

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.

**DEFENDANTS HARRISON COUNTY BOARD OF EDUCATION
AND DORA STUTLER'S MOTION *IN LIMINE* TO PRECLUDE INTRODUCTION OF
TESTIMONY BY STUTLER ELICITED OUTSIDE OF THE SCOPE OF THE RULE
30(B)(6) TOPICS FOR WHICH SHE WAS DESIGNATED TO TESTIFY**

Defendants the Harrison County Board of Education (“HCBOE”) and County Superintendent Dora Stutler (“Stutler”) (collectively, the “County Board”), by counsel, move the Court pursuant to Rules 30(b)(6) and 30(d)(3) of the Federal Rules of Civil Procedure for entry of an order precluding Plaintiff and/or any other party from introducing at trial any part of Stutler’s testimony that was elicited outside of the scope of the topics for which she was designated to testify on behalf of the HCBOE in response to Plaintiff’s Amended Notice of 30(b)(6) Deposition. Such testimony was improperly elicited and cannot bind the HCBOE; therefore, it should be excluded at trial.

I. RULE 30(b)(6) AND RULE 30(d)(3)

Rule 30(b)(6) of the Federal Rules of Civil Procedure provides that a party may name an entity as a deponent. When a party does so, the party “must describe with reasonable particularity the matters for examination.” Fed. R. Civ. P. 30(b)(6). Afterward, the named entity “must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify.” *Id.* Additionally, “the serving party and the organization must confer in good faith about the matters for examination.” *Id.*

The Committee Note regarding the 2020 amendment to Rule 30 states with regard to Rule 30(b)(6), “[c]andid exchanges about the purposes of the deposition and the organization’s information structure may clarify and focus the matters for examination, and enable the organization to designate and to prepare an appropriate witness or witnesses, thereby avoiding later disagreements.”

When parties comply with Rule 30(b)(6) by corresponding about the topics that will be addressed at the deposition of an entity and they agree (even tacitly) as to the scope of the examination, then if the party taking the deposition exceeds the scope of those topics, the party

being deposed has “a valid reason for limiting the testimony.” *Kovich v. Nationwide Prop. & Cas. Ins. Co.*, No. 3:20-CV-00518, 2021 WL 5450455, at *2 (S.D.W. Va. Nov. 22, 2021).

Courts are divided regarding whether a Rule 30(b)(6) deposition of an entity may delve into information outside of the scope of the Rule 30(b)(6) notice in the first place, but courts agree that any testimony elicited from an entity’s representative that falls outside of that scope does not bind the entity being deposed. *See, e.g., Lutes v. Kawasaki Motors Corp., USA*, No. 3:10CV1549 WWE, 2014 WL 657712, at *2 (D. Conn. Feb. 20, 2014) (recognizing that “courts are divided” regarding whether a 30(b)(6) examination may exceed the scope of the notice, with some courts taking the position that the notice “constitutes the minimum, not the maximum, about what a deponent must be prepared to speak” but determining that under the circumstances of the case, where court intervention had been sought regarding the scope of the notice, “the more sound approach is to adopt the view that a 30(b)(6) examination should be confined to matters stated with reasonable particularity in the notice of deposition”); *Meyer Corp. U.S. v. Alfay Designs, Inc.*, No. CV 2010 3647 CBA MDG, 2012 WL 3536987, at *5 (E.D.N.Y. Aug. 13, 2012) (even under the view that a 30(b)(6) notice does not limit the scope of testimony that may be elicited, a party “is permitted to object to a question as beyond the scope of the notice in order to preserve for the record that the deponent is answering such a question in an individual, not corporate, capacity”).

The rationale for altogether disallowing the elicitation of testimony outside of the scope of a Rule 30(b)(6) notice is compelling, and it stems directly from the wording and purpose of Rule 30(b)(6). As one court has noted:

First, the purpose of the rule [Rule 30(b)(6)] was to afford the party deposing the corporation the ability to obtain information on certain matters in the form of testimony on behalf of the corporation without having to name the individual in the corporation to be deposed. It makes no sense for a party to state in a notice that it wishes to examine a representative of a corporation on certain matters, have the corporation designate the person most knowledgeable with

respect to those matters, and then to ask the representative about matters totally different from the ones listed in the notice.

