

No. 24-43

In the Supreme Court of the United States

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STATE OF WEST VIRGINIA, ET AL.,

v.

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

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JOINT APPENDIX (VOLUME III OF X)

(Pages 966-1290)

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(continued from front cover)

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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

[14]

BERNARD DOLAN having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. KANG:

Q. Hi. Good afternoon, Mr. Dolan. How are you?

A. Good. How are you?

Q. Doing well. [15]

Thank you so much for spending your Friday afternoon with us.

Before we get started, would you please state and spell your name for the record.

A. Bernard, B-E-R-N-A-R-D; Dolan, D-O-L-A-N.

Q. Mr. Dolan, before we get started, we have some housekeeping items. So the oath you just took is the same oath you would take if you were testifying in a courtroom. So what that means is you must testify truthfully and not leave out any important facts.

Is there any reason you cannot testify truthfully today?

A. No.

Q. Please give verbal answers to any of my questions. Nodding or shaking your head cannot, unfortunately, be captured by the court reporter. So the answer you just gave was perfect.

If you don't understand the question, please let me know, and I'm happy to try to rephrase it or make it clear for you. If you answer, I will assume you understood. Is that fair?

A. Yes.

Q. And just to be clear, when I ask questions I am not seeking communications that you had with your attorney.
[16]

Because the court reporter is taking down what we say on the record, I'll do my best to avoid talking over you and to avoid talking at the same time as you.

And then, finally, I'm going to try to do a break every hour or so -- but if at any point you need a break, we'll finish up whatever question we are on, and we can take a break whenever you feel comfortable.

Does that sound fair?

A. Yes, ma'am.

Q. Have you ever had your deposition taken before?

A. Yes.

Q. When was it? A. Two years ago, I believe.

Q. What was it about?

A. A herpes case in wrestling.

Q. So were you testifying on behalf of the WVSSAC?

A. Yes, ma'am.

Q. And going forward if I say the "Commission" instead of the "WVSSAC," would that be all right with you?

A. That is fine. [17]

Q. So you mentioned it's a herpes case. Can you tell me whether you testified on behalf of the W- -- of the Commission or was it in your personal capacity?

A. I believe it was on behalf of the Commission, but I'm -- I wouldn't -- I'm not sure.

Q. Have you ever -- have you ever had your deposition taken other than this time?

A. Not that I recall.

Q. Have you ever testified at trial?

A. Yes.

Q. When was this?

A. Couple years -- I would say probably three or four years ago.

Q. What was it about?

A. A golf ruling in a championship.

Q. And so were you also testifying on behalf of the Commission?

A. Yes, ma'am.

Q. Did you bring anything with you today?

A. Just a bottle of water.

Q. Good. And do you understand that you are here to respond to a 30(b)(6) deposition notice?

A. Yes. [18]

Q. Do you know what a 30(b)(6) deposition -- deposition notice is?

A. Yes.

Q. Have you had a chance to review the deposition notice?

A. Yes.

Q. So in that deposition notice, there were a number of topics.

Are you familiar with each of the topics described in that notice?

A. Yes.

Q. So if you go into your Marked Exhibits folder, I'm going to introduce to you a document that's been marked as Exhibit 1.

(Deposition Exhibit 1 was marked for identification and is attached hereto.)

BY MS. KANG:

Q. Let me know when you have had a chance to pull that up.

A. Okay. Exhibit 1, the deposition notice.

Q. That's correct.

And I'm going to ask you to scroll down to Page 6 of Exhibit A. I believe it's Page 7 of the actual pdf, if that's helpful, or Page 6.

A. Yes. Okay. [19]

Q. Great.

So I'm going to go through each of the topics and just ask you a few questions about them.

So for Topic 1, what did you do to prepare for Topic 1?

A. Looked at our organization.

Q. Did you review any documents?

A. Our rules and regulations.

Q. And by looked at your organization, did you mean –

A. Review –

Q. -- look at your -- sorry. Go ahead.

A. Just -- there's a part of our rules and regulations that has a history of the organization.

Q. Got it.

Is there any reason you can't give full and complete testimony on Topic 1?

A. No.

Q. When preparing for Topic 1, did you consult with anyone other than your attorney?

A. No.

Q. Moving on to Topic 2, same question. What did you do to prepare for Topic 2?

A. Probably just discuss with my attorney.

Q. And did you review any documents? [20]

A. Not necessary for that one.

Q. And just to clarify, you didn't talk to anyone other than your attorney?

A. No.

Q. For Topic 3, what did you do to prepare for Topic 3?

A. Looked at our handbook, rules and regulations handbook.

Q. Did you review any other document?

A. No.

Q. Did you consult with anyone other than your attorney?

A. No.

Q. And is there any reason you cannot give full and complete answers on behalf of the Commission for that topic?

A. No.

Q. For Topic 4, what did you do to prepare for it?

A. Rules and regulations handbook.

Q. Did you review anything else?

A. No.

Q. Did you consult with anyone other than your attorney?

A. No. [21]

Q. And is there any reason you cannot give full and complete answers on behalf of the Commission for Topic 4?

A. No.

Q. For Topic 5, what did you do to prepare for that?

A. Looked at our rules and regulations and probably researched my email.

Q. Can you clarify for me what you mean by researched your email?

A. Just search the email to make sure I didn't have any communication with the plaintiffs.

Q. Did you consult with anyone other than your attorney for Topic 5?

A. No.

Q. And is there any reason you cannot give full and complete answers on behalf of the Commission?

A. No.

Q. Sorry. I know these questions are repetitive, but I do appreciate it. For Topic 6, what did you do to prepare for Topic 6?

A. Researched -- or looked through my emails as well as text messages. [22]

Q. Did you review any documents?

A. Not really. Just -- I'm sorry. Our transgender policy or our Board policy. That was all.

Q. Did you review any of the emails or text messages that you searched for?

A. I probably would have read them for -- to determine whether there was any substance to them, yes.

Q. Did you consult with anyone other than your attorney for Topic 6?

A. No.

Q. And is there any reason you cannot give full and complete answers on behalf of the Commission for Topic 6?

A. No.

Q. For Topic 7, what did you do to prepare for it?

A. Looked at our rules and regulations handbook. Q. Did you review any documents other than the rules and regulations handbook?

A. No.

Q. Did you consult with anyone other than your attorney about Topic 7? [23]

A. No.

Q. And is there any reason you cannot give full and complete answers on behalf of the Commission?

A. No.

Q. For Topic 8, what did you do to prepare for Topic 8?

A. Reviewed text messages and emails concerning House Bill 3293.

Q. Did you review anything else?

A. No.

Q. Did you consult with anyone other than your attorney?

A. No.

Q. And is there any reason you cannot give full and complete answers on behalf of the Commission?

A. No.

Q. For Topic 9, what did you do to prepare for Topic 9?

A. Reviewed the rules and regulations handbook.

Q. Did you review anything other than the rules and regulations handbook?

A. No. [24]

Q. Did you consult anyone other than your attorney?

A. No.

Q. Is there any reason you cannot give full and complete answers on behalf of the Commission?

A. No.

Q. All right. We're almost there. For Topic 10, what did you do to prepare for it?

A. Reviewed the rules and regulations handbook.

Q. Did you review anything else?

A. No.

Q. Did you -- did you consult anyone other than your attorney?

A. No.

Q. Is there any reason you cannot give full and complete answers on behalf of the Commission?

A. No.

Q. For Topic 11, what did you do to prepare for it?

A. Reviewed the rules and regulations handbook as well as the Board policy on transgender.

Q. Did you review anything else?

A. No. [25]

Q. Did you consult with anyone other than your attorney?

A. No.

Q. Is there any reason you cannot give full and complete answers on behalf of the Commission?

A. No.

Q. For Topic 12, what did you do to prepare for it?

A. Reviewed the rules and regulations handbook.

Q. Did you review anything else?

A. No.

Q. Did you consult with anyone other than your attorney?

A. No.

Q. Is there any reason you can't give full and complete answers on behalf of the Commission?

A. No.

Q. For Topic 13, what did you do to prepare for it?

A. Read the rule -- read the House Bill 3293.

Q. Did you review anything else?

A. Just our rules and regulations.

Q. Did you consult with anyone other than your attorney? [26]

A. No.

Q. And is there any reason you cannot give full and complete answers on behalf of the Commission?

A. I -- I did consult -- I probably -- I had a communication with Melissa White from House Education. She had sent me documents -- or a document. So I would say I communicated with Melissa White about House Bill 3293.

Q. Was this in preparation for this deposition?

A. No. I'm sorry.

Q. No need to apologize.

All right. Last -- last topic. What did you do to prepare for Topic 14?

A. Primarily reviewed the rules and regulations handbook and the transgender Board policy and look at emails and text messages.

Q. Anything else?

A. No. Q. Did you consult with anyone other than your attorney?

A. No.

Q. Is there any reason you cannot give full and complete answers on behalf of the Commission? [27]

A. No.

Q. So for some of these topics, you mentioned reviewing emails and documents. Do you know if those emails and documents have been produced to Plaintiff?

A. They all have, yes.

Q. All right. Thank you.

MS. KANG: You can take down Exhibit 1.

BY MS. KANG:

Q. Do you understand that you're testifying about these topics in the deposition notice on behalf of the Commission?

A. Yes.

Q. So just to be clear, when I ask for your position on something, I -- I'm asking for the position of -- of the Commission unless I say otherwise.

You understand?

A. Yes, ma'am.

Q. In general, what did you do to prepare for today's deposition?

A. Again, reviewed the rule -- the rules and regulations.

Q. Did you meet with anyone other than your attorney? [28]

A. No.

Q. Did you discuss today's deposition with anyone other than your attorney?

A. Just that I had it scheduled so people would know in the office not to send me calls.

Q. So other employees at -- at the Commission; is that right?

A. Yes, ma'am.

Q. Do you know who B.P.J. is?

A. By name only, yes.

Q. Do you know anything else about her?

MS. GREEN: I'll just object to the form, to the extent he knows things from me, from counsel.

THE WITNESS: I have -- only know what -- the documents that have been sent to me. I don't know anything firsthand about her.

BY MS. KANG:

Q. Do you agree that B.P.J. is a girl who is transgender?

MS. GREEN: I'll object to the form. And I'll just object outside the scope.

THE WITNESS: It's been presented to me that way.

BY MS. KANG:

Q. Are you aware that B.P.J. ran [29] cross-country on the girls' team at Bridgeport Middle School?

A. Yes.

Q. How did you become aware of that?

A. Through the court case.

Q. Have you ever spoken to B.P.J.?

A. I have not.

Q. Have you ever spoken to B.P.J.'s parents?

A. No.

MS. GREEN: And I'll just object to the extent this is outside the scope.

BY MS. KANG:

Q. Have you ever spoken to B.P.J.'s sibling?

A. No.

Q. Now, I want to just talk a little bit about your personal background to sort of better understand your selection as -- as the witness for the 30(b)(6) deposition.

What is your position at the Commission?

A. I am the executive director.

Q. What are your responsibilities as executive director?

A. Generally oversee the organization, assign duties and evaluate staff, make decisions when there's disagreement amongst schools. [30]

Q. What sort of duties do you assign?

A. Director of all the tournaments. So each -- each assistant executive director is assigned multiple sports that they will oversee and -- and put on the tournaments.

I assign secretarial duties to the secretarial staff.

Q. How many assistant executive directors do you have?

A. Three.

Q. So I believe you said you make decisions when schools have disputes. Is that accurate?

A. Yes, ma'am.

Q. Can you tell me a little bit -- a little bit more about that.

MS. GREEN: I'll just object. Outside the scope.

THE WITNESS: If there is a difference on -- opinion on eligibility of a student in one school, one school may say they are eligible, one school may say they are ineligible. So we gather the facts, and we'll make a determination.

BY MS. KANG:

Q. And by "we," do you mean you as the executive director or the Commission? [31]

A. The Commission.

Q. And I --

A. And I -- I'm sorry. Me as the executive director for the Commission.

Q. Understood.

How long have you been the executive director?

A. Seven years.

Q. Have you held any other positions at the Commission?

A. No.

Q. Do you --

A. Pardon me. Wait a minute.

I was on the Board of Directors at one point.

Q. And when was that?

A. That -- I believe it was 2012 to 2014.

Q. What was your role when you were on the Board of Directors?

MS. GREEN: Object to the form.

THE WITNESS: Approve -- approve the workings of the organization to proof financial reports, those things.

Also to hear appeals of students or coaches who have been -- who violated the rule and [32] they come up before the Board to either appeal their discipline or appeal their ineligibility.

BY MS. KANG:

Q. Do you report to anyone currently as the executive director?

A. I have ten Board members, yes.

Q. Is that the same Board of Directors that you were just talking about?

A. Yes, ma'am.

Q. Does anyone report to you?

A. My eight other staff members report to me, yes.

Q. What are their titles?

A. Three of --

MS. GREEN: Object. Outside the scope. And can I just have a continuing objection for the outside scope, or you want be to keep hopping in?

MS. KANG: Yes. I'll grant you a continuing objection for outside the scope, Roberta.

MS. GREEN: Thank you. Thank you.

THE WITNESS: There are three assistant executive directors, one events communication coordinator, one bookkeeper, and three secretaries. [33]

BY MS. KANG:

Q. Have you ever been employed by -- employed by the Attorney General's Office of the State of West Virginia?

A. No.

Q. Have you ever been employed by the West Virginia House of Delegates?

A. No.

Q. Have you ever been employed by the West Virginia Senate?

A. No.

Q. Have you ever been employed by the Harrison County Board of Education?

A. No.

Q. Have you ever been employed by the West Virginia State Board of Education? A. No.

Q. So I am going to introduce to you a document that is going to be marked as Exhibit 2.

And I'll let you know when it should appear in your Marked Exhibit folder.

(Deposition Exhibit 2 was marked for identification and is attached hereto.)

BY MS. KANG:

Q. So if you go to your Marked Exhibit [34] folder, you should now see a document that's been marked as Exhibit 2.

Let me know when you see it.

A. Okay.

Q. So on Page 2 of Exhibit 2, you'll see a section entitled "Bernie Dolan," and this is -- I'll represent to you that this

is a screenshot that I took from the Commission website on February 10th, 2022. And in the bottom left corner you'll see the URL stamp where I pulled it from the website.

And I'd just like to ask you a few questions about your biography in -- on this page.

Do you agree with what's written in the paragraph on Page 2 of Exhibit 2 under "Bernie Dolan"?

MS. MORGAN: Counsel, this is Kelly Morgan.

I do not see an Exhibit 2 in the Egnyte.

MS. KANG: So if you're -- if anyone is having trouble accessing the Marked Exhibits, I recommend clicking on the folder again to refresh it.

Let me know if you continue to have problems.

