender females treated from 14.9 (± 1.9) years for 1.3 years (0.5 to 3.8 years), although not all changes were statistically significant (94). There was incomplete catch-up at age 22 years after sex hormone treatment from age 16.6 (± 1.4)

years for a median duration of 5.8 years (3.0 to 8.0 years) in transgender females and from age 16.4 (± 2.3) years for 5.4 years (2.8 to 7.8 years) in transgender males. Little is known about more prolonged use of GnRH analogs. Researchers reported normal BMD z scores at age 35 years in one individual who used GnRH analogs from age 13.7 years until age 18.6 years before initiating sex hormone treatment (65).

Additional data are available from individuals with late puberty or GnRH analog treatment of other indications. Some studies reported that men with constitutionally delayed puberty have decreased BMD in adulthood (95). However, other studies reported that these men have normal BMD (96, 97). Treating adults with GnRH analogs results in a decrease of BMD (98). In children with central precocious puberty, treatment with GnRH analogs has been found to result in a decrease of BMD during treatment by some (99) but not others (100). Studies have reported normal BMD after discontinuing therapy (69, 72, 73, 101, 102). In adolescents treated with growth hormone who are small for gestational age and have normal pubertal timing, 2-year GnRH analog treatments did not adversely affect BMD (103). Calcium supplementation may be beneficial in optimizing bone health in GnRH analog-treated individuals (104). There are no studies of vitamin D supplementation in this context, but clinicians should offer supplements to vitamin D-deficient adolescents. Physical activity, especially during growth, is important for bone mass in healthy individuals (103) and is therefore likely to be beneficial for bone health in GnRH analog-treated subjects.

GnRH analogs did not induce a change in body mass index standard deviation score in GD/gender-incongruent adolescents (94) but caused an increase in fat mass and decrease in lean body mass percentage (92). Studies in girls treated for precocious puberty also reported a stable body mass index standard deviation score during treatment (72) and body mass index and body composition comparable to controls after treatment (73).

Arterial hypertension has been reported as an adverse effect in a few girls treated with GnRH analogs for precocious/early puberty (105, 106). Blood pressure monitoring before and during treatment is recommended.

Individuals may also experience hot flashes, fatigue, and mood alterations as a consequence of pubertal suppression. There is no consensus on treatment of these side effects in this context.

It is recommended that any use of pubertal blockers (and subsequent use of sex hormones, as detailed below) include a discussion about implications for fertility (see recommendation 1.3). Transgender adolescents may

want to preserve fertility, which may be otherwise compromised if puberty is suppressed at an early stage and the individual completes phenotypic transition with the use of sex hormones.

Limited data are available regarding the effects of GnRH analogs on brain development. A single cross-sectional study demonstrated no compromise of executive function (107), but animal data suggest there may be an effect of GnRH analogs on cognitive function (108).

Values and preferences

Our recommendation of GnRH analogs places a higher value on the superior efficacy, safety, and reversibility of the pubertal hormone suppression achieved (as compared with the alternatives) and a relatively lower value on limiting the cost of therapy. Of the available alternatives, depot and oral progestin preparations are effective. Experience with this treatment dates back prior to the emergence of GnRH analogs for treating precocious puberty in papers from the 1960s and early 1970s (109–112). These compounds are usually safe, but some side effects have been reported (113–115). Only two recent studies involved transgender youth (116, 117). One of these studies described the use of oral lynestrenol monotherapy followed by the addition of testosterone treatment in transgender boys who were at Tanner stage B4 or further at the start of treatment (117). They found lynestrenol safe, but gonadotropins were not fully suppressed. The study reported metrorrhagia in approximately half of the individuals, mainly in the first 6 months. Acne, headache, hot flashes, and fatigue were other frequent side effects. Another progestin that has been studied in the United States is medroxyprogesterone. This agent is not as effective as GnRH analogs in lowering endogenous sex hormones either and may be associated with other side effects (116). Progestin preparations may be an acceptable treatment for persons without access to GnRH analogs or with a needle phobia. If GnRH analog treatment is not available (insurance denial, prohibitive cost, or other reasons), postpubertal, transgender female adolescents may be treated with an antiandrogen that directly suppresses androgen synthesis or action (see adult section).

Remarks

Measurements of gonadotropin and sex steroid levels give precise information about gonadal axis suppression, although there is insufficient evidence for any specific short-term monitoring scheme in children treated with GnRH analogs (88). If the gonadal axis is not completely suppressed—as evidenced by (for example) menses, erections, or progressive hair growth—the interval of GnRH analog treatment can be shortened or the dose increased. During treatment, adolescents should be monitored for negative effects of delaying puberty, including a halted growth spurt and impaired bone mineral accretion. Table 7 illustrates a suggested clinical protocol.

Anthropometric measurements and X-rays of the left hand to monitor bone age are informative for evaluating growth. To assess BMD, clinicians can perform dual-energy X-ray absorptiometry scans.

- 2.4. In adolescents who request sex hormone treatment (given this is a partly irreversible treatment), we recommend initiating treatment using a gradually increasing dose schedule (see Table 8) after a multidisciplinary team of medical and MHPs has confirmed the persistence of GD/gender incongruence and sufficient mental capacity to give informed consent, which most adolescents have by age 16 years (Table 5). (1 ⊕ ⊕ ⊕ ⊕)
- 2.5. We recognize that there may be compelling reasons to initiate sex hormone treatment prior to the age of 16 years in some adolescents with GD/gender incongruence, even though there are minimal published studies of gender-affirming hormone treatments administered before age 13.5 to 14 years. As with the care of adolescents ≥16 years of age, we recommend that an expert multidisciplinary team of medical and MHPs manage this treatment. (1 ⊕ ⊕ ⊕ ⊕)
- 2.6. We suggest monitoring clinical pubertal development every 3 to 6 months and laboratory parameters every 6 to 12 months during sex hormone treatment (Table 9). (2 ⊕ ⊕ ⊕ ⊕)

Table 7. Baseline and Follow-Up Protocol During Suppression of Puberty

Every 3–6 mo
Anthropometry: height, weight, sitting height, blood pressure, Tanner stages
Every 6–12 mo
Laboratory: LH, FSH, E2/T, 25OH vitamin D
Every 1–2 y
Bone density using DXA
Bone age on X-ray of the left hand (if clinically indicated)

Adapted from Hembree *et al.* (118).

