

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

L.E., by his next friends and parents,  
SHELLEY ESQUIVEL and MARIO  
ESQUIVEL,

Plaintiff,

v.

BILL LEE, et al.,

Defendants.

Case No. 3:21-cv-00835

Chief Judge Waverly D. Crenshaw Jr.  
Magistrate Judge Alistair E. Newbern

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**SUPPLEMENTAL DECLARATION OF STELLA YARBROUGH**

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I, Stella Yarbrough, am an attorney for Plaintiff L.E., by his next friends and parents, Shelley Esquivel and Mario Esquivel, in the above-captioned matter. I submit, pursuant to 28 U.S.C. §1746, this supplemental declaration in opposition to Defendants' motions for summary judgment. I have personal knowledge of the facts in this declaration. If called upon to testify, I could competently testify to the matters set forth in this declaration.

Attached to this declaration are true and accurate copies of the below items. Where applicable, the numbered paragraph for a particular item indicates that the item has been excerpted.

1. A true and accurate copy of excerpts of the transcript of the Deposition of Donald Dodgen, dated July 28, 2022, is attached as Exhibit 1 to this Supplemental Declaration.
2. A true and accurate copy of email correspondence between Shelley Esquivel and John Bartlett, dated March 4 – March 5, 2021, produced as Attachment 1 of Plaintiff's

Responses to Defendant Knox County Board of Education's First Set of Interrogatories and Bates stamped TNLE00000017-18, is attached as Exhibit 2 to this Supplemental Declaration.

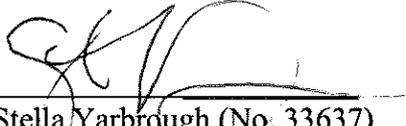
3. A true and accurate copy of Tennessee State Board of Education Rule 0520-01-23, October 2022 (revised), is attached as Exhibit 3 to this Supplemental Declaration.

4. I have reviewed the video recording of the Tennessee House K-12 Subcommittee Hearing dated February 9, 2021, which is available at <https://tinyurl.com/5633tyrc>. At 45:50, a person identified as Rep. Michele Carringer states, "I was born a girl, they were born a boy. And from my religious background, I mean, I believe that's how it is. God made men and women and there was a reason why we were created differently."

5. I have reviewed the video recording of the Tennessee Senate Floor Session Hearing dated March 1, 2021, which is available at <https://tinyurl.com/5y53n95d>. At 51:10, a person identified as Sen. Paul Rose states, "So God created man in His own image, an image of God created He him, male and female created He them."

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 4, 2022

  
Stella Yarbrough (No. 33637)  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF TENNESSEE  
P.O. Box 120160  
Nashville, TN 37212  
Tel: (615) 320-7142  
[syarbrough@aclu-tn.org](mailto:syarbrough@aclu-tn.org)

# EXHIBIT 1

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE

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L.E., by his next friends \*  
And parents \*  
  
Plaintiff \*  
  
V. \*  
  
BILL LEE, in his official \*  
Capacity as Governor of \*  
Tennessee; PENNY SCHWINN, \*  
In her official capacity as \*  
The Tennessee Education \*  
Commissioner; TENNESSEE \*  
STATE BOARD OF EDUCATION; \*  
SARA HEYBURN MORRISON in \*  
Her official capacity as \*  
The executive Director of \*  
The Tennessee State Board \*  
Of Education; NICK DARNELL \*  
MIKE EDWARDS ROBERT EBY \*  
GORDON FERGUSON, ELISSA, \*  
KIM LILLIAN HARTGROVE, \*  
NATE MORROW, LARRY JENSEN \*  
DARRELL COBBINS, and EMILY \*  
HOUSE, the individual \*  
Members of the Tennessee \*  
State Board of Education, \*  
In their official \*  
Capacities; KNOX COUNTY \*  
BOARD OF EDUCATION a/k/a \*  
KNOX COUNTY SCHOOLS a/k/a \*  
KNOX COUNTY SCHOOL \*  
DISTRICT; ROBERT M. "BOB" \*  
THOMAS, in his Official \*  
Capacity as Director of \*  
Knox County Schools \*  
  
Defendants \*  
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DEPOSITION OF DONALD DODGEN  
APPEARING REMOTELY FROM  
KNOXVILLE, TENNESSEE

July 28, 2022  
10:30 a.m.