THE WITNESS: I do -- I agree with what is [35] written there.

BY MS. KANG:

Q. Where did you work before your current role at the Commission?

A. Ohio County Schools.

Q. How long did you work there?

A. 30 years.

Q. Whoa.

Did you interact with any transgender individuals in that role?

A. I did not.

Q. When did you attend West Virginia University?

A. I graduated in '85; so probably '81 to '85.

Q. And when did you attend Salem International University?

A. I would say '99 to 2000 or 2000 to 2001.

Q. What is the Super Six?

A. State football championship.

Q. What was your role there?

A. I had a variety of roles starting out from assistant media director over the years to being the director -- once I was the athletic director of Wheeling Park High School.

[36]

Q. What was your role as the athletic director?

A. I was the athletic director at Wheeling Park High School.

What was the question?

Q. Sure.

Could you tell me what some of your responsibilities were in that role?

A. I would oversee the coaches, do their evaluations, purchase equipment for each team, as well as coordinate transportation, and also make sure all eligibility information was submitted to the Commission -- Commission as well as accurate.

Q. What is the state golf tournament?

A. State championship for golf.

Q. And what was your role there?

A. The director.

Q. What is OVAC?

A. It's the Ohio Valley Athletic Conference. It was the conference that Wheeling Park was a member of, and still is, but it's the athletic conference for the high schools.

Q. What was your role there?

A. I served on executive Board a couple of the years while I was the athletic director at [37] Wheeling Park.

Q. Finally, what is WVADA?

A. West Virginia Athletic Directors Association.

Q. What was your role there?

A. I served on the executive Board -- or the Board of Directors for a couple of years while I was the athletic director at Wheeling Park High School.

Q. And do you yourself play sports?

A. A little bit still.

Q. What sports do you play?

A. Tennis a little bit. Basketball a little bit. Pickleball.

Q. Do you currently coach any sports?

A. I do not.

Q. Did you used to coach?

A. I did.

Q. What did you coach?

A. 18 years I coached boys' and girls' track at Wheeling Park High School;

12 as the head coach for both boys and girls;

Assistant coach of football;

And assistant coach of girls' basketball.

Q. Thank you.

[38]

MS. KANG: You can take down Exhibit 2 now.

BY MS. KANG:

Q. So now I want to move into talking a little bit more about the Commission and its structure.

When was the Commission founded?

A. In 1916.

Q. Why was it founded?

A. To primarily handle disputes between schools at that point, and they did provide championship opportunities for schools.

Q. What sort of disputes between schools?

A. As I said earlier, it could be eligibility; it could have been breaking of contracts; could be officials, you know -- who -- what officials get assigned to games.

So there is quite a bit of conflict possible.

Q. How does the Commission define secondary sports?

A. Secondary sports, we are -- we oversee the sports that we currently have, which is -- a number of them.

But the -- what happens is, as the schools [39] offer these sports as clubs, once there is enough schools that offer the sports, then they would petition us to recognize an additional sport. So we have, I believe, 19 championships at this point.

Q. What grades count as a secondary grade?

A. 6th through 12.

Q. Do you know if Bridgeport Middle School qualifies as a secondary school?

A. They are a member of our association. So yes.

Q. Can you tell me what is a member of your -- what does a member of your association mean?

A. First of all, initially there was a initia- -- an initiation fee. And there were dues. But we have not charged dues for 20 years.

To be a member, you just have to provide -- you have to agree to follow all the rules and regulations as well as provide an opportunity for a boy sport and a girl sport in each of the seasons.

Q. So each member school has to offer a boys' team or a girls' team for each support?

A. Yes.

Q. Is that right?

A. Yes. Yes.

[40]

Q. And you said you stopped collecting dues for 20 years; is that correct?

A. Yes.

Q. Why did the Commission stop collecting dues?

A. At that point, it was more trouble than it was worth it. There wasn't that much money coming in from dues. It was before my time, though.

Q. Understood.

How many employees does the Commission have currently?

A. Nine.

Q. Is there someone who is considered in charge of the Commission?

A. I would assume -- I am the executive director. So I would be in charge. But I still answer to my Board of Directors.

Q. So does the Commission have a relationship with the State Board of Education in West Virginia?

A. We do have a relationship, number one. As our rules are promulgated from our members, they will submit rules to be voted on by the membership at our Board of Control.

If at the Board of Control they pass by a majority, then those rules get submitted to the [41] State Board of Education who would then put them out for public comment.

And they would have final vote on whether or not the rule becomes law. And if it does, they will submit that to the Secretary of State's office.

Q. So just to clarify, who submits the rules to the Board of Control again?

A. Principals. We are a principals organization. So each principal has one vote in our membership.

Q. And are you the principal of your member school?

A. Yes, ma'am.

Q. Do you personally, as the executive director, work with the State Board of Education of West Virginia?

A. Not directly.

MS. GREEN: I'm sorry. Could -- I'm sorry.

Ms. Kang, would you repeat the question?

MS. KANG: Sure.

BY MS. KANG:

Q. Do you personally, as the executive director, have a role or relationship with the State Board of Education of West Virginia?

[42]

A. I don't have a -- I mean, I have a working relationship because we deal with same schools. But as far as on a daily basis of any interaction, no -- other than they approve the rules.

Q. Does the Commission have a relationship with the County Board of Education?

A. Not really. We are a principals organization. We do communicate with county boards. But our membership are the high schools.

Q. What sort of communication --

A. And --

Q. Oh, sorry.

What sort of communications would you have with the County Board?

A. Oftentimes we would -- if there is rules or memos that we go out and send out, sometimes we will send them to the County Boards of Education that -- to keep them up to date on what is going on with the Commission.

Q. By "rules," do you mean the Commission's rules?

A. It could be -- yes, the Commission rules. Yep. Yes.

Q. Does the Commission determine who can play on a secondary school sports team?

[43]

MS. GREEN: Object to the form.

THE WITNESS: When you say "Commission," it's not the nine members here at the office.

The Commission, technically, is made up by the 286 members. So they have voted in the rules, and they are required by law -- by the -- being a member to follow those rules. So only when there is a dispute do we intervene.

BY MS. KANG:

Q. So I'd ask who makes the initial determination of a student's eligibility?

A. That would be the school.

Q. I believe you mentioned earlier the -- a dispute process. So the student -- or a student's eligibility is disputed.

Can you walk me through what would happen there?

A. It could be a school sending -- if Student A left School Number 1, went to School Number 2, and didn't follow the normal transfer procedures, School A might file a complaint to say, "Hey, can you look at so-and-so because they never sat out with School B, or Number 2."

So we would intervene and get the information, work with the two schools, and come up [44] with a final answer.

Q. What sort of information would you look at?

A. Whether they -- when they enrolled at the school, who they -- are they still living with their parents, same household, did they -- did they make a bona fide move, and whether they have a 2.0 or not. Things like that.

Q. Anything else?

A. Could be age. There's a number of rules for eligibility, but those are the biggest ones.

Q. So if a student is deemed ineligible by the Commission, is that student -- student prohibited from playing?

A. The student would be prohibited from playing in a varsity or JV game. There's only a limited exception as to when they would be able to even practice with the team. But for the most part, if you're ineligible, you're ineligible for all activities for that team.

Q. And I believe you mentioned that you have 286 member schools. Do you know if that includes all the schools -- secondary schools in West Virginia?

A. It does not.

[45]

Q. Do you know how many schools are not a member school in West Virginia?

A. I do not.

Q. If the Commission finds a person is ineligible, is there an appeal process?

A. Yes, there is.

Q. Can you walk me through what that appeal process looks like?

A. They would -- I would send them a letter telling them initially that they were determined ineligible. If they would like a hearing in front of our Board of Directors, then along with the level -- along with a letter of ineligibility, I would send the appeal papers that they would fill out and return to me.

And then within 30 days, I would bring them before our Board of Directors for them to make a decision to grant a waiver or not. And the Board can grant a waiver for rule

fails to accomplish what it was intended for or there's a hardship on the student.

Q. What sort of hardship would count?

A. It -- it's up to the Board of Directors. So there is -- there's no marker that you have to hit. So there's lots of different things that may [46] have come up.

Q. Have you taken part in the appeal process before?

A. When I was a member of the Board of Directors, yes.

Q. So is it the Board of Directors that makes the determination on the appeal?

A. Yes.

Q. Are you familiar with WVEIS, the West Virginia Education Information System?

A. Yes.

Q. Does the Commission have any control over the information that goes into WVEIS?

A. No. We have no access to that note.

Q. In West Virginia, to your knowledge, has a college team ever competed against a middle school team?

A. Has a college team ever competed against a middle school?

Q. That's correct.

A. It would be against our rule if they did. But no, not to my knowledge.

MS. KANG: So I'm going to introduce a document to you that's going to be marked as Exhibit 3, and I'll let you know when folks can [47] access it in their Marked Exhibit folder.

(Deposition Exhibit 3 was marked for identification and is attached hereto.)

MS. KANG: So Exhibit 3 should now be in everyone's Marked Exhibit folder. If you don't see it, try clicking on the folder again to refresh it.

BY MS. KANG:

Q. Mr. Dolan, let me know when you're able to access Exhibit 3.

A. Okay.

Q. Do you recognize this document?

A. It is our rules and regulations handbook. Yes.

Q. Do you know who prepared this document?

A. Over time it's -- you know -- you know, it's the charge of one of my secretaries to -- once rules are changed, to submit the changes. But we take care of that in -- in the office here.

Q. So is this a Commission that's responsible for the information in the rules and regulations handbook?

A. Yes.

Q. So you'll notice that on the first page of Exhibit 3 it says that this was revised and printed August 2021.

[48]

Is this the most recent version of the rules and regulations?

A. Yes. There may be editorial changes between then, but that's the most recent copy we have, yes.

Q. So is it fair to say --

A. For --

Q. I'm sorry. Go ahead.

A. For the current year.

Q. So is it fair to say that this document is -- is currently in effect?

A. Yes.

Q. And just to be clear, is this the rules and regulations handbook that you reviewed when preparing for this deposition?

A. Yes.

Q. Is the Commission required to follow these rules and regulations?

A. The Commission as well as all the member schools, yes.

Q. So I believe you might have mentioned it earlier, but just to be clear, can you walk me through the rule-making process of the rules and regulations in this handbook?

A. Okay. Any principal can submit a rule [49] proposal. It has to be in by January 15th.

This rule proposal would then be looked at by our constitution and bylaws committee. They would make sure that it's legal and written appropriate.

In the next week here, we'll be sending out those proposals, all of our rule proposal changes out to our membership.

We will meet in the -- the first week of in April. And we will go over all of the rule proposals, and we'll vote on them individually.

If they pass by a majority, they'll move on to the State Board of Education, who puts them out for comment. And

then they will vote on them whether or not they will move forward as part of our rule book.

Q. What do you mean by you make sure that the proposed rule is legal?

A. Sometimes the way it's written may not be appropriate. You know, there just may be misspellings, misinterpretation. So any changes we make would go back to the person who made it. We would re-read it and say, "Is this what your intent was" to make sure it's written properly.

Q. And just to be clear, who exactly votes on [50] the proposed rule in the Commission?

A. At our Board of Control, all 286 members are eligible to vote. So if they come to our annual meeting, we will discuss each item. And then the next day we vote on every item that we have.

Q. So it -- it would be the Board of Control and any member school who participate in that meeting that would vote on that rule?

A. That is correct.

Q. Who amends these rules if they need amendments?

A. Beforehand, it would be the constitution and bylaws. There is a committee that we have that -- made up of five principals.

Q. Who is responsible for enforcing these rules?

A. All of the member schools plus the SSAC office itself.

Q. What happens if a member school doesn't follow these rules?

A. Either the coach, the administration, or the school itself could face any sort of penalty from a letter of warning to suspension or fine.

Q. By "suspension," do you mean suspension from being a member school?

[51]

A. I don't know if we have ever suspended anybody from being a member school, but it would be suspicion of games, maybe not able to participate in championships.

But, to my knowledge, we have never suspended anybody from being a member.

Q. Is it possible for the Commission to cancel a school's membership?

A. I'm not sure.

Q. To your knowledge, has anyone ever submitted a rule proposal about the participation of transgender students?

A. No.

Q. So I'm going to be just walking you through a couple of excerpts in this exhibit. And it is quite long. So I'm only going to be pointing to certain sections.

So with that said, as I am going through, if you want me to slow down or pause, or you want to read over something, just -- just let me know.

So I'm going to ask you to turn to Page 99 of the pdf. In the bottom right-hand corner, it will be stamped WVSSAC000216. And let me know whenever you happen to get there.

A. What page again?

[52]

Q. So it's Page 99 of the pdf. But I believe it's Page 85 of the actual document.

A. Okay.

Q. And just for future reference, when I -- when I say Page 99 or Page 2, I'm referring the page of the pdf not the page numbers that may be written in the exhibit.

MS. GREEN: His assistant is slow. He has got a really slow assistant over here who is paging through a page at a time. We should be back in about two weeks.

THE WITNESS: Is it the organizational chart?

BY MS. KANG:

Q. That's correct.

A. Okay. Yes. I am there.

Q. Do you recognize this organizational chart?

A. I do.

Q. Do you believe that accurately reflects the organizational structure of the Commission?

A. Except for the State Board of Education, they only have oversight of our -- they have final say of our rules. So that may be why they are placed at the top.

[53]

The Board of Directors -- I'm not sure it accurately reflects our organization. But yeah.

Q. Would --

A. The Board of Directors does not answer to the Board of Control, I guess.

Q. So, I guess, where would you place the Board of Directors in the organizational chart to make it more accurate?

A. Well, I would probably and will probably move State Board of Education, National Federation out of the chart, and Board of Directors would be at the top. Board of Control would be where the National Federation is.

Q. So is it fair to say that the Board of Directors is probably the one at the head of the organization?

A. That is correct.

Q. I'm just going to ask you few questions about a couple of these -- of these entries on the organizational chart.

Can you tell me a little more about the State Board of Education's relationship with the Board of Control specifically.

A. With the Board of Control, the State Board of Education has final -- they will review and put [54] the rules out for comments by the general public, and they'll have the final say on the votes.

That's probably the only relationship the State Board of Education has with the Board of Control.

Q. I know you touched a bit on this earlier, but could you tell me a bit more about what the Board of Control's role is in the Commission.

A. The Board of Control's charge is to vote for rule changes, either vote them up or down.

Q. What do you mean by "vote them up or down"?

A. When the -- they are put up for a vote, whether it's to create a new rule or not, it's their vote -- it's a majority of the Board of Control that is there that day for the vote.

It either passes or it fails. If it passes, it goes on to the State Board of Education.

Q. Does the State Board ever promulgate rules that the Commission has to follow?

A. The State Board has a 2.0 policy that is in our rule book, but it never passed our Board of Control. It was -- it's a State Board of Education policy.