Abbreviations: DXA, dual-energy X-ray absorptiometry; E2, estradiol; FSH, follicle stimulating hormone; LH, luteinizing hormone; T, testosterone;

Table 8. Protocol Induction of Puberty

Induction of female puberty with oral 17β -estradiol, increasing the dose every 6 mo:

5 $\mu\text{g}/\text{kg}/\text{d}$

10 $\mu\text{g}/\text{kg}/\text{d}$

15 $\mu\text{g}/\text{kg}/\text{d}$

20 $\mu\text{g}/\text{kg}/\text{d}$

Adult dose = 2–6 mg/d

In postpubertal transgender female adolescents, the dose of 17β -estradiol can be increased more rapidly:

1 mg/d for 6 mo

2 mg/d

Induction of female puberty with transdermal 17β -estradiol, increasing the dose every 6 mo (new patch is placed every 3.5 d):

6.25–12.5 $\mu\text{g}/24$ h (cut 25- μg patch into quarters, then halves)

25 $\mu\text{g}/24$ h

37.5 $\mu\text{g}/24$ h

Adult dose = 50–200 $\mu\text{g}/24$ h

For alternatives once at adult dose, see Table 11.

Adjust maintenance dose to mimic physiological estradiol levels (see Table 15).

Induction of male puberty with testosterone esters increasing the dose every 6 mo (IM or SC):

25 $\text{mg}/\text{m}^2/2$ wk (or alternatively, half this dose weekly, or double the dose every 4 wk)

50 $\text{mg}/\text{m}^2/2$ wk

75 $\text{mg}/\text{m}^2/2$ wk

100 $\text{mg}/\text{m}^2/2$ wk

Adult dose = 100–200 mg every 2 wk

In postpubertal transgender male adolescents the dose of testosterone esters can be increased more rapidly:

75 mg/2 wk for 6 mo

125 mg/2 wk

For alternatives once at adult dose, see Table 11.

Adjust maintenance dose to mimic physiological testosterone levels (see Table 14).

Adapted from Hembree et al. (118).

Abbreviations: IM, intramuscularly; SC, subcutaneously.

Evidence

Adolescents develop competence in decision making at their own pace. Ideally, the supervising medical professionals should individually assess this competence, although no objective tools to make such an assessment are currently available.

Many adolescents have achieved a reasonable level of competence by age 15 to 16 years (119), and in many countries 16-year-olds are legally competent with regard to medical decision making (120). However, others believe that although some capacities are generally achieved before age 16 years, other abilities (such as good risk

assessment) do not develop until well after 18 years (121). They suggest that health care procedures should be divided along a matrix of relative risk, so that younger adolescents can be allowed to decide about low-risk procedures, such as most diagnostic tests and common therapies, but not about high-risk procedures, such as most surgical procedures (121).

Currently available data from transgender adolescents support treatment with sex hormones starting at age 16 years (63, 122). However, some patients may incur potential risks by waiting until age 16 years. These include the potential risk to bone health if puberty is suppressed

Table 9. Baseline and Follow-up Protocol During Induction of Puberty

Every 3–6 mo

- Anthropometry: height, weight, sitting height, blood pressure, Tanner stages

Every 6–12 mo

- In transgender males: hemoglobin/hematocrit, lipids, testosterone, 25OH vitamin D
- In transgender females: prolactin, estradiol, 25OH vitamin D

Every 1–2 y

- BMD using DXA
- Bone age on X-ray of the left hand (if clinically indicated)

BMD should be monitored into adulthood (until the age of 25–30 y or until peak bone mass has been reached).

For recommendations on monitoring once pubertal induction has been completed, see Tables 14 and 15.

Adapted from Hembree et al. (118).

Abbreviation: DXA, dual-energy X-ray absorptiometry.

for 6 to 7 years before initiating sex hormones (*e.g.*, if someone reached Tanner stage 2 at age 9-10 years old). Additionally, there may be concerns about inappropriate height and potential harm to mental health (emotional and social isolation) if initiation of secondary sex characteristics must wait until the person has reached 16 years of age. However, only minimal data supporting earlier use of gender-affirming hormones in transgender adolescents currently exist (63). Clearly, long-term studies are needed to determine the optimal age of sex hormone treatment in GD/gender-incongruent adolescents.

The MHP who has followed the adolescent during GnRH analog treatment plays an essential role in assessing whether the adolescent is eligible to start sex hormone therapy and capable of consenting to this treatment (Table 5). Support of the family/environment is essential. Prior to the start of sex hormones, clinicians should discuss the implications for fertility (see recommendation 1.5). Throughout pubertal induction, an MHP and a pediatric endocrinologist (or other clinician competent in the evaluation and induction of pubertal development) should monitor the adolescent. In addition to monitoring therapy, it is also important to pay attention to general adolescent health issues, including healthy life style choices, such as not smoking, contraception, and appropriate vaccinations (*e.g.*, human papillomavirus).

For the induction of puberty, clinicians can use a similar dose scheme for hypogonadal adolescents with GD/gender incongruence as they use in other individuals with hypogonadism, carefully monitoring for desired and undesired effects (Table 8). In transgender female adolescents, transdermal 17β -estradiol may be an alternative for oral 17β -estradiol. It is increasingly used for pubertal induction in hypogonadal females. However, the absence of low-dose estrogen patches may be a problem. As a result, individuals may need to cut patches to size themselves to achieve appropriate dosing (123). In transgender male adolescents, clinicians can give testosterone injections intramuscularly or subcutaneously (124, 125).

When puberty is initiated with a gradually increasing schedule of sex steroid doses, the initial levels will not be high enough to suppress endogenous sex steroid secretion. Gonadotropin secretion and endogenous production of testosterone may resume and interfere with the effectiveness of estrogen treatment, in transgender female adolescents (126, 127). Therefore, continuation of GnRH analog treatment is advised until gonadectomy. Given that GD/gender-incongruent adolescents may opt not to have gonadectomy, long-term studies are necessary to examine the potential risks of prolonged GnRH analog treatment. Alternatively, in transgender male adolescents, GnRH analog treatment can be discontinued once an

adult dose of testosterone has been reached and the individual is well virilized. If uterine bleeding occurs, a progestin can be added. However, the combined use of a GnRH analog (for ovarian suppression) and testosterone may enable phenotypic transition with a lower dose of testosterone in comparison with testosterone alone. If there is a wish or need to discontinue GnRH analog treatment in transgender female adolescents, they may be treated with an antiandrogen that directly suppresses androgen synthesis or action (see section 3.0 “Hormonal Therapy for Transgender Adults”).

Values and preferences

The recommendation to initiate pubertal induction only when the individual has sufficient mental capacity (roughly age 16 years) to give informed consent for this partly irreversible treatment places a higher value on the ability of the adolescent to fully understand and oversee the partially irreversible consequences of sex hormone treatment and to give informed consent. It places a lower value on the possible negative effects of delayed puberty. We may not currently have the means to weigh adequately the potential benefits of waiting until around age 16 years to initiate sex hormones vs the potential risks/harm to BMD and the sense of social isolation from having the timing of puberty be so out of sync with peers (128).

