

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.

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 VALERIA M. PELET DEL TORO

I, Valeria M. Pelet del Toro, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney at the law firm Cooley LLP and counsel of record for Plaintiff B.P.J, with her next friend and mother, Heather Jackson. The following is true of my own personal knowledge, and, if called as a witness, I would and could testify competently thereto.
2. I submit this declaration in support of Plaintiff's Motion *in Limine* to Exclude References to Plaintiff by Her Name Given at Birth ("Deadname") or Using Male Pronouns (He/Him) and Supporting Memorandum of Law.
3. Attached to this declaration are true and correct copies of the documents listed in the table below.

Exhibit	Description
A	Letter from K. Hartnett to Defendants (December 20, 2021)
B	Email from D. Tryon (January 3, 2022)

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

Executed on June 22, 2022

/s/ Valeria M. Pelet del Toro
Valeria M. Pelet del Toro

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

I, Loree Stark, do hereby certify that on this 22nd day of June, 2022, I electronically filed a true and exact copy of the foregoing document 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



December 20, 2021

+1 (415) 693-2071
khartnett@cooley.com

December 20, 2021

Re: *B.P.J. et al. v. West Virginia State Board of Education et al., No. 2:21-cv-00316 (S.D.W. Va.)*

Counsel:

Thank you all for a productive call on Thursday, December 16. We write to memorialize that conversation, and to confirm the parties' understanding regarding certain deposition logistics.

Deposition Timing

Counsel for Plaintiff and all Defendants (including Intervenor-Defendant) have confirmed that they are available on January 18-21 for the deposition of B.P.J. and her parents. Both of B.P.J.'s parents are willing to appear for deposition voluntarily, but B.P.J.'s father is available only on January 18 and 19. Plaintiff therefore proposes that depositions begin on January 19 with a deposition of B.P.J.'s father, followed by B.P.J.'s mother. If necessary, the deposition of B.P.J.'s mother could continue on January 20, followed by B.P.J.'s deposition, which would allow B.P.J.'s mother to attend B.P.J.'s deposition with her. As an eleven-year-old child, B.P.J. should be accorded the presence of her parents in the room. Her parents' silent presence would not influence or impede Defendants' ability to depose B.P.J. Please let us know if Defendants are amenable to this approach.

Based on our conversation, it is Plaintiff's understanding that Defendants intend to depose B.P.J.'s medical providers shortly after deposing B.P.J. and her parents, and that counsel for the State Board will reach out to these medical providers in the first instance to arrange potential dates for deposition. Please let us know potential deposition dates as you receive them so that we can promptly confirm our availability.

Finally, we are awaiting the results of our upcoming conferrals with Defendants concerning their discovery responses before proposing dates for Plaintiff's expected depositions. We hope to propose deponents and dates by the first week of January, if not sooner.

Deposition Logistics

- **Location:** Plaintiff appreciates County counsel's offer to host depositions at one of their offices in Morgantown, Charleston, or Bridgeport. Given the proximity to BPJ and her family, it is Plaintiff's preference to hold the depositions of B.P.J. and her family in Bridgeport, West Virginia at County counsel's office. Please confirm that Defendants are amenable to holding the depositions at this location during the week of January 18.



December 20, 2021

- Fact Witnesses: It is Plaintiff's understanding from our call that counsel for all parties are amenable to taking and defending the fact witness depositions via a mixed virtual and in-person approach. Under this approach, a limited number of attorneys from each party can attend the depositions in person if they so desire, while other attorneys may simultaneously attend the deposition via Zoom. It is also Plaintiff's understanding that Defendants have no objection to a counsel questioning a witness virtually. Please let us know if any of this does not accord with your understanding.
- Experts: Regarding the deposition of expert witnesses, counsel for the State queried whether Plaintiff would be amenable to having all expert witnesses appear for deposition via Zoom. It is Plaintiff's preference to use a mixed virtual and in-person approach, whereby any party may defend or take an expert's deposition in person if they desire, while other attorneys may simultaneously attend the deposition via Zoom. Because many experts live out-of-state, any party who wishes to take or defend an expert's deposition in person must travel to the expert's location, and will bear its own costs to do so. Please let us know Defendants' thoughts on this approach.