Q. Does the Commission have to follow that [55] 2.0 rule?

A. Yes. And all of our members.

Q. Are you aware of any other rules from the State Board of Education?

A. Not really.

Q. What is the Board of Control's relationship with the directors, if any?

A. Five of the Board of Directors are principals; so five of those principals would be members of the Board of Control. That's about the -- the best relationship -- the only relationship they have.

Q. What is the Board of Control's relationship with the executive director?

A. None, really. I mean, the Board -- the Board -- the five members of the Board of Directors that are principals represented an administrative district. And so the Board -- the Board of Directors answers to schools in their district. So that's the only indirect connection between myself and the Board of Control.

Q. And there are ten Board of Directors members; is that right?

A. Yes, ma'am.

Q. Does any member of the Board of Directors [56] ever promulgate or propose rules?

A. If they are one of the five principals they can, yes.

Q. Can you tell me a little bit more about what your assistant executive directors do in relation to the rules in this handbook?

A. Basically they -- they can help interpret the rules between our member schools, if there is issues.

But they primarily are responsible for the championships in their particular sports. But they can answer questions and interpretations on disputes of the rule book between schools.

Q. By overseeing the championship, does that include issuing rules for the championship?

A. No. All of our playing rules are created by the National Federation. There are some times that they have -- by state adoption that you can modify rules, but we follow the NFHS playing rules 100 percent.

Q. So the --

A. Close a 100 percent. As close to a 100 percent as possible.

Q. So does -- so the Commission does not have any of its own rules in relation to championship?

[57]

A. No. There are rules in there that govern how many people are at the game; you know, how many teams are at the game; where the game is going to be held. All those

things. The time. The place. Those are all determined by our Board of Directors.

And then they are given the charge to myself or my -- my assistants to run those championships on those days.

Q. What does the Sports Medicine Committee do?

A. They advise us in all of our rules and regulations that go in for each sport for safety. For instance, concussion, heat illness, sudden cardiac arrest, whether we are making modifications to practice schedules based on their -- their expertise.

And so they will make recommendations to us for modifying sports to make it more safe.

Q. So who makes up the Sports Medicine Committee?

A. There's a variety of doctors and athletic trainers. I believe there is -- I mean, there is a number of them. At least 12. I'm not sure of the exact number because they come off and on. But yeah. So they -- that's who makes it up is a [58] variety of medical personnel.

Q. And do they report to you?

A. They would make recommendations to me to give to the Board of Directors if we happen to have changes about -- sport-specific things, practice, things like that. Things that are not in the rule book, but they are modifications or rules that they would apply.

Heat illness is a big example. They are providing recommendations on how long a practice is, what you are allowed to do at a practice, and things like that.

Q. Do you happen to know if anyone from the West Virginia Legislature spoke with anyone from the Sports Medicine Committee before H.B. 3293 was passed?

A. Not that I know of.

MS. KANG: So I think now might be a good time for a five- to ten-minute break, just let you stretch your legs a little bit.

THE WITNESS: Okay.

MS. KANG: Roberta, are you all right with that?

MS. GREEN: Yes. I think it's a good time.

[59]

MS. KANG: All right. So why don't we -- why don't we take a break until about 1:30.

THE WITNESS: Okay.

THE VIDEOGRAPHER: This marks the end of Media Number 1. Going off the record. The time is 1:20.

(Brief recess.)

THE VIDEOGRAPHER: This marks the beginning of Media Number 2 in the deposition of 30(b)(6) Witness Bernie Dolan.

Back on the record. The time is 1:35.

BY MS. KANG:

Q. Mr. Dolan, before I move on to my next topic, I just want to ask you two more quick questions about the Sports Medicine Committee.

To your knowledge, has the Sports Medicine Committee or anyone from that committee ever made a recommendation regarding transgender participation in athletics?

A. I don't believe it's ever been on the agenda, no.

Q. Do you know if the Sports Medicine Committee has ever made a recommendation on girls playing on boys' teams?

A. Not in my tenure here, no. I don't know [60] about previous.

Q. All right. So I'm going to have a similar set of questions next. So just diving a little bit more into the Commission's role at -- role in sports.

Can you tell me -- I know you mentioned some earlier - - what factors are currently used to determine a student's eligibility?

A. Number one is do they live with their -- are they enrolled in the school;

Number two, do they live with their parents;

Number three, do they reside in the district where their school is;

What's -- what's their age as of August 1st of the -- that current year;

Are they playing on any other teams outside the school team.

Those are the majority -- and do they have a 2.0.

Those are the majority of the eligibility reasons that somebody might not be eligible for a period of time.

Q. If I could just put a pin in that.

So a student could be ineligible for a [61] certain period of time and then gain eligibility?

A. Yes.

Q. And the factors that are used to determine a student's eligibility -- are those the rules and regulations

in the handbook plus the rules promulgated by the State Board of Education?

A. It is the -- the rules that are in our rule book, as well as the 2.0, which is the West Virginia Department of ED's rule, State Board of Education.

It's in our rule book, but it's not technically our rule, but it's for all of our member -- all of our public schools, and our private schools follow it too.

Q. Do the -- do the county boards of education in West Virginia have any rules that determine a student's eligibility?

MS. GREEN: And I'll just object to the form.

THE WITNESS: They are not supposed to have any rules additional than ours. They have given over the rights of overseeing sports to the SSAC.

BY MS. KANG:

Q. When a student's eligibility is in [62] dispute, who makes the final determination as to that student's eligibility?

A. I would make the initial -- well, the school makes the initial call. I would then either verify or overturn their decision based upon the facts.

And then if they're not happy with the answer that I get, they want to appeal that, they take that to the Board of Directors. And if they are -- if my ruling is sustained at the Board of Directors, they have a Board of Review that they could go to to get one final opportunity for a waiver.

Q. And the Board of Review is that different from the Board of Control?

A. It is. The Board of Review is the final Board that has seven members and may or may not be connected to the schools. It's more general. But they are appointed by the State Board of Education.

Q. Is the Board of Review a part of the Commission?

A. They are appointed by the Board of -- or the State Board of Education. So I think you've seen them say WVSSAC Board of Review, but we have no input as to whether or not -- who the members are.

[63]

Q. Are any Commission members currently part of the Board of Review?

A. There may be one member who is a Board office personnel who also serves on the Commission -- or on the Board of Review as the athletic director's association, but she is not a member -- she's not an employee of one of the schools. She works at the county office.

Q. Which county office?

A. I believe Lewis County office.

Q. Okay. So I want us to go back to Exhibit 3. And this will be Page 16 of the pdf. And in the bottom right-hand corner it will be Bates stamped VSV- -- WVSSAC000133. And let me know whenever you get a chance to review it.

MS. GREEN: And, Ms. Kang, what was the pdf page?

MS. KANG: Sure. It's Page 16.

MS. GREEN: 15 or 16?

BY MS. KANG:

Q. 16. 1,6.

A. Okay. I'm at 14 now.

MS. GREEN: Sorry.

THE WITNESS: Okay.

MS. GREEN: And what does it read at the [64] bottom?

BY MS. KANG:

Q. WVSSAC000133.

A. Yep. Okay. Yes.

Q. At the top of Exhibit 3, Page 16, you'll note it says, "Title 127 Legislative Rule."

Do you know what a legislative rule is?

A. I assume -- no. All of our rules are 127. So I think that's the area that we are in. But I would probably be guessing if I did, you know.

MS. GREEN: Yeah.

THE WITNESS: Yeah.

BY MS. KANG:

Q. Do you know who promulgated this specific rule?

MS. GREEN: I'll just object to the form.

THE WITNESS: Well, our rules have been in place since 1916. So over time, all of our rules have had some modification every year.

So as far as when that particular rule, the most current part, I couldn't tell you.

It's probably -- well, it says it was effective in September 9 of 2019. So that means there was a rule change at the Board of Control in 2019.

[65]

BY MS. KANG:

Q. Okay. I just want to draw your attention to the section on the same page it says "127-1-2 Name."

And in this paragraph -- I'll read out a section. But take your time reading it as well.

It says [as read]:

"Extracurricular activities of the students in the public secondary schools are controlled pursuant to W. Va. Code 18225, and authority for the delegation of such control to the Commission is granted by statute."

A. Yes.

Q. Now, did I -- did I read this correctly?

A. You did.

Q. Is this statement accurate?

A. I believe it's accurate. But it's not inclusive if that's the -- because it's -- we have private schools as members also.

But the legislature apparently, by statute, only dealt with the public schools.

Q. Do you know how many private schools are part of your membership?

A. Somewhere around 20. I don't know the [66] exact number.

Q. Are you familiar at all with West Virginia Code 18225?

A. Yes.

Q. What is your understanding of it?

MS. GREEN: I'll just object to the extent it would call for a legal conclusion.

THE WITNESS: It was when they authorized the WVSSAC.

BY MS. KANG:

Q. What do you mean "authorized WVSSAC"?

A. We had been an organization since 1916. And in the late '60s, they -- for some reason they put us in the code, I guess.

Q. What does "extracurricular activities" in this section mean?

A. It would be sports and band.

Q. Does it include club sports?

A. No. Not -- not in terms of the WVSSAC, no.

Q. When does a club sport become a sport that is controlled by the WVSSAC?

A. When there is more than 30 -- more than 20 we can recognize it.

At 32 teams, when there are 32 individual [67] teams, our Board can authorize a championship for one class.

If there is 50 percent of our membership -- of the high school membership, they could authorize two classes; 75 percent they could authorize three.

Q. So I'm going to draw your attention now staying on the same page on Exhibit 3 to the section that says, "127-1-3 Goals."

And I'm also going to refer you to the section that says "3.1." And I'll read it out loud. And feel free to take your time reading it as well. [As read]:

"This Commission, through the employment of instrumentalities hereinafter established, shall supervise

and control interscholastic athletics and band activities among member schools.”

A. Okay.

Q. Did I read this correctly?

A. You did.

Q. Is this statement accurate?

MS. GREEN: Object to form.

THE WITNESS: Yes.

[68]

BY MS. KANG:

Q. What does “supervise and control interscholastic athletics” mean?

MS. GREEN: Object to the form.

THE WITNESS: Provide the rules and make sure that everybody is following the rules.

BY MS. KANG:

Q. And how do you make sure that everyone is following the rules?

A. Well, usually it -- you know, it’s brought to our attention either through members of the public, schools in particular. Sometimes we see violations in the newspaper, and we follow up on them.

Q. By “follow up,” you mean you reach out to the individual member school?

A. Yes. And ask them for a written response as to what the allegation might be.

Q. And do you have a rough estimate of how many violations happen a year?

A. How many violations? Or how many times are we called about a violation?

Q. Let's say, how many times you are called for a violation.

A. If I had to guess, it would probably be [69] two or three a month. Not counting the appeals -- the student appeals.

Q. How does a school stop being a member of the WVSSAC?

A. To be honest with you, I'm not sure how a public school does.

The private school simply writes us a letter and says, "We no longer want to be a member of your organization." There's no penalty for withdrawal.

Q. Is there a reason why it's a different rule for a private school versus a public school?

A. I guess a public could withdraw.

Q. To your knowledge, has any public school ever withdrawn?

A. No. Just -- they have consolidated; and, therefore, they become a new school, or they've closed and have been absorbed into a new school. But, to my knowledge, no public school has ever not been a member.

Q. Are all public schools in West Virginia currently members?

A. All public secondary schools 6 through 12, yes.

Q. If a school is not a member of the [70] Commission, could it still offer interscholastic sports?

A. Yes.

Q. Can a school that is not a member compete with member schools?

A. As long as they are a school, yes.

Q. So now I would like to draw your attention to Page 17 of Exhibit 3, it should be just the next page down.

And I'll ask you to look at the paragraph that starts "127-1-4. Membership."

A. Okay.

Q. And that paragraph says [as read]: "The WVSSAC shall be composed of the principals or designee, of those public or private secondary schools which have certified in writing to the State Superintendent of Schools of West Virginia [paren] (State Superintendent) that they have elected to delegate the control, supervision, and regulation of their interscholastic athletic and band activities."

Did I read that correctly?

A. Yes.

[71] Q. Is this statement accurate?

MS. GREEN: Object to the form.

THE WITNESS: Yes.

BY MS. KANG:

Q. What does it mean to "delegate the control, supervision, and regulation of their interscholastic athletic and band activities"?

MS. GREEN: Object to the form.

THE WITNESS: It means that the WVSSAC and its member schools will write rules and everybody will follow them.

And so they can't have rules of their own that are separate from the rules that we have all agreed to.

BY MS. KANG:

Q. So just to be a clear, a member school cannot issue its own rules -- is that -- for interscholastic athletics; is that right?

A. Not if it's in conflict with our rule.

Q. Can it issue rules that are not in conflict with the SSAC rules?

A. Sure.

Q. Did Bridgeport Middle School delegate its control, supervision, and regulation of interscholastic athletic activities to the [72] Commission?

A. I'm sure they did at one time, yes.

Q. So we're going to stay on the same page, but I'm going to draw your attention to the section that starts with 4.2.b. Says [as read]:

"The principal or designee is and shall be responsible for conducting interscholastic athletic and band activities of the school in accordance with the constitution, bylaws, rules and regulations of the Commission which have been adopted by the Board of Control of the Commission for the governing of such activities."

A. Okay.

Q. Did I read this correctly?

A. Yes.

Q. Do you believe this statement is accurate?

MS. GREEN: Object to the form.

THE WITNESS: Yes.

BY MS. KANG:

Q. What happens if a principal or a designee breaks one of the Commission's rules?

A. There's a -- depends upon what the rule is [73] and how often, it could be a letter of discipline, it could be a verbal warning, or it could go all the way up to suspension or fine.

Q. So am I right that, when a member school makes a determination of what students are eligible to play secondary sports, it has to follow the rules and regulations of the Commission?

A. Yes.

Q. So now I'm going to ask you to scroll down two more pages to Page 19. It should be stamped WVSSAC000136 of Exhibit 3. Let me know whenever you're there.

A. Okay. We're there.

Q. I'm sorry. Let me actually take you to Page 20. That's Bates stamped -137 of Exhibit 3.

A. Okay.

Q. So in the section that says "127-1-8. Board of Directors," it says [as read]: "The Board of Directors shall have authority to administer the regulations of the WVSSAC."

Did I read that correctly?

A. You did.

Q. Do you believe the statement is accurate?

A. Yes.

[74] Q. What does administer the regulations of the WVSSAC mean?

MS. GREEN: Object to the form.

THE WITNESS: Make sure everybody is following the rules as written and interpreted.

(Simultaneously speaking.)