Remarks

Before starting sex hormone treatment, effects on fertility and options for fertility preservation should be discussed. Adult height may be a concern in transgender adolescents. In a transgender female adolescent, clinicians may consider higher doses of estrogen or a more rapid tempo of dose escalation during pubertal induction. There are no established treatments yet to augment adult height in a transgender male adolescent with open epiphyses during pubertal induction. It is not uncommon for transgender adolescents to present for clinical services after having completed or nearly completed puberty. In such cases, induction of puberty with sex hormones can be done more rapidly (see Table 8). Additionally, an adult dose of testosterone in transgender male adolescents may suffice to suppress the gonadal axis without the need to use a separate agent. At the appropriate time, the multidisciplinary team should adequately prepare the adolescent for transition to adult care.

3.0 Hormonal Therapy for Transgender Adults

The two major goals of hormonal therapy are (1) to reduce endogenous sex hormone levels, and thus reduce

the secondary sex characteristics of the individual's designated gender, and (2) to replace endogenous sex hormone levels consistent with the individual's gender identity by using the principles of hormone replacement treatment of hypogonadal patients. The timing of these two goals and the age at which to begin treatment with the sex hormones of the chosen gender is codetermined in collaboration with both the person pursuing transition and the health care providers. The treatment team should include a medical provider knowledgeable in transgender hormone therapy, an MHP knowledgeable in GD/gender incongruence and the mental health concerns of transition, and a primary care provider able to provide care appropriate for transgender individuals. The physical changes induced by this sex hormone transition are usually accompanied by an improvement in mental well-being (129, 130).

- 3.1. We recommend that clinicians confirm the diagnostic criteria of GD/gender incongruence and the criteria for the endocrine phase of gender transition before beginning treatment. (1 ⊕⊕⊕○)
- 3.2. We recommend that clinicians evaluate and address medical conditions that can be exacerbated by hormone depletion and treatment with sex hormones of the affirmed gender before beginning treatment (Table 10). (1 ⊕⊕⊕○)
- 3.3. We suggest that clinicians measure hormone levels during treatment to ensure that endogenous sex steroids are suppressed and administered sex steroids are maintained in the normal physiologic range for the affirmed gender. (2 ⊕⊕○○)

Evidence

It is the responsibility of the treating clinician to confirm that the person fulfills criteria for treatment. The treating clinician should become familiar with the terms and criteria presented in Tables 1–5 and take a thorough history from the patient in collaboration with the other members of the treatment team. The treating clinician must ensure that the desire for transition is appropriate; the consequences, risks, and benefits of treatment are well understood; and the desire for transition persists. They also need to discuss fertility preservation options (see recommendation 1.3) (67, 68).

Transgender males

Clinical studies have demonstrated the efficacy of several different androgen preparations to induce masculinization in transgender males (Appendix A) (113, 114, 131–134). Regimens to change secondary sex characteristics follow the general principle of hormone replacement treatment of male hypogonadism (135). Clinicians can use either parenteral or transdermal preparations to achieve testosterone values in the normal male range (this is dependent on the specific assay, but is typically 320 to 1000 ng/dL) (Table 11) (136). Sustained supraphysiologic levels of testosterone increase the risk of adverse reactions (see section 4.0 “Adverse Outcome Prevention and Long-Term Care”) and should be avoided.

Similar to androgen therapy in hypogonadal men, testosterone treatment in transgender males results in increased muscle mass and decreased fat mass, increased facial hair and acne, male pattern baldness in those genetically predisposed, and increased sexual desire (137).

Table 10. Medical Risks Associated With Sex Hormone Therapy

Transgender female: estrogen

Very high risk of adverse outcomes:

- Thromboembolic disease

Moderate risk of adverse outcomes:

- Macroprolactinoma
- Breast cancer
- Coronary artery disease
- Cerebrovascular disease
- Cholelithiasis
- Hypertriglyceridemia

Transgender male: testosterone

Very high risk of adverse outcomes:

- Erythrocytosis (hematocrit > 50%)

Moderate risk of adverse outcomes:

- Severe liver dysfunction (transaminases > threefold upper limit of normal)
- Coronary artery disease
- Cerebrovascular disease
- Hypertension
- Breast or uterine cancer

Table 11. Hormone Regimens in Transgender Persons

Transgender females ^a	
Estrogen	
Oral	
Estradiol	2.0–6.0 mg/d
Transdermal	
Estradiol transdermal patch (New patch placed every 3–5 d)	0.025–0.2 mg/d
Parenteral	
Estradiol valerate or cypionate	5–30 mg IM every 2 wk 2–10 mg IM every week
Anti-androgens	
Spironolactone	100–300 mg/d
Cyproterone acetate ^b	25–50 mg/d
GnRH agonist	3.75 mg SQ (SC) monthly 11.25 mg SQ (SC) 3-monthly
Transgender males	
Testosterone	
Parenteral testosterone	
Testosterone enanthate or cypionate	100–200 mg SQ (IM) every 2 wk or SQ (SC) 50% per week
Testosterone undecanoate ^c	1000 mg every 12 wk
Transdermal testosterone	
Testosterone gel 1.6% ^d	50–100 mg/d
Testosterone transdermal patch	2.5–7.5 mg/d

Abbreviations: IM, intramuscularly; SQ, sequentially; SC, subcutaneously.

^aEstrogens used with or without antiandrogens or GnRH agonist.

^bNot available in the United States.

^cOne thousand milligrams initially followed by an injection at 6 wk then at 12-wk intervals.

^dAvoid cutaneous transfer to other individuals.

In transgender males, testosterone will result in clitoromegaly, temporary or permanent decreased fertility, deepening of the voice, cessation of menses (usually), and a significant increase in body hair, particularly on the face, chest, and abdomen. Cessation of menses may occur within a few months with testosterone treatment alone, although high doses of testosterone may be required. If uterine bleeding continues, clinicians may consider the addition of a progestational agent or endometrial ablation (138). Clinicians may also administer GnRH analogs or depot medroxyprogesterone to stop menses prior to testosterone treatment.

Transgender females

The hormone regimen for transgender females is more complex than the transgender male regimen (Appendix B). Treatment with physiologic doses of estrogen alone is insufficient to suppress testosterone levels into the normal range for females (139). Most published clinical studies report the need for adjunctive therapy to achieve testosterone levels in the female range (21, 113, 114, 132–134, 139, 140).