Regarding the timing of expert depositions, one of Plaintiff's experts, Dr. Safer, is available for deposition on March 24, 2022.

- COVID Protocol: Given the ongoing pandemic, Plaintiff proposes the following protocols for those appearing in-person at a deposition in this case, in addition to or concurrently with any COVID protocol in place at the deposition location. Please let us know if Defendants are willing to agree to these procedures.
 - Each party will limit in-person attendance to 1-2 counsel per deposition (in addition to any witness).
 - All individuals who are attending a deposition in person must show evidence of a negative rapid antigen COVID test the morning of the deposition.
 - All individuals who are attending a deposition in person must wear an N95 mask (and not a KN95 mask) throughout the deposition.

During the call, the parties had discussed the possibility of allowing those taking the deposition and those answering to remain unmasked. After further consultation with our clients, and especially given the recent resurgence of infection numbers, Plaintiff would highly prefer if all individuals attending in person would remain masked throughout for just the depositions of B.P.J., her mother, and her father. In future depositions, Plaintiff is amenable to proceeding with the taker and answerer unmasked. Please let us know if Defendants are amenable to this protocol, and/or if they would like to discuss further.



December 20, 2021

Deposition Scope

- Questioning by Multiple Defense Counsel

Given that there are five sets of defense counsel, we raised during our call the desire to prevent duplicative questioning, particularly of B.P.J. Our expectation is that defense counsel would let us know at the outset of the deposition the order in which they would seek to question the witness, and that counsel questioning after the first questioner would avoid asking questions that already have been asked and answered during prior counsel's questioning. Please confirm your agreement to this proposed approach.

- Scope of B.P.J.'s Deposition

As discussed on the call, including in light of correspondence with the State to date in this case and lines of inquiry pursued by Defendants' likely experts, Plaintiff has concerns about certain potential lines of questioning at B.P.J.'s deposition that would be unduly harassing, harmful, or distressing to B.P.J. In particular, while Defendants' experts may allege certain improprieties about the diagnosis and treatment for gender dysphoria, Plaintiff does not believe that such lines of questioning are appropriately directed at an eleven-year-old girl undergoing treatment for gender dysphoria; nor are they necessary for Defendants to fully and fairly litigate this case. As noted in previous correspondence, this case concerns whether a state statute prohibiting transgender girls from playing on girls' school sports teams passes muster under federal law. Thus, there is no need for an in-depth probing of B.P.J.'s medical record and gender identity—certainly not during B.P.J.'s deposition—in order to flesh out factual matters relevant to the legal challenge at issue. To the extent that Defendants seek to justify the law by reference to certain viewpoints about transgender individuals and gender dysphoria and its treatment, those are matters that can be covered otherwise—including in expert reports and depositions—rather than through questioning of B.P.J.

Thus, Plaintiff respectfully requests that all Defendants agree to the following proposed guidelines for B.P.J.'s deposition in order to avoid any unnecessary harm or distress. Plaintiff emphasizes that this proposal would not prevent Defendants from asking basic questions about B.P.J.'s gender identity and medical care; questions regarding B.P.J.'s participation in school or athletics; questions concerning her allegations of harm from being deprived the opportunity to participate on in girls' sports; or any other questions regarding the matters at issue in this lawsuit that do not conflict with the proposed guidelines below.

- No usage of B.P.J.'s deadname (i.e., her name given at birth) and no showing B.P.J. documents with her deadname unredacted.
- No reference whatsoever to B.P.J. as a "male" or "boy."
- Reference to B.P.J. using "she/her" pronouns if a pronoun must be used.



December 20, 2021

- No questioning that refers to or asks B.P.J. about her genitalia or the specifics of her bodily development.
- No questioning that concerns either the legitimacy or appropriateness of her medical and/or mental health treatment.
- No reading directly from B.P.J.'s medical records to B.P.J. or asking B.P.J. about the content of her medical records.
- No questioning that references sexual abuse, assault, or misconduct. As Defendants can see from the provided records, no such conduct has occurred, and it would be inappropriate to ask such questions to an eleven-year old.
- No questions attacking or undermining her mother, her parents, or her family members.