REPORTED BY:  
Dawn L. Halcisak, CLR  
APPEARING REMOTELY FROM CRISFIELD, MARYLAND

R E M O T E   A P P E A R A N C E S

ON BEHALF OF PLAINTIFF KNOX COUNTY BOARD OF  
EDUCATION AND BOB THOMAS:

JESSICA JERNIGAN-JOHNSON, ESQUIRE  
KNOX COUNTY LAW DIRECTOR'S OFFICE  
(865) 215-2327  
jessica.johnson@knoxcounty.org

SASHA BUCHERT, ESQUIRE  
(pro hac vice forthcoming)  
LAMBDA LEGAL DEFENSE AND EDUCATION  
FUND INC.  
1776 K Street, N.W., 8th Floor  
Washington, D.C 20006-5500  
(202) 804-6245  
sbuchert@lambdalegal.org

1 R E M O T E A P P E A R A N C E S (Cont'd.)

2  
3 ON BEHALF OF L.E., by his next friends and  
4 parents SHELLEY ESQUIVEL and MARIO ESQUIVEL  
5 & ACLU OF TENNESSEE:

6 STELLA YARBROUGH, ESQUIRE (No. 33637)

7 P.O. Box 120160

8 Nashville, Tennessee 37212

9 (615) 320-7142

10 syarborough@aclu-tn.org

11  
12 ALSO PRESENT:

13 FOR KNOX COUNTY LAW DIRECTOR'S OFFICE:

14 Bob Thomas, Director of Knox County Schools

15 Coach Donald Dodgen

16  
17 ATTORNEY GENERAL'S OFFICE:

18 Anne Levit

19 Mr. Swaine

20 Executive Director Morrison

21 State Board Members

22 Veda Newman, Law Clerk

1 R E M O T E A P P E A R A N C E S (Cont'd.)

2  
3 Lucas Cameron-Vaugh, ACLU

4  
5 VERITEXT:

6 Jerry CURran, Concierge Tech

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I N D E X

Name of Witness	Page
DONALD DODGEN	
Examination	
MS. YARBROUGH	11, 124
MS. BERGMEYER	118

I N D E X

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Exhibit 1	Criteria for Cheerleaders and Dance Teams, 2021-2022-Selection and Participation	45
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(Exhibits attached to transcript.)

1 BY MS. YARBROUGH:

2 Q. And you've never discussed this law  
3 with anyone at Farragut High School?

4 A. Not to my knowledge.

5 Q. You've never discussed this law with  
6 any coach at Farragut High School?

7 A. Not the law, no.

8 Q. Have you discussed the Knox County  
9 board of education policy that we looked at in  
10 the previous exhibit, Exhibit 6, with anyone at  
11 Farragut High School?

12 A. No.

13 Q. Have you discussed the general policy  
14 of who can participate in interscholastic  
15 sports, under this law, with anyone at Farragut  
16 High School?

17 A. No.

18 MS. BERGMEYER: Object to the form.

19 BY MS. YARBROUGH:

20 Q. Have you discussed the issue of  
21 transgender students playing on a sports team,  
22 with anyone, at Farragut High School?

1           A.    My golf coach and I had a conversation,  
2           and that's about it -- very short -- to make  
3           sure that we are following policy.

4           Q.    When was that discussion?

5           A.    I cannot give you the exact date.  It  
6           was -- it was before tryouts that we make sure  
7           everyone knows about tryouts for golf, boys and  
8           girls.

9           Q.    When are golf tryouts?

10          A.    We had golf tryouts last month, I  
11          think, off the top of my head.  I'd have to look  
12          at my calendar.

13          Q.    So you had a discussion last month with  
14          Coach Higgins about transgender students playing  
15          sports, correct?

16          A.    Yes.

17          Q.    What did you discuss?

18          A.    We just -- we heard a rumor that we may  
19          have one person try out.  And all I said is, "We  
20          have to let every person try out."  I did not  
21          talk about boys' tryouts or girls' tryouts.

22          Q.    And what do you mean that you heard a

# EXHIBIT 2

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**From:** Sasha Buchert  
**Sent:** Monday, July 11, 2022 5:34 PM EDT  
**To:** Strongin, Samuel M.  
**CC:** Lnowlin-sohl@aclu.org  
**Subject:** FW: Luc Esquivel, incoming 9th grader

**EXTERNAL SENDER**

Here you go.