Second, another purpose of the rule was to allow the corporation to designate a person who was prepared to answer questions on certain matters on behalf of the corporation. The rule was designed to avoid the problem which arose when a party noticed a particular officer of the corporation and the corporation had no way of knowing what matters were going to be the subject of the inquiry and whether the particular officer whose deposition had been noticed knew anything about those matters. Obviously, this purpose of the rule would be effectively thwarted if a party could ask a representative of a corporation produced pursuant to a Rule 30(b)(6) deposition notice to testify as to matters which are totally unrelated to the matters listed in the notice and upon which the representative is prepared to testify.

Third, the fact that the notice must list the matters upon which examination is requested “with reasonable particularity” also lends weight to the notion that a limitation on the scope of the deposition to the matters specified in the notice is implied in the rule. If a party were free to ask any questions, even if “relevant” to the lawsuit, which were completely outside the scope of the “matters on which examination is requested”, the requirement that the matters be listed “with reasonable particularity” would make no sense. With this in mind, the sentence which reads that “[t]he persons so designated shall testify as to matters known or reasonably available to the organization” can be read in harmony with the rest of the rule if the word “matters” has the same meaning as it does when used earlier in the rule, i.e. “matters upon which examination is requested”. As to “matters upon which examination is requested”, the representative has the duty to answer questions on behalf of the organization to the extent that the information sought is “known to the organization or reasonably available to it”.

Accordingly, I rule that if a party opts to employ the procedures of Rule 30(b)(6), F.R.Civ.P., to depose the representative of a corporation, that party must confine the examination to the matters stated “with reasonable particularity” which are contained in the Notice of Deposition.

Paparelli v. Prudential Ins. Co. of Am., 108 F.R.D. 727, 729–30 (D. Mass. 1985). *See also Falchenberg v. New York State Dep't of Educ.*, 642 F. Supp. 2d 156, 164 (S.D.N.Y. 2008) (quoting *Paparelli*), *aff'd*, 338 F. App'x 11 (2d Cir. 2009).

Therefore, if questions and answers at a Rule 30(b)(6) deposition exceed the scope of the Rule 30(b)(6) notice, then those answers “will not not bind the corporation, but are merely treated as the answers of the individual deponent.” *Falchenberg*, 642 F. Supp. 2d at 164 (citing *Detoy v. City & County of San Francisco*, 196 F.R.D. 362, 367 (N.D.Cal. 2000); *accord King v. Pratt & Whitney*, 161 F.R.D. 475, 476 (S.D.Fla.1995) *aff’d*, 213 F.3d 646 (11th Cir. 2000)). The *Falchenberg* Court echoed other courts that had “noted, ‘if the [30(b)(6)] deponent does not know the answer to questions outside the scope of the matters described in the notice, then that is the examining party’s problem.’” *Id.* (citing *Detoy*, 196 F.R.D. at 367; *King*, 161 F.R.D. at 476) (alteration in *Falchenberg*).

The “scope of a Rule 30(b)(6) deposition has not been directly addressed in the Fourth Circuit,” but, at least in the District of Maryland, it has “been established that a ‘deponent’s answers to questions outside the scope of the notice will not bind the organization.’” *Green v. Wing Enterprises, Inc.*, No. 1:14-CV-01913- RDB, 2015 WL 506194, at *8 (D. Md. Feb. 5, 2015) (quoting *E.E.O.C. v. Freeman*, 288 F.R.D. 92, 98–99 (D. Md. 2012)). Like other jurisdictions, the District of Maryland has taken the position that “to the extent the questioning is beyond the scope of the notice the testimony will constitute that of the deponent in an individual capacity and not on behalf of his organization.” *Green*, 2015 WL 506194, at *8.

