

No. 22A800

IN THE
Supreme Court of the United States

THE STATE OF WEST VIRGINIA; WEST VIRGINIA STATE BOARD OF EDUCATION;
WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION; W. CLAYTON BURCH,
IN HIS OFFICIAL CAPACITY AS STATE SUPERINTENDENT; AND LAINEY ARMISTEAD,

Applicants,

v.

B.P.J., BY HER NEXT FRIEND AND MOTHER, HEATHER JACKSON,

Respondent.

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE
UNITED STATES AND CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT

RESPONDENT'S SUPPLEMENTAL APPENDIX

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WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 3293

BY DELEGATES HANNA, BRIDGES, CLARK, ELLINGTON,
HORST, JENNINGS, LONGANACRE, MAZZOCCHI, TULLY,

PHILLIPS AND BURKHAMMER

[Passed April 9, 2021; in effect ninety days from
passage.]

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1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §18-2-25d, relating to designation of athletic teams or sports sponsored by
3 any public secondary school or state institution of higher education according to biological
4 sex; providing legislative findings; defining “biological sex”, “female”, and “male”; providing
5 for designation of athletic teams as “males, men, or boys”, “females, women, or girls”, or
6 “coed or mixed”; prohibiting biological males from participating on athletic teams or sports
7 designated for biological females where competitive skill or contact is involved; clarifying
8 that eligibility of any student to participate on athletic teams or sports designated for
9 biological males is not restricted; providing cause of action for student aggrieved by
10 violation of this section; requiring identity of minor student related to such action to remain
11 anonymous; requiring promulgation of rules by the State Board of Education; and requiring
12 proposal of legislative rules by the Higher Education Policy Commission and Council for
13 Community and Technical College Education.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-25d. Clarifying participation for sports events to be based on biological sex of the athlete at birth.

1 (a) The Legislature hereby finds:

2 (1) There are inherent differences between biological males and biological females, and
3 that these differences are cause for celebration, as determined by the Supreme Court of the
4 United States in *United States v. Virginia* (1996);

5 (2) These inherent differences are not a valid justification for sex-based classifications that
6 make overbroad generalizations or perpetuate the legal, social, and economic inferiority of either
7 sex. Rather, these inherent differences are a valid justification for sex-based classifications when
8 they realistically reflect the fact that the sexes are not similarly situated in certain circumstances,
9 as recognized by the Supreme Court of the United States in *Michael M. v. Sonoma County*,

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10 *Superior Court* (1981) and the Supreme Court of Appeals of West Virginia in *Israel v. Secondary*
11 *Schools Act. Com'n* (1989);

12 (3) In the context of sports involving competitive skill or contact, biological males and
13 biological females are not in fact similarly situated. Biological males would displace females to a
14 substantial extent if permitted to compete on teams designated for biological females, as
15 recognized in *Clark v. Ariz. Interscholastic Ass'n* (9th Cir. 1982);

16 (4) Although necessarily related, as concluded by the United States Supreme Court in
17 *Bostock v. Clayton County* (2020), gender identity is separate and distinct from biological sex to
18 the extent that an individual's biological sex is not determinative or indicative of the individual's
19 gender identity. Classifications based on gender identity serve no legitimate relationship to the
20 State of West Virginia's interest in promoting equal athletic opportunities for the female sex; and

21 (5) Classification of teams according to biological sex is necessary to promote equal
22 athletic opportunities for the female sex.

23 (b) Definitions. - As used in this section, the following words have the meanings ascribed
24 to them unless the context clearly implies a different meaning:

25 (1) "Biological sex" means an individual's physical form as a male or female based solely
26 on the individual's reproductive biology and genetics at birth.

27 (2) "Female" means an individual whose biological sex determined at birth is female. As
28 used in this section, "women" or "girls" refers to biological females.

29 (3) "Male" means an individual whose biological sex determined at birth is male. As used
30 in this section, "men" or "boys" refers to biological males.

31 (c) Designation of Athletic Teams. —

32 (1) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are
33 sponsored by any public secondary school or a state institution of higher education, including a
34 state institution that is a member of the National Collegiate Athletic Association (NCAA), National

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35 Association of Intercollegiate Athletics (NAIA), or National Junior College Athletic Association
36 (NJCAA), shall be expressly designated as one of the following based on biological sex:

37 (A) Males, men, or boys;

38 (B) Females, women, or girls; or

39 (C) Coed or mixed.

40 (2) Athletic teams or sports designated for females, women, or girls shall not be open to
41 students of the male sex where selection for such teams is based upon competitive skill or the
42 activity involved is a contact sport.

43 (3) Nothing in this section shall be construed to restrict the eligibility of any student to
44 participate in any interscholastic, intercollegiate, or intramural athletic teams or sports designated
45 as “males,” “men,” or “boys” or designated as “coed” or “mixed”: *Provided*, That selection for a
46 team may still be based on those who try out and possess the requisite skill to make the team.

47 (d) Cause of Action. —

48 (1) Any student aggrieved by a violation of this section may bring an action against a
49 county board of education or state institution of higher education alleged to be responsible for the
50 alleged violation. The aggrieved student may seek injunctive relief and actual damages, as well
51 as reasonable attorney’s fee and court costs, if the student substantially prevails.

52 (2) In any private action brought pursuant to this section, the identity of a minor student
53 shall remain private and anonymous.

54 (e) The State Board of Education shall promulgate rules, including emergency rules,
55 pursuant to §29A-3B-1 *et. seq.* of this code to implement the provisions of this section. The Higher
56 Education Policy Commission and the Council for Community and Technical College Education
57 shall promulgate emergency rules and propose rules for legislative approval pursuant to §29A-
58 3A-1 *et. seq.* of this code to implement the provisions of this section.

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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

The within this the.....
day of, 2021.

.....
Governor

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, and DORA STUTLER in her official capacity as Harrison County Superintendent,

Defendants.

Civil Action No. 2:21-cv-00316

Hon.

DECLARATION OF HEATHER JACKSON

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

1. I make this declaration of my own personal knowledge, and, if called as a witness, I could and would testify competently to the matters stated herein.

2. I am 53 years old. My husband and I are the parents of two sons, ages 20 and 13, and an 11-year-old daughter. We have been married for almost 21 years. We live in Lost Creek, West Virginia.

3. Our daughter's name is B.P.J. My daughter and I have a very deep connection and I believe she knows that she can come to me for anything—I love her very much.

4. I am fiercely protective of B.P.J. As her mother, I want to see her be able to achieve all of her dreams.

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

6. B.P.J. is also transgender. B.P.J. knew from a very young age that “she didn’t want her boy parts.” She never wanted to be naked for bathing because she was deeply

uncomfortable with and did not want to see certain parts of her body. B.P.J. also did not like standing up to urinate. She would often ask me a lot of questions about my own body and about why our bodies were physically different, if we were both girls.

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

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

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

10. By the time B.P.J. was in the third grade she had chosen her name and was living as herself at home. Towards the end of that school year, B.P.J. informed her father and me that she did not want to continue going to school “dressed as a boy.” We agreed she could start going to school dressed as herself.

11. In 2019, B.P.J. was diagnosed by Dr. Gerald T. Montano at University of Pittsburgh Medical Center with gender dysphoria.

12. Early in B.P.J.’s social transition, she began seeing a therapist experienced in treating transgender children. In late 2019, when B.P.J.’s gender dysphoria was especially

severe, causing her to be depressed and anxious, her father and I would take her to visit her therapist more often than usual.

13. B.P.J. started puberty-delaying treatment on June 15, 2020 and has been on this treatment for almost a year. She began this care under the treatment of a multidisciplinary team of providers, and continues to see providers with expertise in transgender children.

14. B.P.J. is young and just beginning to explore her interest in sports.

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

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

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

18. Although B.P.J. enjoyed cheerleading, she joined the cheer team in part because it was one of the only sports offered to her grade level that she was interested in participating in. When B.P.J. begins junior high, however, she wants to try out for Bridgeport Middle School's girls' cross-country and track teams. I think that B.P.J. may also wish to try out for basketball and/or volleyball, in addition to trying out for and participating on the girls' cross-country and track teams.

19. From past experience with both of my sons, I believe that the cross-country team starts practicing in July of 2021. In the past, to be eligible to try out for the team when school starts in August, students must have already participated in 14 practices. If B.P.J. is unable to begin practicing with other girls in July, she will not have enough time to put 14 practices under her belt before try-outs.

20. Having the opportunity to run on the cross-country and track teams is important to B.P.J. because B.P.J. comes from a family of runners. When she was younger, I would take B.P.J. on runs with me through parks and she grew up watching her brothers run on their school teams. B.P.J. sees my medals on our walls from when I run 5Ks, and her brothers' medals, and she wants the opportunity to be able to run and win some for herself. More importantly, she wants a continued sense of belonging and camaraderie like she had with the cheer team.

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

22. B.P.J. has the support of her family, coaches, instructors, and peers. Our family is very supportive, and my 75-year-old mother, B.P.J.'s grandmother, and step-grandfather are B.P.J.'s biggest supporters.

23. On May 18, 2021, during a meeting with B.P.J.'s new Principal at Bridgeport Middle School, David Mazza, I was informed that because of H.B. 3293, my daughter will not be permitted to participate on the girls' cross-country or track teams this coming school year.

24. Principal Mazza explained to me (apparently based on his incorrect assumption that running on the boys' team is an option for B.P.J.) that the coaches for both the girls' and boys' cross-country teams will need to be informed that my daughter is transgender. Principal Mazza told me that this disclosure is necessary because B.P.J. looks and presents like a female, and it would be confusing for the girls' cross-country coach if she saw one of the girls walking over to the boys' side while the teams were practicing.

25. I am also aware that to try out and participate in the girls' cross-country team, B.P.J. needs to submit a form issued by the West Virginia Secondary School Activities Commission, and completed in part by a physician after a physical exam. A true and correct copy of this form is attached as Exhibit A. The form contains detailed questions about the student's medical history, but does not ask for the student's sex, genetics, or reproductive anatomy.

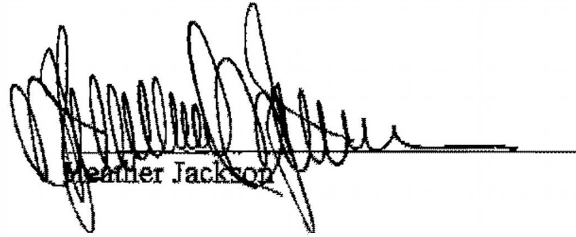
26. B.P.J. is a girl. It makes no sense for her to run with the boys. Forcing B.P.J. to compete on the boys' cross-country or track teams will mean that she will stand out like a sore thumb. B.P.J. knows she is not a boy, and we know she is not a boy.

27. Forcing B.P.J. to run with the boys would completely erase who she is, and it would devastate her. My daughter is simply saying, "Accept me for who I am." Forcing her to run to with the boys is a clear sign to her and others that the state refuses to see her and accept her for the girl that she is.

* * *

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

Executed on 5-25-2021



Heather Jackson

EXHIBIT A

2875 Staunton Turnpike - Parkersburg, WV 26104

ATHLETIC PARTICIPATION/PARENTAL CONSENT/PHYSICIAN'S CERTIFICATE FORM
(Form required each school year on or after May 1st. File in School Administration Office)

ATHLETIC PARTICIPATION / PARENTAL CONSENT

PART I

Name _____ School Year: _____ Grade Entering: _____
Home Address: _____ Home Address of Parents: _____
City: _____ City: _____
Phone: _____ Date of Birth: _____ Place of Birth: _____

Last semester I attended _____ (High School) or (Middle School). We have read the condensed eligibility rules of the WVSSAC athletics. If accepted as a team member, we agree to make every effort to keep up school work and abide by the rules and regulations of the school authorities and the WVSSAC.

INDIVIDUAL ELIGIBILITY RULES

Attention Athlete! To be eligible to represent your school in any interscholastic contest, you:

- _____ must be a regular bona fide student in good standing of the school. (See exception under Rule 127-2-3)
- _____ must qualify under the Residence and Transfer Rule (127-2-7)
- _____ must have earned at least 2 units of credit the previous semester. Summer School may be included. (127-2-6)
- _____ must have attained an overall "C" (2.00) average the previous semester. Summer School may be included. (127-2-6)
- _____ must not have reached your 15th (MS), 19th (HS) birthday before August 1 of the current school year. (127-2-4)
- _____ must be residing with parent(s) as specified by Rule 127-2-7 and 8.
 - _____ unless parents have made a bona fide change of residence during school term.
 - _____ unless an AFS or other Foreign-Exchange student (one year of eligibility only).
 - _____ unless the residence requirement was met by the 365 calendar days attendance prior to participation.
- _____ if living with legal guardian/custodian, may not participate at the varsity level. (127-2-8)
- _____ must be an amateur as defined by Rule 127-2-11.
- _____ must have submitted to your principal before becoming a member of any school athletic team Participation/Parent Consent/Physician Form, completely filled in and properly signed, attesting that you have been examined and found to be physically fit for athletic competition and that your parents consent to your participation. (127-3-3)
- _____ must not have transferred from one school to another for athletic purposes. (127-2-7)
- _____ must not have received, in recognition of your ability as a HS or MS athlete, any award not presented or approved by your school or the WVSSAC. (127-3-5)
- _____ must not, while a member of a school team in any sport, become a member of any other organized team or as an individual participant in an unsanctioned meet or tournament in the same sport during the school sport season (See exception 127-2-10).
- _____ must follow All Star Participation Rule. (127-3-4)
- _____ must not have been enrolled in more than (8) semesters in grades 9 to 12. Must not have participated in more than three (3) seasons while in grades 6-7-8. (Rule 127-2-5).
- _____ qualify under homeschool rule. (Rule 127-2-3.11, 127-2-7.2k, 126-26-3.1.1k)

Eligibility to participate in interscholastic athletics is a privilege you earn by meeting not only the above listed minimum standards but also all other standards set by your school and the WVSSAC. If you have any questions regarding your eligibility or are in doubt about the effect any activity or action might have on your eligibility, check with your principal or athletic director. They are aware of the interpretation and intent of each rule. Meeting the intent and spirit of WVSSAC standards will prevent athletes, teams, and schools from being penalized.

PART II - PARENTAL CONSENT

In accordance with the rules of the WVSSAC, I give my consent and approval to the participation of the student named above for the sport **NOT MARKED OUT BELOW**:

BASEBALL	CROSS	GOLF	SWIMMING	VOLLEYBALL
BASKETBALL	COUNTRY	SOCCER	TENNIS	WRESTLING
CHEERLEADING	FOOTBALL	SOFTBALL	TRACK	BAND

MEDICAL DISQUALIFICATION OF THE STUDENT-ATHLETE / WITHHOLDING A STUDENT-ATHLETE FROM ACTIVITY

The member school's team physician has the final responsibility to determine when a student-athlete is removed or withheld from participation due to an injury, an illness or pregnancy. In addition, clearance for that individual to return to activity is solely the responsibility of the member school's team physician or that physician's designated representative.

I understand that participation may include, when necessary, early dismissal from classes and travel to participate in interscholastic athletic contests. I will not hold the school authorities or West Virginia Secondary School Activities Commission responsible in case of accident or injury as a result of this participation. I also understand that participation in any of those sports listed above may cause permanent disability or death. Please check appropriate space: He/She has student accident insurance available through the school (); has football insurance coverage available through the school (); is insured to our satisfaction ().

I also give my consent and approval for the above named student to receive a physical examination, as required in Part IV, Physician's Certificate, of this form, by an approved health care provider as recommended by the named student's school administration.

I consent to WVSSAC's use of the herein named student's name, likeness, and athletically related information in reports of Inter-School Practices or Scrimmages and Contests, promotional literature of the Association, and other materials and releases related to interscholastic athletics.

I have read/reviewed the concussion and Sudden Cardiac Arrest information as available through the school and at WVSSAC.org. (Click Sports Medicine)

Date: _____ Student Signature _____ Parent Signature _____ **Supp. App. 15a**

PART III – STUDENT’S MEDICAL HISTORY

(To be completed by parent or guardian prior to examination)

Name _____ Birthdate ____/____/____ Grade _____ Age _____

- | | |
|---|--|
| Has the student ever had: | Yes No 12. Have any problems with heart/blood pressure? |
| Yes No 1. Chronic or recurrent illness? (Diabetes, Asthma, Seizures, etc.) | Yes No 13. Has anyone in your family ever fainted during exercise? |
| Yes No 2. Any hospitalizations? | Yes No 14. Take any medicine? List _____ |
| Yes No 3. Any surgery (except tonsils)? | Yes No 15. Wear glasses ____, contact lenses____, dental appliances____? |
| Yes No 4. Any injuries that prohibited your participation in sports? | Yes No 16. Have any organs missing (eye, kidney, testicle, etc.)? |
| Yes No 5. Dizziness or frequent headaches? | Yes No 17. Has it been longer than 10 years since your last tetanus shot? |
| Yes No 6. Knee, ankle or neck injuries? | Yes No 18. Have you ever been told not to participate in any sport? |
| Yes No 7. Broken bone or dislocation? | Yes No 19. Do you know of any reason this student should not participate in sports? |
| Yes No 8. Heat exhaustion/sun stroke? | Yes No 20. Have a sudden death history in your family? |
| Yes No 9. Fainting or passing out? | Yes No 21. Have a family history of heart attack before age 50? |
| Yes No 10. Have any allergies? | Yes No 22. Develop coughing, wheezing, or unusual shortness of breath when you exercise? |
| Yes No 11. Concussion? If Yes _____
Date(s) | Yes No 23. (Females Only) Do you have any problems with your menstrual periods. |

PLEASE EXPLAIN ANY "YES" ANSWERS OR ANY OTHER ADDITIONAL CONCERNS.

I also give my consent for the physician in attendance and the appropriate medical staff to give treatment at any athletic event for any injury.

SIGNATURE OF PARENT OR GUARDIAN _____ DATE ____/____/____

PART IV – VITAL SIGNS

Height _____ Weight _____ Pulse _____ Blood Pressure _____

Visual acuity: Uncorrected ____/____; Corrected ____/____; Pupils equal diameter: Y N

PART V – SCREENING PHYSICAL EXAM

This exam is not meant to replace a full physical examination done by your private physician.

Mouth:		Respiratory:		Abdomen:	
Appliances	Y N	Symmetrical breath sounds	Y N	Masses	Y N
Missing/loose teeth	Y N	Wheezes	Y N	Organomegaly	Y N
Caries needing treatment	Y N	Cardiovascular:		Genitourinary (males only);	
Enlarged lymph nodes	Y N	Murmur	Y N	Inguinal hernia	Y N
Skin - infectious lesions	Y N	Irregularities	Y N	Bilaterally descended testicles	Y N
Peripheral pulses equal	Y N	Murmur with Valsalva	Y N		

Any "YES" under Cardiovascular requires a referral to family doctor or other appropriate healthcare provider.

Musculoskeletal: (note any abnormalities)

Neck:	Y N	Elbow:	Y N	Knee/Hip:	Y N	Hamstrings:	Y N
Shoulder:	Y N	Wrist:	Y N	Ankle:	Y N	Scoliosis:	Y N

RECOMMENDATIONS BASED ON ABOVE EVALUATION:

After my evaluation, I give my:

- _____ Full Approval;
- _____ Full approval; but needs further evaluation by Family Dentist ____; Eye Doctor ____; Family Physician ____; Other ____;
- _____ Limited approval with the following restrictions: _____;
- _____ Denial of approval for the following reasons: _____.

MD/DO/DC/Advanced Registered Nurse Practitioner/Physician's Assistant

Date
Supp. App. 16a

DON'T LET AN INJURY LEAD TO AN OPIOID ADDICTION

2 MILLION ATHLETES ARE EXPECTED TO SUFFER A SPORTS INJURY THIS YEAR

MANY OF THESE ATHLETES WILL BE PRESCRIBED OPIOID PAINKILLERS

75% OF HIGH SCHOOL HEROIN USERS STARTED WITH PRESCRIPTION OPIOIDS

HIGH SCHOOL ATHLETES ARE AT RISK OF BECOMING ADDICTED TO PRESCRIPTION DRUGS

- 28.4% used medical opioids at least once over a three year period.
- 11% of high school athletes have used an opioid medication for nonmedical reasons.
- Nearly 25% of students who chronically use prescription opioids also use heroin.

HOW TO PROTECT YOUR CHILD

- Talk to your healthcare provider about alternative pain management treatment options (see below).
 - First-time prescription opioid users have a 64% higher risk of early death than patients who use alternative pain medication.
- If your child is prescribed an opioid painkiller, talk about the dangers of misusing medication, including overuse and medication sharing.
- Monitor your child's intake of prescription medication to ensure he/she is following dosage instructions.
- Safely dispose of any unused medication through a prescription drug drop box or a DEA Take-Back program.

WHAT ARE OPIOIDS?

Opioids are a powerful and addictive type of prescription painkiller that have similar chemical properties and addiction risks as heroin. While opioids may provide temporary relief, they do nothing to address the underlying injury and can have serious side effects.

These drugs may lead to: dependence, tolerance, accidental overdose, coma and death.

The most common prescribed opioid painkillers in West Virginia are:

- Oxycodone (OxyContin)
- Hydrocodone (Lortab and Vicodin)

NON-NARCOTIC PAIN MANAGEMENT ALTERNATIVES

- Physical Therapy
- Chiropractic
- Massage Therapy
- Acupuncture
- Over-the-Counter Medication



WEST VIRGINIA
ATTORNEY GENERAL'S OFFICE



West Virginia
Board of
Medicine

HEADS ^x UP

CONCUSSION IN HIGH SCHOOL SPORTS

A FACT SHEET FOR PARENTS

What is a concussion?

A concussion is a type of traumatic brain injury. Concussions are caused by a bump or blow to the head. Even a "ding," "getting your bell rung," or what seems to be a mild bump or blow to the head can be serious.

You can't see a concussion. Signs and symptoms of concussion can show up right after the injury or may not appear or be noticed until days or weeks after the injury. If your child reports any symptoms of concussion, or if you notice the symptoms yourself, seek medical attention right away.

What are the signs and symptoms of a concussion?

If your child has experienced a bump or blow to the head during a game or practice, look for any of the following signs of a concussion:

SYMPTOMS REPORTED BY ATHLETE	SIGNS OBSERVED BY PARENTS/GUARDIANS
<ul style="list-style-type: none"> • Headache or "pressure" in head • Nausea or vomiting • Balance problems or dizziness • Double or blurry vision • Sensitivity to light • Sensitivity to noise • Feeling sluggish, hazy, foggy, or groggy • Concentration or memory problems • Confusion • Just "not feeling right" or "feeling down" 	<ul style="list-style-type: none"> • Appears dazed or stunned • Is confused about assignment or position • Forgets an instruction • Is unsure of game, score, or opponent • Moves clumsily • Answers questions slowly • Loses consciousness (even briefly) • Shows mood, behavior, or personality changes

How can you help your child prevent a concussion or other serious brain injury?

- Ensure that they follow their coach's rules for safety and the rules of the sport.
- Encourage them to practice good sportsmanship at all times.
- Make sure they wear the right protective equipment for their activity. Protective equipment should fit properly and be well maintained.
- Wearing a helmet is a must to reduce the risk of a serious brain injury or skull fracture.
 - However, helmets are not designed to prevent concussions. There is no "concussion-proof" helmet. So, even with a helmet, it is important for kids and teens to avoid hits to the head.

What should you do if you think your child has a concussion?

SEEK MEDICAL ATTENTION RIGHT AWAY. A health care professional will be able to decide how serious the concussion is and when it is safe for your child to return to regular activities, including sports.

KEEP YOUR CHILD OUT OF PLAY. Concussions take time to heal. Don't let your child return to play the day of the injury and until a health care professional says it's OK. Children who return to play too soon—while the brain is still healing—risk a greater chance of having a repeat concussion. Repeat or later concussions can be very serious. They can cause permanent brain damage, affecting your child for a lifetime.

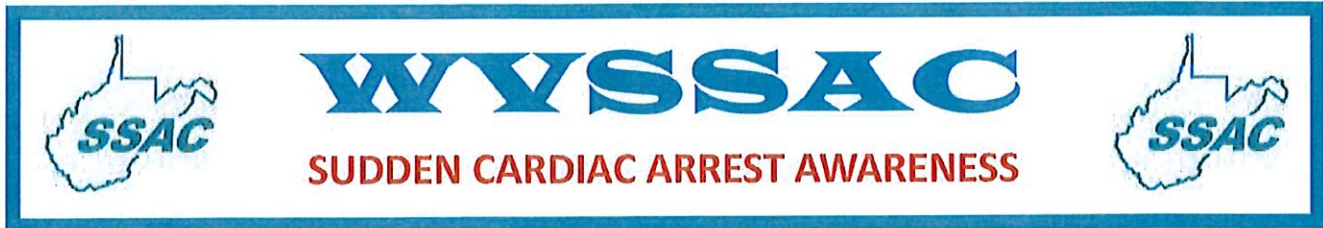
TELL YOUR CHILD'S COACH ABOUT ANY PREVIOUS CONCUSSION. Coaches should know if your child had a previous concussion. Your child's coach may not know about a concussion your child received in another sport or activity unless you tell the coach.

If you think your teen has a concussion:
 Don't assess it yourself. Take him/her out of play. Seek the advice of a health care professional.

It's better to miss one game than the whole season.

For more information, visit www.cdc.gov/Concussion.





What is Sudden Cardiac Arrest?

- Occurs suddenly and often without warning.
- An electrical malfunction (short-circuit) causes the bottom chambers of the heart (ventricles) to beat dangerously fast (ventricular tachycardia or fibrillation) and disrupts the pumping ability of the heart.
- The heart cannot pump blood to the brain, lungs and other organs of the body.
- The person loses consciousness (passes out) and has no pulse.
- Death occurs within minutes if not treated immediately.

What are the symptoms/warning signs of Sudden Cardiac Arrest?

- SCA should be suspected in any athlete who has collapsed and is unresponsive
- Fainting, a seizure, or convulsions during physical activity
- Dizziness or lightheadedness during physical activity
- Unusual fatigue/weakness
- Chest pain
- Shortness of breath
- Nausea/vomiting
- Palpitations (heart is beating unusually fast or skipping beats)
- Family history of sudden cardiac arrest at age <50

ANY of these symptoms/warning signs may necessitate further evaluation from your physician before returning to practice or a game.

What causes Sudden Cardiac Arrest?

- Conditions present at birth (inherited and non-inherited heart abnormalities)
- A blow to the chest (Commotio Cordis)
- An infection/inflammation of the heart, usually caused by a virus. (Myocarditis)
- Recreational/Performance-Enhancing drug use.
- Other cardiac & medical conditions / Unknown causes. (Obesity/Idiopathic)

What are ways to screen for Sudden Cardiac Arrest?

- The American Heart Association recommends a pre-participation history and physical which is mandatory annually in West Virginia.
- Always answer the heart history questions on the student Health History section of the WVSSAC Physical Form completely and honestly.
- Additional screening may be necessary at the recommendation of a physician.

What is the treatment for Sudden Cardiac Arrest?

- Act immediately; time is critical to increase survival rate
- Activate emergency action plan
- Call 911
- Begin CPR
- Use Automated External Defibrillator (AED)

Where can one find additional information?

- Contact your primary health care provider
- American Heart Association (www.heart.org)

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, and DORA STUTLER in her official capacity as Harrison County Superintendent,

Defendants.

Civil Action No.

Hon.

DECLARATION OF J

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

1. I make this declaration of my own personal knowledge, and, if called as a witness, I could and would testify competently to the matters stated herein.

2. I am a girl who is also transgender. I am 11 years old and will be entering the sixth grade this fall at Bridgeport Middle School. I have two older brothers, ages 13 and 20 years old. I live with my brothers; my Mom, Heather; and my Dad, Wesley in Lost Creek, West Virginia.

3. Some of my favorite things to do include playing outside with our family’s dogs, riding my bike, and jumping on the trampoline. I am very passionate about math and science and make straight As in school. Also, I like to play videogames like Apex Legends and Minecraft.

4. I am a girl. When I was younger, I remember wanting to play in my mom’s clothing and always liking pink and “girly” items.

5. My mom has always been supportive of me, so talking to her about how I was feeling about being a girl and that I wanted to go by the name B.P.J. felt normal to me.

6. After I talked with my parents about being a girl and wanting to go by the name B.P.J., my mother and father were supportive and began taking me to a therapist who works with transgender people. I was diagnosed with gender dysphoria.

7. I am currently on puberty-delaying medication and have been for almost a year.

8. I first got into cheering because my mom encouraged me to try a sport. Since I had spent time learning cheer routines while in the stands and my friends were also on the cheer team, I decided to pursue cheer.

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

10. During my first year on the cheer team, our team placed at a cheer competition for the first time ever. We got third place in competition. It made me feel proud and good about myself to work hard and succeed as a team.

11. Heading into junior high school, I am excited to try out for the girls' cross-country and track teams. Although I really enjoyed my time on the cheer team, I sometimes got "stage fright" and would prefer to take up a new sport. Since I was young, I have always enjoyed running and everyone in my family runs. My older brothers run cross-country, and my mom runs too. Seeing my family run has motivated me to want to try out and participate.

12. Knowing I cannot try out for the girls' cross-country and track teams just because I am a transgender girl is horrible and makes me feel angry and sad. It hurts to know that I will

not be able to have the chance to run on the girls' team like my friends can because I am a transgender girl.

13. I do not want to run with the boys and I should not have to run with the boys.

14. Running with the girls means a lot to me because I am a girl, and I should be treated like a girl. If I do not get to participate in cross-country or track, I will miss out on the opportunity to spend time with my friends and grow with a new team.

15. I just want to have a chance to participate in school sports like any other girl. It is frustrating and hurtful that some people want to take that chance away from me and treat me differently from everyone else just because I am transgender.

* * *

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

Executed on 5-24-2021

B. P. Jr.
B.P.J.

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

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

Plaintiff,

vs.

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

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

JURY DEMAND ENDORSED HEREIN

Defendants.

THE STATE OF WEST VIRGINIA'S ANSWER TO FIRST AMENDED COMPLAINT

The State of West Virginia, by its Attorney General (the "State"), submits the following answer and affirmative defenses to First Amended Complaint (Doc. 64). Any allegation made by the First Amended Complaint that has not been expressly admitted within this Answer is denied. To the extent any section heading or subheading in the First Amended Complaint is not deemed to be purely for the purpose of organization and, instead, is deemed a factual allegation, all such headings and subheadings are denied. Further, any reference to complaint means the First Amended Complaint if not otherwise stated.

32. The State lacks sufficient information to admit or deny the allegations in Paragraph 32 of the First Amended Complaint, including facts personal to Plaintiff, and on that basis denies those allegations.

33. The State lacks sufficient information to admit or deny the allegations in Paragraph 33 of the First Amended Complaint, including facts personal to Plaintiff, and on that basis denies those allegations.

34. The State lacks sufficient information to admit or deny the allegations in Paragraph 34 of the First Amended Complaint, including facts personal to Plaintiff, and on that basis denies those allegations. In answering further, the State, upon information and belief, admits that Bridgeport Middle School cross-country team tryouts are expected to begin August 2, 2021.

35. The State lacks sufficient information to admit or deny the allegations in Paragraph 35 of the First Amended Complaint, including facts personal to Plaintiff, and on that basis denies those allegations.

36. The State lacks sufficient information to admit or deny the allegations in Paragraph 36 of the First Amended Complaint, including facts personal to Plaintiff, and on that basis denies those allegations.

37. The State lacks sufficient information to admit or deny the allegations in Paragraph 37 of the First Amended Complaint, including facts personal to Plaintiff, and on that basis denies those allegations.

38. In response to Paragraph 38 of the First Amended Complaint, the State admits that school-sponsored athletics offer a range of benefits for some children and young adults and provide an opportunity to develop physically, emotionally, and socially. In answering further,

the State lacks sufficient information to admit or deny the remaining allegations in Paragraph 38 of the First Amended Complaint and on that basis denies those allegations.

39. The State denies the allegations of Paragraph 39 of the First Amended Complaint.

40. The State specifically denies the allegations that there is a “scientific consensus” and, further answering, denies all other allegations in Paragraph 40 of the First Amended Complaint.

41. The State admits that puberty blocker hormone drug treatment impact endogenous puberty. Answering further, the State denies all other allegations in paragraph 41 of the First Amended Complaint.

42. Paragraph 42 of the First Amended Complaint does not meet the requirements of Federal Rules of Civil Procedure 8(d)(1). Answering further, the State avers that the policies of the National Collegiate Athletic Association (“NCAA”), World Athletics, and the International Olympic Committee (the “Olympics”) speak for themselves. Further answering, the State denies all other allegations therein.

43. In response to Paragraph 43 of the First Amended Complaint, the State avers that W. Va. Admin. Code § 127-2-3 (3.8) speaks for itself.

44. In response to Paragraph 44 of the First Amended Complaint, the State avers that West Virginia laws or policies regarding the participation of students in school sports speak for themselves. Answering further, the State denies the remaining allegations therein, including the implication that H.B. 3293 is a prohibition preventing transgender students from participating in school sports.

45. The State admits that H.B. 3293 was introduced as an originating bill by the Education Committee for the West Virginia House of Delegates (the “House”), sponsored by

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

B. P. J., et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF EDUCATION, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the court are three motions to dismiss Plaintiff's First Amended Complaint, filed by Defendant West Virginia Secondary School Activities Commission [ECF No. 70], Defendants Harrison County Board of Education and Dora Stutler [ECF No. 72], and Defendants West Virginia Board of Education and Superintendent W. Clayton Burch [ECF No. 74]. For the following reasons, the motions to dismiss are **DENIED**.

I. PRELIMINARY MATTER

Before turning to the merits of the case, I will first address the Court's use of pronouns going forward. I note from the outset that I have consistently used female pronouns to refer to B.P.J. in my opinions. Courts hearing cases involving transgender litigants have long used language respecting the gender identity used by the litigants. *See, e.g., Farmer v. Haas*, 990 F.2d 319, 320 (7th Cir. 1993) (“[T]he defendants say ‘he,’ but Farmer prefers the female pronoun and we shall respect her preference.”); *Farmer v. Circuit Court of Maryland for Baltimore Cty.*, 31 F.3d 219,

220 n.1 (4th Cir. 1994) (“This opinion, in accord with Farmer’s preference, will use feminine pronouns.”); *Murray v. U.S. Bureau of Prisons*, 106 F.3d 401 n.1 (6th Cir. 1997) (“Murray uses the feminine pronoun to refer to herself. Although the government in its brief used the masculine pronoun, for purposes of this opinion we will follow Murray’s usage.”); *Schwenk v. Hartford*, 204 F.3d 1187, 1192 (9th Cir. 2000) (“In using the feminine rather than the masculine designation when referring to Schwenk, we follow the convention of other judicial decisions involving male-to-female transsexuals which refer to the transsexual individual by the female pronoun.”); *Cuoco v. Moritsugu*, 222 F.3d 99, 103 n.1 (2d Cir. 2000) (“We . . . refer to the plaintiff using female pronouns” because “[s]he [is] a preoperative male to female transsexual.”); *Smith v. Rasmussen*, 249 F.3d 755, 757 (8th Cir. 2001) (“As did the parties during the proceedings in the district court, we will refer to Smith, in accordance with his preference, by using masculine pronouns.”); *Kosilek v. Spencer*, 740 F.3d 733, 737 (1st Cir. 2014) (“We will refer to Kosilek as her preferred gender of female, using feminine pronouns.”); *Pinson v. Warden Allenwood USP*, 711 F. App’x 79, 80 (3d Cir. 2018) (“Because Pinson has referred to herself using feminine pronouns throughout this litigation, we will follow her example.”).

That being said, it will be necessary in this case to differentiate between males and females, as assigned at birth, without regard to their gender identity. The Court, therefore, adopts the following framework for the language it will use in its opinions going forward:

When referring to a person's sex assigned at birth, I will use the term “biological male” and “biological female.” A person who was assigned male at birth but identifies as female I will refer to as a transgender girl or a transgender woman.

A person who was assigned female at birth but identifies as male I will refer to as a transgender boy or a transgender man. A person who was assigned female at birth and identifies as female is a cisgender woman or girl. A person who was assigned male at birth and identifies as male is a cisgender man or boy. I will use the pronouns associated with a person's gender identity. In doing so, I am not expressing any opinion, political, judicial, or otherwise about any issue in this case. I will not order any litigant to use the language that I use.

II. BACKGROUND

On April 28, 2021, the State of West Virginia passed H.B. 3293, known as the "Protect Women's Sports Act." W. Va. Code § 18-2-25d. ("H.B. 3293" or "the Act"). The Act requires that any sports team sponsored by a public secondary school or higher education institution be expressly designated as a male, female, or coed team. § 18-2-25d(c)(1). Teams designated as "female" are not open to males, while teams designated as "male" are open to either sex. § 18-2-25d(c)(2). The act defines "male" and "female" as a person's "biological sex determined at birth." § 18-2-25d(b)(3).

B.P.J. is an eleven-year-old transgender girl. The complaint alleges that B.P.J. has been "living authentically as the girl she is" since the end of her third grade school year. [ECF No. 64, at ¶¶ 31–32]. She enjoys sports and has competed on girls' sports teams throughout elementary school. [ECF No. 64, at ¶¶ 31, 36]. Going into middle school, the complaint alleges that she anticipated trying out for girls' sports teams. [*Id.* at ¶ 34]. H.B. 3293 would prevent her from doing so because her sex assigned at birth is male.

B.P.J. has brought suit asserting that H.B. 3293 violates her rights under Title IX and the Equal Protection Clause. Count I of B.P.J.’s First Amended Complaint, against the State of West Virginia, the State Board of Education, the Harrison County Board of Education, and the West Virginia Secondary School Activities Commission (“WVSSAC”), alleges that the law violates Title IX of the Education Amendments of 1972 (20 U.S.C. § 1618 *et seq.*) [*Id.* at ¶¶ 88–99]. Count II, against State Superintendent W. Clayton Burch, Harrison County Superintendent Dora Stutler, and the WVSSAC, alleges that the law violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. [*Id.* at ¶¶ 100–110].¹ All named defendants, except the State of West Virginia, have filed motions to dismiss. The motions to dismiss are filed pursuant to Federal Rules of Civil Procedure 12(b)(1)—lack of subject matter jurisdiction—and 12(b)(6)—failure to state a claim upon which relief can be granted. I will first consider the court’s subject matter jurisdiction and then consider whether the plaintiff has adequately stated a claim under both Title IX and the Equal Protection Clause.

III. SUBJECT MATTER JURISDICTION

The West Virginia Board of Education and Superintendent Clayton Burch (collectively, the “State Board Defendants”) have moved to dismiss the complaint for lack of subject matter jurisdiction. They argue first that Plaintiff lacks standing because the State Board Defendants did not cause her injuries, and second that

¹ Both claims named Patrick Morrissey in his official capacity as the Attorney General of West Virginia, but Mr. Morrissey is no longer a defendant because the court has granted the Joint Motion to Dismiss Equal Protection Claim Against Defendant Patrick Morrissey in his Official Capacity as Attorney General of the State of West Virginia. [ECF No. 127].

Plaintiff's claims are not ripe for judicial consideration because the law has not been enforced against her.

The WVSSAC similarly challenges B.P.J.'s standing and the ripeness of her claims. WVSSAC argues that because it has no mandate to enforce the law against B.P.J., it is an improper party. The Harrison County Board of Education and Harrison County Superintendent Dora Stutler (collectively, the "County Board Defendants") argue that their actions are not the cause of B.P.J.'s harm and that they have not and will not enforce the law against her. Though their arguments are clothed in 12(b)(6), they nonetheless challenge Plaintiff's standing and the claims' ripeness. Accordingly, I will address these arguments as if they were made under 12(b)(1).

A. Standard of Review

It is axiomatic that a court must have subject matter jurisdiction over a case before it can render any decision on the merits. A motion to dismiss challenging that jurisdiction arises under Federal Rule of Civil Procedure 12(b)(1). Rule 12(b)(1) covers challenges to Article III standing and ripeness because those issues implicate a court's competency to hear a claim and therefore its subject matter jurisdiction. *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983) ("[T]hose who seek to invoke the jurisdiction of the federal courts must satisfy the threshold requirement . . . by alleging an actual case and controversy."). A defendant can challenge the court's subject matter jurisdiction facially—by arguing that the facts alleged in the complaint are not sufficient to establish jurisdiction—or factually—by arguing that the facts establishing jurisdiction are untrue. *Kerns v. United States*, 585 F.3d 187, 192 (4th Cir. 2009). If a factual challenge is made, the court may hold an evidentiary hearing to test the validity of the jurisdictional allegations. *Id.* However, if a facial

challenge is made, as it is here, “the facts alleged in the complaint are taken as true, and the motion must be denied if the complaint alleges sufficient facts to invoke subject matter jurisdiction.” *Id.*

B. Discussion

B.P.J. has standing to sue the State Board Defendants, the County Board Defendants, and the WVSSAC. She has adequately alleged an injury-in-fact—that she will be treated differently on the basis of sex; she has asserted that under H.B. 3293, each defendant will take some action that will cause her asserted harm; and she has established that each defendant can redress her claims because a favorable ruling against each will prevent them from enforcing the Act as to B.P.J.

B.P.J.’s claims are ripe against each defendant. First, her claims are fit for judicial review because they do not require any future factual development. The question in this case is whether it is permissible under Title IX or the Equal Protection Clause to prevent B.P.J., a transgender girl, from playing on girls’ sports teams. H.B. 3293 requires each defendant to prevent B.P.J. from playing on girls’ sports teams; no future factual development will change that effect. Second, and consistent with my ruling on the preliminary injunction, B.P.J. has sufficiently alleged that she will experience hardship if this law is enforced against her.

IV. FAILURE TO STATE A CLAIM

A motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of a complaint or pleading. *Giarratano v. Johnson*, 521 F.3d 298, 302 (4th Cir. 2008). A pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This standard “does not require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-

harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). To survive a motion to dismiss, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim for relief that is plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570). To achieve facial plausibility, the plaintiff must plead facts allowing the court to draw the reasonable inference that the defendant is liable, moving the claim beyond the realm of mere possibility. *Id.* Mere “labels and conclusions” or “formulaic recitation[s] of the elements of a cause of action” are insufficient. *Twombly*, 550 U.S. at 555.

A. DISCUSSION

All named defendants claim that B.P.J. has failed to state a claim upon which relief can be granted under both Title IX and the Equal Protection Clause.

B.P.J. has plausibly stated a claim under Title IX against State Superintendent Burch, Harrison County Superintendent Stutler, and the WVSSAC. She has sufficiently alleged that each defendant (1) will exclude her from participation in an educational event on the basis of sex, (2) receives federal funding, either directly or indirectly, and (3) that the exclusion from school events will cause her harm. *See Grimm v. Gloucester Cty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *cert. denied*, No. 20-1163, 2021 WL 2637992 (U.S. June 28, 2021) (defining the elements of a Title IX claim).

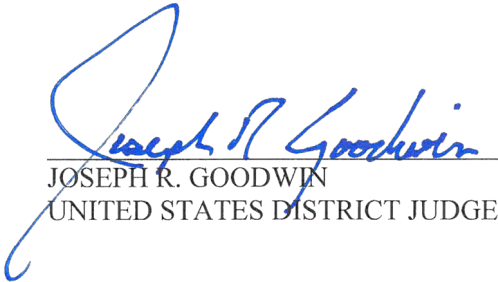
B.P.J. has plausibly stated an equal protection claim against State Superintendent Burch, Harrison County Superintendent Stutler, and the WVSSAC. She has alleged that each defendant, acting under the color of state law, is discriminating against her on the basis of sex. Both the Supreme Court and the Fourth Circuit have ruled that discrimination on the basis of a person’s transgender

status is discrimination on the basis of sex. *Bostock v. Clayton Cty.*, ___ U.S. ___, ___, 140 S. Ct. 1731, 1741 (2020); *Grimm*, 972 F.3d at 609; 616 (2020).

V. CONCLUSION

For the foregoing reasons, the Motions to Dismiss [ECF Nos. 71, 72, 74] are **DENIED**. The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: December 1, 2021


JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

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.

**DEFENDANTS HARRISON COUNTY BOARD OF EDUCATION
AND DORA STUTLER'S ANSWER TO
FIRST AMENDED COMPLAINT**

For their Answer to the First Amended Complaint, Defendants Harrison County Board of Education and Dora Stutler (collectively, the "County Board Defendants") state as follows:

First Defense

The First Amended Complaint fails, in whole or in part, to state a claim upon which relief may be granted.

Second Defense

The County Board Defendants respond to the specific allegations of the First Amended Complaint as follows:

63. Upon information and belief, the County Board Defendants admit the allegations in Paragraph 63 of the First Amended Complaint.

64. Upon information and belief, the County Board Defendants admit that Governor Justice made the quoted comments during an interview on April 30, 2021. The County Board Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 64 of the First Amended Complaint.

2. H.B. 3293 As Enacted

65. Upon information and belief, the County Board Defendants admit the allegations in Paragraph 65 of the First Amended Complaint.

66. The allegations in Paragraph 66 of the First Amended Complaint state a legal conclusion to which no response is required. To the extent a response is required, H.B. 3293 speaks for itself.

67. The allegations in Paragraph 67 of the First Amended Complaint state a legal conclusion to which no response is required. To the extent a response is required, H.B. 3293 speaks for itself.

68. The allegations in Paragraph 68 of the First Amended Complaint state a legal conclusion to which no response is required. To the extent a response is required, H.B. 3293 speaks for itself.

69. The allegations in Paragraph 69 of the First Amended Complaint state a legal conclusion to which no response is required. To the extent a response is required, H.B. 3293 speaks for itself.

70. The allegations in Paragraph 70 of the First Amended Complaint regarding H.B. 3293 state a legal conclusion to which no response is required. To the extent a response is required, H.B. 3293 speaks for itself. The County Board Defendants are without knowledge or

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
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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.

STIPULATION OF UNCONTESTED FACTS

IT IS HEREBY AGREED AND STIPULATED, by and between the undersigned
counsel, that:

1. The Harrison County Board of Education and County Superintendent Dora Stutler acknowledge and respect that B.P.J. has a female gender identity as recognized in the Gender Support Plan [HCBOE 00054-58; HCBOE 00060-64].
2. Because, as it is currently drafted, House Bill 3293, codified at West Virginia Code § 18-2-25d, applies to public secondary schools and states that “[a]thletic teams or sports

designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport[,]” and because of the definitions set forth in House Bill 3293, House Bill 3293 prevents B.P.J. from participating on sports teams that are designated for girls and that are sponsored by Bridgeport Middle School, absent an injunction by a court.

3. House Bill 3293 is a West Virginia State law that applies to County Boards of Education, including the Harrison County Board of Education and its County Superintendent. House Bill 3293 provides for private causes of action, and thus imposes liability against County Boards of Education, like the Harrison County Board of Education. While the Harrison County Board of Education and its County Superintendent did not devise and have not adopted House Bill 3293 as their own policy, the Harrison County Board of Education and its County Superintendent, absent an injunction by a court, would be compelled and required to enforce House Bill 3293 because it is a mandatory State law that affords them no discretion.
4. Accordingly, absent the injunction in this action, House Bill 3293 would have prevented the Harrison County Board of Education from permitting B.P.J. to participate on the Bridgeport Middle School girls’ cross-country team during the 2021-2022 school year.
5. B.P.J. participated on the Bridgeport Middle School girls’ cross-country team during the 2021-2022 school year without any disruption.
6. No other Bridgeport Middle School student was displaced by B.P.J.’s participation on the girls’ cross-country team.
7. The Harrison County Board of Education has delegated some level of control, supervision, and regulation of interscholastic athletic events sponsored by Bridgeport Middle School to

the West Virginia Secondary School Activities Commission.

8. The Harrison County Board of Education receives federal funding.

Dated this seventh day of March, 2022.

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Stutler*

COUNSEL FOR PLAINTIFF

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**Visiting Attorneys*

Attorneys for Plaintiff

Exhibit 1

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

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

Plaintiff,

v.

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

Defendants,

and

LAINY ARMISTEAD,

Defendant-Intervenor.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

DECLARATION OF HEATHER JACKSON

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

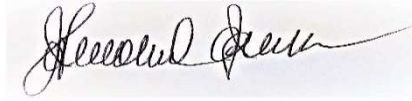
30. B.P.J. is a girl. It is wrong and senseless to try to make her participate on boys' sports teams when there are girls' teams available. Forcing B.P.J. to compete on the boys' cross-country or track teams when girls' teams are available would completely erase who she is, and it would devastate her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

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

* * *

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

Executed on 04/19/2022

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

Heather Jackson

Exhibit A



Dr. Mark A. Manchin
Superintendent

- Confidential -
Gender Support Plan

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

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

PARENT/GUARDIAN INVOLVEMENT

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

CONFIDENTIALITY, PRIVACY AND DISCLOSURE Molly Oberfechtler- Leggett- WVU

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

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



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

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

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

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

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

STUDENT SAFETY

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

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

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

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

Field Trips - find closest trusted adult yell help

In the halls " "

Other _____

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

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

Mom and/or Dad will contact Tara Shields.