To the extent that there is any confusion regarding whether a line of questioning is appropriate, Plaintiff is happy to discuss further, including during B.P.J.'s deposition, and as needed. It is Plaintiff's hope that all parties can come to reasonable agreement without court intervention, and thus we would appreciate Defendants letting us know if they agree to this proposal.

Defendants' Discovery Requests

On the call, counsel for the County queried whether there are additional records that Plaintiff still needs to produce. Other than the ongoing medical record production, Plaintiff has completed her production in response to Defendants' discovery requests. If the County has specific requests presenting a question about whether production is complete, please bring them to our attention as we requested on the call.

In response to the County counsel's question of whether there is a recording reflecting Heather Jackson's conversation with the principal of Bridgeport Middle School, we are not aware of any such recording.

Medical Records

We will provide an update on the status of B.P.J.'s remaining medical records, including records from Dr. Bhatt's office, tomorrow morning.

Sincerely,

Kathleen Hartnett

Exhibit B

From: David C. Tryon <David.C.Tryon@wvago.gov>
Sent: Monday, January 3, 2022 6:08 PM
To: Kang, Katelyn L; Curtis R. A. Capehart; Morgan, Kelly; Hammond, Kristen; Taylor, Michael; aria.vaughan@usdoj.gov; Doug P. Buffington, II; fred.westfall@usdoj.gov; jennifer.mankins@usdoj.gov; bstelelawoffice@gmail.com; Tducar@azlawyers.com; Kimberly M. Bandy; Roberta Green; jscruggs@alliancedefendingfreedom.org; cholcomb@adflegal.org; Fox, Laticia; Susan Deniker
Cc: Reinhardt, Elizabeth F; Veroff, Julie M.; Tara Borelli; Carl Charles; Barr, Andrew D; Joshua Block; Hartnett, Kathleen; Avatara Smith-Carrington; Loree Stark; Sruti Swaminathan; Taylor Brown; Helstrom, Zoë
Subject: RE: B.P.J. v. West Virginia State Board of Education, et al.; Civil Action No.: 2:21-CV-00316

[External]

To Plaintiff's Counsel regarding deposition protocols:

We are in your receipt of your letters addressing deposition protocols for the upcoming depositions. We appreciate the concerns and thoughts you have raised and have the following responses.

Deposition order, location, and virtual attendance: As you know, the Notice of Deposition sets forth a specific order for depositions. We anticipate that the depositions may well last three days, and we had intended and been preparing for the specified order. However, if you agree that B.P.J. will not attend the depositions of Wesley Pepper or Heather Jackson and (since neither of them is a party) that neither of them will attend each other's depositions, your proposed order is acceptable. Accordingly, we agree to begin Wesley Pepper's deposition on Wednesday January 19, at 10 am, followed by the deposition of Heather Jackson either later that day or beginning January 20 at 10am. Thereafter, either on January 20 or January 21, we will depose B.P.J.

As set forth in the Notice of Deposition, the Bridgeport location is acceptable.

We agree with prior communications regarding the mixed virtual and in-person approach. There are several reasons for maintaining in-person depositions, including the potential for technology issues and the inherent limitations that attend any communicative effort that is remote only. Also, given the current level of understanding of COVID and exposure risk control, there are reasonable efforts that the parties can take to minimize the potential for transmission while conducting depositions here. (For example, the confirmed availability of a sizeable space for depositions coupled with very light in-person attendance is a major factor in proceeding safely.) More on this is anticipated during the January 4, 2022, call.

We agree with your approach on expert witness location and asking questions remotely.