BY MS. KANG:

Q. By "interpreted," who --

A. The --

Q. -- makes -- oh, sorry.

A. Just --

Q. Did you --

A. As the rules are written.

Q. Does it mean anything else?

A. No.

Q. I'm going to ask you to scroll one more page down to the page that's Bates stamped WVSSAC -138. It should be Page 21 of the pdf of Exhibit 3.

A. Okay.

Q. So I'll draw your attention to Section 8.5, which says [as read]:

"The Board of Directors shall have power to decide all cases of [75] eligibility of students and participants in interscholastic athletic and band activities. The Board may also exercise discretionary powers it may deem necessary for the furtherance of education and interscholastic athletic and band activities in the secondary schools of West Virginia."

Did I read that correctly?

A. You did.

Q. Do you believe this statement is accurate?

MS. GREEN: Object to the form.

THE WITNESS: Yes.

BY MS. KANG:

Q. What does it mean "Shall have the power to decide all cases of eligibility of students and participants in interscholastic athletic and band activities"?

MS. GREEN: Object to form.

THE WITNESS: If I have -- if the school or I have determined somebody to be ineligible, they can grant a waiver to make them eligible.

BY MS. KANG:

Q. Can anyone other than the Commission grant a waiver?

[76] A. Well, the Commission cannot. The Board of Directors can. And then the Board of Review can. But the -- the office itself cannot grant waivers.

I'll take that back.

I can grant a waiver if it's been ruled before in a similar fashion by the Board, but I don't have -- I don't execute that.

Q. So is it fair to say that if the Board of Review issues a determination of a student's eligibility and the current student before you has a similar set of facts, you can rely on that previous determination?

MS. GREEN: Object to the form.

THE WITNESS: The rule says that, but they're never -- I've yet to find two cases that are exactly similar. So...

BY MS. KANG:

Q. But you have the ability to -- to do so?

A. It says that we have the ability to do so, yes.

Q. So now I'd like to -- we're staying on the same page -- draw your attention to Paragraph 8.7 and 8.8.

So I'll read Paragraph 8.7 first. It says [as read]:

[77] "At the request of the Board of Directors, a Deputy Board Member may investigate matters of eligibility and other violations of the rules and regulations of the WVSSAC. The Deputy Board Member shall submit to the Board of Directors a written report of findings and recommendations for disposition of the case(s)."

Did I read that correctly?

A. You did.

Q. Do you believe this statement is accurate?

MS. GREEN: Object to form.

THE WITNESS: Yes.

BY MS. KANG:

Q. When would the Board of Directors request an investigation into matters of eligibility?

A. If something was brought to them by a member school or the public at large.

Q. Are there any Deputy Board Members currently?

A. There are ten.

Q. Who do they report to?

A. They have very few -- very few responsibilities. We have not asked them to [78] investigate. We -- you know, we feel like it has put some them in difficult positions. So most of the investigations come out of our office.

Q. Can you tell me a little bit more about putting them in difficult positions; what you mean by that.

A. If they have to go into somebody else's school and make a determination on eligibility or where somebody lives, it could be a rival school and people might not want them there.

So, you know, we have taken it over because it's unbiased if we're looking at it.

Q. So are the Deputy Board Members designees or members of the member school?

A. They are principals of a member school, yes.

Q. So now on Paragraph 8.8 it says [as read]:

"The Board of Directors shall have the power to investigate through the Deputy Board Member, or in such other manner as may be found advisable, matters of eligibility and other violations of rules when the Board deems it advisable to do so on the basis of information furnished, [79] even though a formal protest is not filed."

Did I read that correctly?

A. You did.

Q. Is this statement accurate?

MS. GREEN: Object to the form.

THE WITNESS: It is.

BY MS. KANG:

Q. So when would the Board -- when would the Board deem it advisable to investigate matters of eligibility even without formal protest?

A. Sometimes they --

MS. GREEN: Object to the form.

I'm sorry.

THE WITNESS: Oh. I'm sorry.

Sometimes they get anonymous letters that would supply some information; and, you know, they would -- now they would ask us because I also can investigate. And so we would do it and then -- instead of our Board -- Deputy Board just because we don't want to put them in a position where they would be ruling on a -- sometimes a competitor.

BY MS. KANG:

Q. And what is the difference between a formal protest versus an informal protest?

[80] A. A formal protest would be somebody's -- has written it and put their name to it.

Informal would be an anonymous letter or a phone call.

Q. So I'm going to ask you to scroll one page down in Exhibit 3 to the page that is Bates Stamped -139. It should be Page 22 of the pdf.

A. Okay.

Q. So I am looking at Section 127-1-9 titled "Funds."

A. Okay.

Q. How -- how is the Commission funded?

A. All of our revenue comes from championship events, ticket sales at championship events;

Regional basketball ticket sales;

Playoffs for football;

Registering of officials;

Coaches Education;

And corporate partnership.

Q. Are there any other sources of revenue?

A. None of any significance.

Q. By "none of any significance," what do you mean?

A. There would be maybe some fines in there for people -- coaches not paying -- or not [81] evaluating their officials or not putting scores in. Things like that.

Q. How much money are those fines usually?

A. \$25 or \$50 or \$10, depending upon what it is for.

Q. Now, you mentioned the Coaches Education. Could you tell me a bit more about what that is.

A. The legislature requires that our coaches who are non-teachers must have a Coaches Education. And this is a State Board of Education. But they have charged us with providing the education, but State Board of Education would do the certification.

Q. Do the coaches pay the Commission for this education?

A. They do.

Q. Is the Commission a for-profit organization?

A. We are not.

Q. Do you receive any funds from the federal government?

A. We received from -- some pandemic funds. But that was all through the small business authority.

Q. Anything else?

A. We have received GEAR funding from -- [82] through the Department of Education for monies to

go back to the school through AEDs, wet globe bulbs [verbatim], reimbursement for travel, things like that.

Because everybody was in short -- low attendance, and so we were trying to find a way to help them with their money.

Q. By "gear funding," do you mean sports gear or...

A. For them they also had limited attendance and limited games. So --

Did I miss the question?

Okay. What was your question again?

Q. Oh. I just asked that by "gear funding," did you mean sports gear?

A. No. No. It is -- I think it's -- GEAR is the program.

Q. Understood.

And was this all during the pandemic?

A. Yes, ma'am.

Q. Do you receive any funds from your member schools?

A. The only funds we receive at this time would be fines that they would have to pay for not attending, not putting in scores.

[83] Sometimes our events might be held at their schools; so they would collect the gate and then write us a check.

But that's pretty much all we get from the schools.

Q. And how much are the fines?

A. For not putting in an evaluation, it's \$10; For not doing your eligibility, it's \$25; And if you don't put in a score, it's \$50.

Q. Is any of the Commission's revenue shared with the member schools?

A. Yes.

Q. How is it shared?

A. We -- we give reimbursement back to the schools. Each sport has a different formula, but we help with travel and meal money at most of the events.

At football they also get a commission of the gate. 20 percent the first week, 15 percent the second, 10 the third, and 5 at the championship.

Q. If you had to estimate, what percentage of Commission funds go to the member schools?

A. When you say go to the schools, you mean actually cash sent back to them? Or do you mean [84] services to the school?

Q. Let's start with cash sent back to them.

MS. GREEN: Object to the form.

THE WITNESS: I would say \$300,000 out of a probably \$1.5 million budget.

BY MS. KANG:

Q. So what about services?

A. The services -- oh. I'm sorry. Services would be higher because -- I would think it's probably closer to \$700,000 depending upon what you call as "giving back".

You know, if it's -- some people would say that the expenses to put on tournaments is a way to give back.

Direct expenses would be, you know, the things that we are purchasing for them right now, which would be the

AED and the wet globe bulb and the cooling submersion tubs.

Q. So what -- what is encompassed in the term "services"?

A. Services. Each -- each season we travel around the state to meet with all principals for a regional principal meeting.

We also travel around the state to meet with each sport during each -- at the beginning of [85] each season to make sure -- we go over all the rules and regulations that are current.

Those are some of -- as well as expenses that we incur hosting the tournaments for them.

And the coaches -- you know, we have -- we have expenses in materials for Coaches Education.

Q. I believe you mentioned you stopped collecting dues from your members.

Do you currently have any plans to resume collecting dues?

A. No. We have a proposal from one of our principals for this year to strike out the -- all of the dues' language and inserting language in there that says, "Could resume at any time when necessary."

Q. So, now, sticking with Exhibit 3, I'm actually going to ask you to go back up to Page 6 of the pdf and the Bates stamp is WVSSAC000123. And let me know whenever you get there.

A. Okay.

Q. So I'm going to direct you to the paragraph that begins with "Discrimination Prohibited."

Take your time reading it, and let me know whenever you are finished reading that paragraph.

[86] A. [Witness reviews document].

Okay.

Q. Do you know who wrote this portion of the handbook?

A. I do not.

Q. Do you know how long this portion has been in the handbook?

A. I do not.

Q. Do you remember ever reviewing this section of the handbook?

A. Yes.

Q. When did you review it?

A. I --

Q. Oh. Go ahead.

A. I would say a couple of years ago. We've tried to have a book study and go through all of these.

Q. When you reviewed it a couple of years ago, did you believe the Commission was required to comply with Title IX?

A. Yes.

Q. Is the Commission currently required to comply with Title IX?

MS. GREEN: I'll just object to the form.

THE WITNESS: I would believe that the [87] schools are required to follow Title IX. But I believe we believe it also.

BY MS. KANG:

Q. Now, I want to turn your attention to the section below that titled "Beliefs and Objectives."

Take a moment to read the first paragraph and let me know whenever you are done.

A. [Witness reviews document].

Okay.

Q. What are "proper ideals of sportsmanship," as written in this paragraph?

MS. GREEN: Object to the form.

THE WITNESS: Are you on Paragraph 1 or 3?

BY MS. KANG:

Q. Paragraph 1[verbatim] of the Beliefs and Objectives section.

A. What was your question again?

Q. Sure.

What are -- what are the proper ideals of sportsmanship?

I'm sorry. I --

A. The --

Q. I am referring to Paragraph 3. You had it right the first time.

A. Okay.

[88]

Sportsmanship is that everybody's on a fair playing field. And the -- you should be gracious in losing and winning.

Q. What do you mean by "fair playing field"?

MS. GREEN: Object to the form.

THE WITNESS: Same age. Same gender.

BY MS. KANG:

Q. Anything else?

A. No.

When I say "same age," it would be same programatic level. So middle -- middle school kids cannot play against high school but freshmen can play against seniors.

Q. What are physical -- the physical and social benefits that are referenced in this paragraph?

A. Just good -- for one, just good health. Participation. Also, you know, we believe that it's -- the competitive part is good, and the training part is beneficial to the student athlete.

Q. Why do you believe it's beneficial?

A. Studies we have read. And as a participant a long time ago.

Q. What does "partisanship and prejudice" mean in this paragraph?

[89]

A. Partisanship and prejudice would mean that it's equal. You know, one side -- especially with -- you know, as far as equipment or what -- if you come to a game, you can't have lush seats for you and the other team have foldable chairs and things like that. So that's part- -- partisan.

You know, all the equipment at a game has to be the same equipment everybody is using. Same ball. Same rims. Everything is the same.

Q. What do you mean by “prejudice” in this paragraph?

A. Prejudice would mean, you know – you know, is there some advantage to one team over another.

Q. What sort of advantage are you referring to?

A. Could be something as simple as a tarp over your bench as opposed to the other team not having it;

Could be as simple as a heater. You might have a heater on a sideline at a cold game and they don’t.

So things that would make the game unfair that are outside of the game.

Q. Is there anything else that you believe [90] would make the game unfair?

MS. GREEN: Object to the form.

THE WITNESS: There are probably other things, but right off the top of my head not sure.

Could be something as simple as how far you got to walk to your locker room in between games.

BY MS. KANG:

Q. Do you believe that allowing transgender students to participate on sports teams consistent with their gender identity is consistent with the goals identified in this paragraph?

MS. GREEN: Object to the form.

THE WITNESS: I believe our -- our Board policy was that, if it was not safe or unfair advantage, then it would be okay for them to participate.

BY MS. KANG:

Q. Does Bridgeport Middle School cross-country count as an interscholastic athletic?

A. It does.

MS. KANG: So I'm actually about to move into the next session. I think we are up on an hour.

Roberta, do you have preference as to [91] whether you want me to get started or you want to take a break now?

THE WITNESS: I'm good.

MS. GREEN: All right. Let's do --

THE WITNESS: I can't go to the bathroom.

MS. GREEN: I know. Really no need for a bathroom break over here.

MS. KANG: All right. Well, if it's okay with you, we'll go on a little bit longer.

Let me know if you do need a break.

So we can take down Exhibit 3.

BY MS. KANG:

Q. And I want to talk a little bit about some of the statistics that the Commission turns over to various organizations.

So I'm going to introduce an exhibit that will be marked as Exhibit 4.

MS. KANG: And I'll let you know when it's in everyone's folders.

(Deposition Exhibit 4 was marked for identification and is attached hereto.)

MS. KANG: Exhibit 4 should now be in everyone's Marked Exhibit folder.

Let me know if anyone has trouble accessing it.

[92]

BY MS. KANG:

Q. And, Mr. Dolan, let me know whenever you have it up.

A. Okay.

MS. GREEN: Counsel, was there a certain page in the exhibit?

MS. KANG: Yeah.

BY MS. KANG:

Q. If you go to Page 6 to start, that would be great. And the Bates stamp is -365.

MS. GREEN: I'm sorry.

THE WITNESS: That's fine.

Is this the "2016-'17 Participation Report"?

BY MS. KANG:

Q. Do you believe it is?

A. Okay.

[Witness reviews document].

Okay.

Q. So I'm going to represent to you that this is a document that was produced by your counsel in response to one of plaintiff's discovery requests.

If you want to read the text of the request, it's Request Number 15 in this same document.

[93]

Do you recognize this document that is before you right now?

A. I do.

Q. What is it?

A. This is a participation -- the National Federation of High School keeps track of how many participants are in each sport, trying to find trends among the sports, which ones are growing, which ones are falling; and if they are falling, how come.

Q. What is the National Federation of State High School Associations?

A. It is the association of 51 members, the 50 states plus Washington, D.C., and they primarily provide the sport-specific rules for almost all of our events.

Q. How long have you provided these statistics to the Federation?

A. To be honest with you, they've been tracking them, but I couldn't tell you how long we have.

Q. Do you think it's --

A. I would assume.

Q. Go ahead.

A. I would assume -- it's a -- it's an [94] ongoing thing; so I would think it's probably been done for a number of years.

Q. More than ten?

A. Yes.

Q. More than 20?

A. Probably.

Q. Why do you provide these statistics to the NFHS?

A. They -- they gather them for the whole country to try to monitor which sports are growing in popularity and

which ones might not be. And the ones that aren't they're trying to look and see why.