NAMES, PRONOUNS AND STUDENT RECORDS

What name and gender marker are listed on the student's identity documents? _____

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

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

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

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

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

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

Tara Shields

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

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

By students? " "

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

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

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

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

Parents are supportive

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

maintain confidentiality and handle as needed.

USE OF FACILITIES

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

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

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

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

natural Bathroom. Go to teacher & teacher make sure Bathroom empty (female) if no gender natural Bathroom.

Are there any questions or concerns about the student's access to facilities?

No

EXTRA CURRICULAR ACTIVITIES

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

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

What steps will be necessary for supporting the student there?

N/A

Does the student participate in an after-school program?

N/A

What steps will be necessary for supporting the student there?

N/A

Questions/Notes:

OTHER CONSIDERATIONS

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

Factors to be considered regarding sibling's needs?

Not at Norwood - brother is in Middle School BMS

Does the school have a dress code?

Yes

How will this be handled?

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

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

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

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

No

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

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

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

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

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

N/A

SUPPORT PLAN REVIEW AND REVISION

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

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

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

Action Item	Who?	When?
N/A		

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

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

Sarah Starkey MSW, LGSW

[Handwritten signature]

b [Redacted]

Jane Cullen

Tara Shields
Gasmin Louthe

Exhibit



HARRISON COUNTY SCHOOLS

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

Dora L. Stutler
 Superintendent

Preferred Name Request Form

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

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

Legal Name:

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

Preferred Name:

Preferred First Name:
B [Redacted]

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

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

For Office Use Only:

Principal Signature: [Handwritten Signature]
Date Received: _____



Dora L. Stutler
Superintendent

- Confidential -

Gender Support Plan

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

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

PARENT/GUARDIAN INVOLVEMENT

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

CONFIDENTIALITY, PRIVACY AND DISCLOSURE

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

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

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

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

N/A



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

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

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

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

STUDENT SAFETY

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

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

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

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

Field Trips find closest trusted adult; yell help

In the halls "

Other _____

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

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

Mom and/or Dad will contact Mr. Mazza.

NAMES, PRONOUNS AND STUDENT RECORDS

What name and gender marker are listed on the student's identity documents? _____

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

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

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

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

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

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

David Mazza

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

intentional - will be addressed by Principal and/or Counselor

By students? "

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

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

During registration _____

Completing enrollment _____

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

Standardized tests Populated in WVELS

School photos Name Becky will be used

IEPs/Other Services _____

Student cumulative file Populated in WVELS

After-school programs _____

Lunch lines populated in WVELS

Taking attendance Becky will be in ()

Teacher grade book(s) Live Grades populated from WVELS

Official school-home communication _____

Unofficial school-home communication (PTA/other) _____

Outside district personnel or providers _____

Summons to office Staff will use name Becky

Yearbook Becky Pepper-Jackson

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

Posted lists _____

Distribution of texts or other school supplies _____

Assignment of IT accounts/email address _____

PA announcements _____

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

Parents are supportive

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

Maintain confidentiality and handle as needed.

USE OF FACILITIES

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

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

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

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

neutral bathroom. Go to teacher & teacher make sure female

bathroom is empty if no gender/neutral bathroom option.

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

EXTRA CURRICULAR ACTIVITIES

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

Cross Country and Track

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

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

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

OTHER CONSIDERATIONS

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

Brother at Bridgeport Middle School.

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

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

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

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

NO

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

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

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

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

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

N/A

SUPPORT PLAN REVIEW AND REVISION

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

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

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

Action Item	Who?	When?
N/A		

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

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

Lauren Merrill, BMS Counselor

[Signature] 5-18-2021

Becky Pepper Jackson

Mr. Mazza

Jan Shields

Amber Davis

Exhibit C



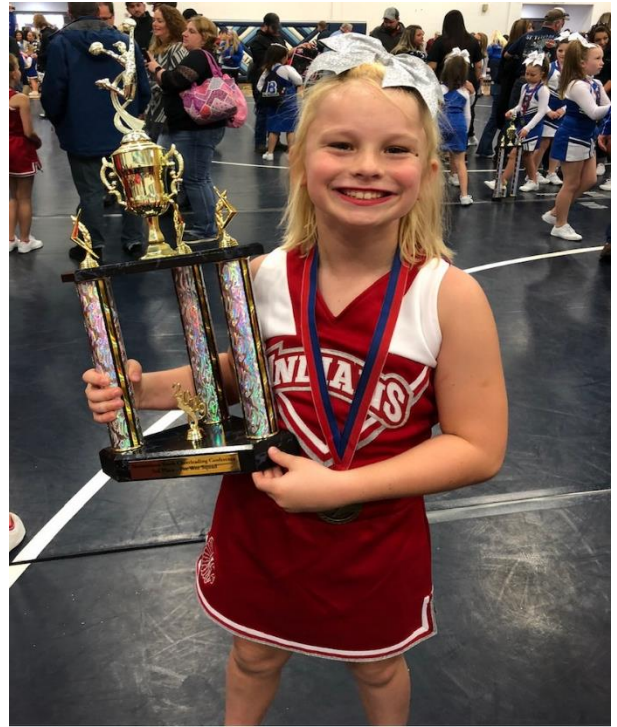




Exhibit 2

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

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

Plaintiff,

v.

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

Defendants,

and

LAINY ARMISTEAD,

Defendant-Intervenor.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

DECLARATION OF J

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

1. I make this declaration of my own personal knowledge, and, if called as a witness, I could and would testify competently to the matters stated herein.

2. I am a girl who is also transgender. I am 11 years old, and I am in the sixth grade at Bridgeport Middle School. I have two older brothers, ages 14 and 20. I live with my brothers; my mom, Heather; and my dad, Wesley in Lost Creek, West Virginia.

3. Some of my favorite things to do include playing outside with our family's dogs, riding my bike, running with my friends and family, and jumping on the trampoline. I am very

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

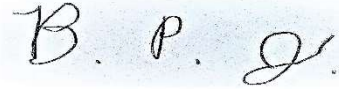
20. In early March, I participated in two weeks of try-outs for the girls' track team and on March 11, 2022, I learned that I made the girls' track team. I was ecstatic.

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

* * *

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

Executed on 04/19/2022

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

B.P.J.

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

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

v.

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

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

and

**LAINY ARMISTEAD,
Intervenor Defendant.**

**WVSSAC'S RESPONSES TO SECOND SET
OF REQUESTS FOR ADMISSION**

Now comes West Virginia Secondary School Activities Commission (WVSSAC), by counsel, and responds to Plaintiff's Second Set of Requests for Admission, as follows. Defendant West Virginia Secondary School Activities Commission has not completed discovery in this civil action and has not completed its preparation for trial. For these reasons, the Defendant's responses are based upon only such information and documents as are presently available and known to WVSSAC. Further discovery and independent investigation may lead to other responsive information and/or documents. The following responses are given in good faith but without prejudice to the Defendant's right to produce evidence of subsequently discovered facts or documents.

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

RESPONSE:

Admitted and denied. WVSSAC denies that H.B. 3293 includes express provisions, prescriptions, duties or other relative to WVSSAC. However, WVSSAC admits that it must follow all laws that include a duty for it.

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

RESPONSE:

Objection; calls for a legal conclusion; incomplete hypothetical. Further, WVSSAC denies that H.B. 3293 includes express provisions, prescriptions, duties or other relative to WVSSAC, including, by example only, adopting or enforcing related policies. For these reasons and based upon the fact that WVSSAC has insufficient first-hand information on these issues and the underlying variables as relates to this student, WVSSAC admits only that it cannot adopt or enforce any policy that conflicts with state law.

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

RESPONSE:

Denied. On information and belief as to the use of the phrase in HB 3293, football, cheer, wrestling, baseball.

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

RESPONSE:

Denied. On information and belief as to the use of the phrase in HB 3293, football, cheer, wrestling, baseball.

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

RESPONSE:

Admitted.

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

RESPONSE:

Objection; form of the question (which WVSSAC does not understand). In a good faith effort to respond and reserving all rights to amend, revise, retract or other upon clarification, WVSSAC asserts that the coed or mixed sports of football, cheer, wrestling, baseball allow for competition between schools.

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

RESPONSE:

Denied. On information and belief as to the use of the phrase in HB 3293, football, cheer, wrestling, baseball.

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

RESPONSE:

Objection; calls for a legal conclusion. Without waiving that objection, on information and belief, admitted.

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

* * * * *

B.P.J., by her next friend and *
Mother, HEATHER JACKSON, *
Plaintiff * Case No.
vs. * 2:21-CV-00316
WEST VIRGINIA STATE BOARD OF *
EDUCATION, HARRISON COUNTY *
BOARD OF EDUCATION, WEST *
VIRGINIA SECONDARY SCHOOL *
ACTIVITIES COMMISSION, W. *
CLAYTON BURCH in his official *
Capacity as State Superintendent, * VIDEOTAPED
DORA STUTLER in her official * VIDEOCONFERENCE
Capacity as Harrison County * DEPOSITION
Superintendent, PATRICK MORRISEY * OF
In his official capacity as * BPJ
Attorney General, and THE STATE * January 21, 2022
OF WEST VIRGINIA, *
Defendants *

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by the certifying agency.

1 BY ATTORNEY CAPEHART:

2 Q. Do you do the same kind of things with your
3 friends that are boys?

4 A. We also hang out. We talk about video games, we
5 play video games, so, yes, about the same.

6 Q. Okay.

7 At some point you decided to change your name.
8 Do you remember when you decided to do that?

9 A. When I came out.

10 Q. So in 4th grade, as you mentioned earlier?

11 A. I came out in the third --- the summer of third
12 grade. But when I was like actually talking to people
13 and stuff about it, it was 4th grade. So yes, when I
14 came out.

15 Q. Okay.

16 And so when did you start going by B [REDACTED] ?

17 A. The summer of third grade.

18 Q. Did you go by B [REDACTED] at school at that time, too,
19 or did you wait until fourth grade for that?

20 ATTORNEY HARTNETT: Objection to form.

21 THE WITNESS: It was the summer of third
22 grade and I was kind of presenting through third grade,
23 but I didn't go by B [REDACTED], just --- at that point I
24 waited until fourth grade.

1 ATTORNEY HARTNETT: Objection to form.

2 THE WITNESS: Yes. Sorry.

3 BY ATTORNEY CAPEHART:

4 Q. Okay.

5 I just want to make sure I understood that.
6 That's how things were when my daughter did midget cheer
7 --- midget league cheer, also.

8 What team were you on like B, C D? Do you
9 recall?

10 ATTORNEY HARTNETT: Objection to form.

11 THE WITNESS: I was on Bridgeport Pee Wee
12 Red.

13 BY ATTORNEY CAPEHART:

14 Q. Okay.

15 And were the members of that team all within
16 --- all the same age or within a year of each other?

17 A. They were within a year of each other.

18 Q. So was that third and fourth or fourth and
19 fifth?

20 A. I think it was fourth and fifth.

21 Q. Did you enjoy being on the cheerleading team?

22 A. Yeah, it was really fun.

23 Q. Did you like cheering at sidelines at games more
24 than competition cheer?

1 Q. And are you in the sixth grade this year, B [REDACTED] ?

2 A. Yes.

3 Q. Do you remember when you were in Norwood
4 Elementary School having a meeting and filling out a
5 document that was called a Gender Support Plan?

6 A. Yes, I remember that.

7 Q. And did you participate in the meeting where
8 that plan was discussed?

9 A. Yes.

10 Q. And did you think that that was a good meeting?

11 A. Yes.

12 Q. Were you happy with the outcome of what was
13 agreed upon at that meeting?

14 A. Yes.

15 Q. And then you had another one of those meetings
16 with school officials before you started at the Middle
17 School.

18 Is that right?

19 A. Yes.

20 Q. And I think that that meeting happened in May of
21 2021, which would have been the end of your fifth grade
22 year.

23 Is that --- does that sound right?

24 A. Yes.

1 Q. And were you a part of that meeting?

2 A. Yes.

3 Q. Do you remember who else was a part of that
4 meeting?

5 A. We had my new principal, Mr. Mazza, the
6 counselor there, Mrs. Shields and my mom.

7 Q. And were you comfortable with what was discussed
8 and agreed upon at that meeting?

9 A. Yes.

10 Q. And how has sixth grade been so far?

11 A. It's been good.

12 Q. Do you like Mr. Mazza?

13 A. Yes.

14 Q. He is your principal this year.

15 Is that right?

16 A. Yes.

17 Q. Do you feel like Mr. Mazza is supportive of you?

18 A. Yes, very.

19 Q. Good. And do you think that he treats you in a
20 kind and fair manner?

21 A. Yes.

22 Q. How are your classes this year? Do you like
23 them?

24 A. Yeah, I like my classes. I have really nice

1 teachers.

2 Q. I think I saw that you are a straight A student.
3 Maybe I saw that in something that your mom wrote.

4 Is that right?

5 A. Yes.

6 Q. Congratulations. Good for you. Do you feel
7 that your teachers are fair and supportive of you?

8 A. Yes.

9 Q. And are you comfortable with the arrangements
10 that the school has made for you this year in terms of
11 addressing how you want to present at school as being a
12 girl?

13 A. Yes.

14 Q. I know that we have discussed today sports and
15 your participation in sports, and I heard you say that
16 you love running.

17 Is that right?

18 A. Yes.

19 Q. And I understand that you tried out for the
20 girls cross-country team.

21 Is that correct?

22 A. Yes.

23 Q. So I want to talk to you a little bit about that
24 process. The cross-country team, did they do some

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

 B.P.J. by her next friend and)
 mother, HEATHER JACKSON,)
 Plaintiff,)
 vs.) Case No.
 WEST VIRGINIA STATE BOARD OF) 2:21-cv-00316
 EDUCATION, HARRISON COUNTY)
 BOARD OF EDUCATION, WEST)
 VIRGINIA SECONDARY SCHOOL)
 ACTIVITIES COMMISSION, W.)
 CLAYTON BURCH in his official)
 capacity as State)
 Superintendent, DORA STUTLER,)
 in her official capacity as)
 Harrison County)
 Superintendent, and THE STATE)
 OF WEST VIRGINIA,)
 Defendants.)
 And)
 LAINIEY ARMISTEAD,)
 Defendant-Intervenor.)

REMOTE VIDEOTAPED DEPOSITION OF
DORA STUTLER
AND
DAVE MAZZA
Tuesday, March 8, 2022
Volume I

Reported by:
ALEXIS KAGAY, CSR No. 13795
Job No. 5079542
PAGES 1 - 240

1 Q Thank you. And Josh Thorton, you said, was a
2 counselor.

3 Are the counselors at Norwood Elementary
4 School employed by the county board?

5 A Yes. 03:25:20

6 Q What qualifications are required to become a
7 counselor in the county board -- in the county?

8 A They -- they have to be certified counselors
9 through the national school counseling association
10 and through our state. 03:25:39

11 Q Was Mr. Thorton made aware of B.P.J.'s status
12 as a girl who is transgender?

13 MS. DENIKER: Objection to form.

14 MR. TRYON: Objection.

15 THE WITNESS: I am unaware of that. 03:25:49

16 BY MS. REINHARDT:

17 Q Was Principal Mazza informed that B.P.J. is a
18 girl?

19 MS. DENIKER: Objection to the form.

20 THE WITNESS: I believe he was contacted when 03:26:05

21 she was going to go there as a sixth grader and
22 there was an update to the gender support plan.

23 That would be when Mr. Mazza was informed.

24 BY MS. REINHARDT:

25 Q Are you aware of any conversation between 03:26:19

Page 95

1 Principal Mazza and Heather Jackson regarding
2 B.P.J. playing on girls' sports teams?

3 A I am only aware of the gender support plan
4 that took place between Heather Jackson, the mother;
5 and Mr. Mazza, and there were a few in that meeting, 03:26:39
6 at that gender support plan meeting.

7 Q Were you in attendance at that meeting?

8 A I was not.

9 Q So how did you become aware that
10 Principal Mazza and Heather Jackson had a meeting 03:26:58
11 regarding the gender support plan?

12 And please do not inform us of -- of any
13 conversations you may have had with counsel.

14 A I reviewed the gender support plan as it
15 related to this case. 03:27:10

16 Q And in preparation for this case, did you
17 speak with Principal Mazza?

18 A I did.

19 Q And did you -- did he inform you of any
20 conversation between him and Heather Jackson 03:27:26
21 regarding B.P.J.'s ability to play on girls' sports
22 teams?

23 MS. DENIKER: I'm going to object to the
24 extent that it -- that the question calls for
25 information that she learned as part of 03:27:38

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

B.P.J. BY HER NEXT FRIEND AND)
MOTHER, HEATHER JACKSON,)
)
PLAINTIFF,)

VS.) CIVIL ACTION NO.
) 2:21-cv-00316

WEST VIRGINIA STATE BOARD OF)
EDUCATION, HARRISON COUNTY BOARD)
OF EDUCATION, WEST VIRGINIA)
SECONDARY SCHOOL ACTIVITIES)
COMMISSION, W. CLAYTON BURCH IN)
HIS OFFICIAL CAPACITY AS STATE)
SUPERINTENDENT, DORA STUTLER IN)
HER OFFICIAL CAPACITY AS HARRISON)
COUNTY SUPERINTENDENT, AND THE)
STATE OF WEST VIRGINIA, ,)

DEFENDANTS,)

AND)

LAINY ARMISTEAD,)
)
DEFENDANT-INTERVENOR.)

_____)

VIDEOTAPED REMOTE ZOOM 30(b)(6) DEPOSITION
WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION
BERNARD DOLAN
FRIDAY, FEBRUARY 11, 2022

JOB NO. 5079532
REPORTED BY: DAYNA HESTER, C.S.R. 9970

1 Q. So I would like to draw your attention to 14:36
2 Interrogatory Number 13 on Exhibit 5. 14:37
3 What does "participation mixed as 14:37
4 indicated to respond to demand" mean? 14:37
5 A. "Identify all WVSSAC sponsored sports in 14:37
6 which students may participate on a team designated 14:37
7 as co-ed or mixed." 14:37
8 Is that the question? And why cheer is 14:37
9 considered mixed? 14:37
10 Q. Yeah. That -- why don't we start there. 14:37
11 Why is cheer considered mixed? 14:37
12 A. It has both boys and girls. So it could 14:37
13 be co-ed or mixed. 14:37
14 Q. What is the difference between calling 14:37
15 cheer mixed and saying that "participation mixed as 14:38
16 indicated to respond to demand"? 14:38
17 A. Basically because cheer almost always has 14:38
18 boy members. Wrestling is starting to get a number 14:38
19 of them. Baseball very seldom has -- it's very 14:38
20 seldom a mixed sport. And football is very seldom. 14:38
21 But golf is transitioning into its own sport. 14:38
22 Q. By "seldom," do you mean girls seldom 14:38
23 participate on those teams? 14:38
24 A. That is correct. 14:38
25 Q. Just to be clear, football is a boys' 14:38

1 team, but if a girl wants to play football, she 14:39
2 would be permitted to play on that team? 14:39
3 A. That's correct. 14:39
4 Q. If a boy wanted to play on a girls' team, 14:39
5 would they be permitted to? 14:39
6 A. No. 14:39
7 Q. Why not? 14:39
8 A. Because girls have been -- they've been 14:39
9 denied opportunity in the past, and by allowing boys 14:39
10 to participate on girls' teams that are strictly 14:39
11 girls, for instance, girls' soccer, girls' 14:39
12 basketball, volleyball and softball, that girls 14:39
13 would then lose opportunity. 14:39
14 Q. Do you have any rules preventing a boy 14:39
15 from playing on a girls' team? 14:39
16 A. Yes. 14:39
17 Q. What rule would that be? 14:39
18 A. I have to find it in my rule book. 14:40
19 Q. Why don't we go back to the rule book, and 14:40
20 I'll ask you a few questions on that. 14:40
21 So we'll go back to Exhibit 3. 14:40
22 (Simultaneously speaking.) 14:40
23 THE WITNESS: I'm trying to -- 14:40
24 BY MS. KANG: 14:40
25 Q. And it should be -- 14:40

1 will have just the varsity. Some will have varsity 14:45
2 and j- -- junior varsity. And some will have 14:45
3 varsity, junior varsity, and a freshman team. 14:45
4 So just different designation of those 14:45
5 teams. 14:45
6 Q. What does junior varsity mean? 14:45
7 A. Junior varsity -- 14:45
8 MS. GREEN: I was just going to object to 14:45
9 the form. 14:45
10 THE WITNESS: Okay. 14:45
11 When you have too many kids and you 14:45
12 have -- you want an opportunity for them, you have a 14:45
13 junior varsity as long as you can get a schedule for 14:45
14 them. 14:45
15 BY MS. KANG: 14:45
16 Q. What does "varsity" mean? 14:45
17 A. You are the team that participates for the 14:45
18 state championships. 14:45
19 Q. What does "freshman" mean? 14:45
20 A. Some large schools want to give more 14:45
21 opportunity to their student athletes. So they have 14:45
22 too many kids for a junior varsity, JV; so they have 14:46
23 a separate freshman program. 14:46
24 Q. Just to be clear, if a student wants to 14:46
25 play a sport that is not in this list -- so it's not 14:46

1 cheer, wrestling, baseball, football, or golf -- 14:46

2 they have to join either the boys' or girls' team? 14:46

3 A. I think that's everybody that is not 14:46

4 included, yes. 14:46

5 Q. One last question before we take a break. 14:46

6 I would like to draw your attention to 14:46

7 Page 9 of Exhibit 5, and this is the response to 14:46

8 Interrogatory Number 14. 14:46

9 A. Okay. 14:46

10 Q. So just to be clear, to make sure I am 14:46

11 reading this chart correctly, in the first row that 14:46

12 starts with "Andrew Jackson Middle School," it 14:46

13 indicates that one girl participated in wrestling. 14:47

14 Is that an accurate -- is that an accurate 14:47

15 interpretation? 14:47

16 A. It is. 14:47

17 Q. How do you collect these statistics? 14:47

18 A. This was a survey of the schools because, 14:47

19 when they do their eligibility, it doesn't 14:47

20 distinguish between boys and girls. 14:47

21 So in order to find out who is playing 14:47

22 what sports, how many -- how many girls are 14:47

23 participating in -- in the sports that allow boys 14:47

24 and girls, the co-ed or mixed, we -- we have to 14:47

25 survey them to find out. 14:47

1 other participants. 15:07

2 Q. How did the Commission come up with this 15:07

3 policy? 15:07

4 A. It was actually created by my predecessor. 15:07

5 And just came in in the beginnings of my time. And 15:07

6 they were just addressing an issue that hadn't come 15:07

7 to West Virginia at this point, but they wanted to 15:08

8 have something in there as a temporary stopgap 15:08

9 measure. 15:08

10 And to this point, no one has written a 15:08

11 rule to be voted on -- our -- by our membership. So 15:08

12 that has been the -- our guidance since 2016. 15:08

13 Q. Who was your predecessor? 15:08

14 A. Gary Ray. 15:08

15 Q. And why did he feel the need to enact this 15:08

16 policy? 15:08

17 MS. GREEN: Object to the form. 15:08

18 THE WITNESS: As we went to the national 15:08

19 meetings more and more, people were saying this was 15:08

20 an issue, and so they wanted -- you know, it had not 15:08

21 hit West Virginia yet but wanted to have something 15:08

22 in place to protect the kids. 15:09

23 BY MS. KANG: 15:09

24 Q. Did you ever receive any complaints about 15:09

25 this policy? 15:09

1 A. No. 15:09

2 Q. Do you know who specifically drafted the 15:09

3 policy? 15:09

4 A. I believe it was probably my predecessor 15:09

5 Gary Ray and -- and the legal counsel at the time. 15:09

6 Q. Do you know if anyone else participated in 15:09

7 the drafting? 15:09

8 A. I don't think so. 15:09

9 Q. Was this policy ever implemented? 15:09

10 A. We have never used it, if that's what you 15:09

11 are asking. 15:09

12 Q. What do you mean by "never used it"? 15:09

13 A. Nobody ever brought up a case -- I'm not 15:09

14 even aware of any case of transgender participating. 15:09

15 Therefore, nobody ever brought it to the Board to 15:10

16 decide whether or not it was fair or safe. 15:10

17 Q. When a school determines a student's 15:10

18 gender, is that always put into WVEIS? 15:10

19 MS. GREEN: Object to the form. 15:10

20 THE WITNESS: I am not sure what they put 15:10

21 in WVEIS, to be honest with you. I'm not -- you 15:10

22 know, each school, I would assume, has rules and 15:10

23 regulations they have to do. 15:10

24 BY MS. KANG: 15:10

25 Q. Is it fair to say that the Commission 15:10

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

* * * * *

B.P.J., by her next friend and *
Mother, HEATHER JACKSON, *
Plaintiff * Case No.
vs. * 2:21-CV-00316
WEST VIRGINIA STATE BOARD OF *
EDUCATION, HARRISON COUNTY *
BOARD OF EDUCATION, WEST *
VIRGINIA SECONDARY SCHOOL *
ACTIVITIES COMMISSION, W. *
CLAYTON BURCH in his official * CONFIDENTIAL
Capacity as State Superintendent, * VIDEOTAPED
DORA STUTLER in her official * VIDEOCONFERENCE
Capacity as Harrison County * DEPOSITION
Superintendent, PATRICK MORRISEY * OF
In his official capacity as * KACIE KIDD, M.D.
Attorney General, and THE STATE * February 21, 2022
OF WEST VIRGINIA, *
Defendants *

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1 would have requested.

2 Is that right?

3 A. This is one of those forms that Epic has
4 compiled for you, but it does look like it is of the
5 labs that I ordered, yes.

6 Q. When this came back did you review it?

7 A. I did.

8 Q. And it shows under components testosterone total
9 serum. Do you see that?

10 A. Let me highlight and make sure we're looking at
11 the same thing. Here?

12 Q. Yes.

13 A. Yes.

14 Q. And if you go lower it shows the total serum and
15 it shows value of less than 7.0.

16 Right?

17 A. Yes.

18 Q. And down below it shows the Tanner reference
19 stages and for prepubertal, 7-20 for Stage 1.

20 Right?

21 A. I can see that.

22 Q. So does that testosterone level indicate that
23 BPJ was at Tanner Stage 1?

24 A. No, that is not a correct interpretation.

1 Q. Could you please interpret it for me?

2 A. Sure. So the testosterone level demonstrates
3 that it is suppressed, actually below a detectable
4 threshold of 7.0 for the purposes of this lab. It is
5 important to note that all bodies, unless they are too
6 young or being blocked, make testosterone and that
7 includes people who are assigned female. And so I
8 myself right now very likely, in fact I'm extremely
9 confident, have a level much higher than seven of
10 testosterone because that is normal for an adult female.
11 And so B [REDACTED]'s testosterone based on this level is fully
12 suppressed. The reason that the Tanner stage reference
13 guidelines are in this record is that other folks use
14 this lab to monitor pubertal progression. B [REDACTED] was
15 Tanner stage prior to the rod and was at Tanner 2 at
16 that time. And so this table is not relevant to B [REDACTED],
17 just a refresh in the lab that her testosterone is fully
18 suppressed.

19 ATTORNEY TRYON: Okay.

20 Now let's turn to Exhibit 33.

21 VIDEOGRAPHER: Before I show it, you said
22 33.

23 ATTORNEY TRYON: I didn't hear you.

24 VIDEOGRAPHER: Before I show it, you said

1 Q. What are masculine components?

2 A. It's a bit of a cultural and time, so temporally
3 associated sort of thing, and I talk about this with
4 patients and families, but it's often how we
5 communicate, how we carry ourselves, what our place and
6 role in society is, lots of expectations. But when
7 we're talking about gender identity, it's this inherent
8 sense of self as it relates to gender.

9 ATTORNEY TRYON: I would ask the court
10 reporter to read back my question, please.

11 COURT REPORTER: What are the masculine
12 components?

13 BY ATTORNEY TRYON:

14 Q. Please answer that question.

15 ATTORNEY HARTNETT: Object to form.

16 THE WITNESS: They are not specific
17 components but instead a sense of self.

18 BY ATTORNEY TRYON:

19 Q. So there are no masculine components?

20 ATTORNEY HARTNETT: Object to form.

21 THE WITNESS: There is not a checkbox for
22 masculinity, although society does impose ideas on us.

23 BY ATTORNEY TRYON:

24 Q. Well, you used term masculine components. I

1 didn't. What were you referring to?

2 A. Those thoughts that society has about what is
3 masculine.

4 Q. Which are what?

5 A. I think it depends on the society in question.

6 Q. Okay.

7 Our society here in West Virginia?

8 ATTORNEY HARTNETT: Object to form.

9 THE WITNESS: Here in West Virginia one
10 may masculine things are --- things like I gave the
11 example earlier of interest in construction, right, and
12 what we were discussing earlier, interest in hunting.
13 While there are many folks who consider those things
14 feminine as well, they stereotypically masculine in our
15 society by my interpretation.

16 BY ATTORNEY TRYON:

17 Q. So that would be your stereotype?

18 ATTORNEY HARTNETT: Object to form.

19 THE WITNESS: The stereotype that I
20 observe in our society as part of my job.

21 BY ATTORNEY TRYON:

22 Q. So how have you reported your observations as to
23 what constitutes a masculine component?

24 ATTORNEY HARTNETT: Object to form.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

* * * * *

B.P.J., by her next friend and *

Mother, HEATHER JACKSON, *

Plaintiff *

vs. *

WEST VIRGINIA STATE BOARD OF *

EDUCATION, HARRISON COUNTY *

BOARD OF EDUCATION, WEST *

VIRGINIA SECONDARY SCHOOL *

ACTIVITIES COMMISSION, W. *

CLAYTON BURCH in his official *

Capacity as State Superintendent, *

DORA STUTLER in her official *

Capacity as Harrison County *

Superintendent, PATRICK MORRISEY *

In his official capacity as *

Attorney General, and THE STATE *

OF WEST VIRGINIA, *

Defendants *

Case No.
2:21-CV-00316

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DEPOSITION
OF
GERALD MONTANO, D.O.
February 24, 2022

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1 any changes?
 2 A. Yes.
 3 **Q. How would you notate that? Would that be simply**
 4 **--- would you state that on the addendum?**
 5 A. I would state that on the addendum.
 6 **Q. And this was just a follow-up visit.**
 7 **Is that right?**
 8 A. Yes.
 9 **Q. I'm now showing you Exhibit 11A. Do you see**
 10 **that?**
 11 A. Not yet.
 12 **Q. I forgot to hit start. Let me know when you see**
 13 **it.**
 14 A. I see it.
 15 **Q. This says --- have you seen this document**
 16 **before?**
 17 A. Yes.
 18 **Q. The encounter date is March 16, 2020.**
 19 **Right?**
 20 A. Yes.
 21 **Q. Encounter date means the date of the visit.**
 22 **Correct?**
 23 A. Yes.
 24 **Q. And who is Taylor Rives?**

1 **Q. Such as what?**
 2 A. Depending on sex, but for those assigned male at
 3 birth, it would be testicular growth. And for those
 4 assigned female at birth, it would be breast buds.
 5 ---
 6 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)
 7 ---
 8 BY ATTORNEY TRYON:
 9 **Q. Down lower it says therapist, she has not**
 10 **started seeing a therapist yet. However, they have a**
 11 **therapist in her town who specializes in gender**
 12 **dysphoria. Mother is waiting to start therapy until**
 13 **B█ wants to start. Do you know who that therapist**
 14 **was to be?**
 15 A. No.
 16 **Q. Is it normal to wait as long as BPJ and Heather**
 17 **waited to start seeing a therapist?**
 18 ATTORNEY JONES: Objection to form.
 19 THE WITNESS: To answer your question,
 20 it's not atypical for someone to wait to see a
 21 therapist.
 22 BY ATTORNEY TRYON:
 23 **Q. Do your patients who have gender dysphoria**
 24 **typically meet with a therapist before meeting with you?**

1 A. She was one of the resident trainees with me
 2 that day.
 3 **Q. Now, it says under history of present illness,**
 4 **second sentence, she has been followed for gender**
 5 **dysphoria with desire to start hormone blockers, but was**
 6 **█ last visit. What does that mean?**
 7 A. █.
 8 █.
 9 **Q. █.**
 10 █.
 11 █.
 12 A. Generally it means first signs of puberty, which
 13 is different ---.
 14 VIDEOGRAPHER: You're cutting out again,
 15 Doctor Montano.
 16 THE WITNESS: Can you hear me now?
 17 VIDEOGRAPHER: Yes.
 18 ATTORNEY TRYON: Yes.
 19 THE WITNESS: Can you repeat the question
 20 that you couldn't hear my answer?
 21 BY ATTORNEY TRYON:
 22 **Q. █.**
 23 █.
 24 █.

1 A. Not always.
 2 **Q. But sometimes?**
 3 A. Yes.
 4 **Q. During your discussions with BPJ and Heather**
 5 **Jackson, did you discuss having a therapist prior to**
 6 **this date of 3/16/2020?**
 7 A. From my recollection, yes, because of my custom
 8 and practice. But yes.
 9 **Q. Why do you --- and I take it you recommend that**
 10 **they talk to a therapist.**
 11 **Is that true?**
 12 ATTORNEY JONES: Objection to form.
 13 ATTORNEY BLOCK: Same.
 14 BY ATTORNEY TRYON:
 15 **Q. Go ahead.**
 16 A. To answer your question, it's my custom and
 17 practice to always --- to recommend seeing a therapist
 18 because gender affirmation can be very difficult for the
 19 patient, so it's in order to get them support that they
 20 need.
 21 **Q. And did you recommend that in your first visit**
 22 **with BPJ and Heather Jackson?**
 23 A. From my recollection, yes.
 24 **Q. And what was their response?**

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

4 -----
5 B.P.J. by her next friend and)
6 mother, HEATHER JACKSON,)
7 Plaintiff,)

8 vs.) Case No.

9 WEST VIRGINIA STATE BOARD OF) 2:21-cv-00316
10 EDUCATION, HARRISON COUNTY)
11 BOARD OF EDUCATION, WEST)
12 VIRGINIA SECONDARY SCHOOL)
13 ACTIVITIES COMMISSION, W.)
14 CLAYTON BURCH in his official)
15 capacity as State)
16 Superintendent, DORA STUTLER,)
17 in her official capacity as)
18 Harrison County)
19 Superintendent, and THE STATE)
20 OF WEST VIRGINIA,)
21 Defendants,)

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

25 REMOTE VIDEOTAPED DEPOSITION OF
LAINEY ARMISTEAD
Friday, March 11, 2022
Volume I

Reported by:
ALEXIS KAGAY, CSR No. 13795
Job No. 5082427
PAGES 1 - 175

1 THE WITNESS: Not to my knowledge, but I don't
2 know.

3 BY MR. BARR:

4 Q Have you ever competed in a soccer game with
5 or against someone who's transgender? 02:30:44

6 A I'm not sure. I don't know.

7 Q Are there any transgender women playing on a
8 team in the Mountain East Conference.

9 MR. TRYON: Objection.

10 THE WITNESS: I don't know. 02:31:05

11 BY MR. BARR:

12 Q Have you ever heard of the phrase "inner sense
13 of self"?

14 A No.

15 Q If I asked you to tell me what that phrase 02:31:20
16 means, would you be able to do that?

17 MR. TRYON: Objection.

18 MS. HOLCOMB: Object to form.

19 THE WITNESS: No.

20 BY MR. BARR: 02:31:27

21 Q Have you ever seen that phrase written on a
22 piece of paper?

23 A It's possible. I do a lot of reading.

24 Q But nothing specific comes to mind?

25 A Correct. 02:31:42

1 A Savanna and Haley.

2 Q Anyone else?

3 A My extended family, when they visited for the
4 holidays.

5 Q What was the nature of those discussions? 05:00:03

6 A I wanted to keep them updated on my life, and
7 I told them about H.B. -- the law -- 3293, and all of
8 my family was encouraging and supportive.

9 Q And just so you know, if you say "the law," I
10 understand you're talking about H.B. 3293. It's very 05:00:30
11 hard for me to remember the number, so I'm very
12 sympathetic to that.

13 Did you write an op-ed?

14 A I'm sorry?

15 Q Did you write an opinion piece for a 05:00:55
16 newspaper?

17 A I -- I don't know what you're talking about.

18 Q Okay. So sitting here today, everything we've
19 talked about, do you object to B.P.J. playing on the
20 Bridgeport Middle School girls' cross-country team? 05:01:15

21 MS. HOLCOMB: Objection to form.

22 THE WITNESS: I don't know.

23 MR. BARR: Okay. That's it for me. I'm happy
24 to turn it over to everyone else. I do want a couple
25 of minutes just to make sure that my notes are clean. 05:01:32

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

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

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

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

Defendants,)

and)

LAINEY ARMISTEAD,)

*Defendant-)
Intervenor.*)

DECLARATION AND EXPERT REPORT OF DEANNA ADKINS, MD

1. I have been retained by counsel for Plaintiff as an expert in connection with the above-captioned litigation.

2. I intend to provide my expert opinion on: (1) the nature and impact of treatment protocols for transgender youth; and (2) the different biological characteristics of sex and the ways in which they may not align within a person.

transgender youth who have been properly diagnosed with gender dysphoria by competent medical providers.

28. It undermines social transition – a critical part of gender dysphoria treatment – to force a person with gender dysphoria to live in a manner that does not align with the person’s gender identity. For example, requiring a girl who is transgender to participate in single-sex activities for boys can be deeply harmful and disruptive to treatment. In the context of activities like athletics, which are typically separated by sex, I know from experience with my patients that it can be extremely harmful for transgender youth to be excluded from the team consistent with their gender identity.

29. For many transgender youth, going through endogenous puberty can cause extreme distress. Puberty blocking treatment allows transgender youth to avoid going through their endogenous puberty thereby avoiding the heightened gender dysphoria and permanent physical changes that puberty would cause.

30. Puberty blocking treatment works by pausing endogenous puberty at whatever stage it is at when the treatment begins. This has the impact of limiting the influence of a person’s endogenous hormones on the body. For example, after the initiation of puberty blocking treatment, a girl who is transgender will experience none of the impacts of testosterone that would be typical if she underwent her full endogenous puberty.

31. When treating a transgender young person, when medically indicated, I prescribe puberty blocking treatment at the Tanner 2 stage of puberty. For girls who are transgender, this means that puberty is put on pause usually around the time that the patient has circulating testosterone at a level of 50 ng/dL or 1.735 nMol/L. If managed appropriately, a patient that undergoes puberty blocking treatment at this stage and then proceeds to gender-affirming

hormone therapy will never have circulating testosterone above what is typical of girls who are not transgender.

32. Under the Endocrine Society Clinical Guidelines, once a transgender youth establishes further maturity and competence to make decisions about additional treatment along with their parent and/or guardian, it may then be medically necessary and appropriate to provide gender-affirming hormone therapy to initiate puberty consistent with gender identity. For girls who are transgender, this means administering both testosterone suppressing treatment as well as estrogen to initiate hormonal puberty consistent with the patient's female gender identity. For boys who are transgender, this means administering testosterone.

33. Hormone therapy and social transition can significantly change a transgender youth's physical appearance. For example, boys who are transgender and treated with puberty blockers and gender affirming hormones will receive the same amount of testosterone during puberty that non-transgender boys generate with their testes. They will grow darker and thicker facial and body hair, experience fat distribution away from the hips, have decreased breast growth, and develop lower vocal pitch. Likewise, girls who are transgender and treated with puberty blockers and gender affirming hormones will receive the same amount of estrogen during puberty that non-transgender girls generate endogenously. They will develop breast tissue, fat will be distributed to their hips, their skin will soften, and their vocal pitch will not deepen further.

34. Treatment for transgender youth is safe, effective, and essential for their well-being. My patients who receive medically appropriate hormone therapy and who are treated consistent with their gender identity in all aspects of life experience significant improvement in their health.

43. In one out of every 1,000 live births, the infant's genitals are not typically male or female.

44. For people with DSDs, sex assignment at birth can involve the evaluation of the chromosomes, the external genitalia, the internal genitalia, hormonal levels, and sometimes, specific genes. There are also cases in which the appearance of the external genitalia can change at puberty as well as variations in the appearance of secondary sex characteristics that may signal a difference in sex development in a person.

45. When assignment of sex of an infant with a DSD is made at birth, that assignment is temporary until the individual can express their gender identity. In cases where the initial designation was incorrect, appropriate medical protocols instruct that the sex should be updated to align with the individual's gender identity. Similarly, if the sex designation of an infant without a DSD turns out to be inconsistent with the individual's gender identity, as for transgender people, the sex should be updated to align with the individual's gender identity.

46. Where surgery has been done on children with DSDs before the child's understanding and expression of their gender identity, significant distress can result. Many of these children have had to endure further surgeries to reverse earlier surgical intervention because their gender identity did not match the initial sex designation.

47. At least one out of every 300 people in the world has an intersex variation, meaning that the person's sex characteristic do not all align as typically male or typically female.

48. Some examples of these variations include:

- a. People with Complete Androgen Insensitivity (CAIS) have 46-XY chromosomes, and internal testes that produce testosterone, but do not have the tissue receptors that respond to testosterone or other androgens. The body,

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

**EXPERT REPORT AND DECLARATION OF
JOSHUA D. SAFER, MD, FACP, FACE**

1. I have been retained by counsel for Plaintiffs as an expert in connection with the above-captioned litigation.
2. The purpose of this expert report and declaration is to offer my expert opinion on:
(1) relevant medical and scientific background regarding gender identity and the attempted regulation of transgender women playing women's sports, including the Endocrine Society's Guidelines for providing gender-affirming care to transgender people; (2) the policies of athletic organizations regarding the participation of transgender women in women's sports, the difficulties that have arisen when athletic associations have attempted to define a person's sex,

25. Before puberty, age-grade competitive sports records show minimal or no differences in athletic performance between non-transgender boys and non-transgender girls before puberty. But after puberty, non-transgender boys and men as a group have better average performance outcomes in most athletic competitions when compared to non-transgender girls and women as a group. Based on current research comparing non-transgender boys and men with non-transgender girls and women before, during, and after puberty, the primary known biological driver of these average group differences is testosterone starting at puberty, and not reproductive biology or genetics. *See Handelsman DJ, et al. Circulating testosterone as the hormonal basis of sex differences in athletic performance. Endocrine Reviews 2018; 39:803–829, (p 820) (summarizing evidence rejecting hypothesis that physiological characteristics are driven by Y chromosome).*

26. Although there are ranges of testosterone that are considered typical for non-transgender men and women, many non-transgender women have testosterone levels outside the typical range.

a. Approximately 6% to 10% of women have a condition called polycystic ovary syndrome (PCOS), which can raise women’s testosterone levels up to 4.8 nmol/L.

b. Some elite female athletes have “46,XY DSDs,” a group of conditions where individuals have XY chromosomes but are born with typically female external genitalia and assigned a female sex at birth. Among individuals with 46,XY DSD some may have inactive testosterone receptors (a syndrome called “complete androgen insensitivity syndrome, CAIS”) which means they don’t respond to testosterone despite very high levels. Usually, these individuals have female gender identity and have external genitalia

that are typically female. They do not develop the physical characteristics associated with typical male puberty.

c. Other individuals with 46,XY DSD may have responsive testosterone receptors. These individuals may have female gender identity but at puberty they may start to develop higher levels of testosterone along with secondary sex characteristics that are typically masculine.

WORLD ATHLETICS POLICIES FOR WOMEN WITH HYPERANDROGENISM AND WOMEN WHO ARE TRANSGENDER

27. World Athletics is the international governing body for the sport of track-and-field athletics. Beginning in 2011, World Athletics (then known as IAAF) began requiring that women with elevated levels of circulating testosterone lower their levels of testosterone below a threshold amount in order to compete in elite international women's sports competitions. Under the 2011 regulations, women with hyperandrogenemia (defined as serum testosterone levels above the normal range) were allowed to compete only if they demonstrated that they had testosterone levels below 10 nmol/L or that they had CAIS, preventing their bodies from responding to testosterone.¹

28. In 2018 the IAAF issued revised regulations lowering the maximum testosterone threshold to 5 nmol/L.² The revised regulations were upheld by the Court of Arbitration for Sport ("CAS") in 2019.

¹ A copy of the 2011 regulation is available at [https://www.bmj.com/sites/default/files/response_attachments/2014/06/IAAF%20Regulations%20\(Final\)-AMG-30.04.2011.pdf](https://www.bmj.com/sites/default/files/response_attachments/2014/06/IAAF%20Regulations%20(Final)-AMG-30.04.2011.pdf)

² A copy of the 2018 regulations is available at <https://www.iaaf.org/download/download?filename=fd2923ad-992f-4e43-9a70-78789d390113.pdf&urlslug=IAAF%20Eligibility%20Regulations%20for%20the%20Female%20Classification%20%5BAthletes%20with%20Differences%20of%20Sex%20Development%5D%20in%20force%20as%20from%208%20May%202019>

29. In 2019, the IAAF adopted regulations allowing women who are transgender to participate in elite international women's sports competitions if their total testosterone level in serum is beneath a particular threshold for at least one year before competition. The IAAF set the threshold at 5 nmol/L, which was the same threshold set by the IAAF's 2018 regulations for non-transgender women with hyperandrogenism that had been upheld by the CAS when contested.³

30. The IAAF rules are consistent with the Endocrine Society Guidelines for the treatment of women who are transgender, which recommend that hormone therapy target circulating testosterone levels to a typical female range at or below 1.7 nmol/L (Endocrine Society Guidelines, p. 3887) and with the study of testosterone levels achieved in practice by medically treated women who are transgender (Liang JJ, et al. Testosterone levels achieved by medically treated transgender women in a United States endocrinology clinic cohort. *Endocrine Practice* 2018; 24:135-142).

INTERNATIONAL OLYMPIC COMMITTEE POLICIES FOR WOMEN WHO ARE TRANSGENDER

31. Formal eligibility rules for the participation of transgender women in the Olympics were published in 2003. The 2003 rules required that transgender women athletes could compete in women's events only if they had genital surgery, a gonadectomy (*i.e.*, removal of the testes), and legal documentation of female sex.⁴

³ A copy of the 2019 regulations is available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwi8qbO nsNL0AhUBkIkEHWdpAiQQFnoECAUQAQ&url=https%3A%2F%2Fwww.worldathletics.org%2Fdownload%2Fdownload%3Ffilename%3Dace036ec-a21f-4a4a-9646-fb3c40fe80be.pdf%26urlslug%3DC3.5%2520-%2520Eligibility%2520Regulations%2520Transgender%2520Athletes&usg=AOvVaw1aPuD3gUoz5hcGKgmumVb5>

⁴ A copy of the 2003 policy is available at <https://olympics.com/ioc/news/ioc-approves-consensus-with-regard-to-athletes-who-have-changed-sex-1>

32. However, many women who are transgender are treated with medicines alone and don't have gonadectomy. As well, many jurisdictions do not have systems to document the sex of transgender people. In some jurisdictions, being transgender is illegal, and disclosure that someone is transgender can be unsafe.

33. Therefore, in 2015, the IOC adopted new guidance modeled after the IAAF's 2011 regulations for non-transgender women with hyperandrogenism. Under the 2015 IOC guidance, women who are transgender were required to demonstrate that their total testosterone level in serum was below 10 nmol/L for at least one year prior to competition. The 10 nmol/L threshold was the same threshold set by the IAAF's 2011 regulations.⁵

34. In 2021, the IOC adopted a new "Framework on Fairness, Inclusion, and Non-Discrimination on the Basis of Gender Identity and Sex Variations" (the "2021 framework"), which replaces the 2015 guidance.⁶

35. Unlike the IOC's 2003 and 2015 policies, the IOC's 2021 framework does not attempt to adopt a single set of eligibility standards for the participation of transgender athletes that would apply universally to every IOC sport. Instead, the 2021 framework provides a set of governing principles for sporting bodies to follow when adopting eligibility rules for their particular sport.

36. Under the 2021 framework, "[n]o athlete should be precluded from competing or excluded from competition on the .exclusive ground of an unverified, alleged or perceived unfair

⁵ A copy of the 2015 policy is available at https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf

⁶ A copy of the 2021 framework is available at https://stillmed.olympics.com/media/Documents/News/2021/11/IOC-Framework-Fairness-Inclusion-Non-discrimination-2021.pdf?_ga=2.207516307.1210589288.1636993769-1638189514.1636993769

competitive advantage due to their sex variations, physical appearance and/or transgender status.” Principle 5.1. “Until evidence . . . determines otherwise, athletes should not be deemed to have an unfair or disproportionate competitive advantage due to their sex variations, physical appearance and/or transgender status.” Principles 5.2.

37. The 2021 framework further provides that “[a]ny restrictions arising from eligibility criteria should be based on robust and peer reviewed research that: (a) demonstrates a consistent, unfair, disproportionate competitive advantage in performance and/or an unpreventable risk to the physical safety of other athletes; (b) is largely based on data collected from a demographic group that is consistent in gender and athletic engagement with the group that the eligibility criteria aim to regulate; and (c) demonstrates that such disproportionate competitive advantage and/or unpreventable risk exists for the specific sport, discipline and event that the eligibility criteria aim to regulate.” Principle 6.1

NCAA POLICIES FOR WOMEN WHO ARE TRANSGENDER

38. Since 2011, the National College Athletics Association (“NCAA”) has allowed women who are transgender to participate on the same teams as other women after one year of testosterone suppression. Under the NCAA policy transgender student-athletes certified that they have been on hormone therapy for a period of one year. The NCAA policy did not require ongoing testosterone testing.