Rule 30(d)(3)(A) of the Federal Rules of Civil Procedure permits a party, “[a]t any time during a deposition,” to “move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party.” The Southern District of West Virginia has recognized that “a valid reason for limiting” Rule 30(b)(6) testimony exists when “the questioning by Plaintiff at the deposition exceeded the scope proposed by Plaintiff, and tacitly agreed to by the parties[.]” *Kovich*, 2021 WL 5450455, at *2. If a party instructs a witness not to answer a question at a deposition because it is outside of

the scope of the Rule 30(b)(6) notice (absent a claim of privilege or non-compliance with a court order), the party should state on the record that it is instructing the witness pursuant to Rule 30(d)(3) and follow up by filing a Rule 30(d)(3) motion after the deposition concludes. *Id.*

II. BRIEF STATEMENT OF RELEVANT FACTS

In accordance with Rule 30(b)(6) of the Federal Rules of Civil Procedure, on February 14, 2022, Plaintiff filed “Plaintiff’s Amended Notice of 30(b)(6) Deposition,” which included “Exhibit A,” a list of 15 topics Plaintiff sought to address at her deposition of the HCBOE, and which is attached hereto as “**Exhibit 1.**”

In response, the HCBOE’s legal counsel conferred with Plaintiff’s counsel about the matters for examination, as required by Rule 30(b)(6). (*See* “Remote Videotaped Deposition of Dora Stutler and Dave Mazza,” pertinent parts of which are attached as “**Exhibit 2,**” at 21-22.) As a result, Plaintiff agreed to withdraw Topic Nos. 3, 6, 9, 12, and 15. The HCBOE designated two witnesses to testify as to the remaining topics. Specifically, it designated Stutler to testify as to Topic Nos. 1, 2, 4, 5, 7, 8, 13, and 14; and it designated Dave Mazza to testify as to Topic Nos. 10 and 11. (Exhibit 2, at 21-22, 197, 204-05.)

At the Rule 30(b)(6) deposition, however, Plaintiff asked questions of Stutler that were outside of the scope of the topics for which she was designated to testify. The undersigned counsel for the HCBOE and Stutler did not instruct Stutler not to answer the questions but, on multiple occasions, objected to questions and testimony elicited on the basis that they exceeded the scope of Plaintiff’s Rule 30(b)(6) notice.

First, Plaintiff’s counsel asked Stutler questions that fell under Topic No. 10, which Mazza was designated to testify about, while claiming that the questions fell under Topic No. 8, which Stutler was designated to testify about. Topic No. 10, which the HCBOE designated Mazza to testify about, is “[t]he relationship between the Harrison County Board and West Virginia

Secondary School Activities Commission.” (Exhibit 1, at Doc. 229-1, p. 5.) Topic No. 8, which Stutler was designated to testify about, was the HCBOE and Stutler’s “current and/or expected role in implementing, monitoring, supervising, regulating, and enforcing H.B. 3293, including any delegation of authority to or supervision over the West Virginia Secondary School Activities Commission.” (Exhibit 1, at Doc. 229-1, p. 4.)

For example, without limiting her question to the HCBOE and Stutler’s role regarding H.B. 3293, Plaintiff’s counsel asked Stutler if the HCBOE has delegated any of its sports-related powers to the West Virginia Secondary School Activities Commission (“WVSSAC”) or any other entity. (Exhibit 2, at 71-72.) Stutler indicated some “confusion” at the beginning of her response because what she and the Board do is to “follow[] state policy and guideline,” and as part of her answer, she stated that she was “trying to just explain the relationship” between the HCBOE and the WVSSAC. (*Id.*) The HCBOE’s counsel objected to the form of the question and also stated on the record “that to the extent we’re talking about the relationship between the Harrison County [B]oard and the WVSSAC, I believe that that is topic 10, and we’ve designated a different witness for that.” (Exhibit 2, at 72-73.) Plaintiff’s counsel indicated that she understood but claimed that she was asking questions related to Topic No. 8. (Exhibit 2, at 73.)