COVID protocol:

- We agree that each party will limit in-person attendance to 1-2 counsel.
- While we appreciate and share your concerns regarding COVID and that precautions are appropriate, we do not agree that daily COVID testing is necessary or practical. That is not required for any situation in West Virginia and is not normal protocol or required by any court rule or order. Moreover, it is unclear if immediate rapid testing kits will even be available in the relevant parts of West Virginia in January given the increasing shortage of these tests. However, we believe that taking temperatures of any in-person attendee is appropriate and if someone is experiencing COVID symptoms, then it would be prudent for that person to get a test (if possible) or attend remotely.
- Masks: West Virginia presently does not have a mask mandate in effect. Nevertheless, we can agree to wearing masks, but masks acceptable per CDC guidance are appropriate. (In fact, the CDC's guidance on which masks to use recommends against N-95 masks. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html>.) Separately, as we all know, verbal communication is only part of communication; nonverbal indicators (e.g. facial expressions) do much to round out that communication. In addition, because hearing issues can affect some participating in or viewing a deposition, it is important to be able to see people's lips when they speak. Finally, as you know, court reporters also generally seek to see the persons face while they are talking to enable more accurate transcription of the testimony. Therefore, we respectfully request that those speaking in depositions do so without masks. (Given the size of the deposition space, any amount of reasonable distancing should be easily accommodated.)

Order of questioning: Questioning by multiple counsel should be conducted based on the normal protocol in multiple party litigation, which is a fairly typical situation. We cannot agree in advance who will ask what or exactly who is entitled to ask what questions. The standard objection of "asked and answered" and other objections are available, and it seems unlikely that any party will seek to unnecessarily extend any of these depositions.

Scope of B.P.J.'s questions. First and foremost, Defendants are sensitive to the fact that B.P.J. is only 11 years old and must be treated with respect and sensitivity, regardless of the subject of the lawsuit or the subject of the deposition. Defendants also recognize the sensitivity of the subjects that may come up during the course of B.P.J.'s deposition. Of course we will act professionally and respectfully, and expect all other counsel to do so as well.

At the same time, Defendants must fulfill their duties to represent their clients' interests properly. In this case, Plaintiff's Amended Complaint presents an as-applied challenge to the statute and includes many allegations about B.P.J. that are relevant to the as-applied challenge. Further, B.P.J. appears to have engaged in significant public discussion, and generally been in the public eye. The parties should be able to agree that any public statements

by B.P.J. or B.P.J.'s family members would be appropriate fare for questions. While Defendants may not see a need to ask questions about these public statements, an objection to such questions based on concerns relating to trauma would be surprising given B.P.J.'s openness and candor evident to this point. Furthermore, it is impossible to commit to not ask any questions related to the very specific case which Plaintiff has brought and the allegations made to date. Similarly, we are not able to commit to any specific questioning in advance. Nevertheless, we are sensitive to your concerns and will keep them in mind during the questioning. However, it is safe to say that during B.P.J.'s deposition:

- It is unlikely that there will be any need to use pronouns referring to B.P.J.
- It is unlikely that there will be a need to speak B.P.J.'s birth certificate name or to present documents with that name on them.
- It is unlikely that there will be a need to refer to B.P.J.'s genitalia.
- It is unlikely that there would be any need to ask B.P.J. about sexual abuse.
- It is unclear what questions might be asked which might be construed as "undermining" parents or family members, so this does not seem to be a problem.
- As to the medical records, B.P.J.'s medical records contain many relevant items which may raise questions that need answers, so we cannot agree that such questions are strictly off limits. But, as always, you will be free to object to any references during the deposition if there is a legitimate objection.
- Since B.P.J. is a biological male under the challenged statute and the challenged statute addressed the question of which team B.P.J. may be on, the request that there be no reference to this key issue is odd. While Defendants' counsel would not expect to present this in a harmful way, it goes to the crux of the Plaintiff's challenge.

Federal Rules of Civil Procedure: This is not particular to this matter and this is a topic that impacts all parties. When engaged in working out deposition logistics, we have begun a practice of noting the content of a rule that is too often given short shrift: FRCP 30(c)(2). While this of course applies to these depositions, it is worth noting: "Objections. An objection at the time of the examination—whether to evidence, to a party's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition—must be noted on the record, but the examination still proceeds; the testimony is taken subject to any objection. An objection must be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3)." All parties are well-served to refresh our collective familiarity with this as we move into depositions here.

We look forward to further discussions, in particular on the COVID protocol issue at the anticipated call on Tuesday.