39. The NCAA recently announced that it has revised its policy to adopt a “sport-by-sport approach” that “aligns transgender student-athlete participation for college sports with recent policy changes.” *See* NCAA Media Center: Board of Governors updates transgender participation policy (Jan. 19, 2022), at <https://www.ncaa.org/news/2022/1/19/media-center-board-of-governors-updates-transgender-participation-policy.aspx>. “Like the Olympics, the

updated NCAA policy calls for transgender participation for each sport to be determined by the policy for the national governing body of that sport, subject to ongoing review and recommendation by the NCAA Committee on Competitive Safeguards and Medical Aspects of Sports to the Board of Governors.” *Id.* The new NCAA policy contemplates that for certain sports, the national governing body for the sport may require transgender athletes “to document sport-specific testosterone levels.” *Id.*

PARTICIPATION OF GIRLS AND WOMEN WHO ARE TRANSGENDER IN THE SCHOLASTIC CONTEXT

40. The policies developed by World Athletics and the IOC for transgender athletes were based on the particular context of elite international competition. Not all of the same considerations apply in scholastic contexts.

41. The World Athletics and prior IOC policies were more stringent than the prior NCAA policy because those organizations were concerned with creating policies that cannot be manipulated by governments that are not bound by the rule of law. For example, there have been many well-known examples of state-sponsored doping scandals. The Russian Olympic team is currently banned from international competition due to an organized doping effort. Also, there have been cases where governments have issued fraudulent birth certificates and identification documents. In 2000, Yang Yun was a medal winner in Gymnastics from the Chinese team. She later reported that she was 14-years-old at the time in violation of the rule that all athletes for her events had to be at least 16-years-old. In 2008, He Kexin was 14-years-old when participating in Gymnastics for the Chinese team in violation of the same rule that athletes be at least 16-years-old in those events. A new passport for Ms. He had hastily appeared 6 months prior to the Olympic Games that year with a new birth year so that Ms. He could qualify.

49. Even as applied to people without intersex characteristics or 46,XY DSDs, the statutory definition of “biological sex” is inconsistent with West Virginia’s stated goal of “promot[ing] equal athletic opportunities for the female sex.” By excluding girls who are transgender based on “biological sex,” and defining that term to mean “reproductive biology and genetics at birth,” West Virginia categorically prevents girls who are transgender from participating on girls’ teams regardless of whether they are pre-pubertal, receiving puberty blockers, or receiving gender-affirming hormone therapy. But based on current research, the primary known biological cause of average differences in athletic performance between non-transgender men as a group and non-transgender women as a group is circulating testosterone—not “reproductive biology and genetics at birth.” A person’s genetic makeup and internal and external reproductive anatomy are not useful indicators of athletic performance and have not been used in elite competition for decades.

50. With respect to average athletic performance, girls and women who are transgender and who do not go through endogenous puberty are somewhat similarly situated to women with XY chromosomes who have complete androgen insensitivity syndrome. It has long been recognized that women with CAIS have no athletic advantage simply by virtue of having XY chromosomes. *See also* Handelsman DJ, *et al.* Circulating testosterone as the hormonal basis of sex differences in athletic performance. *Endocrine Reviews* 2018; 39:803–29, p .820 (summarizing evidence rejecting hypothesis that physiological characteristics are driven by Y chromosome).

51. HB 3293 is also dramatically out of step with even the most stringent policies of elite international athletic competitions for girls and women who are transgender and who have gone through endogenous puberty. Unlike the policies of the IOC, World Athletics, or the

NCAA, HB 3293 excludes girls and women who are transgender from participating on girls' and women's sports teams even if they have suppressed their circulating levels of testosterone through gender-affirming hormone therapy.

52. Some critics of the prior IOC guidelines and World Athletics and NCAA policies have speculated that lowering the level of circulating testosterone does not fully mitigate the athletic advantage derived from endogenous puberty. But there is no basis to assert with any degree of confidence that this hypothesis is true. Based on the limited data available, it is equally or more plausible to hypothesize that women who are transgender could be at a net *disadvantage* in particular sports after receiving gender affirming hormone therapy, as compared to non-transgender women.

53. For example, transgender women who go through typically male puberty will tend to have larger bones than non-transgender women, even after receiving gender-affirming hormone therapy. But larger bones may be a disadvantage for transgender women who have typically female levels of circulating testosterone. Muscle mass will be decreased with the shift to female levels of circulating testosterone. Having larger bones without corresponding levels of testosterone and muscle mass would mean that a runner has a bigger body to propel with less power to propel it.

54. Similarly, in a sport where athletes compete in different weight classes (*e.g.* weight lifting), the fact that a transgender woman has bigger bones may be a disadvantage because her ratio of muscle-to-bone will be much lower than the ratio for other women in her weight class who have smaller bones.

55. There are only two studies examining the effects of gender-affirming hormone therapy on the athletic performance of transgender female athletes. The first is a small study of

eight long-distance runners who are transgender women. The study showed that after undergoing gender-affirming medical intervention, which included lowering their testosterone levels, the athletes' performance was reduced so that their performance when compared to non-transgender women was proportionally the same as their performance had been before treatment relative to non-transgender men. *See Harper J. Race times for transgender athletes. Journal of Sporting Cultures and Identities* 2015; 6:1–9.

56. A more recent study retrospectively reviewed the military fitness test results of 46 transgender women in the U.S. Air Force before and after receiving gender-affirming hormone therapy. These authors found that any advantage transgender women had over non-transgender women in performing push-ups and sit-ups was negated after 2 years. The study also found that before beginning gender affirming hormone therapy, transgender women completed the 1.5 mile run 21% faster on average than non-transgender women; and after 2 years of gender-affirming hormone therapy, transgender women completed the 1.5 mile run 12% faster on average than non-transgender women. *See Roberts TA, Smalley J, Ahrendt D. Effect of gender affirming hormones on athletic performance in transwomen and transmen: implications for sporting organisations and legislators. Br J Sports Med.* 2020.

57. Neither of these limited studies proves there are meaningful athletic advantages for transgender women after receiving gender-affirming hormone therapy, which could only be shown by longitudinal transgender athlete case-comparison studies that control for variations in hormonal exposure and involve numerous indices of performance. Moreover, the ability to perform push-ups and sit-ups or to run 1.5 miles does not necessarily translate into an athletic advantage in any particular athletic event. Because different sports require different types of physical performance, the studies suggest that the existence and extent of a performance

advantage may vary from sport to sport and should not be subject to a categorical across-the-board rule.

58. Even if evidence were eventually to show that on average transgender women have some level of advantage compared to average non-transgender women, those findings would have to be placed in context of all the other intra-sex genetic variations among athletes that can enhance athletic performance among different women or different men.

59. For example, in the academic literature, there are gene sequence variations that can be associated with athleticism referred to as “performance enhancing polymorphisms” or “PEPs.” A PEP is a variation in the DNA sequence that is associated with improved athletic performance. For example, variations in mitochondrial DNA have been associated with greater endurance capacity and greater mitochondrial density in muscles. Other PEPs are associated with blood flow or muscle structure. *See Ostrander EA, et al. Genetics of athletic performance. Annu Rev Genomics Hum Genet 2009; 10:407–429.*

60. As the IOC’s 2021 framework recognizes, there is no inherent reason why transgender women’s physiological characteristics related to athletic performance should be treated as any more of an “unfair” advantage than the advantages that already exist among different women athletes. The 2021 framework instructs that, even at the most elite level of competition, sporting organizations should base eligibility restrictions on whether there exists “a consistent, unfair, and disproportionate competitive advantage” when viewed within the broader context of all the other intra-sex variations that may give a comparative athletic advantage to a particular athlete.

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

**REBUTTAL EXPERT REPORT AND DECLARATION OF
JOSHUA D. SAFER, MD, FACP, FACE**

1. I have been retained by counsel for Plaintiff as an expert in connection with the above-captioned litigation.

2. My background and credentials are set forth in my previous expert report and declaration dated January 21, 2022 (“Safer Rep.”). I incorporate all conclusions and facts set forth in my previously submitted report into this rebuttal report as if fully stated herein.

3. I reviewed the expert reports of Gregory A. Brown, Ph.D. and Chad. A. Carlson, M.D., submitted in this case on February 23, 2022 (“Brown Rep.” and “Carlson Rep.”). I provide

Endocrinol Metab 2017; 102:3869–3903 (“Endocrine Society Guidelines 2017”) at 3875; Safer JD, Tangpricha V. *Care of Transgender Persons*. *N Engl J Med* 2019; 381:2451-2460 (“*N Engl J Med* 2019”).

6. In response to my initial report, Dr. Brown states that sex is rooted in biology. (Brown Rep. ¶¶ 1-3). I agree. But the fact that sex is rooted in biology does not mean that sex is defined exclusively by genetics or reproductive biology at birth. As reflected in the same sources cited by Dr. Brown, dimorphous sexual characteristics in men and women are produced by a combination of genes, prenatal androgen exposure to sex hormones, epigenetics and other environmental factors. Bhargava, A. et al. *Considering Sex as a Biological Variable in Basic and Clinical Studies: An Endocrine Society Scientific Statement*. *Endocr Rev.* 2021; 42:219-258 (“Bhargava 2021”) at 221-228; *N Engl J Med* 2019; Safer JD, Tangpricha V. *Care of the Transgender Patient*. *Ann Intern Med* 2019; 171: ITC1-ITC16 (“*Ann Intern Med* 2019”).

7. In addition, although the precise biological causes of gender identity are unknown, gender identity itself has biological underpinnings, possibly as a result of variations in prenatal exposure to sex hormones, gene sequences, epigenetics, or a combination of factors. And when transgender people receive puberty-delaying treatment and gender-affirming hormones, they develop other biological and physiological sex characteristics that align with their gender identity and not with their sex recorded at birth. *Endocrine Society Guidelines 2017* at 3874-75, 3888-89; Bhargava 2021 at 227; *N Engl J Med* 2019; *Ann Intern Med* 2019.

THE PRIMARY KNOWN BIOLOGICAL DRIVER OF AVERAGE DIFFERENCES IN ATHLETIC PERFORMANCE IS CIRCULATING TESTOSTERONE

8. As explained in my previous report, the primary known biological cause of average differences in athletic performance between non-transgender men as a group and non-transgender women as a group is circulating testosterone—not “reproductive biology and genetics at birth.”

The existing “evidence makes it highly likely that the sex difference in circulating testosterone of adults explains most, if not all, of the sex differences in sporting performance.” See Handelsman DJ, et al. *Circulating Testosterone as the Hormonal Basis of Sex Differences in Athletic Performance*. *Endocrine Reviews* 2018; 39:803-829 (“Handelsman 2018”) at 823 (summarizing evidence rejecting hypothesis that physiological characteristics are driven by Y chromosome).²

9. Neither Dr. Brown nor Dr. Carlson disputes that circulating testosterone is the largest biological driver of average differences in athletic performance (Brown Rep. ¶ 114; Carlson Rep. ¶ 16), but Dr. Brown contends that cisgender boys and transgender girls have at least some biological advantages in athletic performance over cisgender girls even before puberty. In support, Dr. Brown relies primarily on demographic data from physical fitness tests or athletics in which prepubertal cisgender boys have outperformed prepubertal cisgender girls. But there is no reliable basis for Dr. Brown to attribute those differences to biology instead of social factors such as greater societal encouragement of athleticism in boys, greater opportunities for boys to play sports, or different preferences of the boys and girls surveyed. See Handelsman DJ. *Sex Differences in Athletic Performance Emerge Coinciding with the Onset of Male Puberty*. *Clin Endocrinol (Oxf)*. 2017;87(1):68–72 (“Handelsman 2017”).

10. Dr. Brown also points out that there are physiological differences between cisgender boys and cisgender girls before puberty, largely as a result of exposure to hormones in

² Dr. Brown cites to Handelsman in his report but continually misrepresents Handelsman’s findings, notably omitting key portions of the reference. For example, Dr. Brown writes, “[t]here is convincing evidence that the sex differences in muscle mass and strength are sufficient to account for the increased strength and aerobic performance of men compared with women and is in keeping with the differences in world records between the sexes.” (Brown Rep. ¶ 55, citing Handelsman 2018). But Dr. Brown omits the following sentence which explains that “[t]he basis for the sex difference in muscle mass and strength is the sex difference in circulating testosterone.” (Handelsman 2018 at 816) (emphasis added).

have not experienced the biological effects of testosterone during puberty and adolescence can play women’s rugby”).³

16. Dr. Brown contends that “there is no published scientific evidence that the administration of puberty blockers to males before puberty eliminates the pre-existing athletic advantage that prepubertal [transgender girls] have over prepubertal [cisgender] females.” (Brown Rep. at 56). But as I explain above, there is no evidence that prepubertal transgender girls have any such pre-existing biological athletic advantages. *See supra* ¶¶ 9-12.

17. Dr. Brown’s assertions also rest on a misunderstanding of the treatment of gender dysphoria. Indeed, Dr. Brown admits that his speculation about puberty blockers is outside his area of expertise. (Brown Rep. ¶ 110). Under current standards of care, transgender adolescents are eligible to receive puberty blockers when they reach Tanner 2—not Tanner 3—which is early enough to prevent endogenous puberty from taking place. *See* Endocrine Society Guidelines 2017 at 3869-3903. Following administration of puberty blockers, transgender girls and women will have also received gender-affirming care to allow them to go through puberty consistent with their female gender identity. As a result of a typically female puberty, these transgender girls and women will develop many of the same physiological and anatomical characteristics of cisgender girls and women, including bone size (Brown Rep. ¶¶ 46-48), skeletal structure (*id.* at ¶ 49), and “distinctive aspects of the female pelvis geometry [that] cut against athletic performance” (*id.* at ¶ 50). Thus, a transgender girl or women who received puberty blockers followed by gender-affirming hormones does not have the same physiology as a prepubertal cisgender boy.⁴

³ *See* <https://www.world.rugby/thegame/player-welfare/guidelines/transgender/women>

⁴ Dr. Brown cites to a study measuring body composition among transgender people who received puberty delaying medication followed by gender affirming hormones. (Brown Rep. ¶¶ 112-13 (citing Klaver M, et al. *Early Hormonal Treatment Affects Body Composition and Body Shape in*

18. Dr. Brown also cannot point to data justifying H.B. 3293's exclusion of transgender girls and women who experience endogenous puberty and then lower their levels of circulating testosterone. As I explained in my original report, concerns about athletic competition among college students and adults are more attenuated for students in middle school and high school, where athletes' ages typically range from 11-18, with different athletes in different stages of pubertal development. Increased testosterone begins to affect athletic performance at the beginning of puberty, but those effects continue to increase each year of puberty until about age 18, with the full impact of puberty resulting from the cumulative effect of each year. As a result, a 14, 15, or 16-year old has experienced less cumulative impact from testosterone than a 17 or 18-year old.

19. But even with respect to college students, Dr. Brown's sweeping arguments are not supported by his data. There have been only two studies that examined the effects of gender-affirming hormone therapy on the athletic performance of transgender female athletes. (Safer Rep. ¶¶ 55-57). The first is a small study of eight adult long-distance runners showing that when women who are transgender have lowered circulating testosterone, their performance when compared to non-transgender women was proportionally the same as their performance had been before treatment relative to non-transgender men. Harper J. *Race Times for Transgender Athletes*. *Journal of Sporting Cultures and Identities* 2015; 6:1-9. The second is a retrospective study that reviewed military fitness test results, showing that two years of gender-affirming hormone therapy negated any advantage transgender women had over non-transgender women in performing push-ups and

Young Transgender Adolescents. *J Sex Med* 2018; 15: 251-260)). This study confirms that the transgender women after treatment had body composition patterns that more closely resembled cisgender women than cisgender men (or cisgender prepubertal boys). The minimal remaining differences reported in some measurements are not large enough to plausibly confer a material athletic advantage, and those differences are likely attributable to the fact that the subjects do not appear to have started receiving treatments until ages 12.8 to 13.5 at the earliest. By contrast, the start of Tanner 2 for transgender girls usually begins at about age 11.5.

sit-ups, but did not completely negate transgender women's faster times in racing 1.5 miles. Roberts TA, et al. *Effect of gender affirming hormones on athletic performance in transwomen and transmen: implications for sporting organizations and legislators*. Br J Sports Med. 2020; 0:1–7. doi:10.1136/bjsports-2020-102329.

20. Neither of these studies provides enough data to support Dr. Brown's sweeping claim that transgender women who have lowered circulating testosterone have an advantage over cisgender women in all athletic events. To support that inference, Dr. Brown cites to a variety of studies of transgender women measuring discrete physiological characteristics such as muscle size or grip strength. (Brown Rep. ¶¶ 153-56). Dr. Brown predicts that if puberty-influenced characteristics like bone and muscle size are not completely reversed by testosterone suppression, then those characteristics will continue to provide an advantage for transgender women. But because changes in testosterone affect different parts of the body in different ways, we do not have enough information to confidently predict whether the combined effect of the changes will be an advantage or a disadvantage.

21. The study about military fitness tests (Roberts 2020) illustrates the point. Roberts TA, et al. *Br J Sports Med*. 2020; 0:1–7. After two years of suppressing testosterone any advantage that the transgender women had in performing push-ups or sit-ups was eliminated. But because the transgender women in the study weighed more than the cisgender women even after suppressing testosterone, the transgender women had to use more muscle strength to perform the same number of push-ups. In other words, the transgender women may have had more muscle strength, but that greater strength did not translate into an athletic advantage in a push-up contest. Because different sports require different types of physical performance, the existence and extent

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Defendants,

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LAINY ARMISTEAD,

Defendant-Intervenor.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

EXPERT REPORT AND DECLARATION OF PROFESSOR MARY D. FRY, PHD

1. I have been retained by counsel for Plaintiff as an expert in connection with the above-captioned litigation.

2. The purpose of this expert report and declaration is to offer my expert opinion on: (1) the psychological and behavioral benefits of sports for youth and young adults (including collegiate athletes); and (2) the conditions that lend themselves to youth and young adults participating in athletics and accessing those benefits when they do participate.

**FOCUSING SOLELY ON PERFORMANCE OUTCOMES UNDERMINES THE
BENEFITS OF SPORT FOR YOUTH AND YOUNG ADULT ATHLETES**

18. For youth and young adult student-athletes, athletics serve a different purpose than for athletes who participate in professional athletics or world elite competition. A myopic focus on winning in youth and young adult athletics ignores the other important benefits that school athletics offer young athletes, such as teamwork and camaraderie, which are advanced when all athletes have the opportunity to play the sport they love and reap the benefits of such participation.

19. The National Collegiate Athletic Association (NCAA) estimates that there are eight million high school student-athletes in the United States.¹ Of those millions of athletes, only about 6% go on to compete at the college level in any division (with only about 2% earning an athletic scholarship).² By the numbers alone, the primary purpose of high school sports is not about preparing youth for college sports. For the 93% of high school athletes who do not compete in college as well as for those who do, youth sport creates a myriad of benefits unrelated to preparing athletes to compete in college.

20. Then for collegiate athletics, most athletes do not go on to have athletic careers beyond college in an elite sports context. According to the NCAA: “Fewer than two percent of NCAA student-athletes go on to be professional athletes.”³ That percentage does not include National Association of Intercollegiate Athletics (for small college sports) and junior college student-athletes, who are less likely to have professional sports careers. Accordingly, among total numbers of collegiate athletes in the United States, the total percentage of athletes who go on to participate in elite, professional athletics after college is even lower than two percent.

¹ <https://www.ncaa.org/about/resources/research/estimated-probability-competing-college-athletics>

² *Id.*; <https://www.ncaa.org/student-athletes/future/scholarships>

³ <https://www.nfhs.org/media/886012/recruiting-fact-sheet-web.pdf>

orientation” define success based on their effort, improvement, and mastery of tasks over time. In contrast, a high ego orientation occurs when individuals define success in normative terms, only feeling successful when they outperform others. Individuals are to some degree both task- and ego-oriented; in fact, they can be high and/or low in both orientations.

26. Third, motivations are shaped by outside factors, which can reinforce a task orientation as opposed to an ego orientation. Specifically, athletes can perceive the environment that is created by coaches (but can also be influenced by parents and teammates) (Ames, 1992a, 1992b; Nicholls, 1984, 1989) as a task-involving or ego-involving climate. When the environment created by coaches and others is a caring environment, athletes are more likely to perceive the overall climate as task-involving. A caring environment is one where athletes feel safe, welcome, comfortable, and valued, and are treated with kindness and respect by all in the sport setting (Newton et al., 2007). A climate that is both task-involving and caring is one in which coaches do the following: recognize and reward effort and improvement; foster cooperation among teammates; make everyone feel they play an important role on the team; treat mistakes as part of the learning process; and encourage an atmosphere where everyone is treated with mutual kindness and respect.

27. A high task orientation, described above in Paragraph 25 is the key to optimizing motivation over time because effort and improvement – the keys to task orientation – are variables that individuals can more easily control. High task orientation results in athletes being more likely to seek challenge, exert high effort, and persist over time (Maehr & Zusho, 2009).

28. Perhaps the strongest finding within the goal orientation research links task orientation with high enjoyment. Throughout childhood and adolescence, and across a range of sports, athletes who define success based on their personal effort and improvement have more fun

playing their sport than those high in ego orientation (Schneider, Harrington, & Tobar, 2017; Seifriz, Duda, & Chi, 1992; Stephens, 1998; Stuntz & Weiss, 2009; van de Pol & Kavussanu, 2011). Importantly, goal orientations are also associated with the sources of enjoyment athletes identify. For example, youth athletes with a high task orientation more often report experiencing enjoyment from learning and having positive team interactions. In contrast, athletes high in ego orientation more often report experiencing enjoyment as a result of winning and having high perceived competence (Lochbaum & Roberts, 1993).

29. Another benefit of high task orientation in youth athletes is the strong and positive association with interpersonal and team dynamics (Balaguer, Duda, & Crespo, 1999; Ommundsen, Roberts, Lemyre, & Miller, 2005). Task orientation is positively correlated with peer acceptance, less conflict with peers, and greater satisfaction with the coach.

30. Athletes high in task orientation also report greater confidence and perceived ability, and task orientation has been correlated with both self and team efficacy and greater perceived competence (Magyar & Feltz, 2003; Seifriz et al., 1992; Stuntz & Weiss, 2009). Further, athletes high in task orientation report utilizing more adaptive coping strategies (Kim, Duda, & Gano-Overway, 2011; McCarthy, 2011). These adaptive outcomes have been found for middle school, high school, and collegiate athletes.

31. By contrast, ego orientation (i.e., the non-pejorative, descriptive term for defining success based on ability and performance outcomes), is not correlated with perceived ability in general. Confidence of athletes high in ego orientation was more often based on their perceptions of ability and having a strong physical presence, whereas athletes high in task orientation based their perceptions of confidence on their sense of feeling well prepared and mentally strong (Magyar and Feltz, 2003).

32. Athletes high in ego orientation report lower companionship and greater conflict with teammates (Balaguer et al., 1999), and there is no evidence to suggest they reap the benefits of enhanced social relationships that athletes with high task orientation do (Ommundsen et al., 2005). Despite the ego-involving climate's emphasis on performance outcomes, results across studies suggest that the benefits of a task-involving climate may have a direct impact on athletic performance and ultimately improve performance outcomes (Jackson & Roberts, 1992; McDonald, Cote, & Deakin, 2011). By contrast, no evidence currently points to an ego-involving climate leading to greater performance outcomes with young athletes.

33. There is also a consistently significant relationship between ego orientation and anxiety (Lochbaum et al., 2016). Young athletes with high ego orientation participating in a variety of sports have reported higher trait and state cognitive and somatic anxiety, as well as greater concentration disruption, maladaptive perfectionism, and concern over making mistakes (Grossbard, Cumming, Standage, Smith, & Smoll, 2007; Hall, Kerr, & Matthews, 1998; Ommundsen & Pedersen, 1999; Ommundsen et al., 2005; White & Zellner, 1996).

34. Even for athletes who are themselves highly ego-oriented, and who prioritize winning and external rewards, a task-involving and caring climate is preferable. Such a climate encourages young athletes to orient themselves toward a task-involved model for motivation and away from the stress-inducing ego-orientation, which will in turn garner the young person the benefits associated with a task-orientation. For example, Division I college athletes who perceived a task-involving climate on their teams reported having stronger mental skills including their use of goal setting, ability to concentrate, remain worry free, cope with adversity and peak under pressure, act with confidence, and be open to receiving feedback from coaches (Fry, Iwasaki, & Hogue, 2021). These findings would suggest that athletes with strong mental skills might also

perform better. Further, perceptions of an ego-involving climate have been linked to higher salivary cortisol responses (Hogue, Fry, & Fry, 2017). Cortisol is an important and necessary hormone, but in excess it can break down muscle tissue and interfere with the immune system.

35. Thus, the benefits associated with youth and young adult sport are not limited to whether athletes are winning competitions, where they are ranked in their sport, or what level of publicity they are getting. In fact, a focus exclusively on those things not only undermines an athlete's success in those areas but can compromise the holistic range of benefits derived from youth and young adult sport. Ultimately, athletes are more likely to reap the positive benefits associated with youth and young adult sports if they are task-involved, which places greater emphasis on effort, than if they are ego-involved, which would put greater emphasis on trappings of individual success.

36. It should be noted that the research findings described above, which highlight the relationships between goal orientations and numerous outcome variables, have been consistent for both boys and girls. In other words, within the body of research on athletes' goal orientations, results across studies reveal that task orientation is more often positively correlated with adaptive outcomes (e.g., intrinsic motivation), and ego orientation is more often negatively associated with maladaptive outcomes (e.g., worry) for both boys and girls (Fry & Moore, 2019; Roberts, 2012; Roberts, Nerstad, & Lemyre, 2018).

**EXCLUDING TRANSGENDER STUDENTS FROM PARTICIPATING IN
YOUTH AND YOUNG ADULT ATHLETICS WOULD DEPRIVE THEM AND THEIR
TEAMMATES OF A WIDE RANGE OF BENEFITS**

37. A goal of youth sport is to help young athletes have positive experiences across sport. This includes creating space for athletes to have fun, develop skills, make friends, increase their levels of physical activity, continue their participation over time, and learn valuable life

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

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

Plaintiff,

vs.

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

Defendants,

and

LAINY ARMISTEAD,

Defendant-Intervenor.

Case No. 2:21-cv-00316

Hon. Joseph R. Goodwin

DECLARATION OF GREGORY A. BROWN, PH.D., FACSM

I, Dr. Gregory A. Brown, pursuant to 28 U.S. Code § 1746, declare under penalty of perjury under the laws of the United States of America that the facts contained in my Expert Declaration of Gregory A. Brown, Ph.D., FACSM in the Case of B.P.J. v. West Virginia State Board of Education, attached hereto, are true and correct to the best of my knowledge and belief, and that the opinions expressed therein represent my own expert opinions.

Executed on February 23, 2022.



Gregory A. Brown

have physiological and performance advantages over females somewhere between those possessed by pre-pubertal boys, and those who have gone through full male puberty, with the degree of advantage in individual cases depending on that individual's development and the timing of the start of puberty blockade.

111. Tack et al. (2018) observed that in 21 transgender-identifying biological males, administration of antiandrogens for 5-31 months (commencing at 16.3 ± 1.21 years of age), resulted in nearly, but not completely, halting of normal age-related *increases* in muscle strength. Importantly, muscle strength did not decrease after administration of antiandrogens. Rather, despite antiandrogens, these individuals retained higher muscle mass, lower percent body fat, higher body mass, higher body height, and higher grip strength than comparable girls of the same age. (Supplemental tables).

112. Klaver et al. (2018 at 256) demonstrated that the use of puberty blockers did not eliminate the differences in lean body mass between biological male and female teenagers. Subsequent use of puberty blockers combined with cross-sex hormone use (in the same subjects) still did not eliminate the differences in lean body mass between biological male and female teenagers. Furthermore, by 22 years of age, the use of puberty blockers, and then puberty blockers combined with cross sex hormones, and then cross hormone therapy alone for over 8 total years of treatment still had not eliminated the difference in lean body mass between biological males and females.

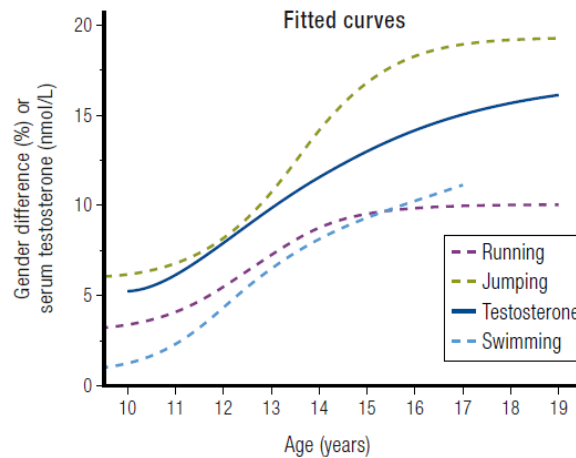
113. The effects of puberty blockers on growth and development, including muscle mass, fat mass, or other factors that influence athletic performance, have been minimally researched. Indeed, Klaver et al. (2018) is the only published research that I am aware of that has evaluated the use of puberty blockers on body composition. As stated by Roberts and Carswell (2021), "No published studies have fully characterized the impact of [puberty blockers on] final adult height or current height in an actively growing TGD youth." (1680). Likewise, "[n]o published literature provides guidance on how to best predict the final adult height for TGD youth receiving GnRHa and gender-affirming hormonal treatment." (1681). Thus, the effect of prescribing puberty blockers to a male child before the onset of puberty on the physical components of athletic performance is largely unknown. There is not any scientific evidence that such treatment eliminates the pre-existing performance advantages that prepubertal males have over prepubertal females.

B. The rapid increase in testosterone across male puberty drives characteristic male physiological changes and the increasing performance advantages.

114. While boys exhibit some performance advantage even before puberty, it is both true and well known to common experience that the male advantage

increases rapidly, and becomes much larger, as boys undergo puberty and become men. Empirically, this can be seen by contrasting the modest advantages reviewed immediately above against the large performance advantages enjoyed by men that I have detailed in Section II.

115. Multiple studies (along with common observation) document that the male performance advantage begins to increase during the early years of puberty, and then increases rapidly across the middle years of puberty (about ages 12-16). (Tønnessen 2015; Handelsman 2018 at 812-813.) Since it is well known that testosterone levels increase by more than an order of magnitude in boys across puberty, it is unsurprising that Handelsman finds that these increases in male performance advantage correlate to increasing testosterone levels, as presented in his chart reproduced below. (Handelsman 2018 at 812-13.)



116. Handelsman further finds that certain characteristic male changes including boys' increase in muscle mass do not begin at all until "circulating testosterone concentrations rise into the range of males at mid-puberty, which are higher than in women at any age." (Handelsman 2018 at 810.)

117. Knox et al. (2019) agree that "[i]t is well recognised that testosterone contributes to physiological factors including body composition, skeletal structure, and the cardiovascular and respiratory systems across the life span, with significant influence during the pubertal period. These physiological factors underpin strength, speed, and recovery with all three elements required to be competitive in almost all sports." (Knox 2019 at 397.) "High testosterone levels and prior male physiology provide an all-purpose benefit, and a substantial advantage. As the IAAF says, "To the best of our knowledge, there is no other genetic or biological trait encountered in female athletics that confers such a huge performance advantage." (Knox 2019 at 399.)

Exhibit 30

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
3 CHARLESTON DIVISION
4
5

6 -----)
7 B.P.J. by her next friend and)
8 mother, HEATHER JACKSON,)
9)
10 Plaintiff,)

11 vs.)

No. 2:21-cv-00316

12 WEST VIRGINIA STATE BOARD OF)
13 EDUCATION, HARRISON COUNTY)
14 BOARD OF EDUCATION, WEST)
15 VIRGINIA SECONDARY SCHOOL)
16 ACTIVITIES COMMISSION, W.)
17 CLAYTON BURCH in his official)
18 capacity as State)
19 Superintendent, DORA STUTLER,)
20 in her official capacity as)
21 Harrison County)
22 Superintendent, and THE STATE)
23 OF WEST VIRGINIA,)

24 Defendants.)

25 And)

LAINIEY ARMISTEAD,)
Defendant-Intervenor.)
-----)

REMOTE VIDEOTAPED DEPOSITION OF
GREGORY BROWN, Ph.D.
Friday, March 25, 2022
Volume I

Reported by:
ALEXIS KAGAY
CSR No. 13795
Job No. 5122856
PAGES 1 - 282

1 there's physical fitness data on -- on prepubertal boys
2 versus prepubertal girls, and my question is, are you
3 aware of any data that specifically breaks out
4 prepubertal trans girls and reports on their
5 performance? 11:05:53

6 A I am not aware of any data analyzing trans
7 girls.

8 Q Okay. So are you aware of any data comparing
9 the performance of prepubertal trans girls to
10 prepubertal cis girls? 11:06:12

11 A I am not aware of any research on that topic.

12 Q Okay. If you could turn to page -- sorry --
13 paragraph 114 of your report again.

14 A Yes, paragraph 114, page 37.

15 Q Okay. I have to pull it up, too. 11:06:38

16 All right. And it -- it continues from page
17 37 to 38. You say (as read):

18 "While boys exhibit some performance
19 advantages even before puberty, it is
20 both true and" -- 11:06:52

21 Sorry, my -- my PDF -- I'll read this again
22 for the record. I apologize. (As read):

23 "While boys exhibit some performance
24 advantages even before puberty, it is
25 both true and well known to common 11:07:03

1 BY MR. BLOCK:

2 Q I -- I understand. But the -- the answer to
3 my question is correct; right?

4 MR. FRAMPTON: Object to the form.

5 THE WITNESS: Isn't that what I said? 02:32:26

6 BY MR. BLOCK:

7 Q No. You -- you've made a different statement,
8 so I -- I just -- I need you to answer my question
9 before you make a different statement.

10 So it's fair to say that -- that 02:32:35

11 World Rugby -- this World Rugby policy does not support
12 excluding trans girls and women from girls and women's
13 teams in rugby if they have been on hormone blockers
14 and not experien- -- puberty blockers and not
15 experienced endogenous puberty; correct? 02:32:58

16 MR. FRAMPTON: Object to the form.

17 THE WITNESS: Yes, that is correct, as you
18 stated, the World Rugby statement is about rugby.

19 (Exhibit 78 was marked for identification
20 by the court reporter and is attached hereto.) 02:33:10

21 BY MR. BLOCK:

22 Q Okay. All right. Now let's look at the
23 Harper 2021 article.

24 All right. This is going to appear on your
25 screen as Exhibit 78. Please let me know once you have 02:33:36

1 BY MR. BLOCK:

2 Q Okay. But you didn't choose to mention this
3 first key point in your report; right?

4 A That is correct.

5 Q Okay. Why not? 02:47:49

6 A I disagree with that key point.

7 Q Okay. So you only highlighted -- you only
8 cited to the portions of this article that you agreed
9 with; right?

10 MR. FRAMPTON: Object to the form. 02:47:58

11 THE WITNESS: I cited the information that I
12 agree with after evaluating the other scientific
13 information.

14 BY MR. BLOCK:

15 Q Let's go to 1409. 02:48:22

16 Do you see that?

17 A Yes.

18 Q Okay. So the third bullet point here, when we
19 get to -- this is -- I'm sorry, under -- this whole
20 section of bullet points is under the subsection 5.7 02:48:41

21 "FIMS Consensus Statements for the Integration of DSD
22 Women and Transwomen Athletes into Elite Female Sport";
23 right?

24 A That is correct.

25 Q All right. So based on the foregoing 02:48:53

1 information discussed in the article, these are the
2 consensus statements that FIMS agreed upon; right?

3 A That's a reasonable conclusion, yes.

4 Q Okay. So the third bullet point on the

5 right-hand column is (as read): 02:49:13

6 "Transwomen have a (sic) right to
7 compete in sports. However, cisgender
8 women have the right to compete in a
9 protected category."

10 Is that right? 02:49:26

11 A That's correct.

12 Q Okay. And this bullet point is a bullet point
13 that you included in your report; right?

14 A Correct.

15 Q Okay. Do you know if you included any of the 02:49:33
16 other bullet points in your report?

17 A I don't think I included any of the other
18 bullet points.

19 Q Okay. So let's look at some of those other
20 bullet points. 02:49:46

21 If you go two bullet points down from the --
22 the one we just looked at, it says (as read):

23 "As each sport can vary greatly in
24 terms of physiological demands, we
25 support the view held also by others 02:49:58

Page 232

1 stating that individual
2 sport-governing bodies should develop
3 their own individual policies based on
4 broader guidelines developed on the
5 best available scientific evidence, 02:50:09
6 determined experimentally from a
7 variety of sources with a particular
8 preference for studies on transwomen
9 and DSD women athletes."

10 Did I read that right? 02:50:19

11 A Yes.

12 Q Okay. So this bullet point supports having
13 different policies developed by different sport's
14 governing bodies; right?

15 MR. FRAMPTON: Object to the form. 02:50:32

16 THE WITNESS: That is a great example of a
17 bullet point that seems contradictory to a previous
18 statement.

19 BY MR. BLOCK:

20 Q Okay. But this statement here does not 02:50:39
21 support an across-the-board policy that applies to all
22 difference types of sports; is that right?

23 MR. FRAMPTON: Same objection.

24 Go ahead.

25 THE WITNESS: That is correct. 02:50:54

1 BY MR. BLOCK:

2 Q And then two more bullet points down, it says
3 (as read):

4 "The use of serum testosterone
5 concentrations as the primary 02:51:17
6 biomarker to regulate the inclusion of
7 athletes into male and female
8 categories is currently the most
9 justified solution as it is supported
10 by the available scientific literature 02:51:27
11 and should be implemented at the elite
12 level, where there is an emphasis on
13 performance enhancement."

14 Did I read that right?

15 A Yes, you read that correctly. 02:51:38

16 Q Okay. And that's -- that's similar to the key
17 point that we talked about before, on the second page;
18 right?

19 A That is similar to that previous key point.

20 Q Okay. And then if you turn the page, the 02:51:46
21 first full -- fir- -- excuse me -- the first full
22 bullet point at the top, you know, again, is --
23 essentially restates the -- the key point that we
24 discussed before; is that right?

25 MR. FRAMPTON: Same objection. 02:52:04

1 Go ahead.

2 THE WITNESS: Yes. That reiterates the
3 5 nmol/L threshold for testosterone.

4 BY MR. BLOCK:

5 Q Okay. And then the sentence also says that 02:52:14
6 that threshold may be modified as new evidence arises
7 for an event or sport-specific concentrations; is that
8 right?

9 A Yes, that is what it says.

10 Q Okay. And so -- so that -- that bullet point 02:52:28
11 and the other bullet point we looked at about the use
12 of serum testosterone and the other bullet point about
13 having individual policies for individual sports are
14 bullet points that you disagreed with; right?

15 A That is correct. 02:52:49

16 Q Okay. And because you disagreed with them,
17 you did not include them in your report?

18 MR. FRAMPTON: Object to the form.

19 Go ahead.

20 THE WITNESS: That is correct. 02:53:01

21 BY MR. BLOCK:

22 Q Okay. But at least according to this
23 document, the -- all the authors of this statement had
24 agreed on those bullet points as consensus statements;
25 right? 02:53:19

1 THE WITNESS: And this is another example of
2 something that is confusing and contradictory to me, is
3 when they say that cisgender women deserve a protected
4 category and then have this kind of a statement.

5 BY MR. BLOCK: 02:57:57

6 Q Well, isn't one way to reconcile it that it's
7 possible to have a protected category for cisgender
8 women if appropriate conditions are placed on the
9 participation of trans women?

10 MR. FRAMPTON: Object to the form. 02:58:17

11 THE WITNESS: My understanding of the
12 intention of the authors is then it would no longer be
13 a protected category.

14 BY MR. BLOCK:

15 Q Well, it would be protected from participation 02:58:24
16 by cisgender men or anyone else with circulating levels
17 of testosterone over the threshold limit; right?

18 MR. FRAMPTON: Same objection.

19 THE WITNESS: Within the -- the field, a
20 protected category of women typically means biological 02:58:38
21 women.

22 BY MR. BLOCK:

23 Q Okay. Let's look at the next document.

24 All right. And, actually, we already marked
25 this one as an exhibit. This is the women's policy 02:58:57

1 briefing book. So this is Exhibit 69, if you could
2 pull it up again.

3 A All right. Women's Sports Policy Working
4 Group, Briefing Book?

5 Q Yes. 02:59:21

6 All right. If you look at page 15.

7 A All right. Page 15.

8 Q So at the -- the top, you can see this is
9 their Proposed Amendment to the Title IX Regulations.

10 Do you see that? 03:00:04

11 A Yes.

12 Q Okay. So if we scroll down to subsection C,
13 Treatment of Transgender Athletes, do you see that?

14 A Yes.

15 Q Okay. So -- so subsection (c)(1) says (as
16 read): 03:00:12

17 Because trans girls/women who have not

18 begun male puberty do not have

19 significant male linked -- male

20 sex-linked advantages, they shall be 03:00:24

21 included in girls' and women's sports

22 without conditions or limitations.

23 Do you see that?

24 A I see that.

25 Q All right. So to the extent that H.B. 3293 03:00:33

1 prohibits trans girls and women from participating in
2 women's sports, even if they have not experienced
3 endogenous male puberty, the authors of this briefing
4 book would disagree with H.B. 3293, to that extent?

5 MR. FRAMPTON: Object to the form. 03:00:56

6 THE WITNESS: I don't think that I can speak
7 on behalf of these authors for what they agree or
8 disagree with regarding H.B. 323 (sic) -- whatever it
9 is. Sorry.

10 BY MR. BLOCK: 03:01:12

11 Q Okay. So do you think that subsection (c)(1)
12 is consistent with H.B. 3293?

13 MR. FRAMPTON: Object to the form.

14 THE WITNESS: Well, (c)(1) says they shall be
15 included in girls and women's sports. 03:01:28

16 BY MR. BLOCK:

17 Q So the answer to my question is yes?

18 MR. FRAMPTON: Object to the form.

19 BY MR. BLOCK:

20 Q I mean -- no, I'll just ask that again. 03:01:40

21 Can you just give me a "yes" or "no" answer so
22 I don't have to worry about getting a clean transcript?

23 So just -- my question is, is section (c)(1)
24 consistent with H.B. 3293?

25 MR. FRAMPTON: Same objection. 03:01:52

West Virginia House of Delegates Education Committee Discussion of H.B. 3293

March 18, 2021

- Chairman Ellington: [00:00:00](#) And some of the potential witnesses today or testimony today. Um, clerk, uh, will take us out on quorum and we do have a quorum. So, uh, Vice Chair make a motion to accept the minutes from the previous meeting.
- Vice Chair: [00:00:16](#) Uh, Mr. Chairman, I move the minutes as presented in the packet, be approved.
- Chairman Ellington: [00:00:23](#) Uh, you heard the Vice Chair. Any, uh, questions, additions, deletions, directions? Chair here is now all in favor of accepting the minutes from the previous meeting, say aye.
- Audience: [00:00:32](#) Aye.
- Chairman Ellington: [00:00:34](#) Those opposed, nay. Ayes appear to have it. Ayes do have it. Minutes adopted. First on the agenda will be an originating bill. Is there any interest in the bill?
- Counsel: [00:00:43](#) Chairman Ellington, I move the bill.
- Chairman Ellington: [00:00:45](#) All right, Counsel. Counsel, explain the bill.
- Counsel: [00:00:47](#) Thank you Chairman Ellington. This bill uh, mens' current code with regard to admission and, uh, participation in single-sex sports. Uh, the bill provides that the birth certificate required for admission to public school must confirm the pupil's sex at the time of birth and the birth certificate. If a birth certificate cannot be obtained, a signed physician's statement indicating the pupil's sex based solely on the pupil's unaltered internal and external reproductive anatomy must be submitted.
- The sex confirmed at the time of admission shall be the pupil's sex for the purposes of participating in SSAC, single-sex interscholastic athletic events. Prior to the students' participation, uh, the SSAC must verify with the county board that each student participating in the single-sex athletics is participating according to, uh, sex listed according to, um, the county provision. And this requirement does not require, it does not apply to co, coed sports, and that's the bill, Mr. Chairman.
- Chairman Ellington: [00:01:51](#) All right. Any questions of the bill of Counsel? Gentlemen from the, uh, was it 43rd?
- Del. Thompson: [00:02:00](#) Yep.

hernias, which are down in the groin folds for those that don't know, and also looking for bilaterally descended testicles.

So there's, those students aren't gonna be put through probably an unnecessary exam that they wouldn't already get to play sports. Would that be a correct assumption based upon this?

- Counsel: [00:17:18](#) If, if that's what it says, yes.
- Del. Tully: [00:17:20](#) Thank you.
- Chairman Ellington: [00:17:22](#) Gentleman from 26th?
- Del. Evans: [00:17:28](#) Thank, thank you Mr. Chairman. Um, are there any girls in West Virginia currently playing the high school football?
- Counsel: [00:17:38](#) I believe that the Delegate just said that there was. Maybe that was a college. I'm not sure.
- Chairman Ellington: [00:17:44](#) [inaudible 00:17:44]. Yeah.
- Counsel: [00:17:44](#) I, I'm not sure.
- Del. Evans: [00:17:46](#) I believe there definitely are. I stood on the football field this year against a team that definitely had a girl on the football field. We went to Webster County at one time, Webster County had a kicker female. So, I guess it is true that girls can play male sports.
- Counsel: [00:18:04](#) Yes.
- Del. Evans : [00:18:05](#) But males cannot play female sports?
- Counsel: [00:18:09](#) That's currently the way, the current law—
- Del. Evans: [00:18:10](#) So how does this, how does this bill then affect them, or does it affect it at all?
- Counsel: [00:18:17](#) This bill would affect those that changed their sex after birth.
- Del. Evans: [00:18:22](#) Okay. So it has nothing to do with current sex or like, like I'm a guy, I'm not going to change that. So it would not affect me?
- Counsel: [00:18:30](#) It would not affect you.
- Del. Evans: [00:18:31](#) Okay, that's all I want to know. Thank you.
- Chairman Ellington: [00:18:34](#) Further questions to Counsel? I believe by leave of the committee, we had requests from the school system. Uh, Ms.

that guidance. The department has not put out any specific guidance, but it will just be mindful of, of the courts' um, direction in that regard. And should that change, we'll appropriately revise and advise the counties appropriately.

- Del. Thompson: [00:21:39](#) If this bill is passed and we later learn, I don't know, whether the outcome of that court decision may or may not be, could this bill then potentially be in violation of that?
- Sarah Stewart: [00:21:47](#) I don't want to speculate on what the US Supreme Court would take.
- Del. Thompson: [00:21:54](#) Right. But not speculation, but is it a possibility that this bill would be in violation?
- Sarah Stewart: [00:21:59](#) It, it could be.
- Del. Thompson: [00:22:00](#) Okay. Has, has your office received, um, calls, concerns, complaints regarding anything remotely related to this about students participating in, in sports or extracurricular activities that you know, that they're . . .?
- Sarah Stewart: [00:22:17](#) Surrounding the conversation today, no, we have not.
- Del. Thompson: [00:22:20](#) Okay. Um, that's all I have for you Sarah. Thank you. I appreciate it.
- Chairman Ellington: [00:22:28](#) Gentleman, from the 16th.
- Del. Hornbuckle: [00:22:33](#) Thank you Mr. Chair. Um, and thank you for being here today. Uh, giving your legal expertise, um, would the WVSSAC have the ability, uh, uh, to set a guideline concerning transgender participation in sports on their own?
- Sarah Stewart: [00:22:50](#) I do not want to speak for whether or not the WVSSAC— I'm not um, comfortable talking to their authorizing statute and where, where their rulemaking ability lies and ends. Potentially they could, but I think it's a better question addressed to them.
- Del. Hornbuckle: [00:23:04](#) And are they here today? Oh, I guess not. Oh, thank you.
- Chairman Ellington: [00:23:11](#) I have a copy of the uh, SSA, WVSSAC um, physical exam certificate, um, Delegate from the 41st asked that it be submitted as a, as an addendum. So, if anyone wants to look at it, they can afterwards. Lady from the 51st.
- Del. Walker: [00:23:33](#) Thank you Mr. Chairman. Thank you, Sarah for being in here. So we just heard that . . . So, I have a question. When there's a transgender student that is entering K-12 public education, do

127CSR1

**TITLE 127
LEGISLATIVE RULE
WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION**

**SERIES 1
CONSTITUTION**

§127-1-1. General.

1.1. Scope. — These rules establish the organization and duties of the West Virginia Secondary School Activities Commission.

1.2. Authority. — W. Va. Constitution, Article XII, §2, and W. Va. Code §§18-2-5, 18-2-25, 18-2-25a, and 18-2-25b.

1.3. Filing Date. — July 11, 2019.

1.4. Effective Date. — September 9, 2019.

1.5. Repeal of Former Rule. — This legislative rule amends W. Va. 127CSR1, West Virginia Secondary School Activities Commission Series 1, Constitution, filed August 10, 2018, and effective October 9, 2018.