Q. I'm just going to ask you a few questions to help me understand how to read this chart.

Did you prepare this document?

A. I personally did not prepare it. But this is a document prepared by our office, yes.

Q. Do you know who prepared this document?

A. Alice Goodwin in our office.

Q. What's her position?

A. Secretary.

Q. Is she your secretary?

A. No.

Q. Do you know which secretary she is?

[95]

A. Well, we don't all have specific secretaries. She works primarily with Greg Reed, but we all ask different people to do different things, depending upon what the level of activity going on in the office for that particular staff member is.

Q. What is Greg Reed's role?

A. Assistant executive director.

Q. Do you contribute any information to this document?

A. This document is -- I personally do not. It's pulled from our website. And it probably -- it is self-populating, I believe. So she doesn't actually type it in there. They pull it from our eligibility sheets.

Q. And who is "they"?

A. Our -- our web designer created this form, and it self-populates from that form, from their eligibility.

Q. So in the second column of this chart, it says "Senior."

What does that mean?

A. "Senior" means "high school."

Q. So senior --

A. 9 through 12.

[96]

Q. So it's any grade from 9 to 12?

A. It's a combination of 9 through 12, yes.

Q. If we go over to the third column, the one that says "Male," what does that mean?

A. That -- it's the same -- when we do our eligibility sheets by sport, for instance, football, football doesn't differentiate between boys and girls. It's -- they're asking for the number of participants.

When you get to girls' track, it can only be done by girls; so, therefore, that -- that's why there's not -- there's a zero in girls' track for males and boys' track has a number but girls' does not.

So football is the number of participants. So in the blue column under "Male," it would be the number of male -- or number of people in football. Could be male or female because our eligibility doesn't differentiate between the two.

Q. So just to be clear, even if a girl plays on the football team, she will not show up in the column that says "Female" for football?

A. That's correct. Because they're asking for the number of participants in football, and it's primarily football -- it's primarily a male sport. [97] So it falls under the male category. That's the best we could do for them.

Similarly, cheer is primarily a cheer event, but there are boys. But there's no number in there. So we just -- it's just the total number in that -- for that particular sport.
14:26

Q. Okay. Scroll all the way over to the gray-colored columns. They're labeled as "Mid/Junior."

What does "Mid/Junior" mean?

A. It was either middle school or junior high and -- you know. I don't believe we have any more junior high. So probably could be fixed to say just middle school.

Q. What grades would those be?

A. 6th through 8.

Q. So now I'm going to ask you to -- to scroll down to Page 11. It will be Bates stamped -370.

Let me know whenever you get there.

A. Okay.

Q. So the last year that you produced this document is 2020 to 2021.

Do you know when the 2021 to 2022 statistics will be published?

[98]

A. We submitted them over the summer. Obviously, our spring sports aren't -- aren't in place yet. So we wouldn't have numbers for them.

Q. For the 2021 to 2022 period, do you know if B.P.J. will be listed in the "Female" column or the "Male" column?

MS. GREEN: Object to form.

THE WITNESS: Which team is she on?

BY MS. KANG:

Q. She is on the cross-country team for girls.

A. And then that's where she will be listed. Because it's just pulling the number off of the eligibility of that particular team.

Q. And the numbers that are submitted, are they coming from the member schools themselves?

A. They -- the member schools have to submit their eligibility on our site. And from there, it takes the total of each school and puts them in their category.

Q. So I'm going to ask you to scroll down one more page to the doc- -- to the document that is Bates Stamped -371.

A. Okay.

Q. So this is also a document that was [99] produced by your counsel in response to one of plaintiff's discovery requests.

If you want to read the text of that request, you can look at Request 14 on Page -4 of this exhibit.

Do you recognize this document?

A. This is a form from the National Federation that puts our participation numbers into their chart.

So the numbers that came off of that chart for '18/'19 would match these numbers.

All those sports that are activities that are -- have zeros by them, those are activities or sports that we do not offer. But they are offered through the National Federation.

Q. So you do not -- you as a Commission do not make this form?

A. No. They send this back to us. This is basically a verification of the form we sent to them.

Q. So is it fair to say that the National

Federation takes information that you give them and puts it into this form?

A. Yes, ma'am.

Q. So I noticed that the year only goes to [100] 2018 to 2019. Is there a reason why we don't have the 2019 to 2020 statistics?

A. I don't know if that's the most recent one. Because obviously with COVID and them not working from the office for a long period of time, I don't know if they have not submitted the most recent years.

Q. So in the column that says "Boys School," what does this column indicate?

A. Are we still on Page 7?

Q. Yes. We are -- we are on Page 12.

A. 12. Okay.

Q. The Bates stamp is -371.

A. And which one am I looking for?

Q. Yeah. So if you go over, it's the fourth column. It says "Boys School."

A. Boys -- okay.

Q. Yeah.

A. These are -- these are the schools that are offering basketball. If you are looking at basketball, there is 124 schools who are offering boys' basketball. And there are 124 schools that are offering girls' basketball.

You'll notice that "Baseball" has 122. There are no girls -- there are no girls' baseball [101] teams. That's why it is a "0."

Q. Got it.

And then the boys participation, does that reflect that 3,052 boys participated of the 124 schools that offer boys' basketball?

A. Yes.

And I would believe this is just high school. It's not middle school also.

Q. Do you know if co-ed teams are reflected on the chart?

A. Again, co-ed teams would be -- they would be reflected as the -- the majority sport. So, for instance, baseball, it could be co-ed if a girl wanted to play baseball. But she would be listed on the -- the school was offering boys' baseball -- or they are offering baseball, the girl would simply be listed on the eligibility and be counted as a baseball participant, not as a female.

So in this -- this study that they are doing is simply the number of participants in that sport, not a breakdown of boys and girls if it's co-ed.

Q. Who determines whether to make a team co-ed?

A. Well, if you have enough boys and have [102] enough girls to have a team, then if we are offering boys and girls, then you have to have a separate team.

For instance, cross-country, you can have one girl and she could make up a team or she could be the team. But if you only have one soccer girl, she couldn't be the team. So she would have to play with the boys. And that would be co-ed at the time.

Q. Is it fair to say that what makes a sport co-ed depends on the sport?

MS. GREEN: Object to the form.

THE WITNESS: It depends on the sport -- I would say depends upon the participants.

If there are enough of each gender to participate, we would have separate -- separate championships.

BY MS. KANG:

Q. So is it fair to say that once a certain number of participants is reached for boys and girls, they have to be separate?

A. At some point based on the number, we would make a recommendation to the Board of Directors that we now have enough to break them and have a stand-alone.

Q. Can you give me an example of when you [103] made that recommendation?

A. We haven't made it yet. But I will tell you that we're -- you know, we have offered more opportunities for girls in golf. And our number of girls playing golf has gone up significantly.

We'll watch the numbers. And, as time goes on, if we -- if the numbers continue to grow, then they will have the opportunity to have a stand-alone program for girls' golf. Right now, they play on the boys' team or the co-ed team.

MS. KANG: So we can take down this exhibit, and I'm going to introduce a different document as the next exhibit, which I believe is Exhibit 5.

(Deposition Exhibit 5 was marked for identification and is attached hereto.)

MS. KANG: Exhibit 5 is now in everyone's Marked Exhibit folder. Please let me know if you have trouble accessing it.

BY MS. KANG:

Q. Mr. Dolan, let me know once you have it up.

And once you have it up, if you could go to Page 5 of the pdf, that would be great.

A. Okay.

[104] Q. So I would like to draw your attention to Interrogatory Number 13 on Exhibit 5.

What does "participation mixed as indicated to respond to demand" mean?

A. "Identify all WVSSAC sponsored sports in which students may participate on a team designated as co-ed or mixed."

Is that the question? And why cheer is considered mixed?

Q. Yeah. That -- why don't we start there. Why is cheer considered mixed?

A. It has both boys and girls. So it could be co-ed or mixed.

Q. What is the difference between calling cheer mixed and saying that “participation mixed as indicated to respond to demand”?

A. Basically because cheer almost always has boy members. Wrestling is starting to get a number of them. Baseball very seldom has -- it’s very seldom a mixed sport. And football is very seldom. But golf is transitioning into its own sport.

Q. By “seldom,” do you mean girls seldom participate on those teams?

A. That is correct.

Q. Just to be clear, football is a boys’ [105] team, but if a girl wants to play football, she would be permitted to play on that team?

A. That’s correct.

Q. If a boy wanted to play on a girls’ team, would they be permitted to?

A. No.

Q. Why not?

A. Because girls have been -- they’ve been denied opportunity in the past, and by allowing boys to participate on girls’ teams that are strictly girls, for instance, girls’ soccer, girls’ basketball, volleyball and softball, that girls would then lose opportunity.

Q. Do you have any rules preventing a boy from playing on a girls’ team?

A. Yes.

Q. What rule would that be?

A. I have to find it in my rule book.

Q. Why don't we go back to the rule book, and I'll ask you a few questions on that.

So we'll go back to Exhibit 3.

(Simultaneously speaking.)

THE WITNESS: I'm trying to --

BY MS. KANG:

Q. And it should be --

[106] A. Try --

Q. It should be Exhibit 3. It should be Page 17, and the Bates stamp should end in -148.

A. Page 17 talks about our membership.

Q. Yes. I'm looking at Paragraph 3.8 of Exhibit 3 on -148.

A. Okay.

Q. Take a moment to read Paragraph 3.8 and let me know when you've had a chance to finish reading it.

A. What page are you on again? Because I don't have 3.8.

Q. No problem. It's page 17. The Bates stamp should end in -148.

A. 17 of the pdf document or 17 of our -- that's numbered on our rule book?

Q. This might be page -- this might be 17 that's numbered in your rule book. My apologies. It's Page 31 of the pdf.

A. Okay. We're getting there.

MS. GREEN: We should have music to play through the...

THE WITNESS: Okay. Scroll down.

Okay. Yep. Yes. Yes. 3.8.

[107]

BY MS. KANG:

Q. Is that the rule that you were thinking of that prevented a transgender boy from playing on a girls' team?

A. Yes.

MS. GREEN: Object to the form, if I can --

THE WITNESS: Okay. Back up?

MS. GREEN: Yes.

BY MS. KANG:

Q. Why was this rule enacted?

A. I would assume to -- it complies with Title IX, but it's -- you know, we're trying to not allow boys to participate in girls' events to either hurt them or dominate them.

Q. When was this rule, Section 3.8, enacted?

A. I would have to find that out. I'd have to go back through all of our rules and find when it was -- when it was enacted.

Q. Do you believe that it was enacted within the past five years?

A. No.

Q. Past ten?

A. No.

Q. Past 20?

[108] A. I -- I'm not sure. I don't know if it's gone that far. But I would say a significant number, yes. I don't know if it's made it to 20.

Q. Fair enough.

So the team is separated by boys' and girls' teams. Can a student ask to participate on a co-ed team?

A. If there is a boys' team and a girls' team -- are we talking about, like, boys' and girls' basketball and can the girls' basketball player play on the boys' team? Is that what you're asking?

Q. Yes.

A. They cannot. If there is a team for them, they must play on the team of their gender.

Q. Let's go back to Exhibit 5.

And then I think once we are done with that exhibit, we can take a break.

So let's go back to Page 5 of the pdf. I just have a few follow-up questions. Back to Interrogatory Number 13.

A. Okay.

Q. What grades does junior varsity cover?

A. It doesn't have a grade. It could be 9 to 12. You could be a senior and still on the junior varsity. If some -- some schools because of numbers [109] will have just the varsity. Some will have varsity and j- -- junior varsity. And some will have varsity, junior varsity, and a freshman team.

So just different designation of those teams.

Q. What does junior varsity mean?

A. Junior varsity --

MS. GREEN: I was just going to object to the form.

THE WITNESS: Okay.

When you have too many kids and you have -- you want an opportunity for them, you have a junior varsity as long as you can get a schedule for them.

BY MS. KANG:

Q. What does "varsity" mean?

A. You are the team that participates for the state championships.

Q. What does "freshman" mean?

A. Some large schools want to give more opportunity to their student athletes. So they have too many kids for a junior varsity, JV; so they have a separate freshman program.

Q. Just to be clear, if a student wants to play a sport that is not in this list -- so it's not [110] cheer, wrestling, baseball, football, or golf -- they have to join either the boys' or girls' team?

A. I think that's everybody that is not included, yes.

Q. One last question before we take a break.

I would like to draw your attention to Page 9 of Exhibit 5, and this is the response to Interrogatory Number 14.

A. Okay.

Q. So just to be clear, to make sure I am reading this chart correctly, in the first row that starts with "Andrew Jackson Middle School," it indicates that one girl participated in wrestling.

Is that an accurate -- is that an accurate interpretation?

A. It is.

Q. How do you collect these statistics?

A. This was a survey of the schools because, when they do their eligibility, it doesn't distinguish between boys and girls.

So in order to find out who is playing what sports, how many -- how many girls are participating in -- in the sports that allow boys and girls, the co-ed or mixed, we -- we have to survey them to find out.

[111] Q. When was this survey done?

A. In the last two weeks, I would imagine. I forget. I mean, it was in the last three -- two to three weeks.

Q. Why did you survey the schools?

A. Just to find out how many girls were participating in our -- since we don't have accurate data of how many girls are playing different sports, this was our opportunity to go ahead and -- and poll our membership.

Not every school replied. And we don't have a way to verify it. It was just for us to have an idea. We looked --

Q. Are there any -- oh. Go ahead, please.

A. We would look at this data, for instance, golf and wrestling, to determine how close we are to having its own sport.

Q. Is this data the current data? Or is this data, like, a participation across all years --

A. And again --

Q. -- of all time?

A. I believe -- you know, it wasn't a certified data. Schools were primarily listing second -- second -- or last year's spring sports and this year's winter and fall.

[112] So, obviously, they don't know how many baseball, softball, track, and tennis participants we have coming up because we haven't had our teams yet.

MS. KANG: Okay. I think now is a good time for everybody to take a break, if that is all right with you, Mr. Dolan.

THE WITNESS: Sure.

Okay. Roberta, is that -- does that work for you?

MS. GREEN: Sure. Thank you.

MS. KANG: Of course.

THE VIDEOGRAPHER: This marks the end of Media Number 2.

Going off the record. The time is 2:49.

(Brief recess.)

THE VIDEOGRAPHER: This marks the beginning of Media Number 3 in the deposition of 30(b)(6) Witness Bernie Dolan.

Back on the record. The time is 3:01.

BY MS. KANG:

Q. Mr. Dolan, would it be harmful to a student if they were forbidden from playing school sports?

MS. GREEN: Object to the form.

[113] THE WITNESS: There are lots of kids who are, I think, not allowed to participate for whatever reason. It could be eligibility things. So happens to a lot of kids right now.