---

**From:** Shelley Esquivel <shelleyesquivel@gmail.com>  
**Sent:** Monday, July 11, 2022 5:33 PM  
**To:** Sasha Buchert <SBuchert@lambdalegal.org>  
**Subject:** Fwd: Luc Esquivel, incoming 9th grader

----- Forwarded message -----

From: **Shelley Esquivel** <[shelleyesquivel@gmail.com](mailto:shelleyesquivel@gmail.com)>  
Date: Fri, Mar 5, 2021, 10:23 AM  
Subject: Re: Luc Esquivel, incoming 9th grader  
To: JOHN BARTLETT <[john.bartlett@knoxschools.org](mailto:john.bartlett@knoxschools.org)>

Thank you for the response. As far as I can tell, KCS has no published policies or guidelines. Thus my concerns....

On Thu, Mar 4, 2021, 7:08 PM JOHN BARTLETT <[john.bartlett@knoxschools.org](mailto:john.bartlett@knoxschools.org)> wrote:

Thank you for reaching out to me. I look forward to meeting Luc. Please know we will operate and provide facilities and opportunities according to KCS practices and the applicable law.

John C. Bartlett, EdD  
"It's About the Students"

Principal  
Farragut High School  
11237 Kingston Pike  
Knoxville, TN 37934  
865-966-9775  
865-671-7120 (Fax)

Currently Reading: *Change Your World* by John Maxwell and Rob Hoskins

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**From:** Shelley Esquivel <[shelleyesquivel@gmail.com](mailto:shelleyesquivel@gmail.com)>

**Date:** Thursday, March 4, 2021 at 1:05 PM

**To:** John Bartlett <[john.bartlett@knoxschools.org](mailto:john.bartlett@knoxschools.org)>

**Subject:** Luc Esquivel, incoming 9th grader

**CAUTION:** External Email. This message originated from outside of the KCS e-mail system.

Good afternoon, Dr. Bartlett-

My name is Shelley Esquivel. I have 2 children, Luc and Cora, who will be entering your school next year. I have heard wonderful things about your leadership, particularly the steps you've taken to create a more accepting, positive culture for students. My educational background is in development psychology, so I know how very important this is. THANK YOU.

I'm writing because I want to let you know that Luc(y) is transgender. He has socially transitioned this school year although, of course, his transition has really been a much longer process. Our family and medical providers are 100% supportive of him. He is a hard-working, thoughtful, and overall wonderful kid who just wants to be able to be himself.

I'm writing to let you know that despite FMS's desire for him to use a gender neutral bathroom, we have given him permission to use the boys' facilities moving forward. Right now, Luc plays for the FMS girls' golf team, but next year, he would like to try out for the boys' team. I understand that our state's legislation is currently trying to prevent this, but as it stands now, there is federal precedent for this right.

At this point, I just wanted to introduce Luc before he comes to your school, and frankly, to gauge the extent to which he will be accepted at FHS. As I'm sure you will understand, I will do whatever it takes to advocate for either of my children.

Sincerely,  
Shelley

Shelley Esquivel, PhD (she/her)

# EXHIBIT 3

**RULES  
OF  
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-23  
INTERSCHOLASTIC ATHLETICS**

**TABLE OF CONTENTS**

0520-01-23-.01 Purpose	0520-01-23-.04 Reviewing Allegations of Noncompliance
0520-01-23-.02 Definitions	0520-01-23-.05 Early Resolution
0520-01-23-.03 LEA Requirements	

**0520-01-23-.01 PURPOSE.**

The purpose of this Chapter is to effectuate T.C.A. § 49-6-310.

**Authority:** T.C.A. § 49-1-201 and 49-6-310. **Administrative History:**

**0520-01-23-.02 DEFINITIONS.**

- (1) "Commissioner" means the Commissioner of the Tennessee Department of Education.
- (2) "Complaint" means a report of allegations of non-compliance with T.C.A. § 49-6-310 filed with the Department by a Reporting Party using the reporting form made available by the Department. Department personnel may assist a Reporting Party to fill out the reporting form if assistance is needed, or if the Reporting Party wishes to file a Complaint via phone.
- (3) "Department" means the Tennessee Department of Education.
- (4) "High School" means a public school or public charter school in which any combination of grades nine through twelve (9-12) are taught.
- (5) "Interscholastic Athletic Activity or Event" means a sporting activity or sporting event involving two (2) or more schools, at least one (1) of which is a Middle School or a High School.
- (6) "LEA" means a Tennessee local education agency and has the same meaning given in T.C.A. § 49-1-103(2).
- (7) "Middle School" means a public school or public charter school in which any combination of grades five through eight (5-8) are taught.
- (8) "Reporting Party" means a current student of a Tennessee LEA or public charter school, a parent or guardian of a current student of a Tennessee LEA or public charter school, or any Tennessee citizen who submits a Complaint alleging noncompliance with T.C.A. § 49-6-310(a) to the Tennessee Department of Education.
- (9) "State Education Finance Funds" means the state school fund as defined in T.C.A. § 49-3-101(a) or funds appropriated or allocated from the state treasury for the operation and maintenance of the public schools or that may derive from any state taxes, the proceeds of which are devoted to public school purposes.