§127-1-2. Name.

2.1. The name of this organization shall be the West Virginia Secondary School Activities Commission (WVSSAC/Commission), a voluntary organization. Extracurricular activities of the students in the public secondary schools are controlled pursuant to W. Va. Code §18-2-25, and authority for the delegation of such control to the Commission is granted by statute.

§127-1-3. Goals.

3.1. This Commission, through the employment of the instrumentalities hereinafter established, shall supervise and control interscholastic athletics and band activities among member schools.

3.2. In the performance of these functions it shall be the aim of the Commission:

3.2.a. To stress the cultural values, appreciations, and skills involved in these interscholastic activities, and to promote cooperation and friendship;

3.2.b. To limit these interscholastic activities in both character and quantity so that these activities and events may be looked upon as promoting the objectives of secondary education, and as such shall not interfere with nor abridge the regular program of teachers and students in the performance of their duties;

3.2.c. To encourage economy in expenses of these interscholastic activities;

3.2.d. To discourage long trips for interscholastic activities; and

3.2.e. To establish minimum standards of conduct for both active and spectator participants, coaches, and all other school personnel at all interscholastic activities approved, sponsored, or controlled by this Commission.

127CSR2

combine students from two or more schools in the same private/parochial or public school system must be submitted annually to the WVSSAC in writing by the superintendent of the private/parochial or public school system. Schools which are combining to form one team must be feeder schools for the same high school, and at least one school must have sufficient numbers for a team. If more than two schools are involved, principals are to evaluate the number of available participants in each school and shall combine schools to provide as many teams as sufficient numbers allow. Sufficient numbers will be defined as the number of a starting line-up plus 50% (for odd number line-ups, round up).

3.2.d. Students enrolled in the 9th grade may participate only on high school teams. Sixth grade students of a K-6 elementary feeder school may participate on their middle school team if granted permission by the county board of education or governing body of a private/parochial school and the school principals involved. Members of a 9th grade team at a high school may be grouped for practice with members of the varsity team. However, if a 9th grade student participates in a varsity scrimmage or game, that student becomes ineligible for the 9th grade team. Participation is defined as dressing and being available to play in a game, regardless if the player enters the game.

3.2.e. Students at a middle feeder school who are not provided the opportunity to participate because of age may move up to their high school if granted permission by the county board of education or governing body of a private/parochial school and the school principals involved.

3.3. A student academically ineligible by rule may begin practicing 15 school days immediately prior to the dates of regaining full eligibility provided all other eligibility requirements are met.

3.4. Students enrolled in the following grades in member schools will be eligible for middle school participation.

3.4.a. Grades 6, 7, and 8 may compete with and against schools/teams of the same configuration.

3.4.b. Stand-alone 9th grade programs at a high school may compete with and against schools/teams of the same grade configuration. An 8th grade student not provided the opportunity to participate at their member school because the sport is not offered may choose to participate on a standalone 9th grade team at their feeder high school, provided the student is otherwise eligible.

3.5. Sixth grade students are eligible to participate in all interscholastic sport teams, including football, in the middle/feeder elementary school in which they are enrolled.

3.6. Students who are enrolled in a grade below the 9th are not eligible for a high school team. Students enrolled in a grade below the 6th will not be eligible for a middle school team.

3.7. Twelfth grade students will be eligible for spring sports until the close of the school's season.

3.8. Schools may sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill. If a school sponsors a team in a particular sport for members of one sex but sponsors no such team for members of the other sex, and athletic opportunities for members of that sex previously have been limited, members of the excluded sex must be allowed to try out for the team offered. For example, because overall athletic opportunities for females have previously been limited, females will be allowed to try out for baseball, but males will not be allowed to try out for volleyball or softball.

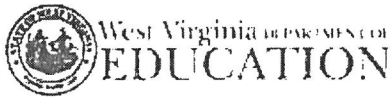
3.9. Students enrolled at West Virginia School for the Deaf will be allowed to participate in sports at the West Virginia School for the Blind. Students from the West Virginia School for the Blind will be allowed to participate in sports at the West Virginia School for the Deaf.

Sarah Stewart

From: Heather Hutchens
Sent: Monday, March 15, 2021 10:53 AM
To: Mary Catherine Tuckwiller; Sarah Stewart; Stephanie Abraham
Subject: RE: Transgender participation in secondary schools bill

It seems like much ado about nothing. I don't think any of it is necessary.

Heather L. Hutchens
General Counsel
Office of the State Auditor



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From: Mary Catherine Tuckwiller
Sent: Monday, March 15, 2021 10:31 AM
To: Sarah Stewart <sarah.a.stewart@k12.wv.us>; Heather Hutchens <hhutchens@k12.wv.us>; Stephanie Abraham <stephanie.abraham@k12.wv.us>
Subject: RE: Transgender participation in secondary schools bill

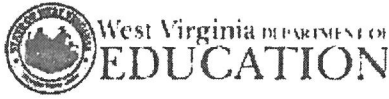
At line 65, they convolute gender and sex when the focus throughout the bill seems to be sex – I realize the issue is when someone is transitioning genders but there is no prior reference in the bill to gender or sex – and the question, I suppose, is how will this issue arise?

Also will every student athlete produce a birth certificate now, and then they will call any suspect birth certificates into question, or will they only request from those who assert a transition? It says birth certificate that doesn't appear to be original – a child who is adopted by a step-parent won't have their original birth certificate. I would think for equitable application purposes everyone might need to produce one. Who is making the judgment call on the veracity of the birth certificate and who is evaluating the evidence? SSAC or the high school or the county board? I looked up some similar legislation in other states and it seems to dictate the student must obtain medical exam/confirmation based on these factors:

<http://billstatus.ls.state.ms.us/documents/2021/html/SB/2500-2599/SB2536IN.htm>

Sarah Stewart

Government Affairs Counsel
Superintendent's Office



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From: Melissa White <Melissa.White@wvhouse.gov>
Sent: Monday, March 15, 2021 9:44 AM
To: Sarah Stewart <sarah.a.stewart@k12.wv.us>
Subject: FW: Transgender participation in secondary schools bill

[EXTERNAL SENDER]: Do not click links, open attachments or reply to this email unless you recognize the sender and know the content is safe.

Sarah,

Per our discussion.

Thank you,
Melissa

Melissa J. White
Chief Counsel
Committee on Education
West Virginia House of Delegates
Room 432M
1900 Kanawha Boulevard, East
Charleston, WV 25305

From: Melissa White
Sent: Thursday, March 11, 2021 9:53 AM
To: Bernie Dolan <bernie.dolan@wvssac.org>; Bernie Dolan <bdolan@k12.wv.us>
Subject: Transgender participation in secondary schools bill

Bernie,

Attached is a draft of an originating bill regarding transgender participation in sports. I kept it short: There are obviously certain things that would need to be handled in a rule, unless you have language that you would like to see in the bill. Please let me know your thoughts and if there are any unintended consequences. The Chairman does not want to keep girls from participating in boys sports when there are not girls teams.

Thanks,
Melissa

Melissa J. White
Chief Counsel
Committee on Education
West Virginia House of Delegates
Room 432M
1900 Kanawha Boulevard, East
Charleston, WV 25305

Sarah Stewart

From: Melissa White <Melissa.White@wvhouse.gov>
Sent: Monday, March 15, 2021 9:44 AM
To: Sarah Stewart
Subject: FW: Transgender participation in secondary schools bill
Attachments: Transgender originating bill.docx

[EXTERNAL SENDER]: Do not click links, open attachments or reply to this email unless you recognize the sender and know the content is safe.

Sarah,

Per our discussion.

Thank you,
Melissa

Melissa J. White
Chief Counsel
Committee on Education
West Virginia House of Delegates
Room 432M
1900 Kanawha Boulevard, East
Charleston, WV 25305

From: Melissa White
Sent: Thursday, March 11, 2021 9:53 AM
To: Bernie Dolan <bernie.dolan@wvssac.org>; Bernie Dolan <bdolan@k12.wv.us>
Subject: Transgender participation in secondary schools bill

Bernie,

Attached is a draft of an originating bill regarding transgender participation in sports. I kept it short. There are obviously certain things that would need to be handled in a rule, unless you have language that you would like to see in the bill. Please let me know your thoughts and if there are any unintended consequences. The Chairman does not want to keep girls from participating in boys sports when there are not girls teams.

Thanks,
Melissa

Melissa J. White
Chief Counsel
Committee on Education
West Virginia House of Delegates
Room 432M

9. Unless otherwise noted, the agency has reviewed the technical sufficiency of the bill and finds as follows:
- a. All code sections in the body of the bill are in the title and enacting section. Yes
 - b. Bill title complies with Section 30, Article VI of the WV Constitution. Yes
 - c. All cross references and citations to federal and state law are correct. Yes
 - d. The numbering of sections, subsections, subdivisions, paragraphs, subparagraphs, clauses and any consecutive similar designation is correct. Yes
 - e. Dates, numbers, and punctuation are sufficiently plain and clear to ascertain what the law is and to give effect to it. Yes
 - f. Effective date of the bill and internal effective dates are not in conflict. Yes
 - g. No other technical errors were identified for which the agency would recommend a technical veto.
10. Agency Rule Making:
- a. Does the bill require a legislative rule? WVBE Policy
 - b. Does the agency currently have sufficient rule-making authority regarding the subject matter of the bill? n/a
 - c. Are emergency rules mandated? Permitted? Does the bill provide for emergency rule authorization status? If not, does the agency need emergency rule making authorization status? n/a
11. Identify whether the bill creates any new funds or accounts or mandates the agency to transfer or distribute monies from accounts under agency control: None
12. Describe any changes to fees, taxes, rates, or revenues: None
13. Agency comments (This may include whether the agency supports, opposes or is neutral about the bill. If the agency questions the constitutionality of the bill, if the bill conflicts with other provisions of state code or federal law, if the agency substantially disagrees with the public policy of the bill, or the agency will suffer undue hardship to make the bill effective, please explain)
14. Is a Governor's veto recommended? If yes, please explain. The WVDE does not support this bill.
15. Please identify whether any other state agency should also provide a bill review: HEPC
16. Preparer's name and title: Sarah Stewart, Government Affairs Counsel

Date: April 19, 2021

Exhibit 43



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.@SRuhle asks WV Gov. Justice about signing a bill restricting transgender athletes.

Ruhle: "Can you give me one example of a transgender child trying to get an unfair advantage? Just one in your state, you signed a bill about it."

Justice: "No, I can't really tell you one."



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Cheryl Gregory @clg0519 · Apr 30, 2021 nailed it



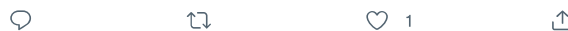
Thomas Jr. @ThomasJ11742717 · Apr 30, 2021 Replying to @MSNBC and @SRuhle One thing is normal in the GOP Suppression of people



erik forrest jackson @MrErikJackson · Apr 30, 2021 Replying to @MSNBC and @SRuhle I am LIVING for the incensed flick of the glasses at :49



David Lytle @davitydave · Apr 30, 2021 Can someone gif that please?



Molly @mememoreme · Apr 30, 2021

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Mom, Host of 11th I Stephanie Ruhle on weeknights 11PM E: Business Analyst, I numbers & even pla

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Molly @mememoreme · Apr 30, 2021
Also, I wouldn't want him anywhere near my daughter - as a coach or as a governor.

16 18 756

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Berks 🌍🇺🇸 @bshires1010 · Apr 30, 2021
Replying to @MSNBC and @SRuhle
That was great journalism at work. TY

12

RobbieRob @RobertW97616297 · Apr 30, 2021
Replying to @MSNBC and @SRuhle
I was told to or else!



GIF ALT

3

wolfonthehill @wolfonthehill · Apr 30, 2021
Replying to @MSNBC and @SRuhle
This is how questions should be framed. Well-done.

31

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Supp. App. 156a



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Supp. App. 157a

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

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

Plaintiff,

v.

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

Defendants,

and

LAINY ARMISTEAD,

Defendant-Intervenor.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

**PLAINTIFF'S STATEMENT OF
UNDISPUTED MATERIAL FACTS**

I. B.P.J. Is A Girl Who Is Transgender.

1. B.P.J. is an eleven-year-old girl who is also transgender. (Ex. 2¹ (Declaration of B.P.J.) ¶ 2; Ex. 12 (Deposition Transcript of B.P.J.) at 25:3-5, 25:11-14, 25:23-26:3; Ex. 13 (Deposition Transcript of Heather Jackson, Jan. 19) at 59:5-6; Ex. 15 (Deposition Transcript of Wesley Scott Pepper) at 46:16-20; Dkt. No. 252 (Stipulation of Uncontested Facts Agreed to by Harrison County Board of Education, County Superintendent Dora Stutler, and Plaintiff) (“County Stip.”) ¶ 1; Dkt. No. 270 (Stipulation of Uncontested Facts Agreed to by West Virginia State Board of Education, State Superintendent W. Clayton

¹ “Ex.” refers to an exhibit attached to the April 21, 2022, declaration of Loree Stark submitted in support of Plaintiff B.P.J.’s motion for summary judgment.

- Burch, and Plaintiff) (WVBOE Stip.) ¶ 1; Dkt. No. 158 (WVSSAC’s Answer to Plaintiff’s First Amended Complaint (“WVSSAC Ans.”) ¶¶ 1, 6, 30.) B.P.J. was designated male at birth and has a female gender identity. (Ex. 1-A (Declaration of Heather Jackson) at 1; Ex. 1-B at 2.)
2. B.P.J. is fiercely protected by her mother, Heather Jackson; unconditionally loved by her father, Wesley Pepper; and has the support of her older brothers and grandparents. (Ex. 1 ¶¶ 4, 22–23; Ex. 2 ¶ 5; Ex. 15 at 165:21-166:1, 185:5-16.)
 3. When B.P.J. was in third grade, she socially transitioned at school to living and presenting in accordance with her identity as a girl. (Ex. 1 ¶ 11; Ex. 12 at 39:6-39:24.) “Social transition” means allowing a transgender child to live and be socially recognized in accordance with their gender identity. (Ex. 22 (Declaration and Expert Report of Deanna Adkins, M.D.) ¶ 27.)
 4. B.P.J.’s elementary school and middle school have both acknowledged and respect that B.P.J.’s gender identity is female. (Dkt. No. 252 (County Stip.) ¶ 1.)
 5. When B.P.J. was in elementary school, her school created a gender support plan designed to help “account[.]” for and “support[.]” B.P.J.’s “authentic gender” at school. (Ex. 1-A at 1; Ex. 2 ¶ 6; Dkt. No. 252 (County Stip.) ¶ 1.)
 6. Under this plan, school staff were informed that B.P.J.’s authentic gender is female, and were instructed to refer to her with her female name and using female pronouns. (Ex. 1-A at 2–3.)
 7. Under the gender support plan, school staff were also informed on how to support B.P.J. if she faced problems from others at school because of her gender. (Ex. 1-A at 2–3.)
 8. B.P.J.’s middle school created a similar plan. (Ex. 1-B.)

9. Like the elementary school plan, B.P.J.’s middle school gender support plan confirmed that B.P.J.’s parents are aware of and supportive of her gender identity and that B.P.J. “is comfortable with others knowing her gender identity and transition,” and provided that “all teachers,” students, and multiple administrators and county staff would be made aware of her gender identity. (Ex. 1-B at 2.)
10. Under the elementary and middle school gender support plans, if anyone has questions about B.P.J.’s identity, teachers and staff should “[b]e open and honest” and respond, “[s]he is [B.P.J.]; and that makes her happy.” (Ex. 1-A at 2; Ex. 1-B at 3.)
11. B.P.J. feels supported by her school given its commitment to treating her as the girl she is. (Ex. 2 ¶ 6; Ex. 12 at 130:3-132:13.)
12. In 2019, B.P.J. was diagnosed with gender dysphoria by Dr. Gerald Montano, a pediatrician at the University of Pittsburgh Medical Center Children’s Hospital of Pittsburgh’s Gender and Sexuality Development Program. (Ex. 1 ¶ 13; Ex. 2 ¶ 7; Ex. 20 (Deposition Transcript of Gerald Montano, D.O.) at 93:17-19; Ex. 5 (State of West Virginia’s Response to Plaintiff’s Second Set of Requests for Admission) No. 5; Ex. 6 (Superintendent Dora Stutler’s Responses and Objections to Plaintiff’s Second Set of Requests for Admission) No. 5; Ex. 7 (Harrison County Board of Education’s Responses and Objections to Plaintiff’s Second Set of Requests for Admission) No. 5.)
13. On June 15, 2020, at the first signs of puberty—known as the “Tanner 2” stage of pubertal development—B.P.J. began receiving puberty delaying (or “blocking”) treatment, in accordance with the Endocrine Society’s clinical guidelines for treating gender dysphoria. (Ex. 1 ¶ 14.)

14. B.P.J. has been on puberty delaying treatment for nearly two years. (Ex. 1 ¶ 14; Ex. 2 ¶ 8; Ex. 20 at 115:22-116:4; Ex. 19 (Deposition Transcript of Kacie Kidd, M.D.) at 89:22-90:18.)
15. “Puberty blocking treatment works by pausing endogenous puberty at whatever stage it is at when the treatment begins.” (Ex. 22 ¶ 30.)
16. When administered to transgender girls at the beginning of the “Tanner 2” stage of sexual maturity, puberty-blocking medication prevents transgender girls from experiencing levels of circulating testosterone above what is typical for non-transgender girls and women. (Ex. 24 (Expert Report and Declaration of Joshua D. Safer, M.D., F.A.C.P., F.A.C.E.) ¶ 50; Ex. 25 (Rebuttal Expert Report and Declaration of Joshua D. Safer, M.D., F.A.C.P., F.A.C.E.) ¶ 17; Ex. 22 ¶ 31.)
17. As a result of receiving puberty-delaying medication at the beginning of the “Tanner 2” stage of pubertal development, B.P.J. has not gone through her endogenous puberty and has not experienced the effects of testosterone that would be typical if she underwent her full endogenous puberty. (Ex. 22 ¶¶ 30–31; Ex. 19 at 119:22-120:15.) Specifically, she has never experienced levels of circulating testosterone above what is typical for non-transgender girls and women. (Ex. 24 ¶ 50; Ex. 25 ¶ 17; Ex. 22 ¶ 31.)
18. If B.P.J. goes on to receive gender-affirming hormone therapy, she will receive the same amount of estrogen during puberty that non-transgender girls generate endogenously and will develop the same changes to bone size, skeletal structure, pelvis shape, fat distribution, and secondary sex characteristics that are typically experienced by non-transgender girls who go through a typically female puberty. (Ex. 25 ¶ 17; Ex. 22 ¶ 43.)

II. B.P.J.’s Wishes To Participate In And Experience The Benefits Of School Sports.

19. B.P.J. has always liked running and loves playing team sports. (Ex. 2 ¶¶ 3, 13; Ex. 12 at 65:2-4, 145:15-18, 67:21-68:6.)
20. While in elementary school, she enjoyed participating in a recreational cheerleading team with other girls. (Ex. 1 ¶¶ 16–18; Ex. 2 ¶¶ 9–11; Ex. 12 at 72:21-72:22.)
21. As someone who comes from a family of runners, B.P.J. also grew up running and watching her older brothers and mother run competitively and as part of a team. (Ex. 1 ¶ 20; Ex. 2 ¶ 13.)
22. School-sponsored athletics offer a range of educational and social benefits for children and young adults, including camaraderie, cooperation, leadership, teamwork, watching out for fellow players, trust, physical fitness, perseverance, sportsmanship, and discipline. (Dkt. No. 78 (State of West Virginia’s Answer to Plaintiff’s First Amendment Complaint) (“State Ans.”) ¶ 38; Dkt. No. 131 (Lainey Armistead’s Answer to Plaintiff’s First Amended Complaint) (“Armistead Ans.”) ¶ 38; Dkt. No. 156 (West Virginia State Board of Education’s Answer to Plaintiff’s First Amendment Complaint) (“WVBOE Ans.”) ¶ 38; Dkt. No. 157 (Harrison County Board of Education’s Answer to Plaintiff’s First Amendment Complaint) (“County Ans.”) ¶ 38; Dkt. No. 158 (WVSSAC Ans.) ¶ 38; Ex. 27 (Expert Report and Declaration of Mary D. Fry, Ph.D.) ¶¶ 18, 37; Ex. 16 (Deposition Transcript of Harrison County Board of Education 30(b)(6) Designees) at 106:22-106:24, 222:9-17; Ex. 8 (West Virginia State Board of Education’s Responses to Plaintiff’s Second Set of Requests for Admission) Nos. 45–47; Ex. 17 (Deposition Transcript of WVSSAC 30(b)(6) Designee) at 113:8-11; Ex. 21 (Deposition of Lainey Armistead) at 156:17-25; Dkt. No. 95-1 (Declaration of Lainey Armistead) ¶ 27; Ex. 11 (Lainey Armistead’s

- Responses and Objections to Plaintiff's Second Set of Requests for Admission) Nos. 44–45.)
23. The benefits from school athletics can contribute to greater success in college and throughout life. (Ex. 27 ¶¶ 18, 37.)
 24. These benefits exist regardless of whether a student wins or loses. (Ex. 5 No. 47; Ex. 6 No. 47; Ex. 8 No. 47; Ex. 9 (State Superintendent W. Clayton Burch's Responses to Plaintiff's Second Set of Requests for Admission) No. 47; Ex. 10 (WVSSAC's Responses to Plaintiff's Second Set of Requests for Admission) No. 47; Ex. 11 No. 47; Ex. 27 ¶ 35).
 25. These benefits are advanced when all athletes have the opportunity to play the sport they love. (Ex. 27 ¶ 18.)
 26. Encouraging student-athletes to focus on improving their own performance and cooperation with teammates maximizes the benefits of athletics for all participants. (Ex. 27 ¶¶ 28–30, 35.)
 27. Where coaches create an environment in which student-athletes feel safe, valued, and respected, performance is improved and the benefits of sport are maximized. (Ex. 27 ¶¶ 26, 34.)
 28. Excluding students for no other reason than because they are transgender eliminates the benefits of sports for them and diminishes those benefits for all participants. (Ex. 27 ¶¶ 37–41.)
 29. B.P.J. has experienced benefits from participating in cheerleading in the past and from participating in cross-country in the 2021-22 school year. (Ex. 1 ¶¶ 17–18, 28; Ex. 2 ¶¶ 10–11, 16–18.)

30. B.P.J. hopes to continue to experience such benefits from playing on girls' teams in the future. (Ex. 2 ¶ 21.)

III. Prior To H.B. 3293, West Virginia Had A Longstanding Policy Of Sex Separation In School Sport And Did Not Categorically Bar Transgender Students From Participating.

31. Before it passed H.B. 3293, West Virginia had a general, longstanding, and unchallenged policy establishing separate school sports teams for boys and girls. *See* W. Va. Code R. § 127.

32. Almost all sports in West Virginia at the public secondary school level are separated into boys' and girls' teams. (Ex. 17 109:24-110:4.) The exceptions are cheerleading, football, baseball, wrestling, and golf. (Ex. 10 Nos. 29–30; Ex. 17 at 109:24-110:4.)

33. Cheer teams are always designated as “coed” or “mixed,” whereas football, baseball, wrestling, and golf teams are boys' teams that permit girls to play if they so desire because no separate girls' teams exist, and so are considered “mixed . . . to respond to demand.” (Ex. 17 at 104:2-105:6.)

34. In practice, cheer “almost always has boy [and girl] members,” but baseball and football are “very seldom” actually mixed. (Ex. 17 at 104:17-20.)

35. There are no co-ed teams for cross-country or track at Bridgeport Middle School or at any other public secondary school in West Virginia. (Ex. 10 Nos. 30–31.)

36. Under rules established by the West Virginia Secondary School Activities Commission (“WVSSAC”)—which were already in existence when H.B. 3293 was enacted—cisgender boys are prohibited from playing on girls' teams at the public secondary school level. (Ex. 17 at 105:4-105:16; Ex. 39 (WVSSAC000148) at § 127-2-3.8; Ex. 7 Nos. 38–39; Ex. 8 Nos. 38–39; Ex. 10 Nos. 38–39; Ex. 11 Nos. 38–39.)

37. By contrast, girls may choose to play on a boys' team if they wish to do so and no girls' team exists, as is the case with football, baseball, wrestling, and golf. (Ex. 17 104:2-105:6.)
38. West Virginia did not have a law or policy prohibiting girls who are transgender from playing on girls' teams before it passed H.B. 3293.
39. Before H.B. 3293, the WVSSAC Board of Directors had an internal policy that allowed students who are transgender to participate on teams consistent with their gender identity if the transgender student's school allowed them to participate, based on its considerations of whether that specific student's participation would impact "fair competition among high school teams." (Ex. 37 (WVSSAC000008).) Under the internal policy, if another school contested the transgender student's eligibility to play, then the Board of Directors would determine whether the student's participation threatened "competitive equity or the safety of teammates and opposing players." (*Id.*)
40. The WVSSAC received no complaints about this internal policy, and the WVSSAC is not aware of any instances of a transgender student attempting to participate under this policy. (Ex. 17 at 118:23-119:16.)
41. Since 2011, the National College Athletics Association ("NCAA") has allowed women who are transgender to participate on women's teams after completing one year of testosterone suppression. (Ex. 24 ¶ 38.)
42. In 2022, the NCAA announced that it had revised its policy to adopt a "sport-by-sport approach" that "calls for transgender participation for each sport to be determined by the policy for the national governing body of that sport, subject to ongoing review and recommendation by the NCAA Committee on Competitive Safeguards and Medical Aspects of Sports to the Board of Governors." (Ex. 24 ¶ 39.)

IV. H.B. 3293 Categorically Bans Transgender Girls And Women From Participating On Girls' And Women's Sports Teams.

43. On April 9, 2021, West Virginia passed H.B. 3293. W. Va. Code § 18-2-25d. H.B. 3293 went into effect 90 days later. *Id.*
44. H.B. 3293 categorically bans all girls who are transgender from participating in school sports from middle school through college. W. Va. Code § 18-2-25d.
45. H.B. 3293 requires that all public secondary school or college sports in West Virginia be “expressly designated” as either “males,” “females,” or “co-ed” based solely on a student’s “biological sex.” W. Va. Code §§ 18-2-25d(b), (c).
46. H.B. 3293 defines “[b]iological sex” as “an individual’s physical form as a male or female based solely on the individual’s reproductive biology and genetics at birth.” W. Va. Code § 18-2-25d(b)(1).
47. H.B. 3293 further provides that “[a]thletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.” W. Va. Code § 18-2-25d(c)(2). There is no parallel provision for boys’ teams.
48. The legislative findings for H.B. 3293 reject the notion of allowing students to play on sports teams consistent with their “gender identity,” asserting that “gender identity is separate and distinct from biological sex” and that “[c]lassifications based on gender identity serve no legitimate relationship to the State of West Virginia’s interest in promoting equal athletic opportunities for the female sex.” W. Va. Code § 18-2-25d(a)(4).
49. H.B. 3293’s definition of “biological sex” categorically excludes B.P.J. and any other transgender girl from playing sports at the middle school, high school, and collegiate levels. (Ex. 5 Nos. 24 (admitting “that H.B. 3293 prohibits Plaintiff B.P.J. from participating on

girls' athletic teams at all public secondary schools located in West Virginia”), 36–37; Ex. 6 Nos. 36–37; Ex. 7 Nos. 20–22, 36–37; Ex. 8 Nos. 36–37; Ex. 9 Nos. 20–22, 36–37; Ex. 10 Nos. 36–37; Ex. 11 Nos. 36–37; Dkt. No. 252 (County Stip.) ¶ 2; Dkt. No. 270 (WVBOE Stip.) ¶ 2; Ex. 16 at 100:21-101:4; Ex. 17 at 113:16-20; Ex. 28 (Deposition Transcript of Mary D. Fry, Ph.D.) 180:18-20 (Q. [from Attorney David Tryon] Well, right now the rule is HB-3293, which says that [a] transgender girl must participate on the boys['] team..))

50. H.B. 3293 does not prohibit a cisgender girl at any public secondary school in West Virginia from joining a girls' athletic team. (Ex. 5 Nos. 34–35; Ex. 6 Nos. 34–35; Ex. 7 Nos. 34–35; Ex. 8 Nos. 34–35; Ex. 9 Nos. 34–35; Ex. 10 Nos. 34–35; Ex. 11 Nos. 34–35; Ex. 16 at 100:2-101:4; Ex. 18 (Deposition Transcript of State Board of Education 30(b)(6) Designee) at 124:11-25, 125:3-19.)
51. Melissa White, counsel for the House of Delegates Education Committee, referred to H.B. 3293 as a “[t]ransgender participation in secondary schools bill” (Ex. 40 (WVSBOE 000008).)
52. Melissa White also described the bill as a “[t]ransgender originating bill” (Ex. 40 (WVSBOE000039)) and a “bill regarding transgender participation in sports” (Ex. 40 (WVSBOE000009).)
53. During debates over the bill, when asked how H.B. 3293 would change the status quo in West Virginia, the counsel representing the bill replied that the bill “would affect those that changed their sex after birth” and further explained that H.B. 3293 “would not affect” a man who was assigned a male sex at birth. (Ex. 35 (West Virginia House of Delegates Education Committee Testimony, Mar. 18, 2021) at 9.)

54. A member of the West Virginia House of Delegates and Chairman of the Education Committee, Joe Ellington, described the “issue” that H.B. 3923 was designed to address as “two transgender girls” who “were allowed to compete in state track and field meetings in Connecticut.” (Dkt. No. 1-1 (Declaration of Loree Stark) Ex. D (West Virginia House of Delegates, Mar. 25, 2021) at 3; Dkt. No 25 (Supplemental Declaration of Katelyn Kang) Ex. C at 37–38.)
55. During the debate in the Senate, one senator, Michael J. Maroney, expressly noted that “the bill” is “about transgenders.” (Dkt. No. 1-1 (Declaration of Loree Stark) Ex. E (West Virginia Senate, Apr. 8, 2021) at 2; Dkt. No. 25 (Supplemental Declaration of Katelyn Kang) Ex. F at 32.)
56. Another senator, Rollan Roberts, shared a constituent letter stating that the “trans movement is an attack upon womanhood.” (Dkt. No. 1-1 (Declaration of Loree Stark) Ex. E (West Virginia Senate, Apr. 8, 2021) at 3; Dkt. No. 25 (Supplemental Declaration of Katelyn Kang) Ex. F at 32.)
57. On March 16, 2021, Delegate Jordan Bridges announced on Facebook that he was co-sponsoring H.B. 3293 and then “liked” comments on his post that advocated for physical violence against girls who are transgender, compared girls who are transgender to pigs, and called girls who are transgender by a pejorative term (“tranny”). (Ex. 42 (Jordan Bridges, “Update: The bill passed out of committee,” Facebook, <https://perma.cc/HA5C-VJ4N> (March 16, 2021)).)
58. The sole justification for H.B. 3293 offered in the legislative text is “promot[ing] equal athletic opportunities for the female sex.” W. Va. Code § 18-2-25d(a)(5). The law discusses

equal athletic opportunities only in terms of the “substantial” displacement of female athletes. *Id.* § 18-2-25d(a)(3)-(4).

59. During the discovery period, the State identified additional rationalizations that it claims are advanced by H.B. 3293: (1) “[t]o [p]rotect [w]omen’s [s]ports,” (2) “[t]o follow Title IX,” and (3) “[t]o protect women’s safety in female athletic sports.” (Ex. 4 (State of West Virginia’s Responses to Plaintiff’s First Set of Interrogatories) No. 6.)
60. During a House committee hearing of the bill, Sarah Stewart from the West Virginia Department of Education testified that her office had never received any calls or complaints about transgender students participating in athletics. (Ex. 35 at 11.)
61. The bill’s sponsors also acknowledged that they were not aware of a single instance of a transgender athlete having ever competed on a secondary school or higher education sports team in West Virginia, let alone any “problem” from such participation. (Dkt. No. 1-1 (Declaration of Loree Stark) Ex. B (West Virginia House of Delegates Education Committee, Mar. 18, 2021) at 1–2, Ex. C (West Virginia House of Delegates Judiciary Committee, Mar. 18, 2021) at 1, Ex. D (West Virginia House of Delegates, Mar. 25, 2021) at 1.)
62. When Governor Justice was asked after signing the bill whether he could give “one example of a transgender child trying to get an unfair advantage,” he responded, “No, I can’t really tell you one.” Ex. 43 (MSNBC on Twitter, <https://twitter.com/MSNBC/status/1388132937707802629> [<https://perma.cc/G8VM-QGYU>] (April 30, 2021).) He further indicated that the issue purportedly addressed by H.B. 3293 was not a priority for him, stating, “I didn’t make it a priority. It wasn’t my bill. . . . This is not like it’s a big priority to me. . . . I think we only have 12 kids maybe in our state that are transgender-type kids. I

mean, for crying out loud . . . I sign hundreds of bills, hundreds of bills. This is not a priority to me.” (*Id.*)

63. Defendants were not aware of any transgender student athletes participating on an athletic team offered by a public secondary school in West Virginia when H.B. 3293 was passed. (Defendants’ Responses to Plaintiff’s Second Set of Requests for Admission Nos. 40–41.)
64. Defendants are not currently aware of a transgender student athlete other than B.P.J. participating on an athletic team offered by Bridgeport Middle School or any other public secondary school in West Virginia. (Ex. 5 Nos. 42–43; Ex. 6 Nos. 42–43; Ex. 7 Nos. 42–43; Ex. 8 Nos. 42–43; Ex. 9 Nos. 42–43; Ex. 10 Nos. 42–43; Ex. 11 Nos. 42–43; Ex. 17 at 119:13-16.)
65. WVSSAC has not received any complaints about transgender students participating in school sports in West Virginia. (Ex. 17 at 120:9-15.)
66. The West Virginia Department of Education’s General Counsel described H.B. 3293 as “much ado about nothing.” (Ex. 40 (WVSBOE000006).)
67. The West Virginia Department of Education did not support H.B. 3293 when it was passed. (Ex. 41 (WVSBOE000038).)
68. The State Board’s 30(b)(6) witness testified that the Board had “not had an issue” and “didn’t see an issue” regarding the participation of transgender girls in school sports, and that the Department of Education, State Board, and State Superintendent have never received any complaints regarding students who are transgender participating in school sports. (Ex. 18 at 67:3-10, 101:15-17, 102:12-13, 113:19-114:16, 125:24-126:2, 135:24-136:19).

69. The West Virginia Department of Education and the State Superintendent still do not support H.B. 3293. (Dkt. No. 270 (WVBOE Stip.) ¶ 5.)
- V. **H.B. 3293’s Exclusive Reliance On “Biological Sex” And Categorical Bar To The Participation Of Transgender Women And Girls Is A Stark Departure From The Inclusive Policies Of Major Sporting Associations.**
70. H.B. 3293 classifies school sports teams “according to biological sex” and defines “biological sex” as “an individual’s physical form as male or female based solely on the individual’s reproductive biology and genetics at birth.” W. Va. Code § 18-2-25d(a)(5), (b)(1).
71. Scientists recognize that a person’s sex encompasses different biological components, including sex chromosomes, certain genes, gonads, exposure to sex hormone, internal and external genitalia, and other secondary sex characteristics, which are not always aligned in the same direction. (Ex. 25 ¶¶ 5–6 (and sources cited therein)); Ex. 23 (Exhibit 4 to Deposition Transcript of Deanna Adkins, M.D. (Hembree WC, et al. Endocrine Treatment of Gender Dysphoria/Gender Incongruent Persons: An Endocrine Society Clinical Practice Guideline. *J Clin Endocrinol Metab* 2017; 102:3869-3903 (“Endocrine Society Guidelines 2017”) at 3875)).)
72. Although the precise biological causes of gender identity are unknown, gender identity itself has biological underpinnings, possibly as a result of variations in prenatal exposure to sex hormones, gene sequences, epigenetics, or a combination of factors. (Ex. 25 ¶ 6 (and sources cited therein); Ex. 23 (Endocrine Society Guidelines 2017 at 3874–75).)
73. H.B. 3293’s requirement that teams be separated “based solely on the individual’s reproductive biology and genetics at birth” is a stark departure from the prior policy in West Virginia and is not the rule used by elite sporting organizations.

74. The NCAA, World Athletics, and the International Olympic Committee (“IOC”) all permit transgender girls and women to compete in women’s sport events after suppressing their levels of testosterone for particular periods of time or below particular thresholds. (Dkt. No. 78 (State Ans.) ¶ 42; Dkt. No. 131 (Armistead Ans.) ¶ 42; Dkt. No. 156 (WVBOE Ans.) ¶ 42; Dkt. No. 157 (County Ans.) ¶ 42; Dkt. No. 158 (WVSSAC Ans.) ¶ 42; Ex. 24 ¶¶ 27–39.)
75. The NCAA’s policy is described above. *See supra* ¶¶ 41–42. The NCAA policy aims to “preserve[] opportunity for transgender-student athletes.” (Ex. 45 (NCAA, *Board of Governors updates transgender participation policy* (Jan. 19, 2022), <https://www.ncaa.org/news/2022/1/19/media-center-board-of-governors-updates-transgender-participation-policy.aspx>.)
76. Since 2011, World Athletics, the international governing body for track-and-field athletics, has required that women with elevated levels of circulating testosterone lower their levels of testosterone below a threshold amount in order to compete in elite international women’s sports competitions. (Ex. 24 ¶ 27.)
77. In 2019, World Athletics adopted regulations allowing women who are transgender to participate in elite international women’s sports competitions if their total testosterone level in serum is beneath a particular threshold—5 nmol/L—for at least one year before competition. (Ex. 24 ¶ 29.)
78. The IOC published formal eligibility rules for the participation of transgender women in 2003. Those rules required that transgender women athletes could compete in women’s events only if they had genital surgery, a gonadectomy (*i.e.*, removal of the testes), and legal documentation of female sex. (Ex. 24 ¶ 31.)

79. In 2015, the IOC adopted new policies allowing women who are transgender to participate on women's teams if they demonstrated that their total testosterone level in serum was below 10 nmol/L for at least one year prior to competition. (Ex. 24 ¶ 33.)
80. In 2021, the IOC adopted a new "Framework on Fairness, Inclusion, and Non-Discrimination on the Basis of Gender Identity and Sex Variations," which replaces the 2015 guidance. (Ex. 24 ¶ 34.)
81. Unlike the IOC's 2003 and 2015 policies, the IOC's 2021 framework does not attempt to adopt a single set of eligibility standards for the participation of transgender athletes that would apply universally to every IOC sport. Instead, the 2021 framework provides a set of governing principles for sporting bodies to follow when adopting eligibility rules for their particular sport. (Ex. 24 ¶ 35.)
82. Under the 2021 framework, "[n]o athlete should be precluded from competing or excluded from competition on the exclusive ground of an unverified, alleged or perceived unfair competitive advantage due to their sex variations, physical appearance and/or transgender status." (Ex. 24 ¶ 36.) "Until evidence . . . determines otherwise, athletes should not be deemed to have an unfair or disproportionate competitive advantage due to their sex variations, physical appearance and/or transgender status." (Ex. 24 ¶ 36.)
83. The 2021 framework further provides that "[a]ny restrictions arising from eligibility criteria should be based on robust and peer reviewed research that: (a) demonstrates a consistent, unfair, disproportionate competitive advantage in performance and/or an unpreventable risk to the physical safety of other athletes; (b) is largely based on data collected from a demographic group that is consistent in gender and athletic engagement with the group that the eligibility criteria aim to regulate; and (c) demonstrates that such

disproportionate competitive advantage and/or unpreventable risk exists for the specific sport, discipline and event that the eligibility criteria aim to regulate.” (Ex. 24 ¶ 37.)

84. USA Swimming recently adopted a policy allowing girls and women who are transgender to apply to compete in elite events if they demonstrate that their “prior physical development . . . as mitigated by any medical intervention, does not give the athlete a competitive advantage over the athlete’s cisgender [f]emale competitors” and they “demonstrate[] that the concentration of testosterone in the athlete’s serum has been less than 5 nmol/L . . . continuously for a period of at least thirty-six (36) months before the date of the Application.” (Ex. 29 (Declaration of Gregory A. Brown, P.H.D., F.A.C.S.M.) ¶ 177.)
85. A person’s genetic makeup and internal and external reproductive anatomy are not useful indicators of athletic performance and have not been used in elite competition for decades. (Ex. 24 ¶ 49.)
86. Some people with 46,XY chromosomes may have inactive testosterone receptors (a syndrome called “complete androgen insensitivity syndrome, CAIS”) which means they do not respond to testosterone despite very high levels. (Ex. 24 ¶ 26(b).)
87. Usually, people with CAIS have female gender identity and have external genitalia that are typically female. They do not develop the physical characteristics associated with typical male puberty. (Ex. 24 ¶ 26(b).)
88. It has long been recognized that women with CAIS do not have an athletic advantage over other women simply by virtue of having XY chromosomes. (Ex. 24 ¶ 59.)
89. There is a medical consensus that the largest known biological cause of average differences in athletic performance between non-transgender men as a group and non-transgender

women as a group is circulating testosterone beginning with puberty. (Ex. 24 ¶ 25; Ex. 25 ¶ 8; Ex. 29 ¶ 114 (“While boys exhibit some performance advantage even before puberty, it is both true and well known to common experience that the male advantage increases rapidly, and becomes much larger, as boys undergo puberty and become men.”).)

90. Before puberty, boys and girls typically have the same levels of circulating testosterone, and age-grade competitive sports records show only modest differences in athletic performance between non-transgender boys and non-transgender girls. (Ex. 24 ¶¶ 24–25; Ex. 26 (Exhibit 4 to Deposition Transcript of Joshua D. Safer (Handelsman 2018 (“Age-grade competitive sports records show minimal or no female disadvantage prior to puberty[.]”))); Ex. 26 ¶ 114 (describing differences as “modest”).)
91. There have been no studies purporting to establish that any modest differences in athletic performance between pre-pubertal cisgender boys and pre-pubertal cisgender girls are attributable to innate physiology as opposed to social factors. (Ex. 30 (Deposition Transcript of Gregory A. Brown) at 94:19-23; Ex. 25 ¶ 9.)
92. H.B. 3293 does not provide for any consideration of circulating testosterone levels. W. Va. Code § 18-2-25d.

VI. H.B. 3293 Harms B.P.J.

93. Under H.B. 3293, B.P.J. is forbidden from playing on a girls’ team at Bridgeport Middle School, or on a girls’ athletic team at any public secondary school in West Virginia. (Ex. 5 Nos. 20-24; Ex. 6 Nos. 20-24; Ex. 7 Nos. 20-24; Ex. 8 Nos. 20-24; Ex. 9 Nos. 20-24; Ex. 10 Nos. 20-24; Ex. 11 Nos. 20-24; Dkt. No. 252 (County Stip.) ¶ 2; Dkt. No. 270 (WVBOE Stip.) ¶ 2.)

94. In May 2021, B.P.J.’s mother, Heather Jackson, met with B.P.J.’s new Principal at Bridgeport Middle School, David Mazza, regarding a gender support plan for B.P.J., which specified the ways the school would support B.P.J. as a girl. (Ex. 1 ¶ 23; Ex. 16 at 95:25-96:6).
95. At that same meeting, Ms. Jackson informed Principal Mazza that B.P.J. wanted to participate on the girls’ cross-country team. (Ex. 1 ¶ 24; Ex. 1-B at 5; Ex. 14 (Deposition Transcript of Heather Jackson (Jan. 20, 2022)) at 250:14-252:7; Ex. 16 at 220:2-16.) In response to Ms. Jackson’s statement, Principal Mazza communicated to Ms. Jackson that B.P.J. would not be able to run on the girls’ cross-country team because of H.B. 3293. (Ex. 1 ¶ 24; Ex. 12 at 129:21-130:2, 106:16-21, 107:3-11; Ex. 13 at 21:22-22:16; Ex. 14 at 250:8-251:12; Ex. 16 at 220:19-22; Dkt. No. 157 (County Ans.) ¶¶ 63–65.)
96. B.P.J. “just want[s] the opportunity to participate in school sports like any other girl.” (Ex. 2 ¶ 21.)
97. Forcing B.P.J. to run on the boys’ team would be stigmatizing, isolating, hurtful, and devastating for her. (Ex. 1 ¶¶ 30–31; Ex. 2 ¶¶ 14–16, 21.)
98. According to B.P.J., “[Being a girl] means—it means everything.” (Ex. 12 29:24-30:5.) “I am not a boy. I do not want to run with the boys when there is a girls’ team and I should not have to run with the boys when there is a girls’ team.” (Ex. 2 ¶ 15; *see also* Ex. 12 at 120:24-121:4.)
99. According to B.P.J., “[r]unning with the girls means a lot to me because I am a girl, and I should be treated like a girl, just like all my friends who are girls. If I did not get to participate in cross-country or track, I would have missed out on the opportunity to spend time with my friends and grow with a new team.” (Ex. 2 ¶ 16.) “It is so upsetting and

hurtful that some people want to take that chance away from me and treat me differently from everyone else just because I am transgender.” (Ex. 2 ¶ 21.)

100. According to B.P.J.’s mother, “[i]t is wrong and senseless to try to make [B.P.J.] participate on boys’ teams when there are girls’ teams available. Forcing B.P.J. to compete on the boys’ cross-country or track teams when girls’ teams are available would completely erase who she is, and it would devastate her because she is a girl.” (Ex. 1 ¶ 30.) “Forcing her to run with the boys is a clear sign to her and others that the state refuses to see her and accept her for the girl that she is.” (Ex. 1 ¶ 31.)

101. B.P.J. does not have the option of running on a co-ed team, as there is no co-ed cross-country or track team at Bridgeport Middle School or at any other public secondary school in West Virginia. (Ex. 10 Nos. 30–31.)

102. Preventing B.P.J. from playing sports with other girls will deprive B.P.J. of experiences of competition, friendship, and responsibility that come from participation in school sports. (Ex. 1 ¶¶ 28, 31; Ex. 2 ¶¶ 10–11, 14, 16–18.)

103. It is hurtful and frustrating for B.P.J. to be denied the opportunity to play on girls’ sports teams, and to be treated differently because she is transgender. (Ex. 2 ¶¶ 14, 21.)

104. Allowing Defendants to enforce H.B. 3293 against B.P.J. would send a signal to B.P.J. that her state refuses to see her for the girl that she is. (Ex. 1 ¶ 31.)

VII. B.P.J.’s Lawsuit Challenges Her Exclusion From Girls’ Sports Under H.B. 3293.

105. B.P.J. filed this lawsuit on May 26, 2021, arguing that H.B. 3293 as applied to her violates Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, and the Equal Protection Clause of the United States Constitution. (Dkt. No. 1 (Complaint).)

106. B.P.J.’s Title IX claim is pleaded against the State of West Virginia, the State Board of Education, the County Board of Education, and the WVSSAC. (Dkt. No. 64 (First Amended Complaint) at 20.)
107. B.P.J.’s Equal Protection Clause claim is pleaded against State Superintendent W. Clayton Burch, County Superintendent Dora Stutler, and the WVSSAC. (Dkt. No. 64 (First Amended Complaint) at 22; Dkt. No. 127 (Order dismissing without prejudice B.P.J.’s equal protection claim against the Attorney General in his official capacity).)
108. The Harrison County Board of Education is the governing body of Harrison County’s public education system. W. Va. Code § 18-5-1. The County Superintendent is responsible for executing educational policies under the direction of the State Board and County Board, including interscholastic athletics. W. Va. Code § 18-4-10.
109. “[A]bsent an injunction, the County Board and County Superintendent would be compelled and required to enforce H.B. 3293 against B.P.J.” (Dkt. No. 252 (County Stip.) at ¶¶ 3–4.) The County Board and County Superintendent’s role in enforcing the law is “mandatory, not merely optional.” (Dkt. No. 73 (Harrison County Board of Education’s Memo in Support of Motion to Dismiss First Amended Complaint) at 2, 6; *see also* Ex. 16 at 44:15-45:12, 145:1-145:5.)
110. “Absent an injunction by a court,” the State Board and Superintendent Burch “would be compelled and required to follow H.B. 3293” and the State Board “would be compelled and required to promulgate rules implementing H.B. 3293.” (Dkt. No. 270 (WVBOE Stip.) ¶¶ 3–4; *see also* Ex. 18 at 118:1-3.)