Thank you.
Dave Tryon

David C. Tryon*

SPECIAL ASSISTANT TO THE ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
State Capitol Complex
112 California Avenue
Bldg. 6, Room 430
Charleston, WV 25305-0220
Main: (304) 558-2021
Direct: (681) 313-4570
Cell: (440) 503-7877



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

From: Kang, Katelyn L <kkang@cooley.com>

Sent: Wednesday, December 29, 2021 5:13 PM

To: David C. Tryon <David.C.Tryon@wvago.gov>; Curtis R. A. Capehart <Curtis.R.A.Capehart@wvago.gov>; Morgan, Kelly <kmorgan@baileywyant.com>; Hammond, Kristen <khammond@baileywyant.com>; Taylor, Michael <mtaylor@baileywyant.com>; aria.vaughan@usdoj.gov; Doug P. Buffington, II <Doug.P.Buffington@wvago.gov>; fred.westfall@usdoj.gov; jennifer.mankins@usdoj.gov; bstelelawoffice@gmail.com; Tducar@azlawyers.com; Kimberly M. Bandy <kbandy@shumanlaw.com>; Roberta Green <rgreen@shumanlaw.com>; jscruggs@alliancedefendingfreedom.org; cholcomb@adflegal.org; Fox, Laticia <tfox@baileywyant.com>; Susan Deniker <Susan.Deniker@steptoe-johnson.com>

Cc: Reinhardt, Elizabeth F <ereinhardt@cooley.com>; Veroff, Julie M. <jveroff@cooley.com>; Tara Borelli <Tborelli@lambdalegal.org>; Carl Charles <CCharles@lambdalegal.org>; Barr, Andrew D <abarr@cooley.com>; Joshua Block <jblock@aclu.org>; Hartnett, Kathleen <khartnett@cooley.com>; Avatara Smith-Carrington <asmithcarrington@lambdalegal.org>; Loree Stark <LStark@acluwv.org>; Sruti Swaminathan <SSwaminathan@lambdalegal.org>; Taylor Brown <TBrown@aclu.org>; Helstrom, Zoë W. <zhelstrom@cooley.com>

Subject: RE: B.P.J. v. West Virginia State Board of Education, et al.; Civil Action No.: 2:21-CV-00316

Counsel:

I hope that everyone is having a good holiday. We write to follow up to our letter sent on December 20, 2021.

Given the recent, material increase in risk associated with COVID-19 and its variants, we write to ask whether counsel for Defendants and for Defendant-Intervenor would be amenable to holding all depositions in this case virtually, including the upcoming depositions for B.P.J. and her parents. This link provides an example of our contemplated format. <https://www.veritext.com/services/veritext-virtual/>. This format allows all exhibits to be displayed electronically (including for the witness to review as they see fit), and we also would be amenable to requiring exhibits to be sent in hard copy to the defending counsel to arrive the day before the deposition in a sealed envelope (or otherwise make provision for hard copies to be available to the witness). Further, we would agree that counsel for the witness may be in the same room as the witness (but everyone else, including court reporter and videographer, would appear virtually). This format would also allow the witnesses to provide testimony without the need to wear masks.

We look forward to your response, which we would appreciate by Tuesday 1/4, and of course are happy to confer by phone if useful. We plan to raise this issue with the Court if we are not able to reach an agreement, given the current severity of the pandemic and the strong preference of our client.

Best,
Katelyn

From: Kang, Katelyn L <kkang@cooley.com>
Sent: Monday, December 20, 2021 5:42 PM
To: David C. Tryon <David.C.Tryon@wvago.gov>
Cc: Susan Deniker <Susan.Deniker@steptoe-johnson.com>; Reinhardt, Elizabeth F <ereinhardt@cooley.com>; Curtis R. A. Capehart <Curtis.R.A.Capehart@wvago.gov>; Morgan, Kelly <kmorgan@baileywyant.com>; Hammond, Kristen <khammond@baileywyant.com>; Taylor, Michael <mtaylor@baileywyant.com>; aria.vaughan@usdoj.gov; Doug P. Buffington, II <Doug.P.Buffington@wvago.gov>; fred.westfall@usdoj.gov; jennifer.mankins@usdoj.gov; bstelelawoffice@gmail.com; Tducar@azlawyers.com; Kimberly M. Bandy <kbandy@shumanlaw.com>; Roberta Green <rgreen@shumanlaw.com>; jscruggs@alliancedefendingfreedom.org; cholcomb@adflegal.org; Fox, Laticia <tfox@baileywyant.com>; Veroff, Julie M. <jveroff@cooley.com>; Tara Borelli <Tborelli@lambdalegal.org>; Carl Charles <CCharles@lambdalegal.org>; Barr, Andrew D <abarr@cooley.com>; Joshua Block <jblock@aclu.org>; Hartnett, Kathleen <khartnett@cooley.com>; Avatara Smith-Carrington <asmithcarrington@lambdalegal.org>; Loree Stark <LStark@acluwv.org>; Sruti Swaminathan <SSwaminathan@lambdalegal.org>; Taylor Brown <TBrown@aclu.org>
Subject: RE: B.P.J. v. West Virginia State Board of Education, et al.; Civil Action No.: 2:21-CV-00316