**Authority:** T.C.A. § 49-1-201 and 49-6-310. **Administrative History:**

(Rule 0520-01-23, continued)

**0520-01-23-.03 LEA REQUIREMENTS.**

- (1) Each local board of education and each governing body of a public charter school shall:
  - (a) Adopt and enforce a policy in compliance with T.C.A. § 49-6-310;
  - (b) Require each Middle School and High School under its control to adopt written procedures to ensure proper implementation of T.C.A. § 49-6-310(a) and the policy adopted pursuant to T.C.A. § 49-6-310; and
  - (c) Require annual reminders of T.C.A. § 49-6-310(a), the policy adopted pursuant to T.C.A. § 49-6-310, and the school procedures required by this Chapter be provided to all coaches and school and district administrators responsible for facilitating Interscholastic Athletic Activities and/or Events at Middle Schools and High Schools under its control.
- (2) If a birth certificate provided by a student or the student's parent or legal guardian does not appear to be the student's original birth certificate or does not indicate the student's sex upon birth, then the student or the student's parent or legal guardian shall provide other evidence indicating the student's sex at the time of birth. Other evidence provided by the student or the student's parent or legal guardian to establish the student's sex at the time of birth shall only be provided with the prior written consent of the student's parent or legal guardian.
- (3) Each LEA shall confirm that each Middle School and High School under its control is in compliance with T.C.A. § 49-6-310 prior to submitting the annual LEA Compliance Report to the Department certifying the LEA's compliance with all education laws and State Board of Education ("State Board") rules.

**Authority:** T.C.A. § 49-1-201 and 49-6-310. **Administrative History:**

**0520-01-23-.04 REVIEWING ALLEGATIONS OF NONCOMPLIANCE.**

- (1) The Department shall initiate a review of the allegation(s) included in the Complaint within ten (10) calendar days of receipt of the Complaint. The Department shall send a written notification of the review to the LEA in which the Complaint arose. The Department shall also notify the Reporting Party, that an investigation has been initiated and provide information regarding the procedural steps involved in the investigative process.
- (2) As part of the review, the Department shall have the authority to:
  - (a) Request any relevant evidence from the LEA, the Reporting Party, and/or any witness; and
  - (b) Interview the Reporting Party and/or any other individual deemed necessary by the Department.
- (3) No later than sixty (60) calendar days after initiating the review, the Department shall issue a written determination letter summarizing the findings of the review to the LEA from which the Complaint arose and to the Reporting Party. The sixty (60) calendar day timeline shall be stayed if the Department and the LEA from which the Complaint arose agree to enter into an early resolution agreement in accordance with the requirements of Rule 0520-01-23-.05 of this Chapter. Such notice shall be sent in compliance with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g); T.C.A. § 10-7-504; the Data Accessibility, Transparency, and Accountability Act, compiled in Title 49, Chapter 1, Part 7; and all other relevant privacy laws. The sixty (60) calendar

(0520-01-23-.04, continued)

day timeline may only be extended if exceptional circumstances exist, and those circumstances are appropriately documented by the Department. If there is a need for an extension of the sixty (60) calendar day timeline, the Department shall notify the LEA in which the Complaint arose and the Reporting Party of this extension in writing.