111. Without an injunction, the WVSSAC “cannot adopt or enforce any policy” allowing girls who are transgender to participate on girls’ sports teams that “conflicts with state law.” (Ex. 10 No. 50.)
112. The State Board is federally funded. (Dkt. No. 156 (WVBOE Ans.) ¶ 90; *see also* Ex. 18 at 39:19-40:3.)
113. The County Board is federally funded. (Dkt. No. 157 (County Ans.) ¶ 90; *see also* (Dkt. No. 252 (County Stip.) ¶ 8); Ex. 7 No. 66).)
114. The State Board has a duty to control, supervise, regulate, and/or enforce rules related to interscholastic athletic events in West Virginia. *See* W. Va. Code § 18-2-25; (Ex. 18 at 35:22-24.)
115. The County Board has a duty to control, supervise, regulate, and/or enforce rules related to interscholastic athletic events in West Virginia. *See* W. Va. Code §§ 18-2-25, 18-5-13; (Ex. 16 at 53:24-54:10.)
116. WVSSAC was given controlling authority over federally funded secondary school athletic programs by the State and County Boards. W. Va. Code § 18-2-25; (Ex. 39 (WVSSAC000133-38) (outlining the WVSSAC’s powers over secondary schools and their athletics)).
117. WVSSAC member schools must follow WVSSAC’s rules and regulations when “conducting interscholastic athletic[s]” (Ex. 39 (WVSSAC0000134)) and when determining whether a student is eligible to play secondary school sports. (Ex. 17 at 73:4-73:8.)

118. WVSSAC's Board of Directors has "the power to decide all cases of eligibility of students and participants in interscholastic athletic[s]." (Ex. 39 (WVSSAC000138); *see also* Ex. 17 at 61:25-62:13.)

119. WVSSAC's athletic handbook provides that it must comply with Title IX. (Ex. 38 (WVSSAC000017).)

VIII. This Court's Preliminary Injunction Allowed B.P.J. To Participate On Her School's Girls' Cross-Country And Track Teams, All Without Incident.

120. After this Court issued its preliminary injunction on July 21, 2021, B.P.J. was permitted to participate on Bridgeport Middle School's girls' cross-country team. (Ex. 5 No. 6; Ex. 6 No. 6; Ex. 7 No. 6; Ex. 8 No. 6; Ex. 9 No. 6; Ex. 10 No. 6; Ex. 11 No. 6.)

121. B.P.J. participated in the Mountain Hollar MS Invitational meet and the Doddridge Invitational meet while she was on the cross-country team. (Ex. 1 ¶ 27.)

122. In the Mountain Hollar Invitational, B.P.J. placed 51 out of 66 participants. (Ex. 1 ¶ 27; Ex. 33 (Mountain Hollar Invitational Stats).)

123. In the Doddridge Invitational meet, B.P.J. placed 123 out of 150 participants. (Ex. 1 ¶ 27; Ex. 34 (Doddridge Invitational Stats, HCBOE_1167-HCBOE_1168).)

124. According to B.P.J.: "My first cross-country season was awesome, and I felt supported by my coaches and the other girls on the team. I made so many new friends and loved competing with and supporting my teammates. We learned about teamwork, having a positive attitude, and how to have fun while being competitive." (Ex. 2 ¶ 18.)

125. In Spring 2022, B.P.J. tried out for, made, and began running on the girls' track team at Bridgeport Middle School. (Ex. 3 (Plaintiff's Second Set of Supplemental Responses and Objections to State of West Virginia's First Set of Interrogatories and Requests for Production) No. 9.)

126. B.P.J. was “ecstatic” to learn she qualified for the track team and “look[s] forward to many more years of running with [her] peers.” (Ex. 2 ¶¶ 20–21.)
127. There were no complaints associated with B.P.J.’s participation on Bridgeport Middle School’s girls’ cross-country team. (Dkt. No. 252 (County Stip.) ¶ 5; Ex. 5 No. 9; Ex. 6 No. 9; Ex. 7 No. 9; Ex. 8 No. 9; Ex. 9 No. 9; Ex. 10 No. 9; Ex. 11 No. 9.)
128. No student was cut from or otherwise not permitted to participate on the cross-country team as a result of B.P.J.’s participation. (Dkt. No. 252 (County Stip.) ¶ 6.)
129. Defendant-Intervenor could not identify “any specific fairness issue” related to B.P.J.’s participation in girls’ cross-country at her middle school. (Ex. 21 at 143:14-20.)
130. Defendant-Intervenor responded, “I don’t know,” when asked whether she “object[ed] to B.P.J. playing on the Bridgeport Middle School girls’ cross-country team.” (Ex. 21 170:13-170:22.)
131. Girls and women who are transgender have competed in a wide range of contact and collision sports in high school and college, including basketball, soccer, volleyball, softball, lacrosse, and women’s tackle football, without any reported injuries to cisgender girls. (Ex. 31 (Declaration of Dr. Chad T. Carlson, M.D., F.A.C.S.M.) at 1; Ex. 32 (Deposition Transcript of Dr. Chad T. Carlson) at 124:6-125:4, 154:12-156:16.)
132. There are significant variations in height, weight, and muscle mass within the population of cisgender girls, and within the population of cisgender boys, such that student athletes all the time play with or compete against students who are bigger, faster, and/or stronger than them, whether they are participating in single sex or co-ed teams. (Ex. 25 at 12 ¶ 27; Ex. 28 at 49:19-50:5, 51:18-22, 52:16-24, 189:13-19.)

133. Any safety considerations attendant to differences in height, weight, and muscle mass are already addressed in West Virginia secondary schools through even-handed rules and the use of proper equipment. (Ex. 16 at 164:3-14, 228:14-22.)
134. Any actual safety concerns attendant to girls who are transgender playing on girls' sports teams "can be addressed through even-handed rules instead of discriminating based on transgender status." (Ex. 25 at ¶ 4(d).)
135. Defendant-Intervenor could not identify any safety concern resulting from B.P.J.'s participation on her middle school girls' cross-country team. (Ex. 21 at 139:25-140:4, "Q: . . . What is the safety concern for middle school cross-country and B.P.J. participating on the girls' team? . . . THE WITNESS: I don't know.")
136. The State does not know of any middle school girl who was physically harmed by B.P.J.'s participation on the Bridgeport Middle School girls' cross-country team. (Ex. 5 No. 10.)
- IX. Lainey Armistead Will Graduate West Virginia State University In May 2022.**
137. Defendant-Intervenor Lainey Armistead will graduate from West Virginia State University in May 2022. (Ex. 22 at 67:21-25.)

Dated: April 21, 2022

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

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

Plaintiff,

v.

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

Defendants,

and

LAINY ARMISTEAD,

Defendant-Intervenor.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, Loree Stark, do hereby certify that on this 21st day of April, 2022, I electronically filed a true and exact copy of the *Statement of Undisputed Material Facts* with the Clerk of Court and all parties using the CM/ECF System.

/s/ Loree Stark

Loree Stark
West Virginia Bar No. 12936

Exhibit 47

TRANSGENDER POLICY

WVSSAC BOARD OF DIRECTORS

In the event a member school, or its governing authority, determines to permit transgender students to participate in interscholastic athletics, the WVSSAC has adopted the following policy to govern such participation:

I.

Definitions

Transgender Student – a student whose gender identity differs from the student's assigned sex at birth.

Gender Identity – a person's deeply-felt internal sense of being male or female.

II.

WVSSAC Transgender Student Policy

A Transgender Student shall be eligible to participate in interscholastic athletics in a manner consistent with a member school policy that meets the minimum standards designated by the WVSSAC Board of Directors policy.

The WVSSAC Board of Directors has designated the following as the minimum standards a member school must consider when determining whether a transgender student may participate in interscholastic athletics in a particular sport. A separate determination shall be made by the member school for each sport in which the student seeks to participate.

1. The transgender student's school shall make the initial determination as to whether a student may participate in interscholastic athletics in a gender that does not match the gender assigned to him or her at birth. When determining whether a transgender student is eligible to participate in interscholastic athletics in a manner consistent with the student's gender identity a member school must consider the following:
 - a. Whether the student is a "transgender student" as determined based upon applicable regulations and policies of the member school or its governing authority.
 - b. Whether the student meets all applicable academic and enrollment eligibility requirements.
 - c. Whether fair competition among high school teams would be impacted by the student's participation.
2. The determination of a student's gender assignment for interscholastic athletics shall remain in effect for the duration of the student's high school eligibility.
3. Any member school may appeal the eligibility of a transgender student on the grounds that the student's participation in interscholastic athletics would adversely affect competitive equity or safety of teammates or opposing players.
 - a. Any such appeal will be heard by the WVSSAC Board of Directors.
 - b. The identity of the student shall remain confidential. All discussion and documentation will be kept confidential and the proceedings will also be confidential unless the student and family make a specific request otherwise.
 - c. The WVSSAC Board of Directors will not consider whether the school has properly determined the student's sex assignment. The board's deliberations will be limited to the question of whether the transgender student represents a threat to competitive equity or the safety of teammates or opposing players. Factors to be considered will include, but not be limited to, the age of the student; the athletic experience of the student; the degree to which the student presents a risk of harm to other competitors due to his or her strength, size, or speed; the nature of the sport; and the degree to which fair competition among high school teams would be impacted by the student's participation.

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

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

Plaintiff,

v.

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

Defendants,

and

LAINY ARMISTEAD,

Defendant-Intervenor.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO
RECONSIDER THE GRANT OF LAINY ARMISTEAD'S
PERMISSIVE INTERVENTION**

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INTRODUCTION AND BACKGROUND

Lainey Armistead's status as Defendant-Intervenor in this case is no longer appropriate. Ms. Armistead sought to intervene on the premise that, as a female athlete in West Virginia, she has a significant interest that could be affected by this litigation; that she would not burden or prejudice the proceedings; and that she would offer legal arguments different from those advanced by the named Defendants. (Dkt. No. 95 (Memo. ISO Mot. to Intervene).) This Court granted her motion, finding that "Ms. Armistead plans to defend H.B. 3293 as a member of the class of people for whom the law was written" and so "will add a perspective not represented by any of the current defendants"; that she "will not significantly add to the parties' discovery burdens"; and that she would make "several arguments . . . that will differ from those of the current defendants." (Dkt. No. 130 (Intervention Order) at 6.) Since the Court issued its order, however, changed circumstances have nullified the first consideration, and the realities of the case's litigation have disproved the second and third.

Critically, Ms. Armistead is no longer "a member of the class of people for whom the law was written." She graduated from West Virginia State University ("WVSU") in May 2022 and will soon move to Florida to attend law school, where she has no plans to play on a scholastic women's soccer team. (Dkt. No. 300 (Supp. Armistead Decl.) at 5 ¶¶ 5-7.) Even before this development, when she was still a West Virginia student athlete, her briefing barely made any mention of her personal perspective. In addition, Ms. Armistead's conduct during the discovery period prejudiced Plaintiff, and, despite her promise to do so, she has not offered the Court any legal arguments in support of H.B. 3293 that are not also advanced by Defendant State of West Virginia ("State").

Ms. Armistead suggests that because she “is already a party to this case,” she is entitled to continue to participate in this action. (Dkt. No. 302 (Int. MSJ Opp.) at 25–26.) But intervention does not signify “absolute entitlement to continue as a party until termination of the suit.” *Morgan v. McDonough*, 726 F.2d 11, 14 (1st Cir. 1984). Courts can and do revisit decisions granting intervention when circumstances change or predicted facts are not borne out. This Court should re-examine its order granting Ms. Armistead’s permissive intervention and rescind her status as Defendant-Intervenor.

LEGAL STANDARD

Federal Rule of Civil Procedure 54(b) provides that “any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.” “Motions for reconsideration of interlocutory orders are not subject to the strict standards applicable to motions for reconsideration of a final judgment,” and “a district court retains the power to reconsider and modify its interlocutory judgments . . . at any time prior to final judgment when such is warranted.” *Am. Canoe Ass’n v. Murphy Farms, Inc.*, 326 F.3d 505, 514–15 (4th Cir. 2003). That power includes the ability to reconsider orders granting intervention. *See, e.g., Mallory v. Eyrich*, 922 F.2d 1273, 1282 (6th Cir. 1991) (“If the plaintiffs should seek reconsideration of the order granting intervention, the district court has authority to reexamine the question of intervention of right, hold whatever hearings it deems advisable, and redetermine the issue in light of its findings and conclusions.”).¹

¹ An order granting a motion to intervene is interlocutory in nature. *See Acceptance Indem. Ins. Co v. Se. Forge, Inc.*, 209 F.R.D. 697, 701 (M.D. Ga. 2002) (citation omitted).

The power to reconsider an interlocutory order “is committed to the discretion of the district court.” *Penn. Higher Edu. Assistance Agency v. Hoh*, No. 14 Civ. 748, 2016 WL 815287, at *4 (S.D. W.Va. Feb. 29, 2016) (citing *Am. Canoe Ass’n*, 326 F.3d at 515). “[A] court may revise an interlocutory order under the same circumstances in which it may depart from the law of the case: (1) a subsequent trial producing substantially different evidence; (2) a change in applicable law; or (3) clear error causing manifest injustice.” *Carlson v. Bos. Sci. Corp.*, 856 F.3d 320, 325 (4th Cir. 2017) (cleaned up); *see also Sutphin v. Ethicon, Inc.*, No. 14 Civ. 1379, 2020 WL 5269409, at *1 (S.D. W.Va. Sept. 3, 2020) (Goodwin, J.) (similar); *Pinney v. Nokia, Inc.*, 402 F.3d 430, 452 (4th Cir. 2005) (noting that “newly discovered (material) evidence” can support reconsideration). “Compared to motions to reconsider *final* judgments pursuant to Rule 59(e)[,] . . . Rule 54(b)’s approach involves broader flexibility to revise *interlocutory* orders before final judgment as the litigation develops and new facts or arguments come to light.” *Carlson*, 856 F.3d at 325.

In the context of intervention, if an intervenor’s “participation fails to produce expected benefits, causes unexpected delays or problems, unnecessarily expands the case, or otherwise interferes with or complicates resolution of the issues, the [c]ourt may re-examine its decision.” *City of Greensboro v. Guilford Cnty. Bd. of Elections*, No. 15 Civ. 559, 2015 WL 12752936, at *1 n.1 (M.D.N.C. Oct. 30, 2015); *see also Illinois v. City of Chicago*, No. 17 Civ. 6260, 2018 WL 3920816, at *11 n.5 (N.D. Ill. Aug. 16, 2018) (“[I]f the assumptions about the future course of this litigation . . . should turn out to be radically incorrect, nothing in the rules or the case law . . . would prevent re-examination of the matter of intervention.”).

Here, reconsideration is warranted “to account for new evidence,” *Sutphin*, 2020 WL 5269409, at *1, as well as the resulting “problems” and the absence of “expected benefits” from

Ms. Armistead’s participation, *City of Greensboro*, 2015 WL 12752936, at *1 n.1—namely, Ms. Armistead’s graduation from WVSU and her imminent departure from West Virginia, the record of discovery complications created by Ms. Armistead’s participation, and the fact that Ms. Armistead did not make arguments different from those of the named Defendants.

ARGUMENT

This Court should reconsider its order granting Ms. Armistead’s status as Defendant-Intervenor for three reasons: (1) Ms. Armistead’s recent graduation nullifies her asserted interests and claimed added value to this case; (2) Ms. Armistead’s participation in this case as Defendant-Intervenor unduly complicated discovery and her continued participation in this proceeding will further consume court and party resources; and (3) Ms. Armistead has not presented the Court with distinct arguments in defense of H.B. 3293.

I. Ms. Armistead No Longer Has A Significantly Protectable Interest At Stake And Does Not Provide A Unique Perspective.

A. Ms. Armistead Graduated From WVSU In May 2022.

Ms. Armistead justified her request for intervention based on her status as a female athlete in West Virginia whose “ability to compete” would be affected by an injunction against H.B. 3293. (Dkt. No. 95 (Memo. ISO Mot. to Intervene) at 7; *see also id.* at 8 (“Armistead has a substantial legal interest in ensuring her equal opportunity to compete in collegiate athletics.”); *id.* at 9 (“This litigation could eviscerate Armistead’s ability to compete fairly and safely and to participate in a system designed to protect women.”); *id.* at 10 (“Were the Sports Act facially invalidated, Armistead would be stripped of her legal protections under the Act.”).) Consistent with those representations, this Court, in its Order allowing Ms. Armistead to permissively intervene, stated, “Ms. Armistead plans to defend H.B. 3293 as a member of the class of people for whom the law

was written. She will add a perspective not represented by any of the current defendants.” (Dkt. No. 130 (Intervention Order) at 6.)

Facts have since changed. Ms. Armistead submitted an application to graduate from WVSU sometime before March 25, 2022 (*see* Dkt. No. 289-22 (Armistead Dep. Tr.) at 67:22-23) and graduated earlier this month (Dkt. No. 300 (Supp. Armistead Decl.) at 5 ¶ 5.) She will begin law school in Florida in August 2022. (*Id.* at 5 ¶ 6.) Ms. Armistead has no “inten[tion] to play soccer on the university’s women’s soccer team.” (*Id.* at 5 ¶ 7.) Because she is no longer a student athlete in West Virginia, nor even an out-of-state student athlete who will compete against women’s teams from West Virginia, Ms. Armistead has no protectable interest implicated by this litigation.

Ms. Armistead did not affirmatively alert Plaintiff of these facts, nor did she allow Plaintiff to discover these facts in a timely manner. She was evasive when answering questions about her graduation plans during her deposition,² even though she had already applied to out-of-state law

² (*See* Dkt. No. 289-22 (Armistead Dep. Tr.) at 50:23-24 (“I am not sure of my exact graduation plans yet.”), 59:4-7 (“Because I am interested in possibly getting a Master’s degree at [WVSU], and I still have three years of NCAA eligibility, which would mean I can continue playing in the fall.”), 61:12-21 (“I’m not sure if I would be able to play soccer and do law school.”), 62:17-24 (“Q. If you get into law school, are you going to try out for the team, or that’s the end of soccer? . . . THE WITNESS: I don’t know.”), 64:5-16 (“Q. Well, you’ve applied to three of them [law schools], and you’re waiting to hear back, right? . . . THE WITNESS: I want to play soccer at [WVSU]. BY [Plaintiff’s counsel] MR. BARR: Q. But you couldn’t do that if you were in law school; right? . . . THE WITNESS: I could not do that if I was in law school, correct.”), 66:21-25 (“Q. When do you expect that you’ll know if you’re going to graduate in May? . . . THE WITNESS: I don’t know. Hopefully before May.”), 68:16-22 (“Q. Do you have any plans to withdraw the form you’ve already filed to graduate in two months? A. Filing the form doesn’t automatically mean that I graduate. Q. I’m just asking if you have any plans to withdraw the form. A. I don’t know what my plans are yet.”), 69:1-2 (“Sitting here today, I am not sure what my future holds yet.”).)

schools³ and submitted an application to graduate from WVSU.⁴ She only confirmed the facts of her graduation and plans to attend law school in Florida in a supplemental declaration accompanying her summary-judgment opposition brief (Dkt. No. 300 (Supp. Armistead Decl.) at 5 ¶¶ 5–6) following Plaintiff’s identification of Ms. Armistead’s graduation plans in Plaintiff’s Statement of Undisputed Material Facts (Dkt. No. 290 (Pl.’s SUF) ¶ 137.)

In short, Ms. Armistead is not “a member of the class” H.B. 3293 purports to protect and will not offer that perspective to the Court. The Court should rescind her status as Defendant-Intervenor on this basis alone.

B. Ms. Armistead’s Briefing Does Not Align With Her Personal Views Expressed At Her Deposition.

Even when Ms. Armistead was a student athlete on a women’s team in West Virginia, however, that personal perspective was lacking from her briefing in this case. Instead, her briefs largely focus on the views and experiences of *other* athletes. (*See, e.g.*, Dkt. No. 288 (Int. MSJ) at 1-4; Dkt. No. 302 (Int. MSJ Opp.) at 13, 20.)

The strident defense of H.B. 3293 and opposition to B.P.J.’s participation on her school’s girls’ cross-country and track teams advanced in Ms. Armistead’s briefing also stands in stark contrast to some of the positions Ms. Armistead took in her deposition. Ms. Armistead testified in her deposition that she lacked familiarity with the basic facts of this case—she did not know that B.P.J. is a middle school student who ran on her school’s girls’ cross-country team (Dkt. No. 289-22 (Armistead Dep. Tr.) at 74:10-25); she did not know whether H.B. 3293 would prohibit B.P.J.

³ (*Id.* at 60:10-14 (“Q. Have you applied to law school? A. Yes. Q. Where did you apply? A. I applied to [three law schools].”))

⁴ (*Id.* at 67:22-25 (“Q. Did you file a form to graduate [from WVSU] in May? A. Yes. Q. When did you file that form? A. Sometime before the due date.”))

from playing on her school’s girls’ cross-country team (*id.* at 80:2-25, 91:3-12); she did not know what would happen if she won this lawsuit (*id.* at 81:2-4); and she did not know “anything” about H.B. 3293, including any of its claimed objectives (*id.* at 86:22-24, 90:5-18). Ms. Armistead also testified that she was not sure whether B.P.J. should, in fact, be excluded from playing on her girls’ sports teams. She stated that she did not know of any safety or fairness concern resulting from B.P.J.’s participation on her school’s girls’ cross-country team (*id.* at 139:25–140:4, 143:14–144:11), and that she did not know whether she “object[ed] to B.P.J. playing on the Bridgeport Middle School girls’ cross-country team” (*id.* at 170:18-22.).⁵

C. Reconsideration Is Warranted In Light Of These Developments.

Because this new evidence and the absence of expected benefits undercut Ms. Armistead’s main argument for intervention and a key basis of this Court’s decision to permit intervention, this Court should reconsider its prior order and revoke Ms. Armistead’s status as Defendant-Intervenor. Doing so is consistent with the values of Federal Rule of Civil Procedure 54(b) and judicial practice. Federal courts can and do reconsider and revoke a party’s status as intervenor in light of new facts or changed circumstances. For example, in *Mishewal Wappo Tribe of Alexander Valley v. Salazar*, the district court removed an intervenor’s status when the intervenor could not maintain its asserted interests. No. 9 Civ. 2502, 2012 WL 4717814, at *6 (N.D. Cal. Sept. 28, 2012). There, the plaintiff Tribe made a land request to the Secretary of the Interior to take into trust public lands held by the Department of the Interior for the benefit of the Tribe. *Id.* at *1. Two Counties asked and were allowed to permissively intervene to protect their interests in the public lands. *Id.* at *3.

⁵ Perhaps given this conflict between Ms. Armistead’s personal perspective and the views being championed in her filings, the State has sought to downplay the notion that Ms. Armistead herself has a valuable perspective to offer in this case. (*See* Dkt. No. 330 (State Resp. Pl.’s SUF) at 10 (asserting that Ms. Armistead “has no reason to have a developed opinion on middle schoolers”).)

As the case progressed, however, the Tribe amended its complaint to include only federal lands, which were not under the Counties' control. *Id.* at *4. The amended complaint rendered the Counties' interests "not viable" and "too remote" to sustain permissive intervention. *Id.* The *Mishewal* court reasoned that the Counties' interests "[we]re not claims that ha[d] much of anything in common with the actual issues." *Id.* at *6. *See also United States v. First Trust & Sav. Bank, Clarksville, Tenn.*, No. 77 Civ. 3296, 1977 WL 1265, at *2 (M.D. Tenn. Aug. 29, 1977) (rescinding a taxpayer's intervenor status following the discovery of new evidence that undermined the intervenor's interests).

As in these cases, subsequent developments in the litigation have undermined the reasoning driving prior decisions to permit Ms. Armistead's intervention. The purpose of granting Ms. Armistead's motion to intervene was to allow her to present her perspective as a West Virginia student athlete. Because she is no longer a West Virginia student athlete and she has not provided that perspective, the Court should reconsider its order granting intervention and revoke Ms. Armistead's status as intervenor.

II. Ms. Armistead Significantly Burdened The Discovery Process And Keeping Her In This Case Will Continue To Add Undue Complications.

In granting permissive intervention, this Court found "that allowing Ms. Armistead to intervene will not cause undue delay or prejudice" and would "not significantly add to the parties' discovery burdens." (Dkt. No. 130 (Intervention Order) at 6.) In addition to the changed circumstances rendering Ms. Armistead disconnected from the issues in this case, this Court should re-examine Ms. Armistead's status as intervenor because "the balance of interests [has] shift[ed]"—Plaintiff's "fears [of prejudice] are [now] substantiated." *State v. City of Chicago*, 912 F.3d 979, 988 (7th Cir. 2019); *see also Mishewal Wappo Tribe*, 2012 WL 4717814, at *6 (revoking

permissive intervention where the intervenors’ “actions have significantly impacted the proceedings”); (Dkt. No. 99 (Pl.’s Opp. to Int. Mot. to Intervene) at 16–17 (describing concern that Ms. Armistead’s intervention would “prolong and increase the burdens of discovery and motion practice”) (quoting *Stuart v. Huff*, 706 F.3d 345, 350 (4th Cir. 2013)).

Since joining this lawsuit as Defendant-Intervenor, Ms. Armistead has issued burdensome and voluminous discovery requests. For example, whereas the other Defendants submitted only two requests for admission, Ms. Armistead sought admissions to *eighty-two* statements. Of those, almost fifty requests sought responses to hypothetical questions regarding the treatment of various endocrine conditions not at issue in this case and/or that had not yet been (and in many cases, have not been) the subject of expert testimony.⁶ Her approach to interrogatories was similarly burdensome and undiscerning.

Ms. Armistead’s involvement in the case has also significantly increased the amount of expert discovery. She supported four expert witnesses, all of which are unqualified, irrelevant, or both,⁷ and she filed a motion to exclude the testimony of one of Plaintiff’s experts that is duplicative of the State’s motion to exclude the same expert.⁸

⁶ (Pelet del Toro Decl., Ex. A ¶¶ 13–61.) Some of these hypothetical questions included: “[a]dmit that Histrelin is used to treat biological males with idiopathic short stature[]”; “[a]dmit there are high-school aged biological males who, because of hypogonadism, have circulating testosterone comparable to that of biological females of their same age[]”; and “[a]dmit that for purposes of participating on sex separated school athletic teams, high school male-identifying biological males who experienced endogenous male puberty but have since received hormone therapy sufficient to bring their circulating testosterone down into the range typical for biological females of their same age are similarly situated to female-identifying biological females of the same age who have received no puberty blocking or other hormone therapy.” (*Id.* ¶¶ 11, 23, 44.)

⁷ (Dkt. Nos. 316 (Brown *Daubert* Mot.), 320 (Cantor *Daubert* Mot.), 324 (Levine *Daubert* Mot.), 328 (Carlson *Daubert* Mot.).)

⁸ (Dkt. Nos. 306 (State Mot. to Exclude Fry Expert Test.), 310 (Int. Mot. to Exclude Fry Expert Test.).)

Moreover, Ms. Armistead now seeks to rely on the irrelevant testimony from ten individuals she failed to timely disclose. (*See* Dkt. No. 288 (Int. MSJ) at 2–3.) Specifically, in support of her motion for summary judgment, Ms. Armistead offers declarations from out-of-state athletes, parents of out-of-state athletes, and former athletes, none of whom have any connection to B.P.J.’s challenge here. These ten individuals are from the list of at least *thirty-seven* individuals Ms. Armistead identified in “supplemental” disclosures provided to Plaintiff’s counsel four months after Ms. Armistead’s initial disclosures and three days after the deadline for written discovery had closed. Despite repeated requests from Plaintiff’s counsel that she identify which witnesses she reasonably believed she might use to support her claims or defenses, Ms. Armistead refused to engage, leaving Plaintiff unable to depose these potential witnesses. (Dkt. Nos. 332-18 (Ltr. to Int. from Pl., Mar. 17, 2022), 332-19 (Email from Int. to Pl., Mar. 23, 2022).)

Finally, in a case where there are already four Defendants and four separate sets of defense counsel, Plaintiff has had to respond to separate (but often overlapping) discovery requests and sets of briefs. Had Ms. Armistead timely shared her plans to graduate from WVSU this spring, Plaintiff could have raised reconsideration with this Court before Ms. Armistead’s submission of a motion for summary judgment and multiple motions to exclude expert testimony, potentially saving the parties and the Court significant time.

Ms. Armistead’s continued participation in this case will continue to impose additional burdens without any corresponding benefit, including separate cross-examination if there is a trial, separate post-trial briefing, and separate appellate briefing at each stage of any subsequent appeal. The added complications and burdens created by Ms. Armistead’s involvement in this litigation are further reason to reconsider the grant of permissive intervention.

III. Ms. Armistead Has Not Made Unique Arguments.

Finally, reconsideration of Ms. Armistead’s intervention is warranted because she has not presented the Court with arguments that “differ from those of the current defendants.” (Dkt. No. 130 (Intervention Order) at 6.) In her motion for intervention, Ms. Armistead represented that she would “advance litigation arguments different from and contrary to the State Defendants’ arguments.” (Dkt. No. 95 (Memo. ISO Mot. to Intervene) at 14.) But the reality is that Ms. Armistead and the State have been fully aligned in their defense of H.B. 3293 and pursuit of summary judgment.

Ms. Armistead identified five arguments that she would make that would differ from those made by the State: (1) “Title IX not only permits—but *requires*—separate sports teams for women and girls in contests of strength or speed”; (2) “gender identity is not a protected class” and *Grimm v. Gloucester County School Board*, 972 F.3d 586 (4th Cir. 2020), was wrongly decided; (3) “the State’s interest in providing equal athletic opportunities for women justifies [H.B. 3293’s] different treatment” based on “gender identity”; (4) B.P.J.’s requested relief would result in discrimination in violation of *Grimm*; and (5) “B.P.J. is asking the Court to replace biological sex with gender identity in the Sports Act.” (Dkt. No. 95 (Memo. ISO Mot. to Intervene) at 14–15.) The State in fact makes the first, third, and fifth arguments. (*See* Dkt. No. 287 (State MSJ) at 22 (“Title IX *requires* some different treatment between the biological sexes.”); *id.* at 13–17 (arguing that H.B. 3293’s classification is substantially related to the State’s interest in “ensuring equal opportunities for females in sports”); *id.* at 4 (“Plaintiff would base sports teams on gender identity.”); *id.* at 7 (“Plaintiff’s position that a student-athlete be permitted to participate on a team consistent with the athlete’s gender identity rather than biological sex would be impossible given this array of gender identities.”).) And Ms. Armistead has not made the second or fourth arguments. Instead, she—like

the State—has argued that “*Grimm* doesn’t apply.” (Dkt. No. 288 (Int. MSJ) at 18; *see also* Dkt. No. 287 (State MSJ) at 33 (“The holding of *Grimm* . . . does not apply here.”).)

* * *

In sum, Ms. Armistead no longer has personal interests at stake in this litigation and thus no longer has a personal perspective as someone supposedly protected by H.B. 3293 to offer the Court; her participation to date has complicated the proceedings and prejudiced Plaintiff and judicial economy; and she has not offered the Court the unique legal arguments promised in her intervention motion. Accordingly, this Court should grant Plaintiff’s motion to reconsider and revoke Ms. Armistead’s intervenor status.

CONCLUSION

Plaintiff respectfully requests that this Court reconsider its order granting Lainey Armistead’s permissive intervention and revoke her status as Defendant-Intervenor in this case.

Dated: May 26, 2022

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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

I, Loree Stark, do hereby certify that on this 26th day of May, 2022, I electronically filed a true and exact copy of *Plaintiff's Memorandum of Law in Support of Motion to Reconsider the Grant of Lainey Armistead's Permissive Intervention* 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

(3) H. Jackson
(3) W. Pepper

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

RE: CHANGE OF NAME OF
[REDACTED] F [REDACTED]-J [REDACTED]

Civil Action No. 22-P-104-1
Judge Christopher J. McCarthy

Heather D. Jackson and
Wesley Scott Pepper, as parents

Petitioners.

ORDER GRANTING PETITION FOR CHANGE OF NAME

Pending before the Court is a Petition for Change of Name, filed by Heather Jackson and Wesley Pepper, as parents, legal guardians, and next of friends on behalf of their daughter, originally named [REDACTED] P [REDACTED]-J [REDACTED], a minor child. The Petitioner seeks the name change in order for her name to conform with her gender identity.

On May 2, 2022, the Petitioners filed the Petition for name change that is pending. The hearing was scheduled for June 1, 2022. On June 1, 2022, this Court held a hearing on the Petition following proper publication of notice as a Class-I legal advertisement. Present at said hearing were Petitioners Heather D. Jackson, Wesley Scott Pepper, and the Minor Child.

The Court now concludes that the Petition will be **GRANTED**.

FINDINGS OF FACT

1. On May 2, 2022, Heather D. Jackson and Wesley Scott Pepper filed in Harrison County, West Virginia a Petition for Change of Name seeking to change their daughter's name from [REDACTED] P [REDACTED]-J [REDACTED] to [REDACTED] P [REDACTED]-J [REDACTED].

2. [REDACTED] F [REDACTED]-J [REDACTED] has been a bona fide resident of Harrison County for all relevant periods of time.
3. Notice of the hearing on said Petition was published as a Class-I legal advertisement on May 18, 2022, in the Clarksburg Exponent Telegram, a newspaper of general circulation for Harrison County, West Virginia, at least 10 days prior to the June 1, 2022 hearing.
4. The name change is not being sought for any of the illegal purposes articulated in West Virginia Code § 48-25-101(a), and the Petitioners are not barred from seeking a name change based on the provisions of § 48-25-101(a) or § 48-25-103, as represented by the Petitioners in their properly verified Petition.¹
5. No injury will be done to any person by reason of the name change.
6. Reasonable and proper cause exists for the name change.

¹ West Virginia Code § 48-25-101(a) states:

(a) A person desiring a change of his or her own name, or that of his or her child, may apply to the circuit court or family court of the county in which he or she resides by a verified petition setting forth and affirming the following:

(1) That he or she has been a bona fide resident of the county for at least one year prior to the filing of the petition or that he or she is a nonresident of the county who was born in the county, was married in the county and was previously a resident of the county for a period of at least fifteen years;

(2) The cause for which the change of name is sought;

(3) The new name desired;

(4) The name change is not for purposes of avoiding debt or creditors;

(5) The petitioner seeking the name change is not a registered sex offender pursuant to any state or federal law;

(6) The name change sought is not for purposes of avoiding any state or federal law regarding identity;

(7) The name change sought is not for any improper or illegal purpose;

(8) The petitioner is not a convicted felon in any jurisdiction;

(9) The name change sought is not for any purpose of evading detection, identification or arrest by any local, state or federal law-enforcement agency; and

(10) Whether or not the petitioner desires to protect his or her identity for personal safety reasons.

7. The name change is not sought for any fraudulent or evil intent on the part of the Petitioners.
8. Petitioners testified at the hearing that their daughter wished to change her name to reflect her gender identity. The minor child also testified to this fact.

CONCLUSIONS OF LAW

Pursuant to West Virginia Code § 48-25-103(a), a court may grant a name change after making certain findings regarding the facts and circumstances of a Petition:

Upon the filing of the verified petition, and upon proof of the publication of the notice and of the matters set forth in the petition, and being satisfied that no injury will be done to any person by reason of the change, and upon a finding that all representations the applicant has affirmed pursuant to subsection (a), section one hundred one of this article are true and the applicant is not prohibited from obtaining a name change pursuant to this article, that reasonable and proper cause exists for changing the name of petitioner and that the change is not desired because of any fraudulent or evil intent on the part of the petitioner, the court or judge may order a change of name.

W. Va. Code § 48-25-103(a).

The Court is not permitted to grant a name change if certain other circumstances are present:

(b) The court may not grant any change of name for any person convicted of any felony during the time that the person is incarcerated.

(c) The court may not grant any change of name for any person required to register with the State Police pursuant to the provisions of article twelve, chapter fifteen of this code during the period that the person is required to register.

(d) The court may not grant a change of name for persons convicted of first degree murder in violation of section one, article two, chapter sixty-

one of this code for a period of ten years after the person is discharged from imprisonment or is discharged from parole, whichever occurs later.

(e) The court may not grant a change of name of any person convicted of violating any provision of section fourteen-a, article two, chapter sixty-one of this code for a period of ten years after the person is discharged from imprisonment or is discharged from parole, whichever occurs later.

W. Va. Code § 48-25-103(b)–(e).

Further, when a name change involves a minor child, proof that the change is in the best interest of the child is necessary over and above what is required by the name change statute. W. Va. Code § 48-25-101 et seq.; Syl. Pt. 3, *In re Name Change of Jenna A.J.*, 231 W. Va. 159, 744 S.E. 2d 269 (2013) (internal citations omitted). Any name change involving a minor child may be made only upon clear, cogent, and convincing evidence that the change would significantly advance the best interests of the child. *Id.* at 231 W. Va. at 163, 744 S.E.2d at 273 (2013).

The Court finds that it is the best interest of the minor child to change her name for several reasons. First, children who are allowed to have names conforming to their gender identity feel more accepted by the community as a whole. Second, changing the minor child's name to her gender identity ensures a safe and happy mental state by the child in conforming with her gender identity. Finally, this name change is supported by the parents. Both of whom know the mind of their child.

The Court is satisfied that all the requirements of the above-quoted statutes have been met, and that the Petitioner is not barred from having the Petition granted by the same.

ORDER

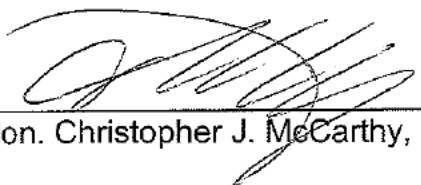
Therefore, based on its above-stated findings, the Court concludes that the instant Petition will be **GRANTED**.

It is hereby **ORDERED** that the name of [REDACTED] P [REDACTED]-J [REDACTED] shall be changed to B [REDACTED] F [REDACTED]-J [REDACTED] by which name she shall hereafter be called.

It is **FURTHER ORDERED** that Petitioner shall immediately deliver a certified copy of this Order to the Office of the Clerk of the County Commission of Harrison County, West Virginia, the current county of his residence, and upon payment of any fees the clerk shall immediately record the same in a book to be kept for the purpose of name changes, and index the same under both the old and the new names. After this Order is filed in the Office of the Clerk of the County Commission, the new name of B [REDACTED] P [REDACTED]-J [REDACTED] is to be used in place of the Petitioner's former name.

It is **FURTHER ORDERED** that the Clerk of this Court shall send three (3) certified copies of this Order to the Petitioners, Heather D. Jackson and Wesley Scott Pepper, 12537 Buckhannon Pike, Lost Creek, WV 26385. This is a **FINAL ORDER**. The Clerk of this Court is **ORDERED** to remove this case from the Court's docket.

ENTER: 6/2/2022


The Hon. Christopher J. McCarthy, Chief Judge

STATE OF WEST VIRGINIA
COUNTY OF HARRISON, TO-WIT

I, Albert F. Marano, Clerk of the Fifteenth Judicial Circuit and the 18th Family Court Circuit of Harrison County, West Virginia, hereby certify the foregoing to be a true copy of the ORDER entered in the above styled action on the 2nd day of June, 2022.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the

Seal of the Court this 2nd day of June, 2022.

Albert F. Marano

Fifteenth Judicial Circuit & 18th

Family Court Circuit Clerk

Harrison County, West Virginia

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

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

Plaintiff,

v.

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

Defendants,

and

LAINY ARMISTEAD,

Defendant-Intervenor.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

DECLARATION OF B.P.J.

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

1. I make this declaration of my own personal knowledge, and, if called as a witness, I could and would testify competently to the matters stated herein.

2. On April 19, 2022, I signed a declaration for my attorneys to submit to the court. When I signed the declaration, I was an 11-year-old girl in sixth grade at Bridgeport Middle School.

3. I am now a 12-year-old girl, and I am currently in the seventh grade at Bridgeport Middle School.

4. I knew from when I was very little that I am a girl. I began receiving puberty-delaying medication in 2020 as part of my treatment for gender dysphoria, which I am still receiving. The doctors gave me a Vantas implant, and I felt so happy that my body would reflect the girl that I am. In June of 2022, after years of visits, my doctor told me that I was ready to begin an estrogen hormone therapy called Estradiol, and I have been taking that medication in addition to the puberty-delaying medication for the last seven months.

5. Competing on a team with my friends on the girls' cross-country and track-and-field teams is a central part of my life and identity. After my Fall cross-country season in 2021, I was very excited to try out for the girls' track-and-field team in the Spring of 2022. My coach, Ms. Schoonmaker, encouraged me to try out some of the field events based on my running times from my cross-country season so that I could still join the track-and-field team and compete with my friends. I ended up loving shotput and discus, and I made the team for those two events. It was so much fun to cheer on my teammates who ran at the meets, and they would cheer me on when I competed in shotput and discus. I then ran on the girls' cross-country team again in Fall 2022. I am excited to try out for the girls' track-and-field team this spring and have been preparing to do so. Tryouts begin on February 27, 2023.

6. The past two years on Bridgeport Middle School's girls' cross-country and track-and-field teams have been the best of my life. I love being on a team with my friends. We have the best time during practices and at cross-country and track-and-field meets. If I had not been able to join the cross-country or track-and-field teams these last few years, I would have missed out on challenging myself with all the amazing friends I made and the time we got to spend together. My teammates support me even when I am not the fastest or best on the team.

7. Every practice and meet is different. I learn something new at each event, and I am happiest when I am trying my best and motivating my teammates to do their best. When it rains and our trails become muddy, we have so much fun together being knee-deep in the mud and finishing our runs. When I compete in meets, I always feel the support from my coach, my teammates, and my family to have fun and keep a positive attitude. You get to push yourself, and the only way to lose is by not trying your hardest. I love breathing in the fresh air and feeling proud when I work hard. I feel so free and fully myself when I am out on the field.

8. When my mom told me that the court had ruled against me and I would no longer be able to participate on the girls' team with my friends, I felt so angry and upset. I ran upstairs to my room and cried in my bed the whole night.

9. I was scared to go to school the next day and tell my friends and my teammates the bad news, but they were so supportive. Even the kids I am not as close to at school told me they think it is unfair that this law prevents me from participating on the girls' team. Running on the boys' team is not an option for me, but would be deeply upsetting, humiliating, and confusing because I am a girl. I feel sad and frustrated that West Virginia does not see me for the girl that I am and won't let me play on a team with my friends and be happy.

10. I don't want to stop doing the thing that I love and that is part of who I am. Sports are everything to me and my cross-country and track-and-field teams have become my second family over the last two years. Nothing makes me happier than being on a team with my friends and competing on behalf of my school. I have many more years of cross-country and track-and-field left, and I just want the opportunity to participate in school sports like any other girl.

* * *

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

Executed on January 20, 2023

B. P. J.
B.P.J.

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

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

Plaintiff,

v.

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

Defendants,

and

LAINY ARMISTEAD,

Defendant-Intervenor.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

DECLARATION OF HEATHER JACKSON

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

1. I make this declaration of my own personal knowledge, and, if called as a witness,

I could and would testify competently to the matters stated herein.

2. On April 19, 2022, I signed a declaration for my attorneys to submit to the court.

3. I am 54 years old. I am the mother of two sons, ages 21 and 14, and a 12-year-old daughter. I live in Lost Creek, West Virginia.

4. My daughter's name is B.P.J. B.P.J. has been on puberty delaying treatment since 2020, under the care of a multidisciplinary team of medical providers with expertise in treating transgender adolescents.

5. In June of 2022, under the care of Dr. Kacie Kidd and her team at the West Virginia University Department of Pediatrics, B.P.J. and I were told that B.P.J. was eligible to start hormone therapy. B.P.J. had pure joy and radiance in her eyes when she realized her body could develop in a way that matches what her brain is telling her. After we spoke as a family, and after we spoke in-depth with her medical and mental health providers, B.P.J. was prescribed estradiol, an estrogen-based hormone therapy, which she has been taking for the last seven months. B.P.J. is very comfortable with her treatment plan and is so excited for her body to go through puberty in a way that matches who she is.

6. For the past year and a half—thanks to the court’s injunction order—participating on Bridgeport Middle School’s girls’ cross-country and track teams has meant everything to my daughter. Having the opportunity to play on the girls’ teams is important to B.P.J. because she feels her happiest when she is out on the field making friends and competing in one of her favorite sports. She is a gracious teammate and an incredible motivator, and she always tries to have as much fun as possible!

7. After running with her cross-country team in the Fall of 2021, B.P.J. was so excited for Spring track-and-field in 2022. Although B.P.J. was not fast enough to make the track-and-field team in running events, her coach, Ms. Schoonmaker, encouraged her to try out for the field events, and B.P.J. focused on shotput and discus. B.P.J. loved taking on a new challenge, was able to make the team, and participated in meets for those two field events. At the Connect Bridgeport Middle School Invitational, B.P.J. placed 36 out of 45 participants in shotput, and 29 out of 29 participants in discus; at the Ritchie Middle School Pizza Box Invitational, B.P.J. placed 15 out of 25 participants in discus; and at the Harry Green Middle School Invitational, B.P.J. placed 57 out

of 61 participants in shotput, and 35 out of 53 participants in discus. B.P.J.'s 2022 track-and-field meet records are attached hereto as Exhibit A.

8. After participating on the cross-country and track-and-field teams for both seasons in the 2021-2022 school year, it was no surprise to me that B.P.J. carried this interest into her seventh-grade year, and tried out for, and made, the girls' cross-country team again in the Fall of 2022. During this second cross-country season of hers, B.P.J. participated in several meets with her teammates. At the Charles Point Invitation, B.P.J. placed 54 out of 55 participants; at the Mountain Holler Middle School Invitational, B.P.J. placed 43 out of 53 participants; at the Taylor County Middle School Invitational, B.P.J. placed 38 out of 46 participants; at the Elkins Middle School Invitational, B.P.J. placed 78 out of 80 participants; and at the Mid-Mountain 10 Conference Middle School Championships, B.P.J.'s final race of the season, B.P.J. finished 64 out of 65 participants. B.P.J. did not participate in any additional meets after her final race due to a toe injury that she has since recovered from. B.P.J.'s 2022 cross-country meet records are attached hereto as Exhibit B.

9. B.P.J. has been excited about trying out for track again this spring and has been planning to do so. Tryouts will take place on February 27, 2023.

10. My daughter's love for participating in school sports is a precious thing. B.P.J. loves all the friends she has made on the girls' cross-country and track teams, trying her best at every practice and meet, and being a team player. In her two years of sports with Bridgeport Middle School, B.P.J. has not encountered any problems with any of her teammates or children from any other schools, and her coaches and teachers have been extremely supportive of her participation. I have never seen my daughter happier than when I pick her up from practices and take her to meets. Photos from B.P.J.'s 2022 cross-country season are attached as Exhibit C.

11. This new year of 2023 has been incredibly difficult for B.P.J. I watched my daughter run upstairs to her room in tears after I told her about the recent ruling against her and removing the injunction that allowed her to participate as the girl she is. She was devastated and cried for the entire night and told me that she was terrified about not being able to continue doing the thing that she loves with her friends. The next morning, B.P.J. told me that although she is very sad, she will never stop fighting for her right to play with her teammates and to be treated equally.

12. Forcing B.P.J. to compete on the boys' cross-country or track-and-field teams would profoundly harm her, erase who she actually is, and make participating in the school sports that bring her so much joy impossible for her. She cannot be the person she is and compete on the boys' team.

13. My daughter is a twelve-year old girl who just wants the same opportunities as the other girls in her school. By refusing to treat her as a girl and singling her out for different treatment than all the other girls, West Virginia sends a clear message that it refuses to see her, accept her, and respect her equally to others. My daughter will be forever harmed if she is not able to compete alongside her teammates and friends as she has done so happily for the past year and a half.

* * *

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

Executed on January 20, 2023

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

Heather Jackson

**United States District Court
Southern District of West Virginia (Charleston)
CIVIL DOCKET FOR CASE #: 2:21-cv-00316**

B. P. J. et al v. West Virginia State Board of Education et al
Assigned to: Judge Joseph R. Goodwin
Cause: 42:1983 Civil Rights Act

Date Filed: 05/26/2021
Date Terminated: 01/05/2023
Jury Demand: None
Nature of Suit: 448 Civil Rights: Education
Jurisdiction: Diversity

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by her next friend and mother

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TERMINATED: 02/10/2022
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V.

Defendant

West Virginia State Board of Education

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Defendant

**West Virginia Secondary School
Activities Commission**

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Defendant

W. Clayton Burch
*in his official capacity as State
Superintendent, and*

represented by **Kelly C. Morgan**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Kristen Vickers Hammond
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Michael W. Taylor
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Defendant

Dora Stutler
*in her official capacity as Harrison County
Superintendent*

represented by **Susan L. Deniker**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Jeffrey Mark Cropp
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ATTORNEY TO BE NOTICED

Defendant

Patrick Morrissey
*in his official capacity as Attorney General,
and
TERMINATED: 11/30/2021*

represented by **Curtis R. Capehart**
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Intervenor

The State of West Virginia

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V.