Multiple adjunctive medications are available, such as progestins with antiandrogen activity and GnRH agonists (141). Spironolactone works by directly blocking androgens during their interaction with the androgen

receptor (114, 133, 142). It may also have estrogenic activity (143). Cyproterone acetate, a progestational compound with antiandrogenic properties (113, 132, 144), is widely used in Europe. 5 α -Reductase inhibitors do not reduce testosterone levels and have adverse effects (145).

Dittrich *et al.* (141) reported that monthly doses of the GnRH agonist goserelin acetate in combination with estrogen were effective in reducing testosterone levels with a low incidence of adverse reactions in 60 transgender females. Leuprolide and transdermal estrogen were as effective as cyproterone and transdermal estrogen in a comparative retrospective study (146).

Patients can take estrogen as oral conjugated estrogens, oral 17 β -estradiol, or transdermal 17 β -estradiol. Among estrogen options, the increased risk of thromboembolic events associated with estrogens in general seems most concerning with ethinyl estradiol specifically (134, 140, 141), which is why we specifically suggest that it not be used in any transgender treatment plan. Data distinguishing among other estrogen options are less well established although there is some thought that oral routes of administration are more thrombogenic due to the “first pass effect” than are transdermal and parenteral routes, and that the risk of thromboembolic events is dose-dependent. Injectable estrogen and sublingual

estrogen may benefit from avoiding the first pass effect, but they can result in more rapid peaks with greater overall periodicity and thus are more difficult to monitor (147, 148). However, there are no data demonstrating that increased periodicity is harmful otherwise.

Clinicians can use serum estradiol levels to monitor oral, transdermal, and intramuscular estradiol. Blood tests cannot monitor conjugated estrogens or synthetic estrogen use. Clinicians should measure serum estradiol and serum testosterone and maintain them at the level for premenopausal females (100 to 200 pg/mL and <50 ng/dL, respectively). The transdermal preparations and injectable estradiol cypionate or valerate preparations may confer an advantage in older transgender females who may be at higher risk for thromboembolic disease (149).

Values

Our recommendation to maintain levels of gender-affirming hormones in the normal adult range places a high value on the avoidance of the long-term complications of pharmacologic doses. Those patients receiving endocrine treatment who have relative contraindications to hormones should have an in-depth discussion with their physician to balance the risks and benefits of therapy.

Remarks

Clinicians should inform all endocrine-treated individuals of all risks and benefits of gender-affirming hormones prior to initiating therapy. Clinicians should strongly encourage tobacco use cessation in transgender females to avoid increased risk of VTE and cardiovascular complications. We strongly discourage the unsupervised use of hormone therapy (150).

Not all individuals with GD/gender incongruence seek treatment as described (*e.g.*, male-to-eunuchs and individuals seeking partial transition). Tailoring current protocols to the individual may be done within the context of accepted safety guidelines using a multidisciplinary approach including mental health. No evidence-based protocols are available for these groups (151). We need prospective studies to better understand treatment options for these persons.

- 3.4. We suggest that endocrinologists provide education to transgender individuals undergoing treatment about the onset and time course of physical changes induced by sex hormone treatment. (2 ⊕○○○)

Evidence

Transgender males

Physical changes that are expected to occur during the first 1 to 6 months of testosterone therapy include

cessation of menses, increased sexual desire, increased facial and body hair, increased oiliness of skin, increased muscle, and redistribution of fat mass. Changes that occur within the first year of testosterone therapy include deepening of the voice (152, 153), clitoromegaly, and male pattern hair loss (in some cases) (114, 144, 154, 155) (Table 12).

Transgender females

Physical changes that may occur in transgender females in the first 3 to 12 months of estrogen and anti-androgen therapy include decreased sexual desire, decreased spontaneous erections, decreased facial and body hair (usually mild), decreased oiliness of skin, increased breast tissue growth, and redistribution of fat mass (114, 139, 149, 154, 155, 161) (Table 13). Breast development is generally maximal at 2 years after initiating hormones (114, 139, 149, 155). Over a long period of time, the prostate gland and testicles will undergo atrophy.

Although the time course of breast development in transgender females has been studied (150), precise information about other changes induced by sex hormones is lacking (141). There is a great deal of variability among individuals, as evidenced during pubertal development. We all know that a major concern for transgender females is breast development. If we work with estrogens, the result will be often not what the transgender female expects.

Alternatively, there are transgender females who report an anecdotal improved breast development, mood, or sexual desire with the use of progestogens. However, there have been no well-designed studies of the role of progestogens in feminizing hormone regimens, so the question is still open.

Our knowledge concerning the natural history and effects of different cross-sex hormone therapies on breast

Table 12. Masculinizing Effects in Transgender Males

Effect	Onset	Maximum
Skin oiliness/acne	1–6 mo	1–2 y
Facial/body hair growth	6–12 mo	4–5 y
Scalp hair loss	6–12 mo	— ^a
Increased muscle mass/strength	6–12 mo	2–5 y
Fat redistribution	1–6 mo	2–5 y
Cessation of menses	1–6 mo	— ^b
Clitoral enlargement	1–6 mo	1–2 y
Vaginal atrophy	1–6 mo	1–2 y
Deepening of voice	6–12 mo	1–2 y

Estimates represent clinical observations: Toorians *et al.* (149), Assche-man *et al.* (156), Gooren *et al.* (157), Wierckx *et al.* (158).

^aPrevention and treatment as recommended for biological men.

^bMenorrhagia requires diagnosis and treatment by a gynecologist.

Table 13. Feminizing Effects in Transgender Females

Effect	Onset	Maximum
Redistribution of body fat	3–6 mo	2–3 y
Decrease in muscle mass and strength	3–6 mo	1–2 y
Softening of skin/decreased oiliness	3–6 mo	Unknown
Decreased sexual desire	1–3 mo	3–6 mo
Decreased spontaneous erections	1–3 mo	3–6 mo
Male sexual dysfunction	Variable	Variable
Breast growth	3–6 mo	2–3 y
Decreased testicular volume	3–6 mo	2–3 y
Decreased sperm production	Unknown	>3 y ^a
Decreased terminal hair growth	6–12 mo	>3 y ^a
Scalp hair	Variable	— ^b
Voice changes	None	— ^c

Estimates represent clinical observations: Toorians *et al.* (149), Asscheman *et al.* (156), Gooren *et al.* (157).

^aComplete removal of male sexual hair requires electrolysis or laser treatment or both.

^bFamilial scalp hair loss may occur if estrogens are stopped.

^cTreatment by speech pathologists for voice training is most effective.

development in transgender females is extremely sparse and based on the low quality of evidence. Current evidence does not indicate that progestogens enhance breast development in transgender females, nor does evidence prove the absence of such an effect. This prevents us from drawing any firm conclusion at this moment and demonstrates the need for further research to clarify these important clinical questions (162).