We do think there are benefits to participation.

BY MS. KANG:

Q. What sort of benefits does playing a school sport afford?

A. Giving an opportunity for leadership, personal health, camaraderie, cooperation.

Q. I want to talk a little bit about House Bill 3293, or H.B. 3293, and a little bit more about the Commission's policy for H.B. 3293 was enacted.

A. Okay.

Q. Do you believe that H.B. 3293 forbids B.P.J. from playing on a girls' team?

MS. GREEN: Object to the perform.

THE WITNESS: I would believe it did before the court case. Yes.

BY MS. KANG:

Q. Have you ever talked to any organizations outside of the State of West Virginia regarding H.B. 3293?

A. Not that I know of.

[114] Q. Have you ever talked to any organizations outside of West Virginia concerning transgender athletes generally?

A. We may have talked -- you know, our National Federation, it was probably on a -- one of our either winter meetings or summer meetings there was probably a topic.

And I would have to go back and look, but the state may have put up a presentation on whatever their -- whatever their rule was.

Q. Do you remember when this meeting occurred?

A. I do not.

Q. Do you know which state proposed a rule?

MS. GREEN: Object to the form.

THE WITNESS: I believe the presentation was from Connecticut.

BY MS. KANG:

Q. Do you remember what the rule they proposed was?

MS. GREEN: Object to the form.

THE WITNESS: I don't know. They weren't proposing a rule; they were explaining their rule.

BY MS. KANG:

Q. Do you remember what their rule was?

[115] A. I believe it was full participation by gender identity.

Q. Okay. So I'm going to ask you a few questions about the Commission's policy. Before I do so, just to be totally clear on the record, I'm just going to give you some terms that I'll explain my definitions for. So whenever I ask you questions, this is what I mean.

When I use the term "cisgender," I am referring to someone whose gender identity matches the sex they were assigned at birth. So, for example, if someone was assigned male at birth and they identify as a male, that person would be a cisgender boy.

When I use the term "transgender," I am referring to someone whose gender identity does not match the sex they were assigned at birth. So, for example, if someone was assigned male at birth but then they identify as female, that person would be a transgender girl or woman.

And so for purposes of the questions I will be asking next, I'll be using these definitions for -- for clarity.

Are you all right with that?

A. Yes.

[116] MS. GREEN: Objection to form.

THE WITNESS: Sorry.

Yes.

BY MS. KANG:

Q. And then you may already understand this, but when I use the phrase "H.B. 3293," I am referring to House Bill 3293.

Are you familiar with this bill?

A. Yes.

Q. To your knowledge, has a cisgender boy ever played on a girl's sports team?

MS. GREEN: Objection to the form.

THE WITNESS: Not to my knowledge.

BY MS. KANG:

Q. To your knowledge, has it ever been raised as an issue?

MS. GREEN: Object to the form.

THE WITNESS: No.

BY MS. KANG:

Q. Currently, if a cisgender girl wants to play football, is she permitted to do so on the boys' team?

A. Yes. Because there's no girls' team at the moment.

Q. Before H.B. 3293 was enacted, did the [117] Commission allow transgender students to participate on sports teams consistent with their gender identity?

MS. GREEN: Object to the form.

THE WITNESS: Our policy ident- -- whatever the school identified them in WVEIS was how we recognize them.

BY MS. KANG:

Q. Can you tell me a little bit more about this policy?

MS. GREEN: Object to the form.

THE WITNESS: Basically, it was to protect athletes from harm or unfairness because of physical abilities. So whatever the school identified them at if -- if everybody was okay with that, they got to participate.

If it ever came to a point where somebody was too big, too strong, or it wasn't safe for that person to play, then they could appeal to the Board.

BY MS. KANG:

Q. Can you tell me a little bit more about what you mean by "it wasn't safe" for them to play?

A. Could be a volleyball player who could jump much higher than the girls, much stronger. And when he hits the ball, could hurt the -- hurt the [118] other participants.

Q. How did the Commission come up with this policy?

A. It was actually created by my predecessor. And just came in in the beginnings of my time. And they were just addressing an issue that hadn't come to West Virginia at this point, but they wanted to have something in there as a temporary stopgap measure.

And to this point, no one has written a rule to be voted on -- our -- by our membership. So that has been the -- our guidance since 2016.

Q. Who was your predecessor?

A. Gary Ray.

Q. And why did he feel the need to enact this policy?

MS. GREEN: Object to the form.

THE WITNESS: As we went to the national meetings more and more, people were saying this was an issue, and so they wanted -- you know, it had not hit West Virginia yet but wanted to have something in place to protect the kids.

BY MS. KANG:

Q. Did you ever receive any complaints about this policy?

[119] A. No.

Q. Do you know who specifically drafted the policy?

A. I believe it was probably my predecessor Gary Ray and -- and the legal counsel at the time.

Q. Do you know if anyone else participated in the drafting?

A. I don't think so.

Q. Was this policy ever implemented?

A. We have never used it, if that's what you are asking.

Q. What do you mean by "never used it"?

A. Nobody ever brought up a case -- I'm not even aware of any case of transgender participating. Therefore,

nobody ever brought it to the Board to decide whether or not it was fair or safe.

Q. When a school determines a student's gender, is that always put into WVEIS?

MS. GREEN: Object to the form.

THE WITNESS: I am not sure what they put in WVEIS, to be honest with you. I'm not -- you know, each school, I would assume, has rules and regulations they have to do.

BY MS. KANG:

Q. Is it fair to say that the Commission [120] looked to WVEIS to determine a student's gender?

A. We have -- we don't have access to WVEIS. We would ask the school to provide what they have designated the student as in WVEIS.

Q. Has this always been the case?

A. I would assume that it's always been the case. Even before we had a policy, the school determined what they put in WVEIS.

Q. Have you received any complaints about B.P.J.'s participation?

A. Not that I know of.

Q. And to be clear, you haven't received any complaints about transgender students participating in West Virginia?

A. No.

Q. Have any transgender students ever asked the Commission if they could participate in sports at a secondary school level?

MS. GREEN: Object to the form.

THE WITNESS: I had one boy who wanted to be a -- play volleyball, and we told him he couldn't play volleyball because it was a girls' sport. And he said, "Then I'll be a boy -- I'll be a girl."

And -- but he wasn't -- he never did anything else with it. And we assumed he just [121] wanted to play volleyball because it never came back up.

I did have contact with a school who said they had one student who one day identified as a girl, next day a boy, and back and forth. But we have not heard anything more from that student.

So...

BY MS. KANG:

Q. When was that?

A. That would have been in the last year.

Q. Do you remember which school it was from?

A. Yes.

Q. Which school was it?

A. South Charleston High School.

Q. So I'm going to introduce a document that's going to be marked as Exhibit 6.

I'll let you know when it's available in your folder.

(Deposition Exhibit 6 was marked for identification and is attached hereto.)

MS. KANG: Exhibit 6 is now available in the shared exhibit folder.

BY MS. KANG:

Q. Mr. Dolan, let me know when you have had a chance to look at it.

[122] A. [Witness reviews document].

Okay.

Q. Do you recognize this document?

A. Yeah. This was our transgender Board of Directors policy.

Q. Is this the same policy that we were discussing earlier?

A. Yes.

Q. So I want to draw your attention to Bullet Point 1, which says [as read]:

“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.”

Did I read that correctly?

A. Yes.

Q. Why did the Commission give the initial determination to the transgender student’s school?

MS. GREEN: Object to the form.

THE WITNESS: First of all, we -- we don’t know this student. There would be no way for us to know all the factors.

So the school is the entity that works [123] closely with that student and the parents and the family on a daily basis.

BY MS. KANG:

Q. Why did the Commission think transgender students should be able to participate on teams consistent with their identity?

MS. GREEN: Object to the form.

THE WITNESS: I assume that the school would put them in the proper place, wherever the school decided based on all the factors.

BY MS. KANG:

Q. Did you ever consider implementing a hormone requirement in this policy?

MS. GREEN: I'm sorry. I didn't hear what you said, Ms. Kang.

MS. KANG: Sure.

BY MS. KANG:

Q. Did you ever consider implementing a hormone requirement in this policy?

MS. GREEN: Thank you.

Object to the form.

THE WITNESS: Our -- it was my predecessor's. So I'm not sure of their discussion as to whether or not they were going to put that in or not.

[124]

BY MS. KANG:

Q. Did you or your staff ever consider putting in this policy -- putting in a hormone requirement?

MS. GREEN: Object to the form.

THE WITNESS: No. Because we would not change the policy. I think it would -- if it was going to change, it

was going to be changed by a rule by our membership and was never brought forward as a rule proposal.

BY MS. KANG:

Q. Am I right to say that this policy was not a rule?

A. That's correct.

Q. What's the difference between this policy versus a rule?

A. This never went before the membership to have a vote; so I don't think it has the power of a rule.

Q. What sort of power would that be?

A. Well, this was giving guidance to a Board of Directors.

But a rule is voted on and -- and approved by the State Board of Education; so it is the rule of law for high school athletics from the WVSSAC.

[125] Q. What do you mean by it provided guidance to the Board of Directors?

A. Would allow them to grant waivers if somebody -- if it was unsafe or unfair to other students or to this student.

Q. By unfair to the student, do you mean unfair to the trans student?

A. Either one. Either one. For safety or given them advantages that made it unfair.

Q. Am I right that this policy does not mention anything about WVEIS?

MS. GREEN: Object to the form.

THE WITNESS: I don't believe it -- I don't believe it mentions WVEIS. It does say that the school will make the initial determination.

BY MS. KANG:

Q. Under this policy, what happens if a student's gender marker in WVEIS is, let's say -- let's say, male, but the school treats the student as female? What would the SAC do in that situation?

MS. GREEN: I'll object to the form. Speculative.

THE WITNESS: I think we would have to look at all the factors that were involved in -- you know, I'm not even sure what the factors would be, [126] but I think we would have to, you know, have everything presented to us to make a determination.

BY MS. KANG:

Q. So is it fair to say, in that case you would not strictly follow WVEIS?

MS. GREEN: Object to the form.

THE WITNESS: We would -- it would be in the cases where it was unsafe and unfair that we would not be following WVEIS. If we felt like it was unsafe or unfair to the participants, other participants or the transgender student, then the Board can override it.

BY MS. KANG:

Q. Okay. I'm going to ask you to turn your attention to a document that I'm going to be marking as Exhibit 7.

MS. KANG: And I'll let you know when it's available in everyone's folder.

(Deposition Exhibit 7 was marked for identification and is attached hereto.)

MS. KANG: Exhibit 7 should now be available in everyone's Marked Exhibit folder.

BY MS. KANG:

Q. And let me know, Mr. Dolan, whenever you have a chance to -- to look at it.

[127] A. Okay.

Q. So this is an email that was produced by your counsel in response to one of plaintiff's document request.

Do you remember this particular email?

A. After I went back and searched it, yeah. And I don't remember -- I didn't remember it until I was looking for it.

Q. Is bernie.dolan@wvssac.org your email address?

A. It is.

Q. Who is Daniel Swartos?

A. He is the executive director for the South Dakota High School Athletic Association -- or Activities Association.

Q. Is that an association in South Dakota?

A. Yes.

Q. So I'd like to draw your attention to Page 2 of this pdf that's been Bates Stamped -224. Let me know whenever you get there.

A. Okay.

Q. In this email you say [as read]:

"It has not been challenged yet."

To clarify, are you referring to the policy that we looked at in Exhibit 6?

[128] A. Right. It had not gone through any court action. Yes.

Q. Were you concerned that the policy was going to be challenged at some point?

A. All of our -- all of our policies get challenged at some point. So...

Q. Fair enough.

A. Yes.

Q. So now I'm going to introduce a document as Exhibit 8. One moment.

MS. KANG: Exhibit 8 is now available in everyone's Marked Exhibit folder.

(Deposition Exhibit 8 was marked for identification and is attached hereto.)

BY MS. KANG:

Q. Mr. Dolan, let me know whenever you have it open.

A. Okay.

Q. So I know this was a while ago, but do you remember the meeting that is referenced in Exhibit 8?

A. Not specifically. But yes.

Q. Do you remember at all who was present at this meeting?

A. It's probably in the minutes.

[129] THE WITNESS: Can you scroll down to the next page and see...

MS. GREEN: Okay.

THE WITNESS: Keep going. See if there's...

[Witness reviews document].

I do not remember. I would assume it was all of my Board of Directors, though.

BY MS. KANG:

Q. How often does the Board of Directors meet?

A. Mostly once a month. There a couple of months that we don't meet. So about ten times a year.

Q. Is this Board of Directors report given to anyone outside of the Board of Directors?

MS. GREEN: Object to the form.

THE WITNESS: I'm not sure because we don't give it out anymore. So I don't know if that's -- if this came from the interscholastic or if it was Board of Directors report that somebody would have submitted.

I don't do it currently; so I don't know if it was -- who it went to in the past.

[130]

BY MS. KANG:

Q. Did it used to go to someone before?

A. I don't know. That's what I...

Q. So I want to draw your attention to Page 2 of the pdf. It's been Bates Stamped -283. And it's Bullet Point 4 "Legal Update."

And in Bullet Point 4, you'll see another Bullet Point iv that says "Transgender."

Read that paragraph and let me know when you are finished.

A. [Witness reviews document].

Okay.

Q. Regarding this specific topic, what was discussed?

MS. GREEN: Object to the form.

THE WITNESS: Based on the information there -- obviously, I can't remember in 2016 -- but we were discussing the policy and how it was -- how schools would -- how it would work with the schools.

BY MS. KANG:

Q. And what do you mean "how it would work with the schools"?

A. Well, it says, Number 1, the school would make the first determination; did they meet all other eligibility requirements; was it fair [131] competition if the school allows; you know, was there an appeal process; and then make sure that we look at each case on an individual basis and kind of -- where the Board stood.

Q. What do you mean by "where the Board stood"?

A. I don't know what the discussion was at that point.

Q. I notice that in this line it says [as read]:

"Editing our transgender policy and guidelines...."

As far as you know, was there any editing that was done to the policy?

A. I don't believe we edited anything because it's still the exact same policy that -- that they approved months earlier.

Q. Do you remember if the Board of Directors -- the Board of Directors unanimously approved this policy?

A. I don't know.

Q. Do you remember if anything was ever conveyed outside of the Board of Directors regarding this policy?

MS. GREEN: Object to the form.

[132] THE WITNESS: When we meet with our principals and -- when we meet with our principals and also at an administrative workshop for a number of years, we indicated that whatever they determined we would accept as long as it was not unsafe or unfair.

BY MS. KANG:

Q. So is it fair to say that your member schools were aware of this policy?

A. Well, I would think at different times. Again, the turnover at schools is high. So if -- did somebody -- every person -- did we verify that they heard it? I don't know.