Interested Party

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Intervenor

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Date Filed	#	Docket Text
05/26/2021	1	COMPLAINT. Filing Fee \$402.00. Receipt # CHAR019069. (Attachments: # 1 Declaration of Loree Stark, # 2 Proposed Summons as to Dora Stutler, # 3 Proposed Summons as to Harrison County Board of Education, # 4 Proposed Summons as to W. Clayton Burch, # 5 Proposed Summons as to West Virginia Secondary School Activities Commission, # 6 Proposed Summons as to West Virginia State Board of Education, # 7 Receipt, # 8 Civil Cover Sheet) (kew)
05/26/2021	2	MOTION by B. P. J., Heather Jackson for a Preliminary Injunction. (Attachments: # 1 Declarations of Joshua Safer and Heather Jackson, # 2 Proposed Order) (kew)
05/26/2021	3	MOTION by B. P. J., Heather Jackson for Leave to File Brief in Excess of the Page Limitation with proposed document attached (Attachments: # 1 Exhibit A, # 2 Proposed Order) (kew)
05/26/2021		CASE assigned to Judge Joseph R. Goodwin. (klc)
05/26/2021	4	STANDING ORDER IN RE: ASSIGNMENT AND REFERRAL OF CIVIL ACTIONS AND MATTERS TO MAGISTRATE JUDGES ENTERED JANUARY 4, 2016. Discovery referred to Magistrate Judge Tinsley. (cc: attys; any unrepresented party) (klc)
05/26/2021	5	ELECTRONIC SUMMONS ISSUED as to W. Clayton Burch, Harrison County Board of Education, Dora Stutler, West Virginia Secondary School Activities Commission, West

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		Virginia State Board of Education, re: 1 Complaint. Summons returnable 21 days. Instructions to Counsel: This is your electronic summons. Please print as many copies of the Summons and Complaint as are necessary to effectuate service under Fed. R. Civ. P. 4. See Proof of Service page of this Summons form for filing a return of service if required by Fed. R. Civ. P. 4(1). (Attachments: # 1 Summons Issued as to Harrison County Board of Education, # 2 Summons Issued as to W. Clayton Burch, # 3 Summons Issued as to West Virginia Secondary School Activities Commission, # 4 Summons Issued as to West Virginia State Board of Education) (kew)
05/27/2021	6	STATEMENT OF VISITING ATTORNEY from Joshua A. Block on behalf of B. P. J., Heather Jackson. Local counsel: Loree Stark. Fee \$50.00. Receipt # AWVSDC-7955402. (Stark, Loree) (Modified on 5/28/2021 to add party filer) (kew).
05/27/2021	7	STATEMENT OF VISITING ATTORNEY from Avatara Smith-Carrington on behalf of B. P. J., Heather Jackson. Local counsel: Loree Stark. Fee \$50.00. Receipt # BWVSDC-7955405. (Stark, Loree) (Modified on 5/28/2021 to add party filer) (kew).
05/27/2021	8	STATEMENT OF VISITING ATTORNEY from Tara L. Borelli on behalf of B. P. J., Heather Jackson. Local counsel: Loree Stark. Fee \$50.00. Receipt # AWVSDC-7955408. (Stark, Loree) (Modified on 5/28/2021 to add party filer) (kew).
05/27/2021	9	STATEMENT OF VISITING ATTORNEY from Carl S. Charles on behalf of B. P. J., Heather Jackson. Local counsel: Loree Stark. Fee \$50.00. Receipt # AWVSDC-7955410. (Stark, Loree) (Modified on 5/28/2021 to add party filer) (kew).
05/27/2021	10	SUPPLEMENTAL CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Complaint. (Stark, Loree)
05/27/2021	11	SUPPLEMENTAL CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Motion for Preliminary Injunction. (Stark, Loree)
05/27/2021	12	SUPPLEMENTAL CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Motion to File Brief in Excess of the Page Limitation. (Stark, Loree)
06/01/2021	13	SUMMONS RETURNED EXECUTED for West Virginia State Board of Education, re: 1 Complaint, 3 MOTION by B. P. J., Heather Jackson for Leave to File Brief in Excess of the Page Limitation, 2 MOTION by B. P. J., Heather Jackson for a Preliminary Injunction. West Virginia State Board of Education served on 5/28/2021, answer due 6/18/2021. (Stark, Loree)
06/01/2021	14	SUMMONS RETURNED EXECUTED for W. Clayton Burch, re: 1 Complaint, 3 MOTION by B. P. J., Heather Jackson for Leave to File Brief in Excess of the Page Limitation, 2 MOTION by B. P. J., Heather Jackson for a Preliminary Injunction. W. Clayton Burch served on 5/28/2021, answer due 6/18/2021. (Stark, Loree)
06/01/2021	15	SUMMONS RETURNED EXECUTED for Dora Stutler, re: 1 Complaint, 3 MOTION by B. P. J., Heather Jackson for Leave to File Brief in Excess of the Page Limitation, 2 MOTION by B. P. J., Heather Jackson for a Preliminary Injunction. Dora Stutler served on 5/28/2021, answer due 6/18/2021. (Stark, Loree)
06/01/2021	16	SUMMONS RETURNED EXECUTED for West Virginia Secondary School Activities Commission, re: 1 Complaint, 3 MOTION by B. P. J., Heather Jackson for Leave to File Brief in Excess of the Page Limitation, 2 MOTION by B. P. J., Heather Jackson for a Preliminary Injunction. West Virginia Secondary School Activities Commission served on 6/1/2021, answer due 6/22/2021. (Stark, Loree)
06/01/2021	17	SUMMONS RETURNED EXECUTED for Harrison County Board of Education, re: 1 Complaint, 3 MOTION by B. P. J., Heather Jackson for Leave to File Brief in Excess of the Page Limitation, 2 MOTION by B. P. J., Heather Jackson for a Preliminary Injunction. (Stark, Loree)

		Injunction. Harrison County Board of Education served on 6/1/2021, answer due 6/22/2021. (Stark, Loree)
06/02/2021	18	ORDER granting 3 MOTION by B. P. J., Heather Jackson for Leave to File Brief in Excess of the Page Limitation; the Clerk is directed to docket the proposed document [ECF No. 3-1] as Plaintiffs' Memorandum in Support of Plaintiff's Motion for Preliminary Injunction. Signed by Judge Joseph R. Goodwin on 6/2/2021. (cc: counsel of record; any unrepresented party) (kew)
06/02/2021	19	MEMORANDUM OF LAW by B. P. J., Heather Jackson in support of 2 MOTION by B. P. J., Heather Jackson for a Preliminary Injunction (docketed pursuant to #18 order) (kew)
06/03/2021	20	STATEMENT OF VISITING ATTORNEY from Andrew Barr on behalf of Heather Jackson, B. P. J. Local counsel: Loree Stark. Fee \$50.00. Receipt # AWVSDC-7958465. (Stark, Loree)
06/03/2021	21	STATEMENT OF VISITING ATTORNEY from Julie Veroff on behalf of Heather Jackson, B. P. J. Local counsel: Loree Stark. Fee \$50.00. Receipt # AWVSDC-7958472. (Stark, Loree)
06/03/2021	22	STATEMENT OF VISITING ATTORNEY from Kathleen Hartnett on behalf of Heather Jackson, B. P. J. Local counsel: Loree Stark. Fee \$50.00. Receipt # AWVSDC-7958489. (Stark, Loree)
06/03/2021	23	STATEMENT OF VISITING ATTORNEY from Katelyn Kang on behalf of Heather Jackson, B. P. J. Local counsel: Loree Stark. Fee \$50.00. Receipt # AWVSDC-7958498. (Stark, Loree)
06/03/2021	24	STATEMENT OF VISITING ATTORNEY from Elizabeth Reinhardt on behalf of Heather Jackson, B. P. J. Local counsel: Loree Stark. Fee \$50.00. Receipt # AWVSDC-7958508. (Stark, Loree)
06/09/2021	25	SUPPLEMENTAL DECLARATION of Katelyn Kang by B. P. J., Heather Jackson in support of 2 MOTION by B. P. J., Heather Jackson for a Preliminary Injunction. (Barr, Andrew) (Modified on 6/10/2021 to correct link and to add party filer) (kew).
06/10/2021	26	STATEMENT OF VISITING ATTORNEY from Sruti J. Swaminathan on behalf of Heather Jackson, B. P. J.. Local counsel: Loree Stark. Fee \$50.00. Receipt # AWVSDC-7964227. (Stark, Loree)
06/11/2021	27	EXPEDITED MOTION by B. P. J., Heather Jackson for a Scheduling Order. (Stark, Loree)
06/11/2021	28	PROPOSED ORDER Order Granting Expedited Motion for a Scheduling Order by B. P. J., Heather Jackson. (Stark, Loree)
06/14/2021	29	ORDER denying 27 EXPEDITED MOTION by B. P. J., Heather Jackson for a Scheduling Order; Defendants' Response to Plaintiffs' Motion for a Preliminary Injunction is due on 6/16/2021; Plaintiffs' Reply to the Response is due 6/23/2021. Signed by Judge Joseph R. Goodwin on 6/14/2021. (cc: counsel of record; any unrepresented party) (kew)
06/14/2021	30	NOTICE OF APPEARANCE by Kelly C. Morgan on behalf of W. Clayton Burch, West Virginia State Board of Education. (Morgan, Kelly)
06/14/2021	31	NOTICE OF ATTORNEY APPEARANCE by Roberta F. Green on behalf of West Virginia Secondary School Activities Commission. (Green, Roberta)

06/15/2021	32	APPEARANCE OF COUNSEL by Susan L. Deniker on behalf of Harrison County Board of Education, Dora Stutler. (Deniker, Susan)
06/15/2021	33	DISCLOSURE STATEMENT PURSUANT TO RULE 7.1, Federal Rules of Civil Procedure, by Defendant West Virginia Secondary School Activities Commission (Green, Roberta)
06/15/2021	34	PROOF/CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Complaint and Initial Pleadings to the Solicitor General of the Office of the West Virginia Attorney General Pursuant to FRCP 5.1(b). (Stark, Loree)
06/15/2021	35	AMENDED PROOF/CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Complaint and Initial Pleadings to the Solicitor General of the Office of the West Virginia Attorney General Pursuant to FRCP 5.1(b). (Stark, Loree)
06/15/2021	36	MOTION by Harrison County Board of Education, Dora Stutler, West Virginia Secondary School Activities Commission, West Virginia State Board of Education, W. Clayton Burch for Amended Schedule. (Deniker, Susan) (Modified on 6/15/2021 to add party filer) (kew).
06/15/2021	37	DISCLOSURE STATEMENT PURSUANT TO RULE 7.1, Federal Rules of Civil Procedure, by Defendant Harrison County Board of Education (Deniker, Susan)
06/15/2021	38	DISCLOSURE STATEMENT PURSUANT TO RULE 7.1, Federal Rules of Civil Procedure, by Defendants W. Clayton Burch, West Virginia State Board of Education (Morgan, Kelly)
06/15/2021	39	ORDER denying 36 Unopposed Motion to Amend the Briefing Schedule; Defendants' Response to the 2 Motion for a Preliminary Injunction is due 6/23/2021; Plaintiffs' Reply is due 6/30/2021. Signed by Judge Joseph R. Goodwin on 6/15/2021. (cc: counsel of record; any unrepresented party) (kew)
06/17/2021	40	UNOPPOSED MOTION by State of West Virginia to Intervene and for Proposed Response Deadline. (Capehart, Curtis)
06/17/2021	41	MEMORANDUM OF LAW by State of West Virginia in support of 40 UNOPPOSED MOTION by State of West Virginia to Intervene and for Proposed Response Deadline. (Capehart, Curtis)
06/17/2021	42	STATEMENT OF INTEREST by United States of America. (Vaughan, Aria)
06/17/2021	43	STIPULATION TO EXTEND TIME TO FILE RESPONSIVE PLEADING to 1 Complaint to 7/2/2021 by West Virginia State Board of Education, West Virginia Secondary School Activities Commission, Heather Jackson, B. P. J., Harrison County Board of Education, W. Clayton Burch, Dora Stutler. (Morgan, Kelly) (Modified on 6/17/2021 to add link to #1 complaint and to add party filers) (kew).
06/17/2021		SET ANSWER DEADLINES for W. Clayton Burch, Harrison County Board of Education, Dora Stutler, West Virginia Secondary School Activities Commission, West Virginia State Board of Education to 7/2/2021. (kew)
06/18/2021	44	ORDER directing the 40 Unopposed Motion by State of West Virginia to Intervene is GRANTED; further directing the request for an additional two days to respond to Plaintiffs' Motion for a Preliminary Injunction is DENIED. Signed by Judge Joseph R. Goodwin on 6/18/2021. (cc: counsel of record; any unrepresented party) (ts)
06/21/2021	45	MOTION by Harrison County Board of Education, Dora Stutler for Leave to Exceed the Page Limit Responding to the 2 Motion for Preliminary Injunction. (Deniker, Susan) (Modified on 6/22/2021 to add link to #2 motion) (kew).

06/22/2021	46	ORDER granting 45 Motion to Exceed the Page Limit. Signed by Judge Joseph R. Goodwin on 6/22/2021. (cc: counsel of record; any unrepresented party) (kew)
06/22/2021	47	RESPONSE by West Virginia Secondary School Activities Commission to 2 MOTION by B. P. J., Heather Jackson for a Preliminary Injunction. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Green, Roberta)
06/23/2021	48	RESPONSE by W. Clayton Burch, West Virginia State Board of Education in opposition to 2 MOTION by B. P. J., Heather Jackson for a Preliminary Injunction (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Morgan, Kelly)
06/23/2021	49	RESPONSE by State of West Virginia in opposition to 2 MOTION by B. P. J., Heather Jackson for a Preliminary Injunction (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I)(Capehart, Curtis)
06/23/2021	50	RESPONSE by Harrison County Board of Education, Dora Stutler in opposition to 2 MOTION by B. P. J., Heather Jackson for a Preliminary Injunction (Deniker, Susan)
06/25/2021	51	MOTION by B. P. J., Heather Jackson for Leave to File Consolidated 30-Page Reply Brief in Support of 2 Motion for Preliminary Injunction. (Attachment: # 1 Proposed Order)(Stark, Loree) (Modified on 6/25/2021 to add link to #2 motion) (kew).
06/28/2021	52	ORDER granting 51 Motion Pursuant to Local Rule of Civil Procedure 7.1(a)(2) For Leave to File Consolidated 30-Page Reply Brief in Support of Plaintiff's Motion for Preliminary Injunction. Signed by Judge Joseph R. Goodwin on 6/28/2021. (cc: counsel of record; any unrepresented party) (lca)
06/30/2021	53	CONSOLIDATED REPLY by B. P. J., Heather Jackson to 47 Response and the 48 , 49 and 50 Responses In Opposition. (Attachment: # 1 Supplemental Expert Declaration of Joshua D. Safer) (Stark, Loree)
07/01/2021	54	MOTION by West Virginia State Board of Education, W. Clayton Burch to Dismiss 1 Complaint. (Morgan, Kelly) (Modified on 7/1/2021 to add party filer) (lca).
07/01/2021	55	MEMORANDUM OF LAW by W. Clayton Burch, West Virginia State Board of Education in support of 54 MOTION by West Virginia State Board of Education, W. Clayton Burch to Dismiss 1 Complaint. (Morgan, Kelly)
07/02/2021	56	MOTION by West Virginia Secondary School Activities Commission to Dismiss 1 Complaint. (Green, Roberta)
07/02/2021	57	MEMORANDUM by West Virginia Secondary School Activities Commission in support of 56 MOTION by West Virginia Secondary School Activities Commission to Dismiss 1 Complaint. (Green, Roberta)
07/02/2021	58	MOTION by Harrison County Board of Education, Dora Stutler to Dismiss 1 Complaint. (Deniker, Susan) (Modified on 7/5/2021 to add link to #1 complaint) (kew).
07/02/2021	59	MEMORANDUM OF LAW by Harrison County Board of Education, Dora Stutler in support of 58 MOTION by Harrison County Board of Education, Dora Stutler to Dismiss 1 Complaint. (Deniker, Susan)
07/02/2021	60	NOTICE OF CHANGE OF ATTORNEY INFORMATION by Tara L. Borelli updating name and/or firm information. (Borelli, Tara) (Modified on 7/3/2021 to convert event to notice of change of attorney information) (mk).
07/02/2021	61	ANSWER TO 1 Complaint With Jury Demand by State of West Virginia.(Capehart, Curtis) (Modified on 7/3/2021 to add jury demand) (mk).

07/07/2021	62	STATEMENT OF VISITING ATTORNEY from David C. Tryon on behalf of State of West Virginia. Local counsel: Curtis R. A. Capehart. Fee \$50.00. Receipt # AWWSDC-7983140. (Capehart, Curtis) (attorney admitted to practice in SDWV on 2/17/2022; no longer appearing pro hac vice) (ts).
07/08/2021	63	ORDER AND NOTICE: Motions under Fed. R. Civ. P. 12(b) - 8/5/2021. Last day for Rule 26(f) meeting - 8/30/2021. Last day to file report of Rule 26(f) meeting - 9/7/2021. Scheduling Conference at 9:00 AM on 9/20/2021 at the Robert C. Byrd United States Courthouse, 300 Virginia Street East, Room 6610 (Library/Conference Room), Charleston, WV. Entry of scheduling order - 9/30/2021. Last day to make Rule 26(a)(1) disclosures - 10/4/2021. Signed by Judge Joseph R. Goodwin on 7/8/2021. (cc: counsel of record; any unrepresented parties) (mfo)
07/16/2021	64	FIRST AMENDED COMPLAINT by B. P. J., Heather Jackson against W. Clayton Burch, Harrison County Board of Education, State of West Virginia, Dora Stutler, West Virginia Secondary School Activities Commission, West Virginia State Board of Education, Patrick Morrissey. (Attachment: # 1 Proposed Summons)(Stark, Loree) (Modified on 7/19/2021 to convert event to amended complaint) (kew).
07/16/2021	65	CONSOLIDATED OPPOSITION by B. P. J., Heather Jackson to 54 , 56 and 58 Motions to Dismiss. (Stark, Loree)
07/19/2021	66	ELECTRONIC SUMMONS ISSUED as to Patrick Morrissey, re: 64 First Amended Complaint. Summons returnable 14 days. Instructions to Counsel: This is your electronic summons. Please print as many copies of the Summons and Complaint as are necessary to effectuate service under Fed. R. Civ. P. 4. See Proof of Service page of this Summons form for filing a return of service if required by Fed. R. Civ. P. 4(l). (kew)
07/21/2021	67	MEMORANDUM OPINION & ORDER granting Plaintiff's 2 MOTION for a Preliminary Injunction. While this case is pending, Defendants are enjoined from enforcing Section 18-2-25d against B.P.J. She will be permitted to sign up for and participate in school athletics in the same way as her girl classmates. I find that a bond is unnecessary and waive its requirement in this case. The court further DIRECTS the Clerk to post a copy of this published opinion on the court's website. Signed by Judge Joseph R. Goodwin on 7/21/2021. (cc: counsel of record; any unrepresented party) (arb)
07/26/2021	68	SUMMONS RETURNED EXECUTED for Patrick Morrissey, re: 64 First Amended Complaint. Patrick Morrissey served on 7/20/2021, answer due 8/10/2021. (Stark, Loree)
07/28/2021	69	ORDER denying as moot Defendants' 54 , 56 , and 58 Motions to Dismiss. Signed by Judge Joseph R. Goodwin on 7/28/2021. (cc: counsel of record; any unrepresented party) (btm)
07/30/2021	70	MOTION by West Virginia Secondary School Activities Commission to Dismiss 64 First Amended Complaint. (Green, Roberta)
07/30/2021	71	MEMORANDUM OF LAW by West Virginia Secondary School Activities Commission in support of 70 MOTION by West Virginia Secondary School Activities Commission to Dismiss 64 First Amended Complaint. (Green, Roberta)
07/30/2021	72	MOTION by Harrison County Board of Education, Dora Stutler to Dismiss re: 64 First Amended Complaint. (Deniker, Susan)
07/30/2021	73	MEMORANDUM OF LAW by Harrison County Board of Education, Dora Stutler in support of 72 MOTION by Harrison County Board of Education, Dora Stutler to Dismiss re: 64 First Amended Complaint(mk)

07/30/2021	74	MOTION by W. Clayton Burch, West Virginia State Board of Education to Dismiss With Prejudice re: 64 First Amended Complaint. (Morgan, Kelly)
07/30/2021	75	MEMORANDUM OF LAW by W. Clayton Burch, West Virginia State Board of Education in support of 74 MOTION by W. Clayton Burch, West Virginia State Board of Education to Dismiss With Prejudice re: 64 First Amended Complaint. (Morgan, Kelly)
07/30/2021	76	MOTION by Patrick Morrissey, State of West Virginia to Dismiss Patrick Morrissey in His Official Capacity as Attorney General of the State of West Virginia re: 64 First Amended Complaint. (Capehart, Curtis)
07/30/2021	77	MEMORANDUM OF LAW by Patrick Morrissey, State of West Virginia in support of 76 MOTION by Patrick Morrissey, State of West Virginia to Dismiss Patrick Morrissey in His Official Capacity as Attorney General of the State of West Virginia re: 64 First Amended Complaint (Capehart, Curtis)
07/30/2021	78	ANSWER TO 64 FIRST AMENDED COMPLAINT With Jury Demand by State of West Virginia.(Capehart, Curtis) (Modified on 7/31/2021 to add jury demand) (mk).
08/02/2021	79	STATEMENT OF VISITING ATTORNEY from Meredith Taylor Brown on behalf of B. P. J., Heather Jackson. Local counsel: Loree Stark. Fee \$50.00. Receipt # AWVSDC-8001642. (Stark, Loree)
08/13/2021	80	CONSOLIDATED MEMORANDUM by B. P. J., Heather Jackson in opposition to 70 MOTION by West Virginia Secondary School Activities Commission, 72 MOTION by Harrison County Board of Education, Dora Stutler and 74 MOTION by W. Clayton Burch, West Virginia State Board of Education to Dismiss With Prejudice, re: 64 First Amended Complaint. (Stark, Loree)
08/13/2021	81	MOTION by B. P. J., Heather Jackson to Strike Jury Demand in 78 Answer to Complaint by State of West Virginia. (Attachment: # 1 Proposed Order Granting Plaintiff's Motion to Strike Jury Demand)(Stark, Loree)
08/13/2021	82	JOINT MOTION by B. P. J., Patrick Morrissey, State of West Virginia to Dismiss Patrick Morrissey in His Official Capacity as Attorney General of the State of West Virginia re: 64 First Amended Complaint. (Attachment: # 1 Proposed Order)(Stark, Loree) (Modified on 8/15/2021 to correct link and to add party filers) (kew).
08/20/2021	83	REPLY by West Virginia Secondary School Activities Commission to 80 Memorandum In Opposition. (Attachment: # 1 Exhibit A)(Green, Roberta)
08/20/2021	84	REPLY by W. Clayton Burch, West Virginia State Board of Education to 80 Consolidated Memorandum in Opposition. (Morgan, Kelly)
08/20/2021	85	REPLY by Harrison County Board of Education, Dora Stutler to 80 Consolidated Memorandum in Opposition. (Deniker, Susan)
08/26/2021	86	NOTICE OF WITHDRAWAL OF COUNSEL by Jessica A. Lee on behalf of State of West Virginia. (Lee, Jessica)
08/27/2021	87	MOTION by B. P. J., Heather Jackson for Leave to File Surreply in Opposition to Defendants' Motion to Dismiss with proposed document attached (Attachments: # 1 Proposed Surreply, # 2 Proposed Order)(Stark, Loree)
08/27/2021	88	RESPONSE by State of West Virginia in opposition to 81 MOTION by B. P. J., Heather Jackson to Strike Jury Demand in 78 Answer to Complaint by State of West Virginia (Capehart, Curtis)

08/30/2021	89	RESPONSE by West Virginia Secondary School Activities Commission in opposition to 87 MOTION by B. P. J., Heather Jackson for Leave to File Surreply in Opposition to Defendants' Motion to Dismiss (Green, Roberta)
08/30/2021	90	ORDER directing that Plaintiff's 87 MOTION for Leave to File Surreply in Opposition to Defendants' Motion to Dismiss is DENIED. Signed by Judge Joseph R. Goodwin on 8/30/2021. (cc: counsel of record; any unrepresented party) (msa)
09/03/2021	91	REPLY by B. P. J., Heather Jackson to 88 Response In Opposition. (Stark, Loree)
09/07/2021	92	RULE 26(f) REPORT OF PLANNING MEETING by B. P. J., Heather Jackson, West Virginia State Board of Education, Harrison County Board of Education, West Virginia Secondary School Activities Commission, W. Clayton Burch, Dora Stutler, Patrick Morrissey, State of West Virginia. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Stark, Loree) (Modified on 9/8/2021 to add party filers) (kew).
09/08/2021	93	SCHEDULING ORDER directing that the scheduling conference is cancelled and that this case shall proceed as follows: Amendment of pleadings and joinder of parties - 10/26/2021. Deadline for written discovery requests - 2/8/2022. Expert disclosure by party with burden of proof - 1/24/2022. Expert disclosure by opposing party - 2/23/2022. Expert disclosure for rebuttal purposes - 3/11/2022. Deposition deadline and close of discovery - 3/25/2022. Filing of dispositive motions - 4/14/2022. Responses to dispositive motions - 4/28/2022. Reply to response to dispositive motion - 5/5/2022. Hearing on motions for summary judgment on 6/8/2022 at 10:00 AM. Settlement meeting and mediation deadline - 5/25/2022. Filing of motions in limine - 6/22/2022. Responses to motions in limine - 6/29/2022. Plaintiff draft of pretrial order to defendant - 6/20/2022. Integrated pretrial order filed by defendant - 6/27/2022. Pretrial conference on 7/6/2022 at 11:00 AM. Proposed jury instructions filed - 7/18/2022. Final settlement conference on 7/25/2022 at 9:00 AM. Trial on 7/26/2022 at 8:30 AM. Signed by Judge Joseph R. Goodwin on 9/8/2021. (cc: counsel of record; any unrepresented parties) (mfo)
09/10/2021		Movant, Lainey Armistead, added pursuant to request of counsel. (ts)
09/10/2021	94	MOTION by Lainey Armistead to Intervene (Steele, Brandon)
09/10/2021	95	MEMORANDUM by Lainey Armistead in support of 94 MOTION by Lainey Armistead to Intervene. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Steele, Brandon)
09/13/2021	96	STATEMENT OF VISITING ATTORNEY from Christiana Holcomb on behalf of Lainey Armistead. Local counsel: Brandon Steele. Fee \$50.00. Receipt # AWVSDC-8031384. (Steele, Brandon)
09/13/2021	97	STATEMENT OF VISITING ATTORNEY from Jonathan Scruggs on behalf of Lainey Armistead. Local counsel: Brandon Steele. Fee \$50.00. Receipt # AWVSDC-8031399. (Steele, Brandon)
09/15/2021	98	STATEMENT OF VISITING ATTORNEY from Timothy Ducar on behalf of Lainey Armistead. Local counsel: Brandon Steele. Fee \$50.00. Receipt # AWVSDC-8033888. (Steele, Brandon)
09/24/2021	99	OPPOSITION by B. P. J., Heather Jackson to 94 MOTION by Lainey Armistead to Intervene. (Stark, Loree)
10/01/2021	100	REPLY MEMORANDUM by Lainey Armistead to 99 Opposition. (Steele, Brandon)
10/04/2021	101	CERTIFICATE OF SERVICE by West Virginia Secondary School Activities Commission for Initial Disclosures. (Green, Roberta)

10/04/2021	102	CERTIFICATE OF SERVICE by W. Clayton Burch, West Virginia State Board of Education for Initial Disclosures. (Morgan, Kelly)
10/04/2021	103	CERTIFICATE OF SERVICE by Harrison County Board of Education, Dora Stutler for Initial Disclosures. (Deniker, Susan)
10/04/2021	104	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Initial Disclosures. (Stark, Loree) (Modified on 10/5/2021 to add party filer) (kew).
10/04/2021	105	CERTIFICATE OF SERVICE by State of West Virginia for Rule 26(a)(1) Disclosures. (Capehart, Curtis)
10/04/2021	106	CERTIFICATE OF SERVICE by Lainey Armistead for Rule 26(a)(1) Initial Disclosures. (Ducar, Timothy)
10/05/2021	107	CERTIFICATE OF SERVICE by State of West Virginia for First Set of Discovery Requests to Plaintiff. (Capehart, Curtis)
10/18/2021	108	NOTICE OF CHANGE OF ATTORNEY INFORMATION by Carl Solomon Charles updating name and/or firm information on behalf of B. P. J., Heather Jackson. (Charles, Carl)
10/18/2021	109	NOTICE OF CHANGE OF ATTORNEY INFORMATION by Tara L. Borelli updating name and/or firm information on behalf of B. P. J., Heather Jackson. (Borelli, Tara) (Modified on 10/19/2021 to convert event to notice of change of attorney information) (kew).
10/22/2021	110	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for First Set of Discovery Requests to Defendants. (Stark, Loree)
11/05/2021	111	PROPOSED ORDER Stipulated Protective Order by State of West Virginia, West Virginia State Board of Education, Harrison County Board of Education, West Virginia Secondary School Activities Commission, W. Clayton Burch, Dora Stutler. (Capehart, Curtis) (Modified on 11/8/2021 to add party filers) (kew).
11/10/2021	112	ORDER construing the parties' 111 Stipulated Protective Order as a joint motion for the entry of a protective order; directing that the parties' construed joint motion for the entry of a protective order is denied, without prejudice as to refile. Signed by Magistrate Judge Dwane L. Tinsley on 11/10/2021. (cc: counsel of record; any unrepresented party) (btm)
11/22/2021	113	JOINT MOTION by State of West Virginia, B. P. J., Heather Jackson, West Virginia State Board of Education, Harrison County Board of Education, West Virginia Secondary School Activities Commission, W. Clayton Burch, Dora Stutler, Patrick Morrissey for Entry of a Particularized Protective Order. (Attachment: # 1 Proposed Order)(Capehart, Curtis) (Modified on 11/22/2021 to add party filers) (kew).
11/22/2021		MOTION REFERRED to Magistrate Judge Dwane L. Tinsley: 113 JOINT MOTION by Certain Parties for Entry of a Particularized Protective Order. (kew)
11/22/2021	114	CERTIFICATE OF SERVICE by West Virginia Secondary School Activities Commission for Responses to First Set of Requests for Production. (Green, Roberta)
11/22/2021	115	CERTIFICATE OF SERVICE by West Virginia Secondary School Activities Commission for Responses to First Set of Interrogatories. (Green, Roberta)
11/22/2021	116	CERTIFICATE OF SERVICE by W. Clayton Burch, West Virginia State Board of Education for Responses to Plaintiff's First Set of Interrogatories to Defendants State Board of West Virginia and W. Clayton Burch. (Morgan, Kelly)

11/22/2021	117	CERTIFICATE OF SERVICE by W. Clayton Burch, West Virginia State Board of Education for Responses to Plaintiff's First Set of Requests for Production (Morgan, Kelly)
11/22/2021	118	CERTIFICATE OF SERVICE by Harrison County Board of Education, Dora Stutler for Answers and Objections to Plaintiff's First Set of Interrogatories (Deniker, Susan)
11/22/2021	119	CERTIFICATE OF SERVICE by Harrison County Board of Education, Dora Stutler for Responses and Objections to Plaintiff's First Set of Requests for Production (Deniker, Susan)
11/23/2021	120	CERTIFICATE OF SERVICE by State of West Virginia for Response to First Set of Interrogatories and Requests for Production. (Capehart, Curtis)
11/23/2021	121	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Responses and Objections to State of West Virginia's First Set of Interrogatories. (Stark, Loree)
11/23/2021	122	AMENDED CERTIFICATE OF SERVICE by West Virginia Secondary School Activities Commission for Responses to First Set of Interrogatories. (Bandy, Kimberly)
11/23/2021	123	ORDER granting 113 Joint Motion for Protective Order. Signed by Magistrate Judge Dwane L. Tinsley on 11/23/2021. (cc: counsel of record; any unrepresented party) (lca)
11/23/2021	124	AMENDED CERTIFICATE OF SERVICE by West Virginia Secondary School Activities Commission for Responses to First Set of Requests for Production. (Bandy, Kimberly)
11/23/2021	125	STIPULATED PROTECTIVE ORDER Setting forth the terms for the handling of confidential documents. Signed by Magistrate Judge Dwane L. Tinsley on 11/23/2021. (cc: counsel of record; any unrepresented party) (lca)
11/24/2021	126	CERTIFICATE OF SERVICE by Harrison County Board of Education, Dora Stutler for Supplemental Responses to First Set of Requests for Production. (Deniker, Susan)
11/30/2021	127	ORDER granting the 82 JOINT MOTION to Dismiss by Plaintiff B.P.J. and Defendants State of West Virginia and Patrick Morrissey, in his official capacity as Attorney General for the State of West Virginia. The claim by Plaintiff B.P.J. against the Attorney General in Count II of the First Amended Complaint, under the Equal Protection Clause, is DISMISSED without prejudice, and the Attorney General is DISMISSED as a party. This order does not affect any other claim or issue in the case. Each side will bear the costs and fees as to this claim against the Attorney General as well as this 82 Joint Motion and the Attorney General's previously-filed 76 Motion to Dismiss. Signed by Judge Joseph R. Goodwin on 11/30/2021. (cc: counsel of record; any unrepresented party) (arb)
12/01/2021	128	ORDER denying as moot 76 MOTION by Patrick Morrissey, State of West Virginia to Dismiss Patrick Morrissey in His Official Capacity as Attorney General of the State of West Virginia. Signed by Judge Joseph R. Goodwin on 12/1/2021. (cc: counsel of record; any unrepresented party) (tmr)
12/01/2021	129	MEMORANDUM OPINION AND ORDER denying 70 , 72 , and 74 Motions to Dismiss are denied. Signed by Judge Joseph R. Goodwin on 12/1/2021. (cc: counsel of record; any unrepresented party) (lca) (Modified on 12/1/2021 to replace unflattened image with flattened image. (lca).
12/01/2021		NOTICE OF DOCKET CORRECTION re: 129 Memorandum Opinion and Order. ERROR: Document not flattened. CORRECTION: Document replaced with flattened document. (lca)
12/01/2021	130	MEMORANDUM OPINION AND ORDER granting in part and denying in part 94 MOTION to Intervene and directs the Clerk to docket Intervenor's Proposed Answer to

		First Amended Complaint. Signed by Judge Joseph R. Goodwin on 12/1/2021. (cc: counsel of record; any unrepresented party) (lca)
12/01/2021	131	ANSWER to 64 First Amended Complaint With Jury Demand by Lainey Armistead; filed pursuant to the 130 Memorandum Opinion and Order. (lca) (Modified on 12/1/2021 to add jury demand) (mk).
12/07/2021	132	NOTICE of Non-Party Subpoena on Adam Burkhammer by B. P. J., Heather Jackson (Attachment: # 1 Exhibit 1)(Stark, Loree)
12/07/2021	133	NOTICE of Non-Party Subpoena on Buck Jennings by B. P. J., Heather Jackson (Attachment: # 1 Exhibit 1)(Stark, Loree)
12/07/2021	134	NOTICE of Non-Party Subpoena on Caleb Hanna by B. P. J., Heather Jackson (Attachment: # 1 Exhibit 1)(Stark, Loree)
12/07/2021	135	NOTICE of Non-Party Subpoena on Charles Horst by B. P. J., Heather Jackson (Attachment: # 1 Exhibit 1)(Stark, Loree)
12/07/2021	136	NOTICE of Non-Party Subpoena on Chris Phillips by B. P. J., Heather Jackson (Attachment: # 1 Exhibit 1)(Stark, Loree)
12/07/2021	137	NOTICE of Non-Party Subpoena on Heather Tully by B. P. J., Heather Jackson (Attachment: # 1 Exhibit 1)(Stark, Loree)
12/07/2021	138	NOTICE of Non-Party Subpoena on Jordan Bridges by B. P. J., Heather Jackson (Attachment: # 1 Exhibit 1)(Stark, Loree)
12/07/2021	139	NOTICE of Non-Party Subpoena on Joe Ellington by B. P. J., Heather Jackson (Attachment: # 1 Exhibit 1)(Stark, Loree)
12/07/2021	140	NOTICE of Non-Party Subpoena on Margitta Mazzocchi by B. P. J., Heather Jackson (Attachment: # 1 Exhibit 1)(Stark, Loree)
12/07/2021	141	NOTICE of Non-Party Subpoena on Melissa White by B. P. J., Heather Jackson (Attachment: # 1 Exhibit 1)(Stark, Loree)
12/07/2021	142	NOTICE of Non-Party Subpoena on Rollan Roberts by B. P. J., Heather Jackson (Attachment: # 1 Exhibit 1)(Stark, Loree)
12/07/2021	143	NOTICE of Non-Party Subpoena on Todd Longanacre by B. P. J., Heather Jackson (Attachment: # 1 Exhibit 1)(Stark, Loree)
12/07/2021	144	NOTICE of Non-Party Subpoena on Wayne Clark by B. P. J., Heather Jackson (Attachment: # 1 Exhibit 1)(Stark, Loree)
12/08/2021	145	JOINT MOTION by State of West Virginia, B. P. J., Heather Jackson, West Virginia State Board of Education, Harrison County Board of Education, West Virginia Secondary School Activities Commission, W. Clayton Burch, Dora Stutler for Protective Order. (Attachment: # 1 Proposed Order)(Capehart, Curtis) (Modified on 12/8/2021 to add party filers) (kew).
12/08/2021		MOTION REFERRED to Magistrate Judge Dwane L. Tinsley: 145 JOINT MOTION by State of West Virginia, B. P. J., Heather Jackson, West Virginia State Board of Education, Harrison County Board of Education, West Virginia Secondary School Activities Commission, W. Clayton Burch, Dora Stutler for Protective Order. (kew)
12/09/2021	146	ORDER granting 145 JOINT MOTION for Protective Order. Signed by Magistrate Judge Dwane L. Tinsley on 12/9/2021. (cc: counsel of record; any unrepresented party) (lca)

12/09/2021	147	STIPULATED PROTECTIVE ORDER (UPDATED WITH NEW PARTY) Setting forth the terms for the handling of confidential documents. Signed by Magistrate Judge Dwane L. Tinsley on 12/9/2021. (cc: counsel of record; any unrepresented party) (lca)
12/10/2021	148	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Supplemental Production of Documents in Response to the State of West Virginia's First Set of Interrogatories and Requests for Production. (Stark, Loree)
12/10/2021	149	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Production of Documents in Response to the State of West Virginia's First Set of Interrogatories and Requests for Production. (Stark, Loree)
12/10/2021	150	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Supplemental Production of Documents in Response to the State of West Virginia's First Set of Interrogatories and Requests for Production. (Stark, Loree)
12/10/2021	151	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Supplemental Production of Documents in Response to the State of West Virginia's First Set of Interrogatories and Requests for Production. (Stark, Loree)
12/10/2021	152	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Initial Disclosures, First Set of Discovery Requests, and Responses and Objections to State of West Virginia's First Set of Interrogatories and Request for Production. (Stark, Loree)
12/13/2021	153	NOTICE OF CHANGE OF ATTORNEY INFORMATION by Jeffrey Mark Cropp appearing on behalf of Harrison County Board of Education, Dora Stutler. (Cropp, Jeffrey)
12/13/2021	154	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Supplemental Production of Documents in Response to the State of West Virginia's First Set of Interrogatories and Requests for Production. (Reinhardt, Elizabeth) (Modified on 12/14/2021 to add party filer) (kew).
12/13/2021	155	AMENDED CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Supplemental Production of Documents in Response to the State of West Virginia's First Set of Interrogatories and Requests for Production. (Stark, Loree) (Modified on 12/14/2021 to add party filer) (kew).
12/15/2021	156	ANSWER TO 64 First Amended Complaint with Jury Demand by W. Clayton Burch, West Virginia State Board of Education. (Morgan, Kelly) (Modified on 12/15/2021 to add document link) (lca).
12/15/2021	157	ANSWER TO 64 First Amended Complaint by Harrison County Board of Education, Dora Stutler. (Deniker, Susan) (Modified on 12/16/2021 to correct link) (kew).
12/15/2021	158	ANSWER TO 64 FIRST AMENDED COMPLAINT with Jury Demand by West Virginia Secondary School Activities Commission. (Green, Roberta) (Modified on 12/16/2021 to add link to #64 amended complaint) (kew).
12/17/2021	159	CERTIFICATE OF SERVICE by Lainey Armistead for First Set of Interrogatories and Requests for Production. (Holcomb, Christiana)
12/20/2021	160	NOTICE OF DEPOSITIONS by State of West Virginia of Heather Jackson at 10:00 a.m. and B.P.J. at 3:30 p.m. on 1/19/2022 and Wesley Pepper on at 10:00 a.m. on 1/20/2022. (Capehart, Curtis)
12/20/2021	161	NOTICE of Non-Party Subpoena on West Virginia State University by B. P. J., Heather Jackson. (Attachment: # 1 Exhibit A)(Stark, Loree) (Modified on 12/21/2021 to add party filer) (kew).

12/20/2021	162	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for First Set of Discovery Requests to Lainey Armistead. (Stark, Loree) (Modified on 12/21/2021 to add party filer) (kew).
12/20/2021	163	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Second Set of Discovery Requests to West Virginia State Board of Education and W. Clayton Burch. (Stark, Loree) (Modified on 12/21/2021 to add party filer) (kew).
12/20/2021	164	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Second Set of Requests for Production to West Virginia Secondary School Activities Commission. (Stark, Loree) (Modified on 12/21/2021 to add party filer) (kew).
12/23/2021	165	AMENDED CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Supplemental Production of Documents in Response to the State of West Virginia's First Set of Interrogatories and Requests for Production. (Stark, Loree) (Modified on 12/27/2021 to add party filer) (kew).
12/23/2021	166	CERTIFICATE OF SERVICE by Lainey Armistead for Second Set of Interrogatories and Requests for Production. (Holcomb, Christiana)
12/28/2021	167	CERTIFICATE OF SERVICE by West Virginia Secondary School Activities Commission for Supplemental Responses to First Set of Requests for Production. (Green, Roberta)
12/28/2021	168	CERTIFICATE OF SERVICE by West Virginia Secondary School Activities Commission for Supplemental Responses to First Set. (Green, Roberta)
01/06/2022	169	MOTION by B. P. J., Heather Jackson for Protective Order. (Attachments: # 1 Declaration, # 2 Proposed Order)(Stark, Loree)
01/06/2022	170	MOTION by B. P. J., Heather Jackson to Expedite Determination of the 169 Motion for Protective Order. (Attachment: # 1 Proposed Order)(Stark, Loree) (Modified on 1/7/2022 to add link to #169 motion) (kew).
01/06/2022		MOTIONS REFERRED to Magistrate Judge Dwane L. Tinsley: 169 MOTION by B. P. J., Heather Jackson for Protective Order, 170 MOTION by B. P. J., Heather Jackson to Expedite. (ts) (Entered: 01/07/2022)
01/06/2022		DUPLICATE ENTRY. (Modified on 1/10/2022 to note duplicate entry of previous motion referred entry re: #169 motion) (ts). (Entered: 01/07/2022)
01/07/2022	171	ORDER granting 170 MOTION to Expedite; defendants shall file any response to the 169 Motion for Protective Order by 1/11/2022 and Plaintiff shall file any reply by 1/13/2022. Signed by Magistrate Judge Dwane L. Tinsley on 1/7/2022. (cc: counsel of record; any unrepresented party) (lca)
01/07/2022	172	CERTIFICATE OF SERVICE by Lainey Armistead for First Set of Requests for Admission. (Holcomb, Christiana)
01/11/2022	173	RESPONSE by Lainey Armistead in opposition to 169 MOTION by B. P. J., Heather Jackson for Protective Order (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C) (Steele, Brandon)
01/11/2022	174	RESPONSE by State of West Virginia in opposition to 169 MOTION by B. P. J., Heather Jackson for Protective Order (Capehart, Curtis)
01/12/2022	175	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Supplemental Production of Documents in Response to the State of West Virginia's First Set of Requests for Production. (Stark, Loree) (Modified on 1/13/2022 to add party filer) (ts)

01/12/2022	176	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Second Set of Interrogatories to Defendant County Board of Education and Dora Stutler. (Stark, Loree) (Modified on 1/13/2022 to add party filer) (ts).
01/12/2022	177	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Second Set of Interrogatories to Defendant West Virginia Secondary School Activities Commission. (Stark, Loree) (Modified on 1/13/2022 to add party filer) (ts).
01/13/2022	178	CONSOLIDATED REPLY by B. P. J., Heather Jackson to 173 and 174 Responses in Opposition. (Stark, Loree) (Modified on 1/14/2022 to correct links and to add party filer) (kew).
01/14/2022	179	CERTIFICATE OF SERVICE by W. Clayton Burch, West Virginia State Board of Education for Supplemental Responses to First Set of Interrogatories. (Morgan, Kelly)
01/18/2022	180	ORDER granting in part and denying in part 169 MOTION for Protective Order, as more fully set forth herein. Signed by Magistrate Judge Dwane L. Tinsley on 1/17/2022. (cc: counsel of record; any unrepresented party) (lca)
01/18/2022	181	CERTIFICATE OF SERVICE by West Virginia Secondary School Activities Commission for Responses to Second Set. (Green, Roberta)
01/18/2022	182	APPEARANCE OF COUNSEL by Joshua D. Brown on behalf of Lainey Armistead. (Brown, Joshua)
01/19/2022	183	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Responses and Objections to Lainey Armistead's First Set of Interrogatories and Requests for Production. (Stark, Loree) (Modified on 1/20/2022 to add party filer) (kew).
01/21/2022	184	NOTICE OF RULE 30(b)(6) DEPOSITION by B. P. J., Heather Jackson of Harrison County Board of Education on 02/18/2022 at 12:00 p.m. (Stark, Loree) (Modified on 1/21/2022 to add party filer) (kew).
01/21/2022	185	NOTICE OF RULE 30(b)(6) DEPOSITION by B. P. J., Heather Jackson of West Virginia State Board of Education on 02/09/2022 at 12:00 p.m. (Stark, Loree) (Modified on 1/21/2022 to add party filer) (kew).
01/21/2022	186	NOTICE OF RULE 30(b)(6) DEPOSITION by B. P. J., Heather Jackson of West Virginia Secondary School Activities Commission on 02/11/2022 at 12:00 p.m. (Stark, Loree) (Modified on 1/21/2022 to add party filer) (kew).
01/21/2022	187	NOTICE OF DEPOSITIONS by B. P. J., Heather Jackson of David R. Mazza at 12:00 p.m. on 2/28/2022, Danyelle Schoonmaker at 12:00 p.m. on 2/23/2022, and Lainey Armistead at 12:00 p.m. on 3/2/2022. (Stark, Loree)(Modified on 1/21/2022 to add party filer) (kew).
01/21/2022	188	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for First Set of Requests for Admission and Second Set of Interrogatories to Lainey Armistead. (Stark, Loree) (Modified on 1/21/2022 to add party filer) (kew).
01/21/2022	189	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for First Set of Requests for Admission and Second Set of Interrogatories to the State of West Virginia. (Stark, Loree) (Modified on 1/21/2022 to add party filer) (kew).
01/21/2022	190	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for First Set of Requests for Admission and Third Set of Interrogatories to Harrison County Board of Education and Superintendent Dora Stutler. (Stark, Loree) (Modified on 1/21/2022 to add party filer) (kew).