However, the questions that Plaintiff’s counsel asked of Stutler were not limited to the HCBOE and Stutler’s role with regard to H.B. 3293, which is all that Topic No. 8 addressed, and Plaintiff’s counsel did not end her questioning there. She went on to ask Stutler if the WVSSAC has powers related to sports, if the WVSSAC provides guidelines that are presented to the HCBOE and whether the HCBOE has to follow those, whether the WVSSAC provides rules that the HCBOE has to follow for its athletic programs, the process if the HCBOE does not agree with a guideline or rule set by the WVSSAC, what happens if a dispute arises about implementing a certain rule, whether the HCBOE was currently following all of the rules set by the WVSSAC,

and whether the HCBOE determines player eligibility. (Exhibit 2, at 73-78.)

When the HCBOE's counsel objected again (and again) on the basis "that this is a topic 10 issue," Plaintiff's counsel asked Stutler to continue to answer, "as I believe this falls under topic 8." (Exhibit 2, at 76-81.) As Plaintiff's counsel continued with her line of general questions about the relationship between the HCBOE and the WVSSAC, counsel for the HCBOE continued to object to the questions, explaining that Plaintiff's line of questioning was outside of the scope of Topic No. 8. When Plaintiff's counsel insisted that her questions fell under Topic No. 8, the HCBOE's counsel stated on the record,

Well, I object to that because I believe that topic 8 is in the context of House Bill 3293. You're asking general questions with regard to the relationship between Harrison County Board of Education and the WVSSAC, which I believe are within the scope of topic 10. I – I understand topic 8 to be in the context solely of House Bill 3293.

(Exhibit 2, at 80-81.) In response, Plaintiff's counsel stated that she would allow a standing objection or further objections – and then she continued her line of questioning. (Exhibit 2, at 81.) She asked Stutler again whether the HCBOE determines player eligibility, whether guidelines determining eligibility are "through" the HCBOE, and what happens if a dispute arises between the HCBOE and the WVSSAC regarding player eligibility and whether a process is in place for disputes. (Exhibit 2, at 81-82.)

Later in the deposition, Plaintiff's counsel asked Stutler whether, in accordance with rules that school Athletic Directors and administrators have to follow, sports rosters are reviewed before students are designated to a specific sports team, that is, a team designated for females or males. (Exhibit 2, at 146.) (The question's reference to a "specific sports team" implied separation by gender, as it followed other questions about whether Stutler was aware of any rule prior to H.B. 3293 that schools had to follow related to gender separation in West Virginia school sports teams. (Exhibit 2, at 145-46.)) Stutler attempted to answer the question but qualified her answer, stating

that “the only thing I know about rostering is that there’s a bulk of information that’s pulled over to that roster from that student, for student information. I am not an expert on rostering and sports by no means.” (Exhibit 2, at 146.)

The HCBOE’s counsel then objected to the form and also stated on the record “that to the extent that this relates to a topic to be covered by another witness, that it’s more appropriate to be asked of that witness.” (Exhibit 2, at 147.) Plaintiff’s counsel responded, “Understood. I’ll save that line of questioning for another witness. Thank you.” (Exhibit 2, at 147.) Indeed, Topic No. 11, which Mazza was designated to testify about, was “[t]he Policies, Documents, and Communications of the Harrison County Board and the County Superintendent Concerning the separation of boys and girls in school-sponsored sports and extracurricular activities in Harrison County.” (Exhibit 1, at Doc. 229-1, p. 5.)

Soon afterward, Plaintiff’s counsel asked Stutler whether the HCBOE had “received any Title IX complaints from a transgender student[.]” (Exhibit 2, at 147.) The HCBOE’s counsel objected on the basis “that this is beyond the scope of the topics set forth for the 30(b)(6) deposition” but permitted Stutler to answer the question while reserving the right to object to further questioning on the topic. (Exhibit 2, at 147.) Plaintiff’s counsel followed that question with another question asking whether “any of those complaints relate[d] to student sports,” to which the HCBOE’s counsel made the same objection. (Exhibit 2, at 148.)

Plaintiff’s counsel then asked Stutler whether the Department of Education had ever investigated the HCBOE for Title IX violations. (Exhibit 2, at 148.) The HCBOE’s counsel objected that the question was “well beyond the scope of the topic” and stated that if Plaintiff’s counsel could show her where her questions fit within one of the listed 30(b)(6) topics, she would reconsider her objection. (Exhibit 2, at 148.) In response, Plaintiff’s counsel contended that the questioning fell under Topic Nos. 1 and 7. (Exhibit 2, at 148-49.)