Values and preferences

Transgender persons have very high expectations regarding the physical changes of hormone treatment and are aware that body changes can be enhanced by surgical procedures (*e.g.*, breast, face, and body habitus). Clear expectations for the extent and timing of sex hormone-induced changes may prevent the potential harm and expense of unnecessary procedures.

4.0 Adverse Outcome Prevention and Long-Term Care

Hormone therapy for transgender males and females confers many of the same risks associated with sex hormone replacement therapy in nontransgender persons. The risks arise from and are worsened by inadvertent or intentional use of supraphysiologic doses of sex hormones, as well as use of inadequate doses of sex hormones to maintain normal physiology (131, 139).

- 4.1. We suggest regular clinical evaluation for physical changes and potential adverse changes in response to sex steroid hormones and laboratory monitoring of sex steroid hormone levels every

3 months during the first year of hormone therapy for transgender males and females and then once or twice yearly. (2 ⊕⊕○○)

Evidence

Pretreatment screening and appropriate regular medical monitoring are recommended for both transgender males and females during the endocrine transition and periodically thereafter (26, 155). Clinicians should monitor weight and blood pressure, conduct physical exams, and assess routine health questions, such as tobacco use, symptoms of depression, and risk of adverse events such as deep vein thrombosis/pulmonary embolism and other adverse effects of sex steroids.

Transgender males

Table 14 contains a standard monitoring plan for transgender males on testosterone therapy (154, 159). Key issues include maintaining testosterone levels in the physiologic normal male range and avoiding adverse events resulting from excess testosterone therapy, particularly erythrocytosis, sleep apnea, hypertension, excessive weight gain, salt retention, lipid changes, and excessive or cystic acne (135).

Because oral 17-alkylated testosterone is not recommended, serious hepatic toxicity is not anticipated with parenteral or transdermal testosterone use (163, 164). Past concerns regarding liver toxicity with testosterone have been alleviated with subsequent reports that indicate the risk of serious liver disease is minimal (144, 165, 166).

Transgender females

Table 15 contains a standard monitoring plan for transgender females on estrogens, gonadotropin suppression, or antiandrogens (160). Key issues include avoiding supraphysiologic doses or blood levels of estrogen that may lead to increased risk for thromboembolic disease, liver dysfunction, and hypertension. Clinicians should monitor serum estradiol levels using laboratories participating in external quality control, as measurements of estradiol in blood can be very challenging (167).

VTE may be a serious complication. A study reported a 20-fold increase in venous thromboembolic disease in a large cohort of Dutch transgender subjects (161). This increase may have been associated with the use of the synthetic estrogen, ethinyl estradiol (149). The incidence decreased when clinicians stopped administering ethinyl estradiol (161). Thus, the use of synthetic estrogens and conjugated estrogens is undesirable because of the inability to regulate doses by measuring serum levels and the risk of thromboembolic disease. In a German gender clinic, deep vein thrombosis occurred in 1 of 60 of transgender females treated with a GnRH analog and oral

Table 14. Monitoring of Transgender Persons on Gender-Affirming Hormone Therapy: Transgender Male

1. Evaluate patient every 3 mo in the first year and then one to two times per year to monitor for appropriate signs of virilization and for development of adverse reactions.
2. Measure serum testosterone every 3 mo until levels are in the normal physiologic male range:^a
 - a. For testosterone enanthate/cypionate injections, the testosterone level should be measured midway between injections. The target level is 400–700 ng/dL to 400 ng/dL. Alternatively, measure peak and trough levels to ensure levels remain in the normal male range.
 - b. For parenteral testosterone undecanoate, testosterone should be measured just before the following injection. If the level is <400 ng/dL, adjust dosing interval.
 - c. For transdermal testosterone, the testosterone level can be measured no sooner than after 1 wk of daily application (at least 2 h after application).
3. Measure hematocrit or hemoglobin at baseline and every 3 mo for the first year and then one to two times a year. Monitor weight, blood pressure, and lipids at regular intervals.
4. Screening for osteoporosis should be conducted in those who stop testosterone treatment, are not compliant with hormone therapy, or who develop risks for bone loss.
5. If cervical tissue is present, monitoring as recommended by the American College of Obstetricians and Gynecologists.
6. Ovariectomy can be considered after completion of hormone transition.
7. Conduct sub- and periareolar annual breast examinations if mastectomy performed. If mastectomy is not performed, then consider mammograms as recommended by the American Cancer Society.

^aAdapted from Lapauw *et al.* (154) and Ott *et al.* (159).

estradiol (141). The patient who developed a deep vein thrombosis was found to have a homozygous C677 T mutation in the methylenetetrahydrofolate reductase gene. In an Austrian gender clinic, administering gender-affirming hormones to 162 transgender females and 89 transgender males was not associated with VTE, despite an 8.0% and 5.6% incidence of thrombophilia (159). A more recent multinational study reported only 10 cases of VTE from a cohort of 1073 subjects (168). Thrombophilia screening of transgender persons initiating hormone treatment should be restricted to those with a personal or family history of VTE (159). Monitoring D-dimer levels during treatment is not recommended (169).

- 4.2. We suggest periodically monitoring prolactin levels in transgender females treated with estrogens. (2 | ⊕⊕○○)

Evidence

Estrogen therapy can increase the growth of pituitary lactotroph cells. There have been several reports of prolactinomas occurring after long-term, high-dose

estrogen therapy (170–173). Up to 20% of transgender females treated with estrogens may have elevations in prolactin levels associated with enlargement of the pituitary gland (156). In most cases, the serum prolactin levels will return to the normal range with a reduction or discontinuation of the estrogen therapy or discontinuation of cyproterone acetate (157, 174, 175).

The onset and time course of hyperprolactinemia during estrogen treatment are not known. Clinicians should measure prolactin levels at baseline and then at least annually during the transition period and every 2 years thereafter. Given that only a few case studies reported prolactinomas, and prolactinomas were not reported in large cohorts of estrogen-treated persons, the risk is likely to be very low. Because the major presenting findings of microprolactinomas (hypogonadism and sometimes gynecomastia) are not apparent in transgender females, clinicians may perform radiologic examinations of the pituitary in those patients whose prolactin levels persistently increase despite stable or reduced estrogen levels. Some transgender individuals receive psychotropic medications that can increase prolactin levels (174).