But the turnover is relatively high at all of our schools, especially at the principal level.

So...

Q. Would it be fair to say that at one point you did inform the member schools about this policy?

MS. GREEN: Object to the form.

THE WITNESS: As long as they attended our meetings, yes. They might not --

BY MS. KANG:

Q. And by --

A. -- have attended.

Q. And by "meetings," do you mean the Board [133] of Directors meetings?

A. No. It would be our regional principals 3 meetings that we did at the beginning of each year.

Q. Does the Commission report H.B. 3293?

MS. GREEN: Object to form.

THE WITNESS: I don't think we ever -- there was ever a position on it. I think our position has been we support Title IX and try to give more opportunities for girls. But bottom line is we are not allowed to discriminate by our rule -- by our policies.

BY MS. KANG:

Q. By "not allowed to discriminate," do you mean also not allowed to discriminate against transgender students?

A. I would think we are not allowed to -- we are not allowed to discriminate against transgender. That's correct.

Q. Could you tell me a little bit more about what you mean by advance Title IX?

A. Well, we continued to offer more opportunities and protect the opportunities that girls have.

We have increased the opportunities for girl golfers to participate just against girls. So [134] our number of girls' golfers has risen tremendously.

We also have supported a girls' only wrestling invitational that has allowed more girls to participate in wrestling.

We have encouraged schools to make sure that Title IX is followed when they are putting in fields, putting in locker rooms, money for programs, and things like that.

Q. Do you believe that Title IX also protects transgender girls?

MS. GREEN: Object to the form.

THE WITNESS: I -- I am not sure. I think that it -- it has been ruled that way, yes.

BY MS. KANG:

Q. Have there ever been any safety concerns with girls playing on the boys' team?

MS. GREEN: Object to the form.

THE WITNESS: The girls are choosing to participate. So I think all kids there's -- there's an oppor- -- there's a possibility of injury. And so, you know, it -- it's brought out in their preparticipation physical that, you know, there is a possibility of injury.

BY MS. KANG:

Q. To your knowledge, have there been any [135] injuries from a girl playing on a boys' team?

MS. GREEN: Object to the form.

THE WITNESS: Oh, I'm sure. I mean, I don't know specifically. But there's -- people get hurt every day in every sport. So I'm sure somebody has gotten hurt in football or wrestling.

BY MS. KANG:

Q. In the context of school sports, what is competitive skill?

MS. GREEN: Object to the form.

THE WITNESS: Skill needed to be successful in that sport.

BY MS. KANG:

Q. Does cross-country require competitive skill?

MS. GREEN: Object to the form.

THE WITNESS: I would think so.

BY MS. KANG:

Q. Do you know whether any girls who tried out for cross-country at Bridgeport Middle School for the fall of 2021 were unable to join the team?

MS. GREEN: Object to the form.

THE WITNESS: We were not involved in the selection. So I don't know.

[136]

BY MS. KANG:

Q. Believe it or not, I am on my last set of questions. So thank you for bearing with me so far. Hopefully, we can get this done early.

So now I want to talk a little bit more about House Bill 3293.

Were you involved at all in the passage of H.B. 3293?

MS. GREEN: Object to the form.

THE WITNESS: I wouldn't say I was involved in the passage.

Oftentimes I get asked to come down and speak. And I was asked to speak to the Democratic caucus. And I pretty much said what I said earlier. We support girls' sports and continued to offer more opportunities for them. But we're not allowed to discriminate.

BY MS. KANG:

Q. Besides the Democratic caucus, did you speak to anyone else?

A. I had communication with Melissa White, who was -
- is the counsel for House Ed.

Q. And did you think -

A. And I think that -

Q. Go ahead.

[137] A. I don't think -- I don't think we spoke about it. She had sent me an email about it.

Q. Did you speak to any legislative committee about H.B. 3293?

MS. GREEN: Object to the form.

THE WITNESS: I spoke to the caucus. I was down there as a witness in front of finance, I believe, Senate finance -- or House finance. But I was never called in to -- to give an opinion or any information.

BY MS. KANG:

Q. So you were called in as a witness but you didn't testify?

A. They told me to be available.

Q. Were you told anything about H.B. 3293 before it was passed?

MS. GREEN: Object to the form.

THE WITNESS: Actually, I was sent an email from Melissa White. But when I looked at it, the beginning of it was a home school bill.

So I assumed she sent the wrong bill. And -- but it did say "transgender" at the top. So I sent it to the legal counsel who was helping us with legislative activity. Or --

MS. GREEN: And I'll object to the form.

[138] THE WITNESS: Okay.

MS. GREEN: Caution him regarding conversations with counsel.

THE WITNESS: Okay.

BY MS. KANG:

Q. By "counsel," was it counsel at the Commission? A.
It is counsel –

MS. GREEN: I'll just –

THE WITNESS: Okay.

MS. GREEN: -- object to the form.

THE WITNESS: Okay.

It was counsel we've had at -- that we used during legislative time.

BY MS. KANG:

Q. Who is this person?

MS. GREEN: I'll just object to the form. I think they're in the privilege log. We identified them.

Do you know the name of the firm?

THE WITNESS: Dinsmore & Shohl is the law firm.

BY MS. KANG:

Q. Did any legislators tell you about the purpose of H.B. 3293?

[139] MS. GREEN: Object to the form.

THE WITNESS: I don't remember having that conversation with any of them. I had one email from Senator Unger, who sent me the NCAA guidelines at the time. It was unsolicited and didn't have anything, really, with it, just a link to the NCAA guidelines.

BY MS. KANG:

Q. Did you respond to that email?

A. I did not.

Q. Has the Commission taken any steps to contemplate policies or rules concerning the implementation of H.B. 3293?

MS. GREEN: Object to the form.

THE WITNESS: The legislation 3293 charged the Department of Ed with creating the rule. So we're going to wait for those guidelines to come out and then probably just bring them into our rule book like we did the 2.0.

BY MS. KANG:

Q. But to be clear, if the State Board promulgates a rule, will the Commission have to follow that rule?

A. Our schools would have to follow it, which, if all of our schools have to follow it, I [140] would say we're following it, yes.

Q. Okay. I'm going to introduce a document as Exhibit 9, and I'll let you know when it's available.

(Deposition Exhibit 9 was marked for identification and is attached hereto.)

MS. KANG: Exhibit 9 is now available in the Marked Exhibits folder.

BY MS. KANG:

Q. And let me know when you have a chance to pull it up, Mr. Dolan.

A. Okay.

Q. So these are some text messages that your counsel produced in response to Plaintiff's discovery requests. It's been Bates stamped WVSSAC000001. And I'm going to represent to you that these are texts between you and Stephen Baldwin.

Do you remember this conversation?

A. Yes.

MS. GREEN: Object to the form.

THE WITNESS: Yes, I do.

BY MS. KANG:

Q. Who is Stephen Baldwin?

A. Senator from Greenbrier County. [Page 141]

Q. Is this the same Democratic office that you were just talking about?

A. Yes, ma'am.

Q. Why did you decide to participate in this meeting?

MS. GREEN: Object to the form.

THE WITNESS: Oftentimes I -- I don't feel like I have a choice. When the legislature calls, I need to go down and be heard.

BY MS. KANG:

Q. Did you bring any documents with you to this meeting?

A. Just the -- just our board policy.

Q. Do you remember if you were shown any documents at the meeting?

A. I don't remember.

Q. Did the Democratic Caucus give you any documents?

A. I don't remember if they gave me the bill at that time or not. So I'm not sure.

Q. So if you scroll down to the document that's Bates Stamped -006. And I believe it's Page 6 of 7 of the pdf of Exhibit 9.

A. Okay.

Q. Do you know who Rucker is?

[142] A. Senator Rucker is the Senate education chair.

Q. Do you agree with her statement that it is not a real policy?

A. I believe it is a policy that -- but it had not -- it didn't go through a rule-writing process and was never challenged in court and upheld.

So we think it was an internal policy, yes, that we give our --

Q. What do you mean --

A. We give our board the opportunity to hear cases of appeals.

Q. Can you clarify what you mean by "internal policy"?

A. Well, it wasn't in our rule book.

Q. So I'm going to introduce an additional document as Exhibit 10.

(Deposition Exhibit 10 was marked for identification and is attached hereto.)

MS. KANG: Exhibit 10 is now available in the Marked Exhibits folder.

BY MS. KANG:

Q. Let me know when you have it up, Mr. Dolan.

[143] A. [Witness reviews document].

Okay.

Q. Do you remember this email?

A. After I looked it back up, yes.

Q. And is that still your email address at the top?

A. It is.

Q. Who is John Raby?

A. John Raby is an Associated Press reporter.

Q. Had you spoken to him before?

A. Probably in a different capacity. When I was the director of Super Six, he was a reporter that would come to games. So...

Q. So on the first page of Exhibit 10, Mr. Raby asks the question [as read]:

“What does the WVSSAC think of the bill?”

And then if you go to the next page of Exhibit 10, in response you write [as read]:

“The WVSSAC has supported Title IX for the last 50 years...Title IX has non discrimination language that we support.”

What do you mean by “Title IX has non-discrimination language that we support”?

[144] A. I believe in the Title IX document it says you can’t discriminate. And so we support Title IX; so we have to support the whole thing.

Q. You also say in your response that [as read]:

“This has increased the quantity and quality of opportunities for girls in our schools.” What opportunities do you believe has been increased?

A. Well, when I was in school, which would have been the early -- early ‘70s, may or may not have had girls’ basketball at all and wouldn’t have had volleyball or soccer, for sure, swim. So over the last 50 years, we have

increased the sports that girls can participate in a hundred times over.

Q. Do you believe that B.P.J. should have the right to these opportunities?

MS. GREEN: Object to the form.

THE WITNESS: I believe we'll follow the rule -- the law.

BY MS. KANG:

Q. What do you mean by "follow the law"?

A. Whatever -- whatever the Department of Ed writes as the rule, then we have to implement that [145] with all of our schools.

Q. Do you believe that B.P.J.'s participation in cross-country harms any of these opportunities?

MS. GREEN: Object to the form.

THE WITNESS: Well, "harm" is a -- a unique word because harm might be that it might not physically harm somebody, but they -- you know, harm might be that you take somebody's position on the team.

In cross-country, only the top seven kids get to compete on the varsity team, whether it's middle school or high school. If you are number seven and you get bumped out, there might be harm. But, in general, physical harm, I don't believe so.

BY MS. KANG:

Q. Do you know if B.P.J. has, as you say, bumped out another girl?

A. I do not.

MS. GREEN: Object to the form.

THE WITNESS: Okay.

MS. KANG: So I am going to introduce another document as Exhibit 11. [146]

(Deposition Exhibit 11 was marked for identification and is attached hereto.)

MS. GREEN: Okay.

MS. KANG: Exhibit 11 is now available in everyone's Marked Exhibit folder.

BY MS. KANG:

Q. Let me know when you have it up.

And, Mr. Dolan, we can take a five-minute break, I think, after -- after this email, before we wrap up.

A. Okay.

Scroll down.

Okay.

Q. Do you recognize this email?

A. I do.

Q. Do you remember this email?

A. I don't know if I remember it. But I recognize it, yes.

Q. Who is Josh Weekley?

A. He runs RunWV which keeps track of all boys' and girls' track and cross-country times and posts them on runwv.com.

Q. Why did you contact him?

A. I was looking for data in comparing girls' times to boys' times. [147]

Q. Why did you want that data?

A. Just curious to see if there were advantages that boy -- if -- what the actual data showed for comparison of boys' and girls' times.

Q. Did you ask in response to any questions from the West Virginia Legislature?

A. I don't remember the time frame of this; so I don't know if it was before or after or during the legislative time.

Q. Did you ever get the data from Josh Weekley?

A. Did not. Did not. They had computer problems and so...

Q. What did you mean by "a transgender issue" on the --

A. Again --

Q. -- first page?

A. I was asking -- I was just telling him. I was trying to compare boys' times and girls' times and what hap- -- you know, what the actual times were of boys and girls competing against each other.

MS. GREEN: Okay. I think if folks are all right, we will take a five-minute break, and then I should have -- let's see -- I should have a couple more exhibits to go through.

[148]

But we'll take a pause here and come back around 3:56.

THE WITNESS: Okay.

THE VIDEOGRAPHER: Going off the record. The time is 3:51.

(Brief recess.)

THE VIDEOGRAPHER: Back on the record. The time is 3:57.

BY MS. KANG:

Q. Mr. Dolan, I'm going to introduce another document as Exhibit 12.

A. Okay.

Q. And I'll let you know when it's in there.

(Deposition Exhibit 12 was marked for identification and is attached hereto.)

MS. KANG: Okay. Exhibit 12 is now available in the Marked Exhibits folder.

BY MS. KANG:

Q. Let me know when you have had a chance to pull it up.

A. Scroll down.

That's it. Okay.

Okay.

Q. Is this the same Melissa White as the one you were referencing earlier? [149]

A. Yes.

Q. Do you know what Melissa White's position is?

A. Well, on the paper it says Chief Counsel for Committee on Education of West Virginia House of Delegates.

Q. Do you know why Melissa White reached out to you regarding H.B. 3293?

A. There may have been original language in there that may have identified the WVSSAC. I don't know. But it

involves athletics; so I'm sure, as a courtesy, she was sending me something.

Q. Had you spoken to her about athletics before this email?

MS. GREEN: I'll object to the form.

THE WITNESS: This -- that -- last year or in general?

BY MS. KANG:

Q. In general.

A. Yeah. I mean, every time there is legislation involving athletics, home school, whatever, it's not unusual for them to contact me about our position or our input on it.

Q. So you notice in the top-right corner, Thursday, March 11th is underlined.

[150]

Was this the first time that Melissa White spoke to you about H.B. 3293?

MS. GREEN: Object to the form.

THE WITNESS: I believe it was. I may have been underlining that as I was gathering my documents to make sure I got them all out of my email. So that might be why that was underlined.

BY MS. KANG:

Q. In this email, she asks for your thoughts on H.B. 3293.

Did you provide her with any thoughts?

A. I did not. It was -- it -- I thought there was an attachment to that, and I sent it off.

Was there -- oh, yeah. There it is. Down at the bottom.

And I didn't -- I didn't open it. I sent it off to Dinsmore & Shohl.

Q. Did you ever have any verbal communications with Melissa White about this bill?

A. The only communication I could -- might have had is that when she asked me to come to the finance meeting and wait outside. And then I was told I wasn't needed.

MS. KANG: I'm going to introduce a document as Exhibit 13. [151]

(Deposition Exhibit 13 was marked for identification and is attached hereto.)

MS. KANG: Exhibit 13 is now available in everyone's Marked Exhibit folder.

BY MS. KANG:

Q. So let me know when you have it up. And once you have it up, if you could scroll to the very last page that has been Bates stamped -370. Let me know.