01/21/2022	191	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for First Set of Requests for Admission and Third Set of Interrogatories to West Virginia State Board of Education and Superintendent W. Clayton Burch. (Stark, Loree) (Modified on 1/21/2022 to add party filer) (kew).
01/21/2022	192	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for First Set of Requests for Admission and Third Set of Interrogatories to West Virginia Secondary School Activities Commission. (Stark, Loree) (Modified on 1/21/2022 to add party filer) (kew).
01/21/2022	193	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Supplemental and Amended Responses and Objections to the State of West Virginia's First Set of Interrogatories and Requests for Production. (Stark, Loree) (Modified on 1/24/2022 to add party filer) (kew).
01/24/2022	194	STATEMENT OF VISITING ATTORNEY from Rachel A. Csutoros on behalf of Lainey Armistead. Local counsel: Brandon Steele. Fee \$50.00. Receipt # AWVSDC-8117291. (Steele, Brandon)
01/24/2022	195	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Initial Designation of Expert Witnesses. (Stark, Loree)
01/25/2022	196	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Responses and Objections to Lainey Armistead's Second Set of Interrogatories and Requests for Production. (Stark, Loree)
01/25/2022	197	STATEMENT OF VISITING ATTORNEY from Roger G. Brooks on behalf of Lainey Armistead. Local counsel: Brandon Steele. Fee \$50.00. Receipt # AWVSDC-8118719. (Steele, Brandon)
01/28/2022	198	CERTIFICATE OF SERVICE by West Virginia Secondary School Activities Commission for Second Supplemental Responses to First Set of Requests for Production. (Green, Roberta)
01/31/2022	199	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Supplemental Response to State of West Virginia's First Set of Requests for Production and Lainey Armistead's First Set of Requests for Production. (Stark, Loree)
02/02/2022	200	CERTIFICATE OF SERVICE by W. Clayton Burch, West Virginia State Board of Education for Responses to Second Set of Interrogatories. (Morgan, Kelly)
02/02/2022	201	CERTIFICATE OF SERVICE by W. Clayton Burch, West Virginia State Board of Education for Responses to Second Set of Requests for Production. (Morgan, Kelly)
02/02/2022	202	CERTIFICATE OF SERVICE by Lainey Armistead for Responses and Objections to First Set of Interrogatories and Requests for Production. (Steele, Brandon)
02/02/2022	203	CERTIFICATE OF SERVICE by State of West Virginia for Second Set of Discovery Requests. (Capehart, Curtis)
02/04/2022	204	INCORRECT ENTRY; IMAGE REMOVED. (Modified on 2/4/2022 to remove image because the incorrect event was used) (kew).
02/04/2022		NOTICE OF DOCKET CORRECTION re: #204 Notice of Attorney Appearance. ERROR: Incorrect event used. CORRECTION: Image removed. (kew)
02/04/2022	205	STATEMENT OF VISITING ATTORNEY from Zo Helstrom on behalf of B. P. J., Heather Jackson. Local counsel: Loree Stark. Fee \$50.00. Receipt # AWVSDC-8125771. (Stark, Loree)

02/04/2022	206	STATEMENT OF VISITING ATTORNEY from Henry W. Frampton, IV on behalf of Lainey Armistead. Local counsel: Joshua D. Brown. Fee \$50.00. Receipt # AWWSDC-8126001. (Brown, Joshua)
02/07/2022	207	NOTICE OF APPEARANCE by Nicholas Ward on behalf of B. P. J., Heather Jackson. (Ward, Nicholas)
02/07/2022	208	CERTIFICATE OF SERVICE by Harrison County Board of Education, Dora Stutler for First Set of Interrogatories to Plaintiff. (Deniker, Susan)
02/07/2022	209	CERTIFICATE OF SERVICE by Harrison County Board of Education, Dora Stutler for First Set of Requests for Production of Documents to Plaintiff. (Deniker, Susan)
02/07/2022	210	CERTIFICATE OF SERVICE by Harrison County Board of Education, Dora Stutler for First Set of Requests for Admission to Plaintiff. (Deniker, Susan)
02/07/2022	211	CERTIFICATE OF SERVICE by Lainey Armistead for Third Set of Interrogatories and Second Set of Requests for Admission to Plaintiff. (Steele, Brandon)
02/08/2022	212	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Responses and Objections to First Set of Requests for Admission. (Stark, Loree)
02/08/2022	213	CERTIFICATE OF SERVICE by Lainey Armistead for Third Set of Requests for Admission to Plaintiff. (Steele, Brandon)
02/09/2022	214	CERTIFICATE OF SERVICE by West Virginia Secondary School Activities Commission for Third Supplemental Responses to First Set of Requests for Production. (Green, Roberta)
02/09/2022	215	CERTIFICATE OF SERVICE by West Virginia Secondary School Activities Commission for Responses to Second Set of Interrogatories. (Green, Roberta)
02/09/2022	216	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Second Set of Requests for Admission to Lainey Armistead. (Stark, Loree)
02/09/2022	217	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Second Set of Requests for Admission to State of West Virginia. (Stark, Loree)
02/09/2022	218	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Second Set of Requests for Admission to State Superintendent W. Clayton Burch. (Stark, Loree)
02/09/2022	219	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Second Set of Requests for Admission to West Virginia State Board of Education. (Stark, Loree)
02/09/2022	220	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Second Set of Requests for Admission to West Virginia Secondary School Activities Commission. (Stark, Loree)
02/09/2022	221	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Second Set of Requests for Admission to Harrison County Superintendent Dora Stutler. (Stark, Loree)
02/09/2022	222	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Second Set of Requests for Admission to Harrison County Board of Education. (Stark, Loree)
02/10/2022	223	NOTICE OF WITHDRAWAL OF COUNSEL by Meredith Taylor Brown on behalf of B. P. J., Heather Jackson. (Stark, Loree)
02/10/2022	224	NOTICE OF DEPOSITION DUCES TECUM by State of West Virginia of Gerald Montano, DO on 02/24/2022 at 10:00 a.m. (Capehart, Curtis)
02/10/2022	225	NOTICE OF DEPOSITION by State of West Virginia of Kacie Kidd, MD on 02/21/2022 at 10:00 a.m. (Capehart, Curtis)

02/10/2022	226	NOTICE OF DEPOSITION by State of West Virginia of Matthew Bunner on 2/25/2022 at 10:00 a.m. (Capehart, Curtis)
02/10/2022	227	CERTIFICATE OF SERVICE by Harrison County Board of Education, Dora Stutler for Answers to Second Set of Interrogatories. (Deniker, Susan)
02/14/2022	228	CERTIFICATE OF SERVICE by Lainey Armistead for First Supplemental Disclosures. (Steele, Brandon)
02/14/2022	229	AMENDED NOTICE OF 30(b)(6) DEPOSITION by B. P. J., Heather Jackson of Harrison County Board of Education on 03/08/2022 at 12:00 P.M. (Attachment: # 1 Exhibit A)(Stark, Loree)
02/16/2022	230	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Responses to First Set of Requests for the Production of Documents. (Stark, Loree)
02/16/2022	231	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Responses to First Set of Requests for the Production of Documents. (Stark, Loree)
02/16/2022	232	NOTICE OF DEPOSITION by Lainey Armistead of Deanna Adkins, MD on March 16, 2022 at 9:00 a.m. (Steele, Brandon)
02/16/2022	233	NOTICE OF DEPOSITION by Lainey Armistead of Joshua Safer, MD on March 24, 2022 at 9:00 a.m. (Steele, Brandon)
02/17/2022	234	NOTICE OF CHANGE OF ATTORNEY INFORMATION by Loree Beth Stark updating name and/or firm information on behalf of B. P. J., Heather Jackson. (Stark, Loree)
02/17/2022	235	CERTIFICATE OF SERVICE by West Virginia Secondary School Activities Commission for Responses to First Set of Requests for Admission and Third Set of Interrogatories. (Green, Roberta)
02/18/2022	236	CERTIFICATE OF SERVICE by Harrison County Board of Education, Dora Stutler for Supplemental Answers to First Set of Interrogatories. (Deniker, Susan)
02/18/2022	237	CERTIFICATE OF SERVICE by Harrison County Board of Education, Dora Stutler for Second Supplemental Responses to First Set of Requests for Production. (Deniker, Susan)
02/18/2022	238	CERTIFICATE OF SERVICE by Harrison County Board of Education, Dora Stutler for Answers and Objections to First Set of Requests for Admission and Third Set of Interrogatories. (Deniker, Susan)
02/21/2022	239	CERTIFICATE OF SERVICE by W. Clayton Burch, West Virginia State Board of Education for Responses to First Set of Request for Admissions and Third Set of Interrogatories. (Morgan, Kelly)
02/21/2022	240	CERTIFICATE OF SERVICE by State of West Virginia for Responses to First Set of Requests for Admission and Second Set of Interrogatories. (Capehart, Curtis)
02/22/2022	241	CERTIFICATE OF SERVICE by Lainey Armistead for Responses and Objections to First Set of Requests for Admission and Second Set of Interrogatories. (Steele, Brandon)
02/23/2022	242	NOTICE OF CHANGE OF ATTORNEY INFORMATION by Shannon Marlowe Rogers appearing on behalf of West Virginia Secondary School Activities Commission. (Rogers, Shannon)
02/23/2022	243	CERTIFICATE OF SERVICE by Lainey Armistead, State of West Virginia for Joint Disclosure of Expert Witnesses. (Steele, Brandon)

02/24/2022	244	CERTIFICATE OF SERVICE by Lainey Armistead for First Supplemental Production. (Steele, Brandon)
02/25/2022	245	STATEMENT OF VISITING ATTORNEY from Valeria M. Pelet del Toro on behalf of B. P. J., Heather Jackson. Local counsel: Loree Stark. Fee \$50.00. Receipt # AWVSDC-8139589. (Stark, Loree)
03/01/2022	246	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Supplemental Response to State of West Virginia's First Set of Requests for Production and Lainey Armistead's First Set of Requests for Production. (Stark, Loree)
03/01/2022	247	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Supplemental Response to State of West Virginia's First Set of Requests for Production and Lainey Armistead's First Set of Requests for Production. (Stark, Loree)
03/01/2022	248	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Supplemental Response to State of West Virginia's First Set of Requests for Production and Lainey Armistead's First Set of Requests for Production. (Stark, Loree)
03/02/2022	249	NOTICE OF DEPOSITIONS by B. P. J., Heather Jackson of Dr. James M. Cantor on 3/21/2022 at 10:00 a.m., Dr. Gregory A. Brown on 3/25/2022 at 10:00 a.m., Dr. Chad T. Carlson on 3/28/2022 at 10:00 a.m., Dr. Stephen B. Levine on 3/30/2022 at 10:00 a.m. (Stark, Loree)
03/03/2022	250	STATEMENT OF VISITING ATTORNEY from Travis C. Barham on behalf of Lainey Armistead. Local counsel: Joshua D. Brown. Fee \$50.00. Receipt # AWVSDC-8143485. (Brown, Joshua)
03/03/2022	251	STATEMENT OF VISITING ATTORNEY from Tyson C. Langhofer on behalf of Lainey Armistead. Local counsel: Joshua D. Brown. Fee \$50.00. Receipt # AWVSDC-8143503. (Brown, Joshua)
03/07/2022	252	STIPULATION OF UNCONTESTED FACTS by B. P. J., Heather Jackson, Harrison County Board of Education. (Hartnett, Kathleen) (Modified on 3/8/2022 to add party filer) (kew).
03/09/2022	253	CERTIFICATE OF SERVICE by West Virginia Secondary School Activities Commission for Responses to Second Set of Requests for Admission. (Green, Roberta)
03/09/2022	254	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Responses and Objections to Lainey Armistead's Third Set of Interrogatories and Second and Third Sets of Requests for Admission. (Stark, Loree)
03/09/2022	255	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Responses and Objections to Harrison County Board of Education and Dora Stutler's First Set of Interrogatories, Requests for Production, and Requests for Admission. (Stark, Loree)
03/10/2022	256	CERTIFICATE OF SERVICE by West Virginia State Board of Education for Responses to Second Set of Requests for Admission. (Morgan, Kelly)
03/10/2022	257	CERTIFICATE OF SERVICE by W. Clayton Burch for Responses to Second Set of Requests for Admission. (Morgan, Kelly)
03/10/2022	258	CERTIFICATE OF SERVICE by Harrison County Board of Education for Responses and Objections to Second Set of Requests for Admission. (Cropp, Jeffrey) (Modified on 3/11/2022 to remove party filer) (kew).
03/10/2022	259	CERTIFICATE OF SERVICE by Dora Stutler for Responses and Objections to Second Set of Requests for Admission. (Cropp, Jeffrey) (Modified on 3/11/2022 to remove party

		filer) (kew).
03/10/2022	260	CERTIFICATE OF SERVICE by Lainey Armistead for Responses and Objections to Second Set of Requests for Admission. (Steele, Brandon)
03/11/2022	261	CERTIFICATE OF SERVICE by W. Clayton Burch, West Virginia State Board of Education for Second Supplemental Responses to First Set of Interrogatories. (Morgan, Kelly)
03/11/2022	262	CERTIFICATE OF SERVICE by State of West Virginia for Responses to Second Set of Requests for Admission. (Capehart, Curtis)
03/17/2022	263	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Responses and Objections to Lainey Armistead's Third Set of Interrogatories and Second and Third Sets of Requests for Admission. (Stark, Loree)
03/17/2022	264	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Responses and Objections to Harrison County Board of Education and Dora Stutler's First Set of Interrogatories, Requests for Production, and Requests for Admission. (Stark, Loree)
03/21/2022	265	CERTIFICATE OF SERVICE by Harrison County Board of Education, Dora Stutler for Second Supplemental Answers to First Set of Interrogatories. (Cropp, Jeffrey)
03/21/2022	266	CERTIFICATE OF SERVICE by Harrison County Board of Education, Dora Stutler for Third Supplemental Responses to First Set of Requests for Production. (Cropp, Jeffrey)
03/22/2022	267	NOTICE OF DEPOSITION by State of West Virginia of Mary Fry, Ph.D. on March 29, 2022 at 9:00 a.m. (Capehart, Curtis)
03/24/2022	268	CERTIFICATE OF SERVICE by Lainey Armistead for Second Subsequent Production. (Steele, Brandon)
03/25/2022	269	NOTICE OF DEPOSITION by Lainey Armistead of Aron Janssen, MD on April 4, 2022 at 8:00 a.m. (Steele, Brandon)
03/30/2022	270	STIPULATION OF UNCONTESTED FACTS by B. P. J., Heather Jackson, West Virginia State Board of Education, W. Clayton Burch. (Hartnett, Kathleen) (Modified on 3/31/2022 to add party filers) (kew).
03/30/2022	271	ORDER granting Plaintiff's 81 Motion to Strike Jury Demand. Signed by Judge Joseph R. Goodwin on 3/30/2022. (cc: counsel of record; any unrepresented party) (btm)
04/01/2022	272	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Second Set of Supplemental Responses and Objections to The State of West Virginia's First Set of Interrogatories and Requests for Production. (Stark, Loree)
04/01/2022	273	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Second Supplemental Responses and Objections to Lainey Armistead's First Set of Interrogatories and Requests for Production. (Stark, Loree)
04/05/2022	274	JOINT MOTION by B. P. J., Heather Jackson, West Virginia State Board of Education, Harrison County Board of Education, West Virginia Secondary School Activities Commission, W. Clayton Burch, Dora Stutler, The State of West Virginia, Lainey Armistead to Extend Deadlines for Dispositive Motions and Briefing re: 93 Scheduling Order, to Establish a Schedule for Filing Daubert Motions, and for Leave to File Briefs in Excess of the Page Limitation. (Attachment: # 1 Proposed Order)(Stark, Loree) (Modified on 4/6/2022 to add link to #93 scheduling order and to add party filers) (kew).
04/06/2022	275	ORDER granting 274 Joint Motion to Extend Deadlines for Dispositive Motions and Briefing re: 93 Scheduling Order, to Establish a Schedule for Filing Daubert Motions, and

		for Leave to File Briefs in Excess of the Page Limitation; the parties are allowed to exceed page limitations as set forth herein; and the deadlines in this case are extended and set as follows: Filing of dispositive motions - 4/21/2022. Responses to dispositive motions; filing of Daubert motions - 5/12/2022. Replies to responses to dispositive motions; responses to Daubert motions - 5/26/2022. Replies to responses to Daubert motions - 6/2/2022. Signed by Judge Joseph R. Goodwin on 4/6/2022. (cc: counsel of record; any unrepresented party) (kew)
04/21/2022	276	MOTION by West Virginia Secondary School Activities Commission for Summary Judgment (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G)(Green, Roberta)
04/21/2022	277	MEMORANDUM by West Virginia Secondary School Activities Commission in support of 276 MOTION by West Virginia Secondary School Activities Commission for Summary Judgment. (Green, Roberta)
04/21/2022	278	MOTION by Harrison County Board of Education, Dora Stutler for Summary Judgment (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8)(Deniker, Susan)
04/21/2022	279	INCOMPLETE IMAGE; IMAGE REMOVED. (Modified on 4/21/2022 to remove incomplete image) (kew).
04/21/2022		NOTICE OF DOCKET CORRECTION re: #279 Memorandum of Law in Support. ERROR: Missing pages. CORRECTION: Image removed. (kew)
04/21/2022	280	JOINT MOTION by B. P. J., Heather Jackson, West Virginia State Board of Education, Harrison County Board of Education, West Virginia Secondary School Activities Commission, W. Clayton Burch, Dora Stutler, State of West Virginia to File Exhibits Under Seal. (Attachments: # 1 Memorandum in Support, # 2 Proposed Order, # 3 Exhibit 1, # 4 Exhibit 2, # 5 Exhibit 3, # 6 Exhibit 4, # 7 Exhibit 5, # 8 Sealed Exhibit 6, # 9 Exhibit 7, # 10 Exhibit 8, # 11 Exhibit 9)(Stark, Loree) (Modified on 4/22/2022 to add party filers and to remove memorandum in support and file at entry #293) (kew). (Modified on 6/7/2022 to modify security of ECF 280-8 pursuant to 379 Order) (mk).
04/21/2022	281	MEMORANDUM OF LAW by Harrison County Board of Education, Dora Stutler in support of 278 MOTION by Harrison County Board of Education, Dora Stutler for Summary Judgment (Deniker, Susan)
04/21/2022	282	REFERENCE LIST submitted by B. P. J., Heather Jackson, West Virginia State Board of Education, Harrison County Board of Education, West Virginia Secondary School Activities Commission, W. Clayton Burch, Dora Stutler, State of West Virginia re: 280 JOINT MOTION by Certain Parties to File Exhibits Under Seal. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9)(Stark, Loree) (Modified on 4/22/2022 to add party filers) (kew).
04/21/2022	283	MOTION by W. Clayton Burch, West Virginia State Board of Education for Summary Judgment (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4) (Morgan, Kelly)
04/21/2022	284	MEMORANDUM OF LAW by W. Clayton Burch, West Virginia State Board of Education in support of 283 MOTION by W. Clayton Burch, West Virginia State Board of Education for Summary Judgment (Morgan, Kelly)
04/21/2022	285	MOTION by State of West Virginia for Summary Judgment. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, #

		8 Exhibit H, # 9 Sealed Exhibit I) (Capehart, Curtis) (Modified on 6/7/2022 to modify security of ECF 285-9 pursuant to 379 Order) (mk).
04/21/2022	286	MOTION by Lainey Armistead for Summary Judgment. (Attachment: # 1 Sealed Appendix in Support)(Steele, Brandon) (Modified on 6/7/2022 to modify security of ECF No 286-1 pursuant to 379 Order) (mk).
04/21/2022	287	MEMORANDUM by State of West Virginia in support of 285 MOTION by State of West Virginia for Summary Judgment. (Capehart, Curtis)
04/21/2022	288	MEMORANDUM by Lainey Armistead in support of 286 MOTION by Lainey Armistead for Summary Judgment. (Steele, Brandon)
04/21/2022	289	MOTION by B. P. J., Heather Jackson for Summary Judgment (Attachments: # 1 Declaration of Loree Stark in Support of Motion for Summary Judgement, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7, # 9 Exhibit 8, # 10 Exhibit 9, # 11 Exhibit 10, # 12 Exhibit 11, # 13 Exhibit 12, # 14 Exhibit 13, # 15 Exhibit 14, # 16 Exhibit 15, # 17 Exhibit 16, # 18 Exhibit 17, # 19 Exhibit 18, # 20 Sealed Exhibit 19, # 21 Exhibit 20, # 22 Exhibit 21, # 23 Exhibit 22, # 24 Exhibit 23, # 25 Exhibit 24, # 26 Exhibit 25, # 27 Exhibit 26, # 28 Exhibit 27, # 29 Exhibit 28, # 30 Exhibit 29, # 31 Exhibit 30, # 32 Exhibit 31, # 33 Exhibit 32, # 34 Exhibit 33, # 35 Exhibit 34, # 36 Exhibit 35, # 37 Exhibit 36, # 38 Exhibit 37, # 39 Exhibit 38, # 40 Exhibit 39, # 41 Exhibit 40, # 42 Exhibit 41, # 43 Exhibit 42, # 44 Exhibit 43, # 45 Exhibit 44)(Stark, Loree) (Modified on 6/7/2022 to modify security of ECF No. 289-20 pursuant to 379 Order) (mk).
04/21/2022	290	STATEMENT OF UNDISPUTED MATERIAL FACTS by B. P. J., Heather Jackson re: 289 MOTION by B. P. J., Heather Jackson for Summary Judgment. (Stark, Loree)
04/21/2022	291	MEMORANDUM by B. P. J., Heather Jackson in support of 289 MOTION by B. P. J., Heather Jackson for Summary Judgment. (Stark, Loree)
04/21/2022	292	EXHIBITS by B. P. J., Heather Jackson in support of 289 MOTION by B. P. J., Heather Jackson for Summary Judgment. (Attachments: # 1 Exhibit 13, # 2 Exhibit 14, # 3 Exhibit 15, # 4 Exhibit 16, # 5 Exhibit 19, # 6 Exhibit 20, # 7 Exhibit 21, # 8 Exhibit 26) (Stark, Loree) (Modified on 4/22/2022 to add link to #289 motion) (kew).
04/22/2022	293	MEMORANDUM by Lainey Armistead, W. Clayton Burch, Harrison County Board of Education, B. P. J., Heather Jackson, State of West Virginia, Dora Stutler, West Virginia Secondary School Activities Commission, West Virginia State Board of Education in support of 280 JOINT MOTION by B. P. J., Heather Jackson, West Virginia State Board of Education, Harrison County Board of Education, West Virginia Secondary School Activities Commission, W. Clayton Burch, Dora Stutler, State of West Virginia, United States of America to File Exhibits Under Seal. (kew) (Modified on 4/26/2022 to add party filer)(mk).
04/22/2022		NOTICE OF DOCKET CORRECTION re: 280 Joint Motion to File Under Seal. ERROR: Memorandum in support attached to motion. CORRECTION: Memorandum removed and filed at entry #293. (kew)
04/25/2022	294	CERTIFICATE OF SERVICE by Lainey Armistead for Third Subsequent Production. (Steele, Brandon)
04/25/2022	295	CERTIFICATE OF SERVICE by B. P. J., Heather Jackson for Supplemental Responses and Objections to Harrison County Board of Education and Dora Stutler's First Set of Interrogatories, First Set of Requests for Production, and First Set of Requests for Admission. (Stark, Loree)

05/05/2022	296	ORDER granting 280 JOINT MOTION to File Exhibits Under Seal; the exhibits attached to this Motion are to be filed UNDER SEAL. It is further ORDERED that the reference list submitted in support of this motion to seal is to remain SEALED. Signed by Judge Joseph R. Goodwin on 5/5/2022. (cc: counsel of record; any unrepresented party) (lca)
05/05/2022	297	EXHIBITS 1 - 9 filed pursuant to the 296 Order. (Attachments: # 1 Exhibit 2, # 2 Exhibit 3, # 3 Exhibit 4, # 4 Exhibit 5, # 5 Exhibit 6, # 6 Exhibit 7, # 7 Exhibit 8, # 8 Exhibit 9) (lca)
05/12/2022	298	RESPONSE by West Virginia Secondary School Activities Commission in opposition to 289 MOTION by B. P. J., Heather Jackson for Summary Judgment (Green, Roberta)
05/12/2022	299	RESPONSE by W. Clayton Burch, West Virginia State Board of Education in opposition to 289 MOTION by B. P. J., Heather Jackson for Summary Judgment (Morgan, Kelly)
05/12/2022	300	SUPPLEMENTAL APPENDIX by Lainey Armistead in support of 286 MOTION by Lainey Armistead for Summary Judgment. (Steele, Brandon)
05/12/2022	301	RESPONSE by Harrison County Board of Education, Dora Stutler in opposition to 289 MOTION by B. P. J., Heather Jackson for Summary Judgment (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Deniker, Susan)
05/12/2022	302	RESPONSE by Lainey Armistead in opposition to 289 MOTION by B. P. J., Heather Jackson for Summary Judgment (Steele, Brandon)
05/12/2022	303	DUPLICATE IMAGE; SEE ENTRY #304. (Modified on 5/16/2022 to remove duplicate entry; see entry #304) (kew).
05/12/2022	304	MOTION by State of West Virginia to (1) Strike Expert Opinion of Professor Mary Fry, (2) Exclude Mary Fry From Providing Expert Testimony and (3) for a Daubert Hearing. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Capehart, Curtis)
05/12/2022	305	BRIEF by State of West Virginia in opposition to 289 MOTION by B. P. J., Heather Jackson for Summary Judgment. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G)(Capehart, Curtis)
05/12/2022	306	MEMORANDUM by State of West Virginia in support of 304 MOTION by State of West Virginia to (1) Strike Expert Opinion of Professor Mary Fry, (2) Exclude Mary Fry From Providing Expert Testimony and (3) for a Daubert Hearing. (Capehart, Curtis) (Modified on 5/16/2022 to correct link) (kew).
05/12/2022	307	MOTION by Lainey Armistead, State of West Virginia to Exclude Expert Testimony of Dr. Deanna Adkins. (Attachments: # 1 Roger G. Brooks Declaration in Support, # 2 Appendix)(Steele, Brandon)
05/12/2022	308	MEMORANDUM by Lainey Armistead, State of West Virginia in support of 307 MOTION by Lainey Armistead, State of West Virginia to Exclude Expert Testimony of Dr. Deanna Adkins. (Steele, Brandon)
05/12/2022	309	MOTION by Lainey Armistead to Exclude Expert Testimony of Mary Fry. (Steele, Brandon)
05/12/2022	310	MEMORANDUM by Lainey Armistead in support of 309 MOTION by Lainey Armistead to Exclude Expert Testimony of Mary Fry. (Steele, Brandon)
05/12/2022	311	MOTION by Lainey Armistead, State of West Virginia to Exclude Expert Testimony of Dr. Aron Janssen. (Steele, Brandon)
05/12/2022	312	MEMORANDUM by Lainey Armistead, State of West Virginia in support of 311 MOTION by Lainey Armistead, State of West Virginia to Exclude Expert Testimony of

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		Dr. Aron Janssen. (Steele, Brandon)
05/12/2022	313	MOTION by Lainey Armistead, State of West Virginia to Exclude Expert Testimony of Dr. Joshua Safer. (Steele, Brandon)
05/12/2022	314	MEMORANDUM by Lainey Armistead, State of West Virginia in support of 313 MOTION by Lainey Armistead, State of West Virginia to Exclude Expert Testimony of Dr. Joshua Safer. (Steele, Brandon)
05/12/2022	315	MOTION by B. P. J., Heather Jackson to Exclude Expert Testimony of Gregory A. Brown. (Stark, Loree)
05/12/2022	316	MEMORANDUM by B. P. J., Heather Jackson in support of 315 MOTION by B. P. J., Heather Jackson to Exclude Expert Testimony of Gregory A. Brown. (Stark, Loree)
05/12/2022	317	DECLARATION by Joshua Block, on behalf of B. P. J., Heather Jackson in support of 315 MOTION by B. P. J., Heather Jackson to Exclude Expert Testimony of Gregory A. Brown. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O, # 16 Exhibit P, # 17 Exhibit Q)(Stark, Loree)
05/12/2022	318	PROPOSED ORDER Granting Motion to Exclude the Expert Testimony of Dr. Gregory A. Brown by B. P. J., Heather Jackson. (Stark, Loree)
05/12/2022	319	MOTION by B. P. J., Heather Jackson to Exclude Expert Testimony of James M. Cantor. (Stark, Loree)
05/12/2022	320	MEMORANDUM OF LAW by B. P. J., Heather Jackson in support of 319 MOTION by B. P. J., Heather Jackson to Exclude Expert Testimony of James M. Cantor. (Stark, Loree)
05/12/2022	321	DECLARATION by Sruti Swaminathan, on behalf of B. P. J., Heather Jackson in support of 319 MOTION by B. P. J., Heather Jackson to Exclude Expert Testimony of James M. Cantor. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H)(Stark, Loree)
05/12/2022	322	PROPOSED ORDER Granting Plaintiff's Motion to Exclude the Expert Testimony of James M. Cantor by B. P. J., Heather Jackson. (Stark, Loree)
05/12/2022	323	MOTION by B. P. J., Heather Jackson to Exclude Expert Testimony of Stephen B. Levine. (Stark, Loree)
05/12/2022	324	MEMORANDUM OF LAW by B. P. J., Heather Jackson in support of 323 MOTION by B. P. J., Heather Jackson to Exclude Expert Testimony of Stephen B. Levine. (Stark, Loree)
05/12/2022	325	DECLARATION by Sruti Swaminathan, on behalf of B. P. J., Heather Jackson in support of 323 MOTION by B. P. J., Heather Jackson to Exclude Expert Testimony of Stephen B. Levine. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I)(Stark, Loree)
05/12/2022	326	PROPOSED ORDER Granting Plaintiff's Motion to Exclude the Expert Testimony of Stephen B. Levine by B. P. J., Heather Jackson. (Stark, Loree)
05/12/2022	327	MOTION by B. P. J., Heather Jackson to Exclude Expert Testimony of Chad T. Carlson. (Stark, Loree)
05/12/2022	328	MEMORANDUM OF LAW by B. P. J., Heather Jackson in support of 327 MOTION by B. P. J., Heather Jackson to Exclude Expert Testimony of Chad T. Carlson. (Stark, Loree)

05/12/2022	329	PROPOSED ORDER Granting Plaintiff's Motion to Exclude the Expert Testimony of Chad T. Carlson by B. P. J., Heather Jackson. (Stark, Loree)
05/12/2022	330	RESPONSE by State of West Virginia to 290 Statement of Undisputed Material Facts. (Capehart, Curtis)
05/12/2022	331	CONSOLIDATED MEMORANDUM by B. P. J., Heather Jackson in opposition to 276 MOTION by West Virginia Secondary School Activities Commission for Summary Judgment, 278 MOTION by Harrison County Board of Education, Dora Stutler for Summary Judgment, 283 MOTION by W. Clayton Burch, West Virginia State Board of Education for Summary Judgment, 285 MOTION by State of West Virginia for Summary Judgment, 286 MOTION by Lainey Armistead for Summary Judgment. (Stark, Loree)
05/12/2022	332	FIRST SUPPLEMENTAL DECLARATION of Loree Stark, dated 05/12/2022, filed on behalf of B. P. J., Heather Jackson re: 331 Consolidated Memorandum in Opposition. (Attachments: # 1 Exhibit 45, # 2 Exhibit 46, # 3 Exhibit 47, # 4 Exhibit 48, # 5 Exhibit 49, # 6 Exhibit 50, # 7 Exhibit 51, # 8 Exhibit 52, # 9 Exhibit 53, # 10 Exhibit 54, # 11 Exhibit 55, # 12 Exhibit 56, # 13 Exhibit 57, # 14 Exhibit 58, # 15 Exhibit 59, # 16 Exhibit 60, # 17 Exhibit 61, # 18 Exhibit 62, # 19 Exhibit 63)(Stark, Loree)
05/12/2022		INCORRECT ENTRY. (Modified on 5/16/2022 to remove referral of motions to Magistrate Judge) (ts). (Entered: 05/16/2022)
05/16/2022		NOTICE OF DOCKET CORRECTION re: #303 MOTION by State of West Virginia to (1) Strike Expert Opinion of Professor Mary Fry, (2) Exclude Mary Fry From Providing Expert Testimony and (3) for a Daubert Hearing. ERROR: Motion is a duplicate of the entry at #304. CORRECTION: Duplicate removed; see entry #304. (kew)
05/20/2022	333	ORDER directing that the motion hearing set for 6/8/2022 is canceled. Signed by Judge Joseph R. Goodwin on 5/20/2022. (cc: counsel of record; any unrepresented party) (lca)
05/26/2022	334	REPLY by W. Clayton Burch, West Virginia State Board of Education to 331 Consolidated Memorandum In Opposition. (Morgan, Kelly)
05/26/2022	335	REPLY by West Virginia Secondary School Activities Commission to 331 Consolidated Memorandum In Opposition. (Green, Roberta) (Modified on 5/27/2022 to remove link to #276 motion) (kew).
05/26/2022	336	REPLY by Harrison County Board of Education, Dora Stutler to 331 Consolidated Memorandum In Opposition. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Deniker, Susan) (Modified on 5/27/2022 to remove links to #278 motion and #281 memorandum) (kew).
05/26/2022	337	REPLY MEMORANDUM by State of West Virginia to 331 Consolidated Memorandum In Opposition. (Capehart, Curtis) (Modified on 5/27/2022 to remove link to #285 motion) (kew).
05/26/2022	338	MEMORANDUM by Lainey Armistead, State of West Virginia in response to 315 MOTION by B. P. J., Heather Jackson to Exclude Expert Testimony of Gregory A. Brown. (Steele, Brandon)
05/26/2022	339	MEMORANDUM by Lainey Armistead, State of West Virginia in response to 319 MOTION by B. P. J., Heather Jackson to Exclude Expert Testimony of James M. Cantor. (Steele, Brandon)
05/26/2022	340	MEMORANDUM by Lainey Armistead, State of West Virginia in response to 327 MOTION by B. P. J., Heather Jackson to Exclude Expert Testimony of Chad T. Carlson. (Steele, Brandon)

05/26/2022	341	MEMORANDUM by Lainey Armistead, State of West Virginia in response to 323 MOTION by B. P. J., Heather Jackson to Exclude Expert Testimony of Stephen B. Levine. (Steele, Brandon)
05/26/2022	342	OPPOSITION by B. P. J., Heather Jackson to 307 MOTION by Lainey Armistead, State of West Virginia to Exclude Expert Testimony of Dr. Deanna Adkins. (Stark, Loree) (Modified on 5/27/2022 to remove link to #2 motion) (kew).
05/26/2022	343	AFFIDAVIT by Roger G. Brooks, on behalf of Lainey Armistead, State of West Virginia in support of 338 , 339 , 340 and 341 Memoranda in Response. (Attachment: # 1 Daubert Response Appendix)(Steele, Brandon) (Modified on 5/27/2022 to correct links) (kew).
05/26/2022	344	SECOND SUPPLEMENTAL APPENDIX by Lainey Armistead in support of 286 MOTION by Lainey Armistead for Summary Judgment. (Steele, Brandon)
05/26/2022	345	DECLARATION of Tara L. Borelli, dated 05/26/2022, filed on behalf of B. P. J., Heather Jackson re: 342 Opposition. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(Stark, Loree)
05/26/2022	346	OPPOSITION by B. P. J., Heather Jackson to 309 MOTION by Lainey Armistead to Exclude Expert Testimony of Mary Fry., 304 MOTION by State of West Virginia to (1) Strike Expert Opinion of Professor Mary Fry, (2) Exclude Mary Fry From Providing Expert Testimony and (3) for a Daubert Hearing. (Stark, Loree)
05/26/2022	347	REPLY by Lainey Armistead to 331 Consolidated Memorandum In Opposition. (Steele, Brandon)
05/26/2022	348	OPPOSITION by B. P. J., Heather Jackson to 311 MOTION by Lainey Armistead, State of West Virginia to Exclude Expert Testimony of Dr. Aron Janssen. (Stark, Loree)
05/26/2022	349	DECLARATION of Joshua Block, dated 05/26/2022, filed on behalf of B. P. J., Heather Jackson re: 348 Opposition. (Attachment: # 1 Exhibit A)(Stark, Loree)
05/26/2022	350	OPPOSITION by B. P. J., Heather Jackson to 313 MOTION by Lainey Armistead, State of West Virginia to Exclude Expert Testimony of Dr. Joshua Safer. (Stark, Loree)
05/26/2022	351	OPPOSITION by B. P. J., Heather Jackson to 307 MOTION by Lainey Armistead, State of West Virginia to Exclude Expert Testimony of Dr. Deanna Adkins. (Stark, Loree)
05/26/2022	352	DECLARATION of Tara L. Borelli, dated 05/26/2022, filed on behalf of B. P. J., Heather Jackson re: 351 Opposition. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(Stark, Loree)
05/26/2022	353	MOTION by B. P. J., Heather Jackson to Reconsider 130 Memorandum Opinion and Order. (Stark, Loree)
05/26/2022	354	MEMORANDUM OF LAW by B. P. J., Heather Jackson in support of 353 MOTION by B. P. J., Heather Jackson to Reconsider 130 Memorandum Opinion and Order. (Stark, Loree)
05/26/2022	355	DECLARATION of Valeria M. Pelet del Toro, dated 05/26/2022, filed on behalf of B. P. J., Heather Jackson re: 353 MOTION by B. P. J., Heather Jackson to Reconsider 130 Memorandum Opinion and Order. (Attachment: # 1 Exhibit A)(Stark, Loree)
05/26/2022	356	PROPOSED ORDER Order Granting Motion to Reconsider 130 Memorandum Opinion and Order by B. P. J., Heather Jackson. (Stark, Loree)
05/26/2022	357	CONSOLIDATED REPLY by B. P. J., Heather Jackson to 298 , 299 , 301 , 302 Responses In Opposition and 305 Brief In Opposition (Stark, Loree)

05/26/2022	358	REPLY by B. P. J., Heather Jackson to 330 Response to Statement of Undisputed Material Facts. (Stark, Loree)
05/27/2022	359	SECOND SUPPLEMENTAL DECLARATION of Loree Stark, dated May 26, 2022, filed on behalf of B. P. J., Heather Jackson re: 357 Consolidated Reply. (Attachments: # 1 Exhibit 64, # 2 Exhibit 65, # 3 Exhibit 66)(Stark, Loree)
05/31/2022	360	MOTION by Lainey Armistead, State of West Virginia for Extension of Time to Respond to 353 MOTION by B. P. J., Heather Jackson to Reconsider 130 Memorandum Opinion and Order to 6/23/2022. (Steele, Brandon)
06/02/2022	361	REPLY MEMORANDUM by Lainey Armistead, State of West Virginia to 351 Opposition. (Steele, Brandon)
06/02/2022	362	REPLY MEMORANDUM by Lainey Armistead to 346 Opposition. (Steele, Brandon)
06/02/2022	363	REPLY MEMORANDUM by Lainey Armistead, State of West Virginia to 348 Opposition. (Steele, Brandon)
06/02/2022	364	REPLY MEMORANDUM by Lainey Armistead, State of West Virginia to 350 Opposition. (Steele, Brandon)
06/02/2022	365	REPLY MEMORANDUM by State of West Virginia to 346 Opposition. (Capehart, Curtis)
06/02/2022	366	REPLY MEMORANDUM OF LAW by B. P. J., Heather Jackson to 339 Memorandum in Response. (Stark, Loree)
06/02/2022	367	REPLY MEMORANDUM OF LAW by B. P. J., Heather Jackson to 340 Memorandum in Response. (Stark, Loree)
06/02/2022	368	REPLY MEMORANDUM OF LAW by B. P. J., Heather Jackson to 341 Memorandum in Response. (Stark, Loree)
06/02/2022	369	SUPPLEMENTAL DECLARATION of Sruti Swaminathan, dated 06/02/2022, filed on behalf of B. P. J., Heather Jackson in support of 368 Reply Memorandum of Law. (Attachment: # 1 Exhibit J)(Stark, Loree)
06/02/2022	370	REPLY MEMORANDUM OF LAW by B. P. J., Heather Jackson to 338 Memorandum in Response. (Stark, Loree)
06/02/2022	371	SUPPLEMENTAL DECLARATION of Joshua Block, dated 06/02/2022, filed on behalf of B. P. J., Heather Jackson in support of 370 Reply Memorandum of Law. (Attachment: # 1 Exhibit R)(Stark, Loree)
06/03/2022	372	NOTICE OF ERRATA by B. P. J., Heather Jackson re: 370 Reply Memorandum of Law. (Stark, Loree)
06/03/2022	373	REPLY MEMORANDUM OF LAW by B. P. J., Heather Jackson to 338 Memorandum in Response. (Stark, Loree)
06/06/2022	374	JOINT MOTION by B. P. J., Heather Jackson, West Virginia State Board of Education, Harrison County Board of Education, West Virginia Secondary School Activities Commission, W. Clayton Burch, Dora Stutler, State of West Virginia, Lainey Armistead to Place ECF Nos. [280-8], [285-9], [286-1], [289-20] Under Seal. (Stark, Loree) (Modified on 6/7/2022 to add party filers) (kew).
06/06/2022	375	MEMORANDUM by B. P. J., Heather Jackson, West Virginia State Board of Education, Harrison County Board of Education, West Virginia Secondary School Activities Commission, W. Clayton Burch, Dora Stutler, State of West Virginia, Lainey Armistead

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		in support of 374 JOINT MOTION by B. P. J., Heather Jackson, West Virginia State Board of Education, Harrison County Board of Education, West Virginia Secondary School Activities Commission, W. Clayton Burch, Dora Stutler, State of West Virginia, Lainey Armistead to Place ECF Nos. [280-8], [285-9], [286-1], [289-20] Under Seal. (Stark, Loree) (Modified on 6/7/2022 to add party filers) (kew).
06/06/2022	376	PROPOSED ORDER Order Granting Joint Motion to Place Documents Under Seal by B. P. J., Heather Jackson. (Stark, Loree)
06/06/2022	377	JOINT MOTION by B. P. J., Heather Jackson, West Virginia State Board of Education, Harrison County Board of Education, West Virginia Secondary School Activities Commission, W. Clayton Burch, Dora Stutler, State of West Virginia, Lainey Armistead for Leave to File Revised Redacted Exhibits re: ECF Nos. [280-8], [285-9], [286-1], [289-20]. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Stark, Loree) (Modified on 6/7/2022 to add party filers) (kew).
06/06/2022	378	PROPOSED ORDER Order Granting Joint Motion for Leave to File Revised Redacted Exhibits by B. P. J., Heather Jackson. (Stark, Loree)
06/07/2022	379	ORDER granting 377 JOINT MOTION by B. P. J., Heather Jackson, West Virginia State Board of Education, Harrison County Board of Education, West Virginia Secondary School Activities Commission, W. Clayton Burch, Dora Stutler, State of West Virginia, Lainey Armistead for Leave to File Revised Redacted Exhibits; directing the Clerk to place the following documents UNDER SEAL: ECF No. 280-8, ECF No. 285-9, ECF No. 286-1 and ECF No. 289-20; further directing the parties to file redacted copies of those documents in accordance with Local Rule 49.1.1(a). Signed by Judge Joseph R. Goodwin on 6/7/2022. (cc: counsel of record; any unrepresented party) (mk)
06/09/2022	380	RESPONSE by Lainey Armistead in opposition to 353 MOTION by B. P. J., Heather Jackson to Reconsider 130 Memorandum Opinion and Order (Steele, Brandon)
06/09/2022	381	RESPONSE by State of West Virginia in opposition to 353 MOTION by B. P. J., Heather Jackson to Reconsider 130 Memorandum Opinion and Order (Capehart, Curtis)
06/16/2022	382	CONSOLIDATED REPLY MEMORANDUM OF LAW by B. P. J., Heather Jackson to 380 and 381 Response In Opposition. (Stark, Loree)
06/22/2022	383	MOTION by Harrison County Board of Education, Dora Stutler in Limine to <i>Preclude Introduction of Testimony by Stutler Elicited Outside of the Scope of the Rule 30(b)(6) Topics</i> (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Deniker, Susan)
06/22/2022	384	MOTION by West Virginia Secondary School Activities Commission in Limine to <i>Exclude Regional Principals' Meeting PowerPoint and Recorded Presentation</i> (Green, Roberta)
06/22/2022	385	MEMORANDUM by West Virginia Secondary School Activities Commission in support of 384 MOTION by West Virginia Secondary School Activities Commission in Limine to <i>Exclude Regional Principals' Meeting PowerPoint and Recorded Presentation</i> (Green, Roberta)
06/22/2022	386	MOTION by West Virginia Secondary School Activities Commission in Limine to <i>Preclude Plaintiff From Offering as Evidence the Assertions Contained in Plaintiff's Statement of Undisputed Facts</i> (Attachment: # 1 Exhibit A)(Green, Roberta)
06/22/2022	387	MEMORANDUM by West Virginia Secondary School Activities Commission in support of 386 MOTION by West Virginia Secondary School Activities Commission in Limine to <i>Preclude Plaintiff From Offering as Evidence the Assertions Contained in Plaintiff's Statement of Undisputed Facts</i> (Green, Roberta)

06/22/2022	388	MOTION by West Virginia Secondary School Activities Commission in Limine to <i>Preclude Use of Harrison Countys 30(b) Testimony Outside Scope</i> (Green, Roberta)
06/22/2022	389	MEMORANDUM by West Virginia Secondary School Activities Commission in support of 388 MOTION by West Virginia Secondary School Activities Commission in Limine to <i>Preclude Use of Harrison Countys 30(b) Testimony Outside Scope</i> (Green, Roberta)
06/22/2022	390	MOTION by West Virginia Secondary School Activities Commission in Limine to <i>Exclude Blatt Exhibit 21</i> (Green, Roberta)
06/22/2022	391	MEMORANDUM by West Virginia Secondary School Activities Commission in support of 390 MOTION by West Virginia Secondary School Activities Commission in Limine to <i>Exclude Blatt Exhibit 21</i> (Green, Roberta)
06/22/2022	392	MOTION by West Virginia Secondary School Activities Commission in Limine to <i>Exclude Text and Email Communications</i> (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M)(Bandy, Kimberly)
06/22/2022	393	MEMORANDUM OF LAW by West Virginia Secondary School Activities Commission in support of 392 MOTION by West Virginia Secondary School Activities Commission in Limine to <i>Exclude Text and Email Communications</i> (Bandy, Kimberly)
06/22/2022	394	MOTION by State of West Virginia in Limine to <i>Exclude or Limit Certain Statements of State Superintendent Burch and Related Parties (Hearsay, Relevance, and Limitation Pursuant to Fed. R. Evid. 105)</i> (Capehart, Curtis)
06/22/2022	395	MEMORANDUM by State of West Virginia in support of 394 MOTION by State of West Virginia in Limine to <i>Exclude or Limit Certain Statements of State Superintendent Burch and Related Parties (Hearsay, Relevance, and Limitation Pursuant to Fed. R. Evid. 105)</i> (Capehart, Curtis)
06/22/2022	396	MOTION by State of West Virginia in Limine to <i>Bar Evidence of Disorders of Sexual Development (Relevance)</i> (Capehart, Curtis)
06/22/2022	397	MEMORANDUM by State of West Virginia in support of 396 MOTION by State of West Virginia in Limine to <i>Bar Evidence of Disorders of Sexual Development (Relevance)</i> (Capehart, Curtis)
06/22/2022	398	MOTION by State of West Virginia, Lainey Armistead in Limine to <i>Bar Plaintiff's Claims to Undisputed Facts (Fed. R. Evid. 105 and 403)</i> (Capehart, Curtis) (Modified on 6/23/2022 to add party filer) (kew).
06/22/2022	399	MEMORANDUM by State of West Virginia, Lainey Armistead in support of 398 MOTION by State of West Virginia, Lainey Armistead in Limine to <i>Bar Plaintiff's Claims to Undisputed Facts (Fed. R. Evid. 105 and 403)</i> (Capehart, Curtis) (Modified on 6/23/2022 to add party filer) (kew).
06/22/2022	400	MOTION by State of West Virginia in Limine to <i>Exclude the Partial Transcript of H.B. 3293's Legislative Hearings (Hearsay, Relevance, Incomplete Transcript and Lawyer As Witness)</i> (Capehart, Curtis)
06/22/2022	401	MEMORANDUM by State of West Virginia in support of 400 MOTION by State of West Virginia in Limine to <i>Exclude the Partial Transcript of H.B. 3293's Legislative Hearings (Hearsay, Relevance, Incomplete Transcript and Lawyer As Witness)</i> (Capehart, Curtis)
06/22/2022	402	MOTION by State of West Virginia in Limine to <i>Exclude Several Legislators' Statements (Hearsay and Relevance)</i> (Capehart, Curtis)

06/22/2022	403	MEMORANDUM by State of West Virginia in support of 402 MOTION by State of West Virginia in Limine to Exclude Several Legislators' Statements (Hearsay and Relevance) (Capehart, Curtis)
06/22/2022	404	MOTION by State of West Virginia in Limine to Exclude the Governor's Statements (Hearsay and Relevance) (Capehart, Curtis)
06/22/2022	405	MEMORANDUM by State of West Virginia in support of 404 MOTION by State of West Virginia in Limine to Exclude the Governor's Statements (Hearsay and Relevance) (Capehart, Curtis)
06/22/2022	406	MOTION by B. P. J., Heather Jackson in Limine to Exclude Evidence and/or Testimony from Bernard Dolan Regarding Certain Hearsay Statements and Supporting Memorandum of Law. (Stark, Loree)
06/22/2022	407	MOTION by B. P. J., Heather Jackson in Limine to Exclude Testimony and/or Evidence Regarding Contact or Collision Sports and Supporting Memorandum of Law. (Stark, Loree)
06/22/2022	408	MOTION by B. P. J., Heather Jackson in Limine to Exclude Defendant State of West Virginia's Exhibit H and Supporting Memorandum of Law. (Stark, Loree)
06/22/2022	409	MOTION by B. P. J., Heather Jackson in Limine to Exclude Evidence and/or Argument Regarding the Potential Number of Gender Identities and Supporting Memorandum of Law. (Stark, Loree)
06/22/2022	410	MOTION by B. P. J., Heather Jackson in Limine to Exclude Evidence and/or Argument Regarding Defendant-Intervenor's Requests for Admission Nos. 13-61 Concerning Hypothetical Individuals and Supporting Memorandum of Law. (Stark, Loree)
06/22/2022	411	MOTION by B. P. J., Heather Jackson in Limine to Exclude Evidence and/or Argument Regarding Press Reports and Supporting Memorandum of Law. (Stark, Loree)
06/22/2022	412	MOTION by B. P. J., Heather Jackson in Limine to Exclude Evidence and/or Argument Regarding the Proper Medical Treatment for Gender Dysphoria and the Propriety of Plaintiff's Diagnosis and Treatment and Supporting Memorandum of Law. (Stark, Loree)
06/22/2022	413	MOTION by B. P. J., Heather Jackson in Limine to Exclude Evidence and/or Argument Regarding Statements of Non-Party Witnesses in Supplemental Disclosures and Supporting Memorandum of Law. (Stark, Loree)
06/22/2022	414	MOTION by B. P. J., Heather Jackson 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. (Stark, Loree)
06/22/2022	415	DECLARATION of Valeria M. Pelet del Toro, dated 6/22/2022, filed on behalf of B. P. J., Heather Jackson re: 414 MOTION by B. P. J., Heather Jackson in Limine to Exclude References to Plaintiff by Her Name Given at Birth ("Deadname") or Using Male Pronouns (he/him) (Attachments: # 1 Exhibit A, # 2 Exhibit B) (Stark, Loree)
06/22/2022	416	MOTION by B. P. J., Heather Jackson in Limine to Exclude Evidence and/or Argument Intended to Question Plaintiff's Gender Identity and Supporting Memorandum of Law. (Stark, Loree)
06/22/2022	417	DECLARATION of Tara L. Borelli, dated 6/22/2022, filed on behalf of B. P. J., Heather Jackson re: 416 MOTION by B. P. J., Heather Jackson in Limine to Exclude Evidence and/or Argument Intended to Question Plaintiff's Gender Identity (Attachment: # 1 Exhibit A)(Stark, Loree)