Topic No. 1 was: “The organization and structure of the Harrison County Board, including current employees and former employees of the Harrison County Board who were employed January 1, 2019 onward but since departed, their positions, and the scope of their responsibilities, including the role and responsibilities of the County Superintendent.” (Exhibit 1, at Doc. 129-1, p. 3.) Topic No. 7 was: “The Policies, Documents, and Communications of the Harrison County Board and the County Superintendent Concerning the participation of transgender students in school-sponsored sports in Harrison County.” (Exhibit 1, at Doc. 129-1, p. 4.) Thus, neither of those topics included in its scope anything about whether the Department of Education had ever investigated the HCBOE for Title IX violations.

The HCBOE’s counsel therefore responded, “Well, I believe that that question is beyond the scope of both of those topics; and, therefore, I object to the line of questioning about other Title IX complaints that may have been received.” (Exhibit 2, at 149.) She continued, “For this witness to answer a question related to Title IX complaints . . . from transgender students involving school sports, the witness has answered that there are not any. I do not believe that further questioning on other Title IX complaints is appropriate or within the topics presented.” (Exhibit 2, at 149.) Plaintiff’s attorney nevertheless asked Stutler to answer the question. (Exhibit 2, at 149-50.)

III. ARGUMENT

All of the questions listed in Section II, above, elicited testimony from Stutler on topics for which she was not designated to testify pursuant to Plaintiff’s Rule 30(b)(6) notice and/or which were outside of the scope of the noticed topics entirely. Therefore, pursuant to the wording and purpose of Rule 30(b)(6), as well as the reasoning of cases including *Paparelli* and *Falchenberg*, that testimony was improperly elicited. As this Court has previously recognized, “a valid reason for limiting” Rule 30(b)(6) testimony exists when “the questioning by Plaintiff at the deposition exceeded the scope proposed by Plaintiff, and tacitly agreed to by the parties[.]” *Kovich*, 2021 WL

5450455, at *2.

Therefore, all testimony by Stutler that was elicited in response to the questions posed to her that fell outside of the scope of Plaintiff's Rule 30(b)(6) notice should be excluded at the trial of this matter, including but not limited to Stutler's answers to all of the questions listed in Section II, above. Notably, counsel for the HCBOE did not instruct Stutler not to answer at her deposition, and therefore counsel for the HCBOE did not need to make an objection that explicitly mentioned Rule 30(d)(3) during the deposition itself. It is proper now, however, to move to exclude that testimony at trial pursuant to *Kovich*, Rule 30(b)(6), and Rule 30(d)(3).

Indeed, if there were topics that Plaintiff wanted to ask the HCBOE, Plaintiff could have easily included those topics in the notice. Including all topics in the notice fulfills the purposes of the rule. That is, it gives the parties the opportunity to agree on the topics to be addressed and to seek court intervention before the deposition if necessary, and it allows the entity to designate as many appropriate representatives as needed and to properly prepare them to testify accurately as to the entity's knowledge. Moreover, it unreasonably annoys and oppresses the deponent or party when questions are posed to a Rule 30(b)(6) representative that are on topics not in the notice or when another witness has been designated to testify on the entity's behalf as to the subject matter at issue.

Therefore, the testimony by Stutler at issue in this motion should be excluded pursuant to Rule 30(b)(6), Rule 30(d)(3), and *Kovich* because the testimony elicited was outside the scope of the notice and/or fell under a topic for which another witness had been designated to testify, and because the testimony was elicited in a manner that unreasonably annoyed and oppressed the HCBOE. Alternatively, at the very least, the testimony should not bind the HCBOE because it did not designate Stutler to testify on its behalf with regard to the testimony at issue in this motion and, thus, before the deposition, it did not ensure that she could accurately testify as to the

HCBOE's knowledge on those topics.