Thank you, David.

Counsel, please see the attached.

Best,
Katelyn

From: David C. Tryon <David.C.Tryon@wvago.gov>
Sent: Monday, December 20, 2021 2:09 PM
To: Kang, Katelyn L <kkang@cooley.com>
Cc: Susan Deniker <Susan.Deniker@steptoe-johnson.com>; Reinhardt, Elizabeth F <ereinhardt@cooley.com>; Curtis R. A. Capehart <Curtis.R.A.Capehart@wvago.gov>; Morgan, Kelly <kmorgan@baileywyant.com>; Hammond, Kristen <khammond@baileywyant.com>; Taylor, Michael <mtaylor@baileywyant.com>; aria.vaughan@usdoj.gov; Doug P. Buffington, II <Doug.P.Buffington@wvago.gov>; fred.westfall@usdoj.gov; jennifer.mankins@usdoj.gov; bstelelawoffice@gmail.com; Tducar@azlawyers.com; Kimberly M. Bandy <kbandy@shumanlaw.com>; Roberta Green <rgreen@shumanlaw.com>; jscruggs@alliancedefendingfreedom.org; cholcomb@adflegal.org; Fox, Laticia <tfox@baileywyant.com>; Veroff, Julie M. <jveroff@cooley.com>; Tara Borelli <Tborelli@lambdalegal.org>; Carl Charles <CCharles@lambdalegal.org>; Barr, Andrew D <abarr@cooley.com>; Joshua Block <jblock@aclu.org>; Hartnett, Kathleen <khartnett@cooley.com>; Avatara Smith-Carrington <asmithcarrington@lambdalegal.org>; Loree Stark <LStark@acluwv.org>; Sruti Swaminathan <SSwaminathan@lambdalegal.org>; Taylor Brown <TBrown@aclu.org>
Subject: RE: B.P.J. v. West Virginia State Board of Education, et al.; Civil Action No.: 2:21-CV-00316

[External]

Counsel:

Attached is a notice of deposition for the three depositions we discussed having the week of January 17. We are noticing them starting Wednesday the 19th because the 17th is MLK day and we thought it might be more convenient to start on Wednesday and we expect that three days should be more than adequate. We also determined that given the

travel time from Charleston and wherever Plaintiff's counsel are staying and given that it is winter and the possible travel delays we should start at 10 am. We have noticed the depositions in the order of Heather Jackson, B.P.J. and then Wesley Pepper and tried to estimate the times necessary to complete those depositions. However, the times may change depending on how long the depositions last. Accordingly, the depositions may continue into Friday. We want to be flexible to recognize both counsel's time issues and the deponents time. Please advise if anyone thinks that these time issues are unrealistic.

Finally, would Plaintiff's counsel confirm that we do not need to subpoena either Ms. Jackson or Mr. Pepper?
Thank you for your cooperation on this matter.

Respectfully,
Dave Tryon

David C. Tryon*

SPECIAL ASSISTANT TO THE ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
State Capitol Complex
112 California Avenue
Bldg. 6, Room 430
Charleston, WV 25305-0220
Main: (304) 558-2021
Direct: (681) 313-4570
Cell: (440) 503-7877



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

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. If you are the intended recipient, please be advised that the content of this message is subject to access, review and disclosure by the sender's Email System Administrator.