06/22/2022	418	MOTION by B. P. J., Heather Jackson in <i>Limine in Limine to Exclude Evidence and/or Argument Regarding Plaintiff's Irrelevant Medical Records</i> and Supporting Memorandum of Law. (Stark, Loree)
06/27/2022	419	AMENDED SCHEDULING ORDER pursuant to Rule 16(b) and Local Rule of Civil Procedure 16.1(e), this case shall proceed as follows: Pretrial conference on 1/9/2023 at 10:00 AM. Proposed jury instructions filed - 1/24/2023. Final settlement conference on 1/30/2023 at 09:00 AM. Trial on 1/31/2023 at 08:30 AM. Signed by Judge Joseph R. Goodwin on 6/27/2022. (cc: counsel of record; any unrepresented parties) (klc)
06/29/2022	420	RESPONSE by Harrison County Board of Education, Dora Stutler in opposition to 407 MOTION by B. P. J., Heather Jackson in <i>Limine to Exclude Testimony and/or Evidence Regarding Contact or Collision Sports</i> (Deniker, Susan)
06/29/2022	421	BRIEF by State of West Virginia in opposition to 408 MOTION by B. P. J., Heather Jackson in <i>Limine to Exclude Defendant State of West Virginia's Exhibit H</i> (Capehart, Curtis)
06/29/2022	422	ARGUMENT by State of West Virginia in opposition to 406 MOTION by B. P. J., Heather Jackson in <i>Limine to Exclude Evidence and/or Testimony from Bernard Dolan Regarding Certain Hearsay Statements</i> (Capehart, Curtis)
06/29/2022	423	ARGUMENT by State of West Virginia in opposition to 411 MOTION by B. P. J., Heather Jackson in <i>Limine to Exclude Evidence and/or Argument Regarding Press Reports</i> (Capehart, Curtis)
06/29/2022	424	MEMORANDUM by State of West Virginia in opposition to 412 MOTION by B. P. J., Heather Jackson in <i>Limine to Exclude Evidence and/or Argument Regarding the Proper Medical Treatment for Gender Dysphoria and the Propriety of Plaintiff's Diagnosis and Treatment</i> (Capehart, Curtis)
06/29/2022	425	BRIEF by State of West Virginia in opposition to 418 MOTION by B. P. J., Heather Jackson in <i>Limine in Limine to Exclude Evidence and/or Argument Regarding Plaintiff's Irrelevant Medical Records</i> (Capehart, Curtis)
06/29/2022	426	RESPONSE by Lainey Armistead, State of West Virginia in opposition to 392 MOTION by West Virginia Secondary School Activities Commission in <i>Limine to Exclude Text and Email Communications</i> and 384 MOTION by West Virginia Secondary School Activities Commission in <i>Limine to Exclude Regional Principals' Meeting PowerPoint and Recorded Presentation</i> (Steele, Brandon)
06/29/2022	427	RESPONSE by Lainey Armistead in opposition to 406 MOTION by B. P. J., Heather Jackson in <i>Limine to Exclude Evidence and/or Testimony from Bernard Dolan Regarding Certain Hearsay Statements</i> (Steele, Brandon)
06/29/2022	428	RESPONSE by Lainey Armistead, State of West Virginia in opposition to 407 MOTION by B. P. J., Heather Jackson in <i>Limine to Exclude Testimony and/or Evidence Regarding Contact or Collision Sports</i> (Steele, Brandon)
06/29/2022	429	COMBINED RESPONSE by Lainey Armistead, State of West Virginia in opposition to 409 MOTION by B. P. J., Heather Jackson in <i>Limine to Exclude Evidence and/or Argument Regarding the Potential Number of Gender Identities</i> and 410 MOTION by B. P. J., Heather Jackson in <i>Limine to Exclude Evidence and/or Argument Regarding Defendant-Intervenor's Requests for Admission Nos. 13-61 Concerning Hypothetical Individuals</i> (Steele, Brandon)
06/29/2022	430	RESPONSE by Lainey Armistead in opposition to 411 MOTION by B. P. J., Heather Jackson in <i>Limine to Exclude Evidence and/or Argument Regarding Press Reports</i>

		(Steele, Brandon)
06/29/2022	431	RESPONSE by Lainey Armistead in opposition to 413 MOTION by B. P. J., Heather Jackson in Limine to Exclude Evidence and/or Argument Regarding Statements of Non-Party Witnesses in Supplemental Disclosures (Steele, Brandon)
06/29/2022	432	RESPONSE by Lainey Armistead, State of West Virginia in opposition to 414 MOTION by B. P. J., Heather Jackson in Limine to Exclude References to Plaintiff by Her Name Given at Birth ("Deadname") or Using Male Pronouns (he/him) (Steele, Brandon)
06/29/2022	433	COMBINED RESPONSE by Lainey Armistead, State of West Virginia in opposition to 416 MOTION by B. P. J., Heather Jackson in Limine to Exclude Evidence and/or Argument Intended to Question Plaintiff's Gender Identity and 412 MOTION by B. P. J., Heather Jackson in Limine to Exclude Evidence and/or Argument Regarding the Proper Medical Treatment for Gender Dysphoria and the Propriety of Plaintiff's Diagnosis and Treatment (Steele, Brandon)
06/29/2022	434	RESPONSE by Lainey Armistead in opposition to 418 MOTION by B. P. J., Heather Jackson in Limine in Limine to Exclude Evidence and/or Argument Regarding Plaintiff's Irrelevant Medical Records (Steele, Brandon)
06/29/2022	435	OPPOSITION by B. P. J., Heather Jackson to 384 MOTION by West Virginia Secondary School Activities Commission in Limine to Exclude Regional Principals' Meeting PowerPoint and Recorded Presentation (Stark, Loree)
06/29/2022	436	DECLARATION of Sruti Swaminathan, dated 6/29/2022, filed on behalf of B. P. J., Heather Jackson in support of 435 Opposition. (Attachment: # 1 Exhibit A)(Stark, Loree)
06/29/2022	437	OPPOSITION by B. P. J., Heather Jackson to 392 MOTION by West Virginia Secondary School Activities Commission in Limine to Exclude Text and Email Communications (Stark, Loree)
06/29/2022	438	DECLARATION of Katelyn Kang, dated 6/29/2022, filed on behalf of B. P. J., Heather Jackson in support of 437 Opposition. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2) (Stark, Loree)
06/29/2022	439	OPPOSITION by B. P. J., Heather Jackson to 390 MOTION by West Virginia Secondary School Activities Commission in Limine to Exclude Blatt Exhibit 21 (Stark, Loree)
06/29/2022	440	OPPOSITION by B. P. J., Heather Jackson to 388 MOTION by West Virginia Secondary School Activities Commission in Limine to Preclude Use of Harrison Countys 30(b) Testimony Outside Scope (Stark, Loree)
06/29/2022	441	CONSOLIDATED OPPOSITION by B. P. J., Heather Jackson to 398 MOTION by State of West Virginia, Lainey Armistead in Limine to Bar Plaintiff's Claims to Undisputed Facts (Fed. R. Evid. 105 and 403) (Stark, Loree)
06/29/2022	442	OPPOSITION by B. P. J., Heather Jackson to 394 MOTION by State of West Virginia in Limine to Exclude or Limit Certain Statements of State Superintendent Burch and Related Parties (Hearsay, Relevance, and Limitation Pursuant to Fed. R. Evid. 105) (Stark, Loree)
06/29/2022	443	OPPOSITION by B. P. J., Heather Jackson to 383 MOTION by Harrison County Board of Education, Dora Stutler in Limine to Preclude Introduction of Testimony by Stutler Elicited Outside of the Scope of the Rule 30(b)(6) Topics (Stark, Loree)
06/29/2022	444	OPPOSITION by B. P. J., Heather Jackson to 396 MOTION by State of West Virginia in Limine to Bar Evidence of Disorders of Sexual Development (Relevance) (Stark, Loree)

06/29/2022	445	OPPOSITION by B. P. J., Heather Jackson to 400 MOTION by State of West Virginia in Limine to Exclude the Partial Transcript of H.B. 3293's Legislative Hearings (Hearsay, Relevance, Incomplete Transcript and Lawyer As Witness) (Stark, Loree)
06/29/2022	446	OPPOSITION by B. P. J., Heather Jackson to 404 MOTION by State of West Virginia in Limine to Exclude the Governor's Statements (Hearsay and Relevance) (Stark, Loree)
06/29/2022	447	OPPOSITION by B. P. J., Heather Jackson to 402 MOTION by State of West Virginia in Limine to Exclude Several Legislators' Statements (Hearsay and Relevance) (Stark, Loree)
07/01/2022	448	SECOND AMENDED SCHEDULING ORDER directing that this case shall proceed as follows: Integrated pretrial order filed by defendant - 12/19/2022. Pretrial conference on 1/9/2023 at 10:00 AM. Proposed jury instructions filed - 1/24/2023. Final settlement conference on 1/30/2023 at 9:00 AM. Trial on 1/31/2023 at 8:30 AM. Signed by Judge Joseph R. Goodwin on 7/1/2022. (cc: counsel of record; any unrepresented parties) (kew)
07/01/2022	449	NOTICE OF CHANGE OF ATTORNEY INFORMATION by Anthony E. Nortz requesting removal from the Court service list on behalf of West Virginia Secondary School Activities Commission. (Nortz, Anthony)
07/01/2022	450	JOINT MOTION by State of West Virginia, B. P. J., Heather Jackson, West Virginia State Board of Education, Harrison County Board of Education, West Virginia Secondary School Activities Commission, W. Clayton Burch, Dora Stutler, Lainey Armistead for Extension of Filing Deadline re: 448 Second Amended Scheduling Order. (Capehart, Curtis) (Modified on 7/5/2022 to add link to #448 second amended scheduling order and to add party filers) (kew).
07/05/2022	451	ORDER granting 450 JOINT MOTION by State of West Virginia, B.P.J., Heather Jackson, West Virginia State Board of Education, Harrison County Board of Education, West Virginia Secondary School Activities Commission, W. Clayton Burch, Dora Stutler, Lainey Armistead for Extension of Filing Deadline re: 448 Second Amended Scheduling Order; replies to motions in limine are due on 7/11/2022. Signed by Judge Joseph R. Goodwin on 7/5/2022. (cc: counsel of record; any unrepresented party) (mfo)
07/11/2022	452	REPLY by Harrison County Board of Education, Dora Stutler to 443 Opposition. (Attachment: # 1 Exhibit A)(Deniker, Susan)
07/11/2022	453	REPLY by West Virginia Secondary School Activities Commission to 441 Consolidated Opposition. (Green, Roberta) (Modified on 7/12/2022 to remove link to #386 motion) (kew).
07/11/2022	454	REPLY by West Virginia Secondary School Activities Commission to 426 Response In Opposition and 435 Opposition. (Green, Roberta) (Modified on 7/12/2022 to remove link to #384 motion) (kew).
07/11/2022	455	REPLY by West Virginia Secondary School Activities Commission to 439 Opposition. (Green, Roberta) (Modified on 7/12/2022 to remove link to #390 motion) (kew).
07/11/2022	456	REPLY by West Virginia Secondary School Activities Commission to 426 Response In Opposition and 437 Opposition. (Green, Roberta) (Modified on 7/12/2022 to remove link to #392 motion) (kew).
07/11/2022	457	REPLY by West Virginia Secondary School Activities Commission to 440 Opposition. (Green, Roberta) (Modified on 7/12/2022 to remove link to #388 motion) (kew).
07/11/2022	458	REPLY by State of West Virginia to 442 Opposition. (Capehart, Curtis) (Modified on 7/12/2022 to remove link to #394 motion and #395 memorandum) (kew).

07/11/2022	459	REPLY by State of West Virginia to 444 Opposition. (Capehart, Curtis) (Modified on 7/12/2022 to remove link to #396 motion and #397 memorandum) (kew).
07/11/2022	460	REPLY by State of West Virginia to 441 Consolidated Opposition. (Capehart, Curtis) (Modified on 7/12/2022 to remove link to #398 motion and #399 memorandum) (kew).
07/11/2022	461	REPLY by State of West Virginia to 445 Opposition. (Capehart, Curtis) (Modified on 7/12/2022 to remove link to #400 motion and #401 memorandum) (kew).
07/11/2022	462	REPLY by State of West Virginia to 447 Opposition. (Capehart, Curtis) (Modified on 7/12/2022 to remove link to #402 motion and #403 memorandum) (kew).
07/11/2022	463	REPLY by State of West Virginia to 446 Opposition. (Capehart, Curtis) (Modified on 7/12/2022 to remove link to #404 motion and #405 memorandum) (kew).
07/11/2022	464	DUPLICATE ENTRY; IMAGE REMOVED. (Modified on 7/15/2022 to remove duplicate image; see ECF #466) (ts).
07/11/2022	465	REPLY by B. P. J., Heather Jackson to 423 Argument In Opposition and 430 Response In Opposition. (Stark, Loree)
07/11/2022	466	REPLY by B. P. J., Heather Jackson to 432 Response In Opposition. (Stark, Loree)
07/11/2022	467	REPLY by B. P. J., Heather Jackson to 431 Response In Opposition. (Stark, Loree)
07/11/2022	468	CONSOLIDATED REPLY by B. P. J., Heather Jackson to 429 Combined Response In Opposition. (Stark, Loree)
07/11/2022	469	REPLY by B. P. J., Heather Jackson to 421 Brief In Opposition. (Stark, Loree)
07/11/2022	470	REPLY by B. P. J., Heather Jackson to 422 Argument In Opposition and 427 Response In Opposition. (Stark, Loree)
07/11/2022	471	REPLY by B. P. J., Heather Jackson to 425 Brief In Opposition and 434 Response In Opposition. (Stark, Loree)
07/11/2022	472	CONSOLIDATED REPLY by B. P. J., Heather Jackson to 420 and 428 Responses In Opposition. (Stark, Loree)
07/11/2022	473	CONSOLIDATED REPLY by B. P. J., Heather Jackson to 424 Memorandum In Opposition and 433 Combined Response In Opposition. (Stark, Loree)
07/12/2022	474	STATEMENT OF VISITING ATTORNEY from Johannes S. Widmalm-Delphonse on behalf of Lainey Armistead. Local counsel: Joshua Brown. Fee \$50.00. Receipt # AWVSDC-8227421. (Brown, Joshua)
07/15/2022		NOTICE OF DOCKET CORRECTION re: #464 Motion. ERROR: Duplicate image filed. CORRECTION: Duplicate image removed; see ECF #466. (ts)
07/22/2022	475	NOTICE of <i>Supplemental Authority</i> by State of West Virginia re: 285 and 289 Motions for Summary Judgment. (Capehart, Curtis)
07/22/2022	476	NOTICE OF WITHDRAWAL OF COUNSEL by David Christian Tryon on behalf of State of West Virginia. (Tryon, David) (Modified on 7/25/2022 to convert event to notice(other)) (kew).
07/29/2022	477	NOTICE of <i>Supplemental Authority</i> by B. P. J., Heather Jackson re: 276 , 278 , 283 , 285 , 286 , 289 Motions for Summary Judgment and 353 Motion to Reconsider. (Stark, Loree) (Modified on 8/1/2022 to correct links) (kew).

07/29/2022	478	RESPONSE by B. P. J., Heather Jackson in opposition to 475 Notice of of Supplemental Authority. (Stark, Loree)
08/01/2022	479	NOTICE OF WITHDRAWAL OF COUNSEL by Loree Beth Stark for Valeria M. Pelet del Toro on behalf of B. P. J., Heather Jackson. (Stark, Loree)
08/09/2022	480	NOTICE of <i>Additional Authority</i> by Harrison County Board of Education, Dora Stutler in support of 278 MOTION by Harrison County Board of Education, Dora Stutler for Summary Judgment. (Deniker, Susan)
08/10/2022	481	RESPONSE by Lainey Armistead in opposition to 477 Supplemental Authority. (Steele, Brandon)
08/10/2022	482	RESPONSE by B. P. J., Heather Jackson in opposition to 480 Notice of Additional Authority. (Stark, Loree)
09/08/2022	483	NOTICE OF CHANGE OF ATTORNEY INFORMATION by Avatara Antoinette Smith-Carrington updating name and/or firm information on behalf of B. P. J., Heather Jackson. (Smith-Carrington, Avatara)
09/19/2022	484	MOTION by West Virginia Secondary School Activities Commission for Leave to File Surreply to 470 Reply to Response with proposed document attached (Attachment: # 1 Exhibit A)(Green, Roberta) (Modified on 9/20/2022 to add link to #470 reply) (kew).
09/19/2022	485	NOTICE of <i>Supplemental Authority</i> by West Virginia Secondary School Activities Commission in support of 331 Consolidated Memorandum In Opposition, 426 Opposition, 439 Opposition. (Green, Roberta) (Modified on 9/20/2022 to correct links) (kew).
09/28/2022	486	CONSOLIDATED OPPOSITION by B. P. J., Heather Jackson in opposition to 484 MOTION by West Virginia Secondary School Activities Commission for Leave to File Surreply to 470 Reply to Response 485 Notice of Supplemental Authority. (Stark, Loree)
10/04/2022	487	REPLY by West Virginia Secondary School Activities Commission to 486 Consolidated Opposition. (Green, Roberta) (Modified on 10/5/2022 to remove link to #484 motion) (kew).
10/19/2022	488	NOTICE OF SUBSTITUTION OF SPONSORING ATTORNEY by Nicholas Ward substituting as sponsoring attorney for Andrew Barr in lieu of Loree Stark on behalf of B. P. J., Heather Jackson. (Ward, Nicholas)
10/19/2022	489	NOTICE OF SUBSTITUTION OF SPONSORING ATTORNEY by Nicholas Ward substituting as sponsoring attorney for Avatara Smith-Carrington in lieu of Loree Stark on behalf of B. P. J., Heather Jackson. (Ward, Nicholas)
10/19/2022	490	NOTICE OF SUBSTITUTION OF SPONSORING ATTORNEY by Nicholas Ward substituting as sponsoring attorney for Carl Charles in lieu of Loree Stark on behalf of B. P. J., Heather Jackson. (Ward, Nicholas)
10/19/2022	491	NOTICE OF SUBSTITUTION OF SPONSORING ATTORNEY by Nicholas Ward substituting as sponsoring attorney for Elizabeth Reinhardt in lieu of Loree Stark on behalf of B. P. J., Heather Jackson. (Ward, Nicholas)
10/19/2022	492	NOTICE OF SUBSTITUTION OF SPONSORING ATTORNEY by Nicholas Ward substituting as sponsoring attorney for Joshua Block in lieu of Loree Stark on behalf of B. P. J., Heather Jackson. (Ward, Nicholas)
10/19/2022	493	NOTICE OF SUBSTITUTION OF SPONSORING ATTORNEY by Nicholas Ward substituting as sponsoring attorney for Julia Veroff in lieu of Loree Stark on behalf of B.

		P. J., Heather Jackson. (Ward, Nicholas)
10/19/2022	494	NOTICE OF SUBSTITUTION OF SPONSORING ATTORNEY by Nicholas Ward substituting as sponsoring attorney for Katelyn Kang in lieu of Loree Stark on behalf of B. P. J., Heather Jackson. (Ward, Nicholas)
10/19/2022	495	NOTICE OF SUBSTITUTION OF SPONSORING ATTORNEY by Nicholas Ward substituting as sponsoring attorney for Kathleen Hartnett in lieu of Loree Stark on behalf of B. P. J., Heather Jackson. (Ward, Nicholas)
10/19/2022	496	NOTICE OF SUBSTITUTION OF SPONSORING ATTORNEY by Nicholas Ward substituting as sponsoring attorney for Sruti Swaminathan in lieu of Loree Stark on behalf of B. P. J., Heather Jackson. (Ward, Nicholas)
10/19/2022	497	NOTICE OF SUBSTITUTION OF SPONSORING ATTORNEY by Nicholas Ward substituting as sponsoring attorney for Tara Borelli in lieu of Loree Stark on behalf of B. P. J., Heather Jackson. (Ward, Nicholas)
10/19/2022	498	NOTICE OF SUBSTITUTION OF SPONSORING ATTORNEY by Nicholas Ward substituting as sponsoring attorney for Zoe Helstrom in lieu of Loree Stark on behalf of B. P. J., Heather Jackson. (Ward, Nicholas)
10/19/2022	499	NOTICE OF CHANGE OF ATTORNEY INFORMATION by Nicholas Ward substituting within-firm representation for Loree Stark on behalf of B. P. J., Heather Jackson. (Ward, Nicholas)
10/21/2022	500	JOINT MOTION by Lainey Armistead, State of West Virginia to Supplement the Expert Report of Dr. Gregory A. Brown. (Attachment: # 1 Exhibit A)(Steele, Brandon)
10/27/2022	501	STATEMENT OF VISITING ATTORNEY from Philip A. Sechler on behalf of Lainey Armistead. Local counsel: Joshua D Brown. Fee \$50.00. Receipt # AWVSDC-8297883. (Brown, Joshua)
11/04/2022	502	OPPOSITION by B. P. J., Heather Jackson in opposition to 500 JOINT MOTION by Lainey Armistead, State of West Virginia to Supplement the Expert Report of Dr. Gregory A. Brow. (Ward, Nicholas)
11/08/2022	503	NOTICE OF CHANGE OF ATTORNEY INFORMATION by Christiana M. Kiefer updating name and/or firm information on behalf of Lainey Armistead. (Kiefer, Christiana) (Modified on 11/9/2022 to correct signature and replace image) (kew).
11/09/2022		NOTICE OF DOCKET CORRECTION re: 503 Notice of Change of Attorney Information. ERROR: Electronic signature missing. CORRECTION: Signature added and image replaced. (kew)
11/11/2022	504	REPLY by Lainey Armistead, State of West Virginia to 502 Response In Opposition. (Steele, Brandon) (Modified on 11/14/2022 to remove link to #500 motion and to add party filer) (kew).
11/18/2022	505	JOINT MOTION by Lainey Armistead, State of West Virginia to Make Rule 26(e) Disclosure as to Dr. Chad Carlson (Attachments: # 1 Exhibit A (Proposed Supplemental Declaration), # 2 Exhibit B)(Steele, Brandon)
11/22/2022	506	JOINT MOTION by B. P. J., Heather Jackson, West Virginia State Board of Education, Harrison County Board of Education, West Virginia Secondary School Activities Commission, W. Clayton Burch, Dora Stutler, State of West Virginia, Lainey Armistead for Status Conference. (Ward, Nicholas) (Modified on 11/23/2022 to add party filers) (kew).

12/02/2022	507	OPPOSITION by B. P. J., Heather Jackson to 505 JOINT MOTION by Lainey Armistead, State of West Virginia to Make Rule 26(e) Disclosure as to Dr. Chad Carlson. (Ward, Nicholas)
12/07/2022	508	NOTICE OF APPEARANCE by Aubrey Sparks on behalf of B. P. J., Heather Jackson. (Ward, Nicholas)
12/09/2022	509	REPLY by Lainey Armistead, State of West Virginia to 507 Opposition. (Steele, Brandon)
12/14/2022	510	JOINT MOTION by B. P. J., Heather Jackson, State of West Virginia, Lainey Armistead to Continue Trial Date and Associated Pretrial Dates re: 448 Second Amended Scheduling Order. (Ward, Nicholas) (Modified on 12/15/2022 to add link to #448 amended scheduling order and to add party filers) (kew).
12/15/2022	511	ORDER granting 510 JOINT MOTION by B. P. J., Heather Jackson, State of West Virginia, Lainey Armistead to Continue Trial Date and Associated Pretrial Dates and directing that all dates established in the Second Amended Scheduling Order 448 are suspended. Signed by Judge Joseph R. Goodwin on 12/15/2022. (cc: counsel of record; any unrepresented party) (mfo)
01/05/2023	512	MEMORANDUM OPINION AND ORDER denying B.P.J.'s 289 Motion for Summary Judgment; denying Defendant WVSSAC's 276 Motion for Summary Judgment; granting the State of West Virginia, the Harrison County defendants, the State Board defendants, and Intervenor Lainey Armistead's 285 , 278 , 283 and 286 Motions for Summary Judgment to the extent they argue that H.B. 3293 is constitutional and complies with Title IX; the preliminary injunction is dissolved; all other pending motions are denied as moot; the Clerk shall post a copy of this published opinion on the court's website, www.wvsd.uscourts.gov. Signed by Judge Joseph R. Goodwin on 1/5/2023. (cc: counsel of record; any unrepresented party) (btm)
01/05/2023	513	JUDGMENT ORDER directing that judgment be entered in accordance with the 512 Memorandum Opinion and Order, and that this case be dismissed and stricken from the docket. Signed by Judge Joseph R. Goodwin on 1/5/2023. (cc: counsel of record; any unrepresented party) (btm)
01/05/2023	514	TRANSMITTED CERTIFIED COPY of 513 Judgment Order to counsel of record and any unrepresented party. (btm)
01/20/2023	515	MOTION by B. P. J., Heather Jackson to Stay Pending Appeal of 512 Memorandum Opinion and Order and 513 Judgment Order. (Attachments: # 1 Declaration of B. P. J., # 2 Declaration of Heather Jackson, # 3 Exhibit A, # 4 Exhibit B, # 5 Exhibit C, # 6 Proposed Order)(Ward, Nicholas) (Modified on 1/23/2023 to add link to #512 memorandum opinion and order and #513 judgment order) (kew).
01/23/2023	516	ORDER re: 515 MOTION by B. P. J., Heather Jackson to Stay Pending Appeal of 512 Memorandum Opinion and Order and 513 Judgment Order; directing the Defendants to jointly respond by 1/27/2023. Signed by Judge Joseph R. Goodwin on 1/23/2023. (cc: counsel of record; any unrepresented party) (lca)
01/23/2023	517	NOTICE OF APPEAL WITH FEE PAID by B. P. J., Heather Jackson as to 513 Judgment Order. Filing Fee \$505. Receipt # AWVSDC-8349569. (Ward, Nicholas)
01/24/2023	518	TRANSMITTAL OF NOTICE OF APPEAL TO 4CCA via APPEAL TRANSMITTAL SHEET re: 517 Notice of Appeal to the 4CCA. (arb)
01/24/2023	519	NOTICE OF APPELLATE CASE OPENING BY 4CCA re: 517 Notice of Appeal to the 4CCA in 4CCA Case No. 23-1078. Case Manager: Anisha Walker. (arb)

01/27/2023	520	RESPONSE by Lainey Armistead, W. Clayton Burch, Harrison County Board of Education, State of West Virginia, Dora Stutler, West Virginia Secondary School Activities Commission, West Virginia State Board of Education in opposition to 515 MOTION by B. P. J., Heather Jackson to Stay Pending Appeal of 512 Memorandum Opinion and Order and 513 Judgment Order. (Steele, Brandon) (Modified on 1/29/2023 to remove terminated party filer) (kew).
01/30/2023	521	REPLY by B. P. J., Heather Jackson to 520 Response In Opposition. (Ward, Nicholas)
02/01/2023	522	NOTICE OF APPEAL WITH FEE PAID by West Virginia Secondary School Activities Commission as to 512 Memorandum Opinion and Order and 513 Judgment Order. Filing Fee \$505. Receipt # AWVSDC-8357053. (Green, Roberta)
02/01/2023	523	AMENDED CERTIFICATE OF SERVICE by West Virginia Secondary School Activities Commission for Notice of Appeal. (Green, Roberta)
02/02/2023	524	TRANSMITTAL OF NOTICE OF APPEAL TO 4CCA via APPEAL TRANSMITTAL SHEET re: 522 Notice of Appeal to the 4CCA. (lca)
02/06/2023	525	NOTICE OF APPELLATE CASE OPENING BY 4CCA re: 522 Notice of Appeal to the 4CCA in 4CCA Case No. 23-1130. Case Manager: Anisha Walker. (mfo)
02/06/2023	526	ORDER OF 4CCA as to 517 Notice of Appeal to the 4CCA and 522 Notice of Appeal to the 4CCA in 4CCA Case No. 23-1130. The court consolidates Case No. 23-1078 (L) and Case No. 23-1130 as cross-appeals. The appellants in Case No. 23-1078 (L) shall be considered the appellants for purposes of the consolidated appeals and shall proceed first at briefing and at oral argument. (lca)
02/07/2023	527	MEMORANDUM OPINION AND ORDER denying 515 MOTION by B. P. J., Heather Jackson to Stay Pending Appeal, as set forth more fully herein. Signed by Judge Joseph R. Goodwin on 2/7/2023. (cc: counsel of record; any unrepresented party) (kew)
02/22/2023	528	ORDER OF 4CCA directing that upon consideration of submissions relative to Appellants motion for stay pending appeal relief requested by February 26, 2023, which the court construes as a motion for an injunction pending appeal, the court grants the motion and stays the district courts January 5, 2023, order dissolving its preliminary injunction. (mfo)

PACER Service Center			
Transaction Receipt			
03/17/2023 16:17:20			
PACER Login:	CL6324	Client Code:	344010-801-64105
Description:	Docket Report	Search Criteria:	2:21-cv-00316
Billable Pages:	30	Cost:	3.00

General Docket
United States Court of Appeals for the Fourth Circuit

Court of Appeals Docket #: 23-1078		Docketed: 01/24/2023		
Nature of Suit: 4448 Civil Rights				
B.P.J. v. West Virginia State Board of Education				
Appeal From: United States District Court for the Southern District of West Virginia at Charleston				
Fee Status: fee paid				
Case Type Information:				
1) Civil Private				
2) private				
3) null				
Originating Court Information:				
District: 0425-2 : 2:21-cv-00316				
Presiding Judge: Joseph R. Goodwin, U. S. District Court Judge				
Date Filed: 05/26/2021				
Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:	
01/05/2023	01/05/2023	01/23/2023	01/24/2023	
Prior Cases:				
None				
Current Cases:				
	Lead	Member	Start	End
Cross-Appeal	23-1078	23-1130	02/06/2023	

B.P.J., by her next friend and mother
 Plaintiff - Appellant

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Supp. App. 269a

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HEATHER JACKSON
Plaintiff - Appellant

v.

WEST VIRGINIA STATE BOARD OF EDUCATION
Defendant - Appellee

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(see above)

HARRISON COUNTY BOARD OF EDUCATION
Defendant - Appellee

WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES
COMMISSION
Defendant - Appellee

W. CLAYTON BURCH, in his official capacity as State
Superintendent
Defendant - Appellee

DORA STUTLER, in her official capacity as Harrison County
Superintendent
Defendant - Appellee

THE STATE OF WEST VIRGINIA
Intervenor - Appellee

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Intervenor - Appellee

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44180 Riverside Parkway
Lansdowne, VA 20176

Supp. App. 272a

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

Plaintiffs - Appellants

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

Defendants - Appellees

and

THE STATE OF WEST VIRGINIA; LAINEY ARMISTEAD

Intervenors - Appellees

- 01/24/2023 [1](#) Case docketed. Originating case number: 2:21-cv-00316. Case manager: AWalker. [1001303887] [23-1078] AW [Entered: 01/24/2023 02:27 PM]
2 pg, 60.98 KB
- 01/24/2023 [2](#) DOCKETING NOTICE issued Re: [\[1\]](#) case. Originating case number: 2:21-cv-00316. Mailed to: Attorneys: Barr, Brooks, Brown, Cropp, Csutoros, Ducar, Helstrom, Kang, Kiefer, Nortz, Pelet del Toro, Reinhardt, Rogers, Sparks, Steele, Swaminathan, Taylor, Veroff, Ward. [1001303898] [23-1078] AW [Entered: 01/24/2023 02:31 PM]
7 pg, 146.41 KB
- 01/24/2023 [3](#) APPEARANCE OF COUNSEL by Joshua A. Block for B.P.J. and Heather Jackson. [1001304047] [23-1078] Joshua Block [Entered: 01/24/2023 04:13 PM]
1 pg, 58.17 KB
- 01/25/2023 4 Attorney Loree Beth Stark for Heather Jackson and B.P.J. in 23-1078 terminated from case. Reason for termination: Change of employment. [1001304238] [23-1078] AW [Entered: 01/25/2023 09:14 AM]
- 01/25/2023 5 Attorney Andrew Barr for Heather Jackson and B.P.J. in 23-1078, Roger Greenwood Brooks for Lainey Armistead in 23-1078, Joshua D. Brown for Lainey Armistead in 23-1078, Jeffrey M. Cropp for Harrison County Board of Education and Dora Stutler in 23-1078, Rachel Csutoros for Lainey Armistead in 23-1078, Timothy Ducar for Lainey Armistead in 23-1078, Zoe Helstrom for Heather Jackson and B.P.J. in 23-1078, Katelyn Kang for Heather Jackson and B.P.J. in 23-1078, Anthony E. Nortz for West Virginia Secondary School Activities Commission in 23-1078, Valeria M. Pelet del Toro for Heather Jackson and B.P.J. in 23-1078, Elizabeth Reinhardt for Heather Jackson and B.P.J. in 23-1078, Shannon Marlowe Rogers for West Virginia Secondary School Activities Commission in 23-1078, Aubrey Sparks for Heather Jackson and B.P.J. in 23-1078, Brandon S. Steele for Lainey Armistead in 23-1078, Sruti J. Swaminathan for Heather Jackson and B.P.J. in 23-1078, Meredith Taylor Brown for Heather Jackson and B.P.J. in 23-1078, Julie Veroff for Heather Jackson and B.P.J. in 23-1078, Nicholas Ward for Heather Jackson and B.P.J. in 23-1078 terminated from case. Reason for termination: Not participating. [1001304242] [23-1078] AW [Entered: 01/25/2023 09:16 AM]
- 01/26/2023 [6](#) APPEARANCE OF COUNSEL by Kathleen Hartnett for B.P.J. and Heather Jackson. [1001305122] [23-1078] Kathleen Hartnett [Entered: 01/26/2023 11:13 AM]
1 pg, 149.59 KB
- 01/26/2023 [7](#) APPEARANCE OF COUNSEL by Sruti J. Swaminathan for B.P.J. and Heather Jackson. [1001305131] [23-1078] Sruti Swaminathan [Entered: 01/26/2023 11:21 AM]
1 pg, 63.23 KB
- 01/26/2023 [8](#) APPEARANCE OF COUNSEL by Tara L. Borelli for B.P.J. and Heather Jackson. [1001305427] [23-1078] Tara Borelli [Entered: 01/26/2023 03:53 PM]
1 pg, 146.63 KB
- 01/30/2023 [9](#) APPEARANCE OF COUNSEL by Lindsay S. See, Solicitor General for The State of West Virginia. [1001306605] [23-1078] Lindsay See [Entered: 01/30/2023 12:06 PM]
1 pg, 118.55 KB
- 01/30/2023 [10](#) APPEARANCE OF COUNSEL by Michael R. Williams, Senior Deputy Solicitor General for The State of West Virginia. [1001306611] [23-1078] Michael Williams [Entered: 01/30/2023 12:09 PM]
1 pg, 111.36 KB
- 01/30/2023 [11](#) DISCLOSURE STATEMENT by The State of West Virginia. Was any question on Disclosure Form answered yes? No [1001306615] [23-1078] Michael Williams [Entered: 01/30/2023 12:10 PM]
2 pg, 12.25 KB
- 01/31/2023 [12](#) APPEARANCE OF COUNSEL by Roberta F. Green for West Virginia Secondary School Activities Commission. [1001307757] [23-1078] Roberta Green [Entered: 01/31/2023 02:33 PM]
1 pg, 58.47 KB
- 01/31/2023 [13](#) APPEARANCE OF COUNSEL by Kimberly M. Bandy for West Virginia Secondary School Activities Commission. [1001307759] [23-1078] Kimberly Bandy [Entered: 01/31/2023 02:35 PM]
1 pg, 66.26 KB
- 01/31/2023 [14](#) APPEARANCE OF COUNSEL by Shannon M. Rogers for West Virginia Secondary School Activities Commission. [1001307761] [23-1078] Shannon Rogers [Entered: 01/31/2023 02:36 PM]
1 pg, 59.44 KB
- 01/31/2023 [15](#)  (ENTRY RESTRICTED) APPEARANCE OF COUNSEL by Kelly C. Morgan for W. Clayton Burch and Harrison County Board of Education. [1001307905] [23-1078]--[Edited 01/31/2023 by AW--see correction at ecf #19] Kelly Morgan [Entered: 01/31/2023 04:07 PM]
0 pg, 0 KB
- 01/31/2023 [16](#)  (ENTRY RESTRICTED) APPEARANCE OF COUNSEL by Kristen V. Hammond for W. Clayton Burch and Harrison County Board of Education. [1001307910] [23-1078]--[Edited 01/31/2023 by AW--see correction at ecf #18] Kristen Hammond [Entered: 01/31/2023 04:09 PM]
0 pg, 0 KB
- 01/31/2023 [17](#)  (ENTRY RESTRICTED) APPEARANCE OF COUNSEL by Michael W. Taylor for W. Clayton Burch and Harrison County Board of Education. [1001307917] [23-1078]--[Edited 01/31/2023 by AW--see correction at ecf #20] Michael Taylor [Entered: 01/31/2023 04:11 PM]
0 pg, 0 KB
- 01/31/2023 [18](#) Corrected APPEARANCE OF COUNSEL by Kristen V. Hammond for W. Clayton Burch and West Virginia State Board of Education. [1001307934] [23-1078] Kristen Hammond [Entered: 01/31/2023 04:24 PM]
1 pg, 145.16 KB
- 01/31/2023 [19](#) Corrected APPEARANCE OF COUNSEL by Kelly C. Morgan for W. Clayton Burch and West Virginia State Board of Education. [1001307937] [23-1078] Kelly Morgan [Entered: 01/31/2023 04:26 PM]
1 pg, 145.57 KB
- 01/31/2023 [20](#) Corrected APPEARANCE OF COUNSEL by Michael W. Taylor for W. Clayton Burch and West Virginia

- 1 pg, 144.85 KB State Board of Education. [1001307942] [23-1078] Michael Taylor [Entered: 01/31/2023 04:28 PM]
- 02/01/2023 [21](#) APPEARANCE OF COUNSEL by Susan L. Deniker for Dora Stutler and Harrison County Board of Education. [1001308543] [23-1078] Susan Deniker [Entered: 02/01/2023 01:35 PM]
1 pg, 555.55 KB
- 02/01/2023 [22](#) DISCLOSURE STATEMENT by Harrison County Board of Education. Was any question on Disclosure Form answered yes? No [1001308546] [23-1078] Susan Deniker [Entered: 02/01/2023 01:36 PM]
2 pg, 356.52 KB
- 02/01/2023 [23](#) DISCLOSURE STATEMENT by Dora Stutler. Was any question on Disclosure Form answered yes? No [1001308547] [23-1078] Susan Deniker [Entered: 02/01/2023 01:38 PM]
2 pg, 354.76 KB
- 02/01/2023 [24](#) DISCLOSURE STATEMENT by West Virginia Secondary School Activities Commission. Was any question on Disclosure Form answered yes? No [1001308654] [23-1078] Roberta Green [Entered: 02/01/2023 02:41 PM]
2 pg, 50.17 KB
- 02/02/2023 [25](#) DISCLOSURE STATEMENT by W. Clayton Burch. Was any question on Disclosure Form answered yes? No [1001309110] [23-1078] Kelly Morgan [Entered: 02/02/2023 09:47 AM]
2 pg, 120.98 KB
- 02/02/2023 [26](#) DISCLOSURE STATEMENT by West Virginia State Board of Education. Was any question on Disclosure Form answered yes? No [1001309113] [23-1078] Kelly Morgan [Entered: 02/02/2023 09:49 AM]
2 pg, 120.64 KB
- 02/03/2023 [27](#) DISCLOSURE STATEMENT by B.P.J. and Heather Jackson. Was any question on Disclosure Form answered yes? No [1001310751] [23-1078] Kathleen Hartnett [Entered: 02/03/2023 06:57 PM]
2 pg, 123.16 KB
- 02/06/2023 [28](#) ORDER filed consolidating case 23-1130 with 23-1078 (L). Cross-appeal appellant: B.P.J. and Heather Jackson. Copies to all parties. [1001311254] [23-1078, 23-1130] AW [Entered: 02/06/2023 01:38 PM]
2 pg, 57.92 KB
- 02/06/2023 [29](#) APPEARANCE OF COUNSEL by John J. Bursch for Lainey Armistead in 23-1078. [1001311408] [23-1078, 23-1130] John Bursch [Entered: 02/06/2023 03:15 PM]
1 pg, 125.78 KB
- 02/06/2023 [30](#) APPEARANCE OF COUNSEL by Jonathan A. Scruggs for Lainey Armistead in 23-1078. [1001311411] [23-1078, 23-1130] Jonathan Scruggs [Entered: 02/06/2023 03:17 PM]
1 pg, 124.95 KB
- 02/06/2023 [31](#) APPEARANCE OF COUNSEL by Johannes Widmalm-Delphonse for Lainey Armistead in 23-1078. [1001311573] [23-1078, 23-1130] Johannes Widmalm-Delphonse [Entered: 02/06/2023 04:23 PM]
1 pg, 126.71 KB
- 02/07/2023 [32](#) DOCKETING STATEMENT by B.P.J. and Heather Jackson.. [1001312185] [23-1078] Kathleen Hartnett [Entered: 02/07/2023 01:13 PM]
5 pg, 182.51 KB
- 02/07/2023 [33](#) APPEARANCE OF COUNSEL by Jacob P. Warner for Lainey Armistead in 23-1078. [1001312233] [23-1078, 23-1130] Jacob Warner [Entered: 02/07/2023 02:07 PM]
1 pg, 126.64 KB
- 02/07/2023 [34](#) MOTION by B.P.J. and Heather Jackson for stay pending appeal. , to expedite decision. Date and method of service: 02/07/2023 ecf. [1001312483] [23-1078] Kathleen Hartnett [Entered: 02/07/2023 10:41 PM]
373 pg, 3.79 MB
- 02/08/2023 [35](#) NOTICE ISSUED to Lainey Armistead, W. Clayton Burch, Harrison County Board of Education, Dora Stutler, The State of West Virginia, West Virginia Secondary School Activities Commission and West Virginia State Board of Education in 23-1078, West Virginia Secondary School Activities Commission in 23-1130 requesting response to Motion for stay pending appeal [34], Motion to expedite decision [34]. Response due: 02/15/2023.[1001312613].. [23-1078, 23-1130] AW [Entered: 02/08/2023 09:20 AM]
1 pg, 79.52 KB
- 02/08/2023 [36](#) (ENTRY RESTRICTED) APPEARANCE OF COUNSEL by Aubrey Sparks for B.P.J. and Heather Jackson in 23-1078, 23-1130. [1001312910] [23-1078, 23-1130]--[Edited 02/08/2023 by AW--amended appearance form filed] Aubrey Sparks [Entered: 02/08/2023 01:21 PM]
0 pg, 0 KB
- 02/08/2023 [37](#) Amended APPEARANCE OF COUNSEL by Aubrey Sparks for B.P.J. and Heather Jackson in 23-1078, 23-1130. [1001312926] [23-1078, 23-1130] Aubrey Sparks [Entered: 02/08/2023 01:36 PM]
1 pg, 63.09 KB
- 02/08/2023 [38](#) APPEARANCE OF COUNSEL by Nicholas Ward for B.P.J. and Heather Jackson in 23-1078, 23-1130. [1001312930] [23-1078, 23-1130] Nicholas Ward [Entered: 02/08/2023 01:38 PM]
1 pg, 62.89 KB
- 02/08/2023 [39](#) APPEARANCE OF COUNSEL by Christiana M. Kiefer for Lainey Armistead in 23-1078. [1001313161] [23-1078, 23-1130] Christiana Kiefer [Entered: 02/08/2023 03:48 PM]
1 pg, 126.15 KB
- 02/14/2023 [40](#) DOCKETING STATEMENT by West Virginia Secondary School Activities Commission.. [1001316012] [23-1130] Roberta Green [Entered: 02/14/2023 02:27 PM]
8 pg, 185.22 KB
- 02/15/2023 [41](#) BRIEFING ORDER filed. Name of Cross-Appeal Appellant for briefing purposes: B.P.J. and Heather Jackson. No paper copies required unless case has been tentatively calendared or copies otherwise ordered. All filings must comply with [Appendix Pagination & Brief Citation Guide](#). [1001316763] Opening Brief and Appendix due 03/27/2023. Opening/Response Brief Due: 04/26/2023. Response/Reply Brief Due 05/26/2023. [23-1078, 23-1130] AW [Entered: 02/15/2023 02:31 PM]
2 pg, 125.3 KB
- 02/15/2023 42 Attorney Travis Christopher Barham for Lainey Armistead in 23-1078 and Lainey Armistead in 23-1130, Douglas Buffington II for The State of West Virginia in 23-1078, Curtis R. Capehart for The State of West Virginia in 23-1078, Carl S. Charles for Heather Jackson and B.P.J. in 23-1078, Henry Wilkins Frampton IV for Lainey Armistead in 23-1078 and Lainey Armistead in 23-1130, Tyson C. Langhofer for Lainey

Armistead in 23-1078 and Lainey Armistead in 23-1130, Avatara Antoinette Smith-Carrington for Heather Jackson and B.P.J. in 23-1078 terminated from case. Reason for termination: Not participating. [1001316820] [23-1078, 23-1130] AW [Entered: 02/15/2023 02:51 PM]

- 02/15/2023 [43](#)
1 pg, 82.45 KB DOCKETING FORMS FOLLOW-UP NOTICE ISSUED to Lainey Armistead in 23-1078 re: filing of disclosure form Disclosure statement due from Lainey Armistead on 02/21/2023. [1001316827] [23-1078, 23-1130] AW [Entered: 02/15/2023 02:55 PM]
- 02/15/2023 [44](#)
1 pg, 112.37 KB APPEARANCE OF COUNSEL by Curtis R. A. Capehart for The State of West Virginia in 23-1078. [1001316902] [23-1078, 23-1130] Curtis Capehart [Entered: 02/15/2023 03:33 PM]
- 02/15/2023 [45](#)
2 pg, 116.76 KB DISCLOSURE STATEMENT by Lainey Armistead in 23-1078. Was any question on Disclosure Form answered yes? No [1001317085] [23-1078, 23-1130] John Bursch [Entered: 02/15/2023 04:25 PM]
- 02/15/2023 [46](#)
27 pg, 110.98 KB RESPONSE/ANSWER by Harrison County Board of Education and Dora Stutler in 23-1078 to for stay pending appeal [\[34\]](#), to expedite decision [\[34\]](#). [1001317131] [23-1078, 23-1130] Susan Deniker [Entered: 02/15/2023 04:56 PM]
- 02/15/2023 [47](#)
1 pg, 84.04 KB NOTICE ISSUED to B.P.J. and Heather Jackson in 23-1078 requesting reply to response on or before 02/17/2023 [\[46\]](#). [1001317150] [23-1078, 23-1130] AW [Entered: 02/15/2023 05:19 PM]
- 02/15/2023 [48](#)
1787 pg, 19.53 MB RESPONSE/ANSWER by Lainey Armistead, West Virginia State Board of Education, W. Clayton Burch, West Virginia Secondary School Activities Commission and The State of West Virginia in 23-1078, Lainey Armistead, West Virginia State Board of Education, W. Clayton Burch, The State of West Virginia and West Virginia Secondary School Activities Commission in 23-1130 to [\[35\]](#), for stay pending appeal [\[34\]](#), to expedite decision [\[34\]](#). Nature of response: in opposition. [1001317194] [23-1078, 23-1130] John Bursch [Entered: 02/15/2023 11:06 PM]
- 02/17/2023 [49](#)
18 pg, 197.62 KB REPLY by B.P.J. and Heather Jackson to for stay pending appeal [\[34\]](#), to expedite decision [\[34\]](#).. [1001318721] [23-1078] Kathleen Hartnett [Entered: 02/17/2023 05:26 PM]
- 02/22/2023 [50](#)
2 pg, 58.99 KB COURT ORDER filed administratively terminating Motion for stay pending appeal [\[34\]](#); granting motion for injunctive relief pending appeal. Copies to all parties. [1001320437] [23-1078] AW [Entered: 02/22/2023 01:44 PM]
- 03/16/2023 [51](#)
1 pg, 316.42 KB APPEARANCE OF COUNSEL by Carl S. Charles for B.P.J. in 23-1130. [1001333140] [23-1078, 23-1130] Carl Charles [Entered: 03/16/2023 01:32 PM]

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