IV. CONCLUSION

For all of the foregoing reasons, all testimony by Stutler that was elicited at the Rule 30(b)(6) deposition of the HCBOE, but which addressed any topic for which Stutler was not designated to testify on the HCBOE's behalf, should be excluded at the trial of this matter.

Respectfully submitted this 22nd day of June, 2022.

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IN THE UNITED STATES DISTRICT COURT
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B.P.J., by her next friend and mother, HEATHER
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WEST VIRGINIA STATE BOARD OF
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Harrison County Superintendent, PATRICK
MORRISEY in his official capacity as Attorney
General, and THE STATE OF WEST VIRGINIA,

Defendants,

and

LAINEY ARMISTEAD,

Defendant-Intervenor.

CERTIFICATE OF SERVICE

I hereby certify that on 22nd day of June, 2022, I electronically filed the foregoing
“Defendants Harrison County Board of Education and Dora Stutler’s Motion *In Limine* to Preclude
Introduction of Testimony by Stutler Elicited Outside of the Scope of the Rule 30(B)(6) Topics
for Which She Was Designated to Testify” with the Clerk of the Court using the CM/ECF system,
which will send notification of such filing to all counsel of record.

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*Counsel for Defendants Harrison County Board
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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
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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 AMENDED
NOTICE OF 30(b)(6) DEPOSITION**

PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiff B.P.J., by her next friend and mother, Heather Jackson, will take the deposition of Defendant the Harrison County Board of Education at approximately the stated time below or on such other date and at such other time as may be agreed upon by the parties.

The deposition will be conducted remotely via video teleconference offered by Veritext. The deposition will continue from day to day until concluded. The deposition will be taken under oath before a certified shorthand reporter or other officer authorized to administer oaths. The deposition will be recorded by stenographic means, on videotape, and by instant visual display of testimony using LiveNote or similar software. The deposition shall be used for discovery purposes and may be used as evidence in this action, including at trial.

Pursuant to Rule 30(b)(6), Defendant Harrison County Board of Education shall designate one or more knowledgeable officers, directors, managing agents, or other persons who consent to testify on their behalf concerning the subjects set forth in Exhibit A. Prior to deposition, Defendant Harrison County Board of Education and Plaintiff shall meet and confer about the matters for examination.

Deponent	Date and Time of Deposition
Harrison County Board of Education 445 W. Main Street Clarksburg, WV 26301	March 8, 2022 at 12:00 PM EST

Dated: February 14, 2022

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Respectfully submitted,
/s/ Loree Stark

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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

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, Loree Stark, do hereby certify that on this 14th day of February, 2022, I electronically filed a true and exact copy of the *Plaintiff's Notice of 30(b)(6) Deposition* with the Clerk of Court and all parties using the CM/ECF System.

/s/ Loree Stark

Loree Stark
West Virginia Bar No. 12936

Exhibit A

DEFINITIONS

1. “Action” means the above-captioned litigation instituted by B.P.J. on May 26, 2021.
2. B.P.J. means B.P.J. and her mother, Heather Jackson.
3. “County Board” means the Harrison County Board of Education, as well as its officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents.
4. “County Superintendent” means Dora Stutler in her official capacity as Superintendent of the “County Board,” as includes each of the officers, directors, employees, partners, corporate parent, subsidiaries, affiliates, attorneys, accountants, consultants, representatives, and agents that report to her in her official capacity. It also means any “Person” who assumes any of Ms. Stutler’s official positions or responsibilities in part, whether temporarily or permanently.
5. “Document” means any written, printed, typed, recorded, magnetic, punched, copied, graphic or tangible thing in, upon, or from which information may be embodied, translated, conveyed, or stored (including, but not limited to, correspondence, memoranda, notes, records, books, papers, telegrams, telexes, dictation or other audio tapes, video tapes, computer tapes, computer discs, computer printouts, microfilm, microfiche, worksheets, diaries, calendars, photographs, charts, drawings, sketches, and all other writings or drafts thereof) as defined in Federal Rule of Civil Procedure 34(a), Federal Rule of Civil Procedure 45, and Federal Rule of Evidence 1001, whether

or not labeled “confidential.” A draft or non-identical copy is a separate “Document” within the meaning of this term.