Table 15. Monitoring of Transgender Persons on Gender-Affirming Hormone Therapy: Transgender Female

1. Evaluate patient every 3 mo in the first year and then one to two times per year to monitor for appropriate signs of feminization and for development of adverse reactions.
2. Measure serum testosterone and estradiol every 3 mo.
 - a. Serum testosterone levels should be <50 ng/dL.
 - b. Serum estradiol should not exceed the peak physiologic range: 100–200 pg/mL.
3. For individuals on spironolactone, serum electrolytes, particularly potassium, should be monitored every 3 mo in the first year and annually thereafter.
4. Routine cancer screening is recommended, as in nontransgender individuals (all tissues present).
5. Consider BMD testing at baseline (160). In individuals at low risk, screening for osteoporosis should be conducted at age 60 years or in those who are not compliant with hormone therapy.

This table presents strong recommendations and does not include lower level recommendations.

- 4.3. We suggest that clinicians evaluate transgender persons treated with hormones for cardiovascular risk factors using fasting lipid profiles, diabetes screening, and/or other diagnostic tools. (2 ⊕⊕○○)

Evidence

Transgender males

Administering testosterone to transgender males results in a more atherogenic lipid profile with lowered high-density lipoprotein cholesterol and higher triglyceride and low-density lipoprotein cholesterol values (176–179). Studies of the effect of testosterone on insulin sensitivity have mixed results (178, 180). A randomized, open-label uncontrolled safety study of transgender males treated with testosterone undecanoate demonstrated no insulin resistance after 1 year (181, 182). Numerous studies have demonstrated the effects of sex hormone treatment on the cardiovascular system (160, 179, 183, 184). Long-term studies from The Netherlands found no increased risk for cardiovascular mortality (161). Likewise, a meta-analysis of 19 randomized trials in nontransgender males on testosterone replacement showed no increased incidence of cardiovascular events (185). A systematic review of the literature found that data were insufficient (due to very low-quality evidence) to allow a meaningful assessment of patient-important outcomes, such as death, stroke, myocardial infarction, or VTE in transgender males (176). Future research is needed to ascertain the potential harm of hormonal therapies (176). Clinicians should manage cardiovascular risk factors as they emerge according to established guidelines (186).

Transgender females

A prospective study of transgender females found favorable changes in lipid parameters with increased high-density lipoprotein and decreased low-density lipoprotein concentrations (178). However, increased weight, blood pressure, and markers of insulin resistance attenuated these favorable lipid changes. In a meta-analysis, only serum triglycerides were higher at ≥24 months without changes in other parameters (187). The largest cohort of transgender females (mean age 41 years, followed for a mean of 10 years) showed no increase in cardiovascular mortality despite a 32% rate of tobacco use (161).

Thus, there is limited evidence to determine whether estrogen is protective or detrimental on lipid and glucose metabolism in transgender females (176). With aging, there is usually an increase of body weight. Therefore, as with nontransgender individuals, clinicians should

monitor and manage glucose and lipid metabolism and blood pressure regularly according to established guidelines (186).

- 4.4. We recommend that clinicians obtain BMD measurements when risk factors for osteoporosis exist, specifically in those who stop sex hormone therapy after gonadectomy. (1 ⊕⊕○○)

Evidence

Transgender males

Baseline bone mineral measurements in transgender males are generally in the expected range for their pre-treatment gender (188). However, adequate dosing of testosterone is important to maintain bone mass in transgender males (189, 190). In one study (190), serum LH levels were inversely related to BMD, suggesting that low levels of sex hormones were associated with bone loss. Thus, LH levels in the normal range may serve as an indicator of the adequacy of sex steroid administration to preserve bone mass. The protective effect of testosterone may be mediated by peripheral conversion to estradiol, both systemically and locally in the bone.

Transgender females

A baseline study of BMD reported T scores less than –2.5 in 16% of transgender females (191). In aging males, studies suggest that serum estradiol more positively correlates with BMD than does testosterone (192, 193) and is more important for peak bone mass (194). Estrogen preserves BMD in transgender females who continue on estrogen and antiandrogen therapies (188, 190, 191, 195, 196).

Fracture data in transgender males and females are not available. Transgender persons who have undergone gonadectomy may choose not to continue consistent sex steroid treatment after hormonal and surgical sex reassignment, thereby becoming at risk for bone loss. There have been no studies to determine whether clinicians should use the sex assigned at birth or affirmed gender for assessing osteoporosis (e.g., when using the FRAX tool). Although some researchers use the sex assigned at birth (with the assumption that bone mass has usually peaked for transgender people who initiate hormones in early adulthood), this should be assessed on a case-by-case basis until there are more data available. This assumption will be further complicated by the increasing prevalence of transgender people who undergo hormonal transition at a pubertal age or soon after puberty. Sex for comparison within risk assessment tools may be based on the age at which hormones were initiated and the length of exposure to hormones. In some cases, it may be

reasonable to assess risk using both the male and female calculators and using an intermediate value. Because all subjects underwent normal pubertal development, with known effects on bone size, reference values for birth sex were used for all participants (154).

- 4.5. We suggest that transgender females with no known increased risk of breast cancer follow breast-screening guidelines recommended for those designated female at birth. (2 ⊕⊕○○)
- 4.6. We suggest that transgender females treated with estrogens follow individualized screening according to personal risk for prostatic disease and prostate cancer. (2 ⊕○○○)

Evidence

Studies have reported a few cases of breast cancer in transgender females (197–200). A Dutch study of 1800 transgender females followed for a mean of 15 years (range of 1–30 years) found one case of breast cancer. The Women's Health Initiative study reported that females taking conjugated equine estrogen without progesterone for 7 years did not have an increased risk of breast cancer as compared with females taking placebo (137).

In transgender males, a large retrospective study conducted at the U.S. Veterans Affairs medical health system identified seven breast cancers (194). The authors reported that this was not above the expected rate of breast cancers in cisgender females in this cohort. Furthermore, they did report one breast cancer that developed in a transgender male patient after mastectomy, supporting the fact that breast cancer can occur even after mastectomy. Indeed, there have been case reports of breast cancer developing in subareolar tissue in transgender males, which occurred after mastectomy (201, 202).

Women with primary hypogonadism (Turner syndrome) treated with estrogen replacement exhibited a significantly decreased incidence of breast cancer as compared with national standardized incidence ratios (203, 204). These studies suggest that estrogen therapy does not increase the risk of breast cancer in the short term (<20 to 30 years). We need long-term studies to determine the actual risk, as well as the role of screening mammograms. Regular examinations and gynecologic advice should determine monitoring for breast cancer.

Prostate cancer is very rare before the age of 40, especially with androgen deprivation therapy (205). Childhood or pubertal castration results in regression of the prostate and adult castration reverses benign prostate hypertrophy (206). Although van Kesteren *et al.* (207) reported that estrogen therapy does not induce hypertrophy or premalignant changes in the prostates of

transgender females, studies have reported cases of benign prostatic hyperplasia in transgender females treated with estrogens for 20 to 25 years (208, 209). Studies have also reported a few cases of prostate carcinoma in transgender females (210–214).