- (4) If the LEA is found to be non-compliant with T.C.A. § 49-6-310, the written determination letter shall include a notice of noncompliance. The notice of noncompliance shall include, at minimum, corrective action steps required for compliance and a deadline for completion of the corrective action steps. An LEA shall not be deemed non-compliant by the Department if the failure to comply is in response to a court or other legally binding order that prohibits the LEA from complying.
- (5) If the Department determines that the LEA failed to complete the required corrective action steps by the deadline included in the notice of noncompliance, the Department shall send the LEA a letter of withholding stating that due to failure to complete the required corrective action steps by the established deadline, the Commissioner shall withhold a portion of the State Education Finance Funds that an LEA is otherwise eligible to receive. The Commissioner shall withhold the portion of the State Education Finance Funds scheduled to be distributed to the LEA in accordance with Table 1 set forth below until the LEA completes each of the required corrective action steps set forth in the notice of non-compliance. When the Commissioner determines that compliance is established, the amount of State Education Finance Funds that were withheld shall be disbursed to the LEA by the Department. The amount of state funds to be withheld by the Commissioner shall be determined as set forth in Table 1 below:

Table 1:

First letter of withholding	2% of annual State Education Finance Funds scheduled to be granted to the LEA
Second letter of withholding	4% of annual State Education Finance Funds scheduled to be granted to the LEA
Third letter of withholding	6% of annual State Education Finance Funds scheduled to be granted to the LEA
Fourth letter of withholding	8% of annual State Education Finance Funds scheduled to be granted to the LEA
Fifth or more letter of withholding	10% of annual State Education Finance Funds scheduled to be granted to the LEA

- (6) The letter of withholding shall state that the LEA has the right to request a contested case hearing regarding the Department’s determination that the requirements of the corrective action plan have not been met by the established deadline. Any contested case hearing granted shall be conducted in accordance with the Tennessee Uniform Administrative Procedures Act at T.C.A. §§ 4-5-301 et. seq. and the Rules of the Tennessee Department of State Administrative Procedures Division, Chapter 1360-04-01. If the LEA chooses to request a contested case hearing, the LEA shall make such a request within thirty (30) calendar days of the Department issuing the letter of withholding.

**Authority:** T.C.A. § 49-1-201 and 49-6-310. **Administrative History:**

**0520-01-23-.05 EARLY RESOLUTION.**

- (1) LEAs are encouraged to work collaboratively with the Department to resolve Complaints as quickly as possible. At any point after a Complaint has been received by the Department, but before a written determination letter has been issued by the Department, the LEA may propose early resolution of the allegations through an early resolution agreement.

(Rule 0520-01-23-.05, continued)

- (2) If early resolution is agreed to by the Department and LEA, the LEA shall prepare a written early resolution agreement to be submitted to the Department for review and approval. Entry into an early resolution agreement shall not constitute an admission that the LEA violated T.C.A. § 49-6-310 or this Chapter. The Department's review of the allegation(s) included in a Complaint shall be suspended upon entry into an early resolution agreement.
- (3) An early resolution agreement shall include, but not be limited to:
  - (a) A summary of the allegations contained in the Complaint; and
  - (b) Any agreed upon terms and conditions of the early resolution agreement, including but not limited to, deadlines for the completion of required acts or steps, and dates for submission of reports and documentation to the Department verifying implementation.
- (4) Once an early resolution agreement between the LEA and the Department is signed by both parties, the Department shall:
  - (a) Monitor the implementation of the early resolution agreement to ensure the LEA complies with the terms;
  - (b) Provide written notice to the LEA of any deficiencies in implementation and shall request immediate and appropriate action to address those deficiencies;
  - (c) When necessary, require additions to or modifications of the early resolution agreement to address the failure of the LEA to fully implement the terms of original agreement; and
  - (d) Provide written notice to the Reporting Party that the LEA and the Department have entered into an early resolution agreement, including the terms of the early resolution agreement. Such notice shall be sent in compliance with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g); T.C.A. § 10-7-504; the Data Accessibility, Transparency, and Accountability Act, compiled in Title 49, Chapter 1, Part 7; and all other relevant privacy laws.
- (5) When the Department determines that the LEA has fully implemented the terms and conditions of the early resolution agreement, the Department shall conclude the monitoring of the early resolution agreement by sending written notification to the LEA and the Reporting Party. Such notice shall be sent in compliance with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g); T.C.A. § 10-7-504; the Data Accessibility, Transparency, and Accountability Act, compiled in Title 49, Chapter 1, Part 7; and all other relevant privacy laws.
- (6) If an LEA fails to comply with the terms and conditions established in an early resolution agreement, the Department shall re-initiate the review of the Complaint submitted to the Department in accordance with Rule 0520-01-23-.04 of this Chapter.

**Authority:** T.C.A. § 49-1-201 and 49-6-310. **Administrative History:**