6. “Person” means any natural person or any business, legal, or governmental entity or association or any other cognizable entity, including, without limitation, corporations, proprietorships, partnerships, joint ventures, consortiums, clubs, associations, foundations, governmental agencies or instrumentalities, societies, and orders.

TOPICS OF EXAMINATION

TOPIC 1:

The organization and structure of the Harrison County Board, including current employees and former employees of the Harrison County Board who were employed January 1, 2019 onward but since departed, their positions, and the scope of their responsibilities, including the role and responsibilities of the County Superintendent.

TOPIC 2:

The Policies, Documents, and Communications Concerning the Harrison County Board and the County Superintendent’s control, supervision, or authority over school-sponsored athletics in Harrison County.

TOPIC 3:

The funding of the Harrison County Board, including any federal funding.

TOPIC 4:

The Policies, Documents, and Communications of the Harrison County Board and the County Superintendent Concerning Plaintiff B.P.J. and her family from January 1, 2019 to the present.

TOPIC 5:

The Policies, Documents, and Communications of the Harrison County Board and the County Superintendent Concerning Plaintiff B.P.J.'s Gender Support Plans from Bridgeport Middle School and Norwood Elementary School.

TOPIC 6:

The Policies, Documents, and Communications of the Harrison County Board and the County Superintendent Concerning any accommodations made for Plaintiff B.P.J. while at Bridgeport Middle School and Norwood Elementary School.

TOPIC 7:

The Policies, Documents, and Communications of the Harrison County Board and the County Superintendent Concerning the participation of transgender students in school-sponsored sports in Harrison County.

TOPIC 8:

The Harrison County Board and the County Superintendent's current and/or expected role in implementing, monitoring, supervising, regulating, and enforcing H.B. 3293, including any delegation of authority to or supervision over the West Virginia Secondary School Activities Commission.

TOPIC 9:

The Harrison County Board and County Superintendent's current and/ or expected role in enforcing H.B. 3293 in the event that there is no longer an injunction barring the enforcement of H.B. 3293.

TOPIC 10:

The relationship between the Harrison County Board and West Virginia Secondary School Activities Commission.

TOPIC 11:

The Policies, Documents, and Communications of the Harrison County Board and the County Superintendent Concerning the separation of boys and girls in school-sponsored sports and extracurricular activities in Harrison County.

TOPIC 12:

The Policies, Documents, and Communications of the Harrison County Board Concerning B.P.J.'s participation on the Bridgeport Youth Football League Cheerleading Team, including its operation and membership from 2019-20 and 2020-21.

TOPIC 13:

The Harrison County Board and the County Superintendent's understanding Concerning the purpose, scope, and implications of H.B. 3293. This expressly includes the Harrison County Board and County Superintendent's understanding of what, if any, governmental interests are furthered by H.B. 3293.

TOPIC 14:

The Harrison County Board and County Superintendent's discovery responses provided to date in this Action.

TOPIC 15:

The Policies, Documents, and Communications of the Harrison County Board Concerning B.P.J.'s participation on Bridgeport Middle School's girls' cross-country team, including the operation of the team and its and membership during Fall 2021.

EXHIBIT 2

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 And)
23 LAINEY ARMISTEAD,)
24 Defendant-Intervenor.)

25 -----
26 REMOTE VIDEOTAPED DEPOSITION OF
27 DORA STUTLER

28 AND

29 DAVE MAZZA

30 Tuesday, March 8, 2022

31 Volume I

32 Reported by:

33 ALEXIS KAGAY, CSR No. 13795

34 Job No. 5079542

35 PAGES 1 - 240

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

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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

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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

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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

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 03:04:24
6 supervision over the West Virginia
7 Secondary School Activities
8 Commission."

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

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

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 03:07:13
21 guideline for what eligibility -- the requirements
22 for eligibility for a student athlete.

23 BY MS. REINHARDT:

24 Q And is that guideline through the County
25 Board of Education? 03:07:23

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: 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 ///

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

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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

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