Transgender females may feel uncomfortable scheduling regular prostate examinations. Gynecologists are not trained to screen for prostate cancer or to monitor prostate growth. Thus, it may be reasonable for transgender females who transitioned after age 20 years to have annual screening digital rectal examinations after age 50 years and prostate-specific antigen tests consistent with U.S. Preventive Services Task Force Guidelines (215).

- 4.7. We advise that clinicians determine the medical necessity of including a total hysterectomy and oophorectomy as part of gender-affirming surgery. (Ungraded Good Practice Statement)

Evidence

Although aromatization of testosterone to estradiol in transgender males has been suggested as a risk factor for endometrial cancer (216), no cases have been reported. When transgender males undergo hysterectomy, the uterus is small and there is endometrial atrophy (217, 218). Studies have reported cases of ovarian cancer (219, 220). Although there is limited evidence for increased risk of reproductive tract cancers in transgender males, health care providers should determine the medical necessity of a laparoscopic total hysterectomy as part of a gender-affirming surgery to prevent reproductive tract cancer (221).

Values

Given the discomfort that transgender males experience accessing gynecologic care, our recommendation for the medical necessity of total hysterectomy and oophorectomy places a high value on eliminating the risks of female reproductive tract disease and cancer and a lower value on avoiding the risks of these surgical procedures (related to the surgery and to the potential undesirable health consequences of oophorectomy) and their associated costs.

Remarks

The sexual orientation and type of sexual practices will determine the need and types of gynecologic care required following transition. Additionally, in certain countries, the approval required to change the sex in a birth certificate for transgender males may be dependent on having a complete hysterectomy. Clinicians should help patients research nonmedical administrative criteria and

provide counseling. If individuals decide not to undergo hysterectomy, screening for cervical cancer is the same as all other females.

5.0 Surgery for Sex Reassignment and Gender Confirmation

For many transgender adults, genital gender-affirming surgery may be the necessary step toward achieving their ultimate goal of living successfully in their desired gender role. The type of surgery falls into two main categories: (1) those that directly affect fertility and (2) those that do not. Those that change fertility (previously called sex reassignment surgery) include genital surgery to remove the penis and gonads in the male and removal of the uterus and gonads in the female. The surgeries that effect fertility are often governed by the legal system of the state or country in which they are performed. Other gender-conforming surgeries that do not directly affect fertility are not so tightly governed.

Gender-affirming surgical techniques have improved markedly during the past 10 years. Reconstructive genital surgery that preserves neurologic sensation is now the standard. The satisfaction rate with surgical reassignment of sex is now very high (187). Additionally, the mental health of the individual seems to be improved by participating in a treatment program that defines a pathway of gender-affirming treatment that includes hormones and surgery (130, 144) (Table 16).

Surgery that affects fertility is irreversible. The World Professional Association for Transgender Health Standards of Care (222) emphasizes that the “threshold of 18 should not be seen as an indication in itself for active intervention.” If the social transition has not been satisfactory, if the person is not satisfied with or is ambivalent about the effects of sex hormone treatment, or if the person is ambivalent about surgery then the individual should not be referred for surgery (223, 224).

Gender-affirming genital surgeries for transgender females that affect fertility include gonadectomy, penectomy, and creation of a neovagina (225, 226). Surgeons often invert the skin of the penis to form the wall of the vagina, and several literatures reviews have

reported on outcomes (227). Sometimes there is inadequate tissue to form a full neovagina, so clinicians have revisited using intestine and found it to be successful (87, 228, 229). Some newer vaginoplasty techniques may involve autologous oral epithelial cells (230, 231).

The scrotum becomes the labia majora. Surgeons use reconstructive surgery to fashion the clitoris and its hood, preserving the neurovascular bundle at the tip of the penis as the neurosensory supply to the clitoris. Some surgeons are also creating a sensate pedicled-spot adding a G spot to the neovagina to increase sensation (232). Most recently, plastic surgeons have developed techniques to fashion labia minora. To further complete the feminization, uterine transplants have been proposed and even attempted (233).

Neovaginal prolapse, rectovaginal fistula, delayed healing, vaginal stenosis, and other complications do sometimes occur (234, 235). Clinicians should strongly remind the transgender person to use their dilators to maintain the depth and width of the vagina throughout the postoperative period. Genital sexual responsiveness and other aspects of sexual function are usually preserved following genital gender-affirming surgery (236, 237).

Ancillary surgeries for more feminine or masculine appearance are not within the scope of this guideline. Voice therapy by a speech language pathologist is available to transform speech patterns to the affirmed gender (148). Spontaneous voice deepening occurs during testosterone treatment of transgender males (152, 238). No studies have compared the effectiveness of speech therapy, laryngeal surgery, or combined treatment.

Breast surgery is a good example of gender-confirming surgery that does not affect fertility. In all females, breast size exhibits a very broad spectrum. For transgender females to make the best informed decision, clinicians should delay breast augmentation surgery until the patient has completed at least 2 years of estrogen therapy, because the breasts continue to grow during that time (141, 155).

Another major procedure is the removal of facial and masculine-appearing body hair using either electrolysis or

Table 16. Criteria for Gender-Affirming Surgery, Which Affects Fertility

1. Persistent, well-documented gender dysphoria
2. Legal age of majority in the given country
3. Having continuously and responsibly used gender-affirming hormones for 12 mo (if there is no medical contraindication to receiving such therapy)
4. Successful continuous full-time living in the new gender role for 12 mo
5. If significant medical or mental health concerns are present, they must be well controlled
6. Demonstrable knowledge of all practical aspects of surgery (e.g., cost, required lengths of hospitalizations, likely complications, postsurgical rehabilitation)

laser treatments. Other feminizing surgeries, such as that to feminize the face, are now becoming more popular (239–241).

In transgender males, clinicians usually delay gender-affirming genital surgeries until after a few years of androgen therapy. Those surgeries that affect fertility in this group include oophorectomy, vaginectomy, and complete hysterectomy. Surgeons can safely perform them vaginally with laparoscopy. These are sometimes done in conjunction with the creation of a neopenis. The cosmetic appearance of a neopenis is now very good, but the surgery is multistage and very expensive (242, 243). Radial forearm flap seems to be the most satisfactory procedure (228, 244). Other flaps also exist (245). Surgeons can make neopenile erections possible by reinnervation of the flap and subsequent contraction of the muscle, leading to stiffening of the neopenis (246, 247), but results are inconsistent (248). Surgeons can also stiffen the penis by imbedding some mechanical device (*e.g.*, a rod or some inflatable apparatus) (249, 250). Because of these limitations, the creation of a neopenis has often been less than satisfactory. Recently, penis transplants are being proposed (233).

In fact, most transgender males do not have any external genital surgery because of the lack of access, high cost, and significant potential complications. Some choose a metaoidioplasty that brings forward the clitoris, thereby allowing them to void in a standing position without wetting themselves (251, 252). Surgeons can create the scrotum from the labia majora with good cosmetic effect and can implant testicular prostheses (253).

The most important masculinizing surgery for the transgender male is mastectomy, and it does not affect fertility. Breast size only partially regresses with androgen therapy (155). In adults, discussions about mastectomy usually take place after androgen therapy has started. Because some transgender male adolescents present after significant breast development has occurred, they may also consider mastectomy 2 years after they begin androgen therapy and before age 18 years. Clinicians should individualize treatment based on the physical and mental health status of the individual. There are now newer approaches to mastectomy with better outcomes (254, 255). These often involve chest contouring (256). Mastectomy is often necessary for living comfortably in the new gender (256).

5.1. We recommend that a patient pursue genital gender-affirming surgery only after the MHP and the clinician responsible for endocrine transition therapy both agree that surgery is medically

necessary and would benefit the patient's overall health and/or well-being. (1 ⊕⊕○○)

- 5.2. We advise that clinicians approve genital gender-affirming surgery only after completion of at least 1 year of consistent and compliant hormone treatment, unless hormone therapy is not desired or medically contraindicated. (Ungraded Good Practice Statement)
- 5.3. We advise that the clinician responsible for endocrine treatment and the primary care provider ensure appropriate medical clearance of transgender individuals for genital gender-affirming surgery and collaborate with the surgeon regarding hormone use during and after surgery. (Ungraded Good Practice Statement)
- 5.4. We recommend that clinicians refer hormone-treated transgender individuals for genital surgery when: (1) the individual has had a satisfactory social role change, (2) the individual is satisfied about the hormonal effects, and (3) the individual desires definitive surgical changes. (1 ⊕○○○)
- 5.5. We suggest that clinicians delay gender-affirming genital surgery involving gonadectomy and/or hysterectomy until the patient is at least 18 years old or legal age of majority in his or her country. (2 ⊕⊕○○)
- 5.6. We suggest that clinicians determine the timing of breast surgery for transgender males based upon the physical and mental health status of the individual. There is insufficient evidence to recommend a specific age requirement. (2 ⊕○○○)

Evidence

Owing to the lack of controlled studies, incomplete follow-up, and lack of valid assessment measures, evaluating various surgical approaches and techniques is difficult. However, one systematic review including a large numbers of studies reported satisfactory cosmetic and functional results for vaginoplasty/neovagina construction (257). For transgender males, the outcomes are less certain. However, the problems are now better understood (258). Several postoperative studies report significant long-term psychological and psychiatric pathology (259–261). One study showed satisfaction with breasts, genitals, and femininity increased significantly and showed the importance of surgical treatment as a key therapeutic option for transgender females (262). Another analysis demonstrated that, despite the young average age at death following surgery and the relatively larger number of individuals with somatic morbidity, the study does not allow for determination of

causal relationships between, for example, specific types of hormonal or surgical treatment received and somatic morbidity and mortality (263). Reversal surgery in regretful male-to-female transsexuals after sexual reassignment surgery represents a complex, multistage procedure with satisfactory outcomes. Further insight into the characteristics of persons who regret their decision postoperatively would facilitate better future selection of applicants eligible for sexual reassignment surgery. We need more studies with appropriate controls that examine long-term quality of life, psychosocial outcomes, and psychiatric outcomes to determine the long-term benefits of surgical treatment.

When a transgender individual decides to have gender-affirming surgery, both the hormone prescribing clinician and the MHP must certify that the patient satisfies criteria for gender-affirming surgery (Table 16).

There is some concern that estrogen therapy may cause an increased risk for venous thrombosis during or following surgery (176). For this reason, the surgeon and the hormone-prescribing clinician should collaborate in making a decision about the use of hormones before and following surgery. One study suggests that preoperative factors (such as compliance) are less important for patient satisfaction than are the physical postoperative results (56). However, other studies and clinical experience dictate that individuals who do not follow medical instructions and do not work with their physicians toward a common goal do not achieve treatment goals (264) and experience higher rates of postoperative infections and other complications (265, 266). It is also important that the person requesting surgery feels comfortable with the anatomical changes that have occurred during hormone therapy. Dissatisfaction with social and physical outcomes during the hormone transition may be a contraindication to surgery (223).

An endocrinologist or experienced medical provider should monitor transgender individuals after surgery. Those who undergo gonadectomy will require hormone replacement therapy, surveillance, or both to prevent adverse effects of chronic hormone deficiency.

Financial Disclosures of the Task Force*

Wylie C. Hembree (chair)—financial or business/organizational interests: none declared, significant financial interest or leadership position: none declared. **Peggy T. Cohen-Kettenis**—financial or business/organizational interests: none declared, significant financial interest or leadership position: none declared. **Louis Gooren**—financial or business/organizational interests: none declared, significant financial

interest or leadership position: none declared. **Sabine E. Hannema**—financial or business/organizational interests: none declared, significant financial interest or leadership position: Ferring Pharmaceuticals Inc. (lecture/conference), Pfizer (lecture). **Walter J. Meyer**—financial or business/organizational interests: none declared, significant financial interest or leadership position: none declared. **M. Hassan Murad****—financial or business/organizational interests: Mayo Clinic, Evidence-based Practice Center, significant financial interest or leadership position: none declared. **Stephen M. Rosenthal**—financial or business/organizational interests: AbbVie (consultant), National Institutes of Health (grantee), significant financial interest or leadership position: Pediatric Endocrine Society (immediate past president). **Joshua D. Safer, FACP**—financial or business/organizational interests: none declared, significant financial interest or leadership position: none declared. **Vin Tangpricha**—financial or business/organizational interests: Cystic Fibrosis Foundation (grantee), National Institutes of Health (grantee), significant financial interest or leadership position, Elsevier *Journal of Clinical and Translational Endocrinology* (editor). **Guy G. T'Sjoen**—financial or business/organizational interests: none declared, significant financial interest or leadership position: none declared.* Financial, business, and organizational disclosures of the task force cover the year prior to publication. Disclosures prior to this time period are archived.**Evidence-based reviews for this guideline were prepared under contract with the Endocrine Society.

Acknowledgments

Correspondence and Reprint Requests: The Endocrine Society, 2055 L Street NW, Suite 600, Washington, DC 20036. E-mail: publications@endocrine.org; Phone: 202971-3636.

Disclosure Summary: See Financial Disclosures.

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