A. Okay. Q. Do you recognize this text exchange?

A. Yes.

Q. Is the Melissa at the top of the thread referring to Melissa White?

A. Yes.

Q. Do you know why she asked for the transgender policy?

MS. GREEN: Object to the form.

THE WITNESS: At some point, I don't -- I'm not sure of the date. But at some point we were -- you know, we had told them that we had a Board policy for transgender.

So I'm sure she was trying to get a copy of that. [152]

BY MS. KANG:

Q. Who is "them"?

A. House -- House Education.

Q. Did you provide the policy to her?

A. I'm sure I did.

Q. Did she say anything to you afterwards about the transgender policy?

A. Not that I recall.

Q. Did the two of you discuss H.B. 3293 after this text conversation at any point?

MS. GREEN: Object to the form.

THE WITNESS: Not that I recall.

MS. KANG: I'm just going to introduce one last exhibit, Exhibit 14.

(Deposition Exhibit 14 was marked for identification and is attached hereto.)

MS. KANG: Exhibit 14 is now available in the Marked Exhibits folder.

BY MS. KANG:

Q. And let me know when you have it up.

THE WITNESS: That is 11.

MS. GREEN: Oh. I'm sorry. Uploaded error there.

THE WITNESS: It was 9.

Yeah. There it is. [153]

MS. GREEN: I'm sorry.

THE WITNESS: Okay.

BY MS. KANG:

Q. So on the first page that is Bates Stamped -286, you will see it reads "Regional Principals' Meetings."

What is the purpose of the Regional Principals' Meetings?

A. It's when we make sure that any new rules, we go over them. And then also -- most importantly, they get their C&I cards, which are all the coaches get in free to games.

And so that's the only reason why they come to the meeting, sadly to say, not to hear me speak.

Q. And apologies for my ignorance. But what's a C&I card?

A. Courtesy and identification card. It's like a free pass into all high school games.

Q. All right. Scroll down one page in Exhibit 14 to the page Bates Stamped -287.

A. Is it the schedule?

Q. No. It's just the first --

A. Regional Principals' Meeting?

Q. That's correct. [154]

A. First slide?

Q. That's -- that's correct.

A. Okay.

Q. So are these the slides that were presented at this meeting?

A. Yes.

Q. Do you know who prepared these slides?

A. Each of us prepared our -- our portion, myself and the three assistants. So we all have different areas to cover.

Q. By "three assistants," you mean your three assistant executive directors?

A. Uh-huh.

Q. So I want to draw your attention to what's been Bates stamped -346. Apology if I -- will identify the page number in a moment.

So it is Page 61 of the pdf.

A. Okay.

Q. Do you recognize this slide?

A. I'm not there yet.

MS. GREEN: I'm sorry.

BY MS. KANG:

Q. Oh. I'm sorry.

A. Yes.

Q. Do you know who prepared this slide? [155]

A. This would have been Cindy Daniel.

Q. And she is one of your --

A. Assistant executive directors.

Q. So in the second bullet point here, it says [as read]:

"WVSSAC's current position is that gender is identified in WVEIS for athletic participation purposes."

What does this mean?

A. Well, I think this was before the ruling that B.P.J. could participate; so that we were still reiterating it in our policy at the time until we got the final ruling from the Department of Ed.

Q. Just to be clear, if someone's gender in WVEIS is male, does that mean they would have to play on the boys' team?

A. Yes.

Q. Before H.B. 3293 was enacted and under your trans policy, did you just rely on the school's determination of gender or would you go into WVEIS and look at WVEIS?

A. We don't have access to WVEIS; so we wouldn't be able to. And, to our knowledge, we didn't have any other cases prior to this.

Q. So in this slide, when it says "the [156] current position is that gender is identified in WVEIS," would you have to depend on the school's determination?

A. Yes.

Q. Can the information in WVEIS for someone's gender be changed?

MS. GREEN: Object to the form.

THE WITNESS: I'm not sure what the rules are for WVEIS.

BY MS. KANG:

Q. Do you know who contributes information to WVEIS?

MS. GREEN: Object to the form.

THE WITNESS: Each school does, but I'm not sure, like, who in each school.

BY MS. KANG:

Q. Do you remember if this slide was discussed during the regional principals' meeting?

A. Probably was. I would say yes.

Q. What was discussed?

MS. GREEN: Object to the form.

THE WITNESS: Just what was on the slide, that current law is being challenged, and we were waiting for final ruling from the Department of Ed.

[157]

BY MS. KANG:

Q. Anything else?

A. As it relates to transgender as it relates to this slide, you mean?

Q. That's correct.

A. I don't think there was anything more discussed, from my knowledge.

MS. KANG: So I believe that is all my questions.

I'm going to go off the record for about five minutes or so and see if there's anything else I need to ask.

But, otherwise, I think we're at the finish line, Mr. Dolan.

THE WITNESS: Good.

THE VIDEOGRAPHER: Off the record. The time is 4:11.

(Brief recess.)

THE VIDEOGRAPHER: Back on the record. The time is 4:18.

MS. KANG: Mr. Dolan, I am finished asking my questions. I will reserve the right to ask any questions depending on other parties' questions. I'll also reserve the right to ask questions if there are changes in the errata. But otherwise I [158] think we're -- you're done with me for today.

THE WITNESS: Okay. Thank you.

THE VIDEOGRAPHER: Is there anybody else with questions or should I go ahead and close out?

MR. SCRUGGS: This is Jonathan Scruggs for the intervenor. No questions from us.

MS. MORGAN: This is Kelly Morgan.

No questions for the State Board and Superintendent Burch.

MR. CROPP: This is Jeffrey Cropp for Harrison County Board of Education and Dora Stutler.

EXAMINATION

BY MR. CROPP:

Q. I just have a couple of follow-up questions, Mr. Dolan.

A. Okay.

Q. Regarding Exhibit 6, which is the transgender policy, was a copy of that policy ever distributed to the member schools?

A. I don't believe so.

Q. Okay. Was a copy of the transgender policy ever given to the principals?

A. I don't believe so.

Q. Was a copy of that transgender policy ever [159] given to the County Boards of Education?

A. I don't believe so.

Q. Was a copy of the transgender policy ever given to the county superintendents?

A. I don't believe so.

Q. You mentioned that -- at a regional meeting that that policy was reviewed with the principals who attended the -- that meeting.

But my question is, is that -- was that just at the first meeting where the policy was introduced, or did you go over that policy every regional meeting after it was introduced?

MS. GREEN: Object to the form.

THE WITNESS: Normally, we would -- you mean each year? Or do you mean, like, when we do ten of them, was it brought up at each ten?

BY MR. CROPP:

Q. Each year. So it was introduced in one year. My question is at the subsequent years -- did you go over that policy during the subsequent years at that -- at all ten regional meetings?

A. I would say it was -- I don't know when it came off, but it was on the agenda for a number of years, yes.

Q. Whether you say --

[160]

A. I don't --

Q. Go ahead.

A. I don't remember if it was on this past year -- it was on this year with Cindy's slide, but normally it was on mine.

So I don't -- I would have to go back and check all my -
- if we record them. And if you didn't go to the meeting,
then you were able to listen to the recording.

Q. Okay. This policy -- excuse me.

The policy was never voted on by the member schools,
the transgender policy?

A. That's correct.

MR. CROPP: I don't have any further questions.

Thank you.

MR. CAPEHEART: Curtis Capeheart for the State.

I have no questions.

Thank you, Mr. Dolan.

THE WITNESS: Thank you.

THE VIDEOGRAPHER: Okay. That looks like
everybody. So I'll go ahead and close out unless there is
anything else.

THE REPORTER: And this is the reporter. [161]

I did hear that there will be an errata sheet. So is the
witness reviewing?

MS. GREEN: Yes. We'll read and sign. And if I could

—

This is Roberta Green.

So if I could please have it sent to me, and I'll get with
Mr. Dolan.

THE REPORTER: Thank you.

THE VIDEOGRAPHER: Thank you.

We are off the record at 4:22 p.m. EST, and this concludes today's testimony given by 30(b)(6) Witness Bernie Dolan. The total number of Media Units used was three. And will be retained by Veritext Legal Solutions.

(Whereupon, at 4:22 p.m., the deposition of BERNARD DOLAN was adjourned.)

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

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

Plaintiff,

v. Civil Action No. 2:21-cv-00316

Honorable Joseph R. Goodwin, Judge

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

Defendants,

And

LAINY ARMISTEAD,
Intervenor Defendant.

**WVSSAC'S RESPONSES TO PLAINTIFF'S
SECOND SET OF INTERROGATORIES**

Now comes West Virginia Secondary School Activities Commission (WVSSAC), by counsel, and responds to Plaintiffs Second Set of Interrogatories to Defendant The West Virginia Secondary School Activities Commission.¹

INTERROGATORIES

INTERROGATORY NO. 13: Identify all WVSSAC sponsored sports in which students may participate on a team designated as co-ed or mixed. If any such sport includes designations of a particular level (*e.g.*, varsity, junior varsity, freshman, intramural), please also include such designations.

RESPONSE:

Available at both middle and high school:

Cheer is mixed.

¹ Defendant has not completed discovery in this civil action and has not completed its preparation for trial. For these reasons, the Defendant's responses are based upon only such information and documents as are presently available and known to WVSSAC. Further discovery and independent investigation may lead to other responsive information and/or documents. The following responses are given in good faith but without prejudice to the Defendant's right to produce evidence of subsequently discovered facts or documents.

The Defendant avails itself of all rights under the Federal Rules of Civil Procedure and such other applicable rules and law, and objects to the instructions contained in Plaintiffs discovery requests to the extent such instructions attempt to impose burdens on the Defendant that are outside the scope of the Rules or the law generally. The Defendant is not bound to follow any instructions which may be contrary to the Rules and other law.

Participation mixed as indicated to respond to demand:

Wrestling

Baseball - Freshman

Football — Varsity, Junior Varsity, Freshman

Golf (transitioning toward having a separate girls' designation) — Varsity, Junior Varsity

INTERROGATORY NO. 14: Identify all co-ed or mixed teams participating in WVSSAC sponsored competition, including (a) the name of the school and (b) the sport in which the team competes. If any team (or subpart of a team) is designated as being of a particular level (*e.g.*, varsity, junior varsity, freshman, intramural), please also include that designation.

RESPONSE:

WVSSAC does not track this information. However, please see attached excel spreadsheet for member schools' self-report. WVSSAC000366-369.

WEST VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION,
By Counsel.

/s/ Roberta F. Green

Roberta F. Green (WVSB #6598)

Kimberly M. Bandy (WVSB #10081)

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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. Civil Action No. 2:21-cv-00316

Honorable Joseph R. Goodwin, Judge

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

Defendants,

And

LAINIEY ARMISTEAD,
Intervenor Defendant.

VERIFICATION

STATE OF WEST VIRGINIA;

COUNTY OF WOOD, to-wit:

Bernie Dolan, being first duly sworn, upon his oath does hereby depose and say that he has read the answers to interrogatories in the foregoing and believes that the facts contained therein, except insofar as they are stated to be upon information and belief, are believed to be true; that the responses set forth herein, subject to inadvertent and undiscovered errors, are based on and therefore necessarily limited by the records and information in existence, presently recollected and thus far discovered in the course of the preparation of these responses; that consequently, he reserves the right to make any changes in the responses if it appears at any time that omissions or errors have been made therein or that more accurate information is available; and that subject to the limitations set forth herein, said responses are true to the best of his knowledge, information and belief.

By: /s/ Bernie Dolan
Bernie Dolan

Taken, subscribed and sworn to before me this 9th day of February, 2022. My commission expires: July 3, 2022.

/s/ Laura Wallace
Notary Public

What is the name of your school?	How many girls participated in Football	How many girls participated in Wrestling	How many girls participated in Golf?	How many boys participated in Cheer?	How many girls participated in Baseball?
Andrew Jackson Middle School	0	1	0	0	0
Andrew Middle School	0	1	0	0	0
Aurora School	0	0	0	0	0
Barboursville Middle School	0	5	2	0	0
Beckley - Stratton Middle School	0	2	0	0	0
Berkeley Springs High School	1	1	1	0	0
Blennerhassett Middle School	0	2	1	0	0
Bluefield High School	0	0	0	0	0
Bluefield Middle School	0	0	0	0	0

Braxton County High School	1	0	1	0	0
Bridge Street Middle School	0	0	1	1	0
Bridgeport High School	0	1	1	0	0
Bridgeport Middle	0	0	0	0	0
Brooke High School	2	2	1	0	0
Bruceton School	0	0	0	0	0
Buffalo	1	2	1	0	0
Cameron High School	0	0	0	0	0
Cameron Middle High School	0	0	0	0	0
Capital High School	0	0	1	0	0
Capon Bridge Middle	1	0	0	0	0
Central Preston MS	0	2	0	0	0

CEREDO- KENOVA MIDDLE SCHOOL	1	0	0	0	0
Chapmanvi lle Middle School	0	0	0	0	0
Chapmanvi lle Regional High School	1	1	1	0	0
Charles Town Middle School	1	3	0	0	0
Charleston Catholic	0	0	2	1	0
Clay Battelle Middle/Hig h School	1	0	2	1	0
Clay County High School	0	0	0	0	0
Clay County Middle School	0	0	0	0	0
Crum PK8	0	0	0	0	0
Doddridge County High	0	2	0	0	0
East bank middle	1	2	0	0	0

East Fairmont High School	0	1	0	1	0
East Hardy High School	0	8	0	0	0
Eastern Greenbrier Middle School	1	3	0	0	0
Edison	0	2	2	0	0
Elkins High School	0	0	6	0	0
Elkins Middle School	0	0	0	0	0
Elkview Middle	0	0	2	0	0
Fairmont Catholic #0201	0	0	0	0	0
Fairmont Senior	0	0	1	0	0
Fairview middle	0	0	0	0	0
Fayetteville PK8	0	0	0	0	0
FGPK8	0	0	0	0	0
Fort Gay Pre K-8	0	0	0	0	1

Frankfort High School	0	0	0	1	0
George Washington High School	0	1	3	1	0
George Washington Middle	0	1	0	0	0
Gilmer	0	1	1	1	0
Glen Fork Elementar y and Middle School	0	0	1	4	0
Glenwood School	0	0	3	0	0
Grafton High School	0	1	0	0	0
Greater Beckley Christian	0	0	0	0	0
Greater Beckley Christian School	0	0	0	0	0
Greenbrier East	0	2	0	1	0
Greenbrier West	1	0	1	1	0
Hamilton Middle	0	2	0	0	0

1096

Hamlin PK8	0	0	0	0	0
Hampshire	0	1	0	0	0
Harman	0	0	0	0	4
Harts PK-8	0	0	0	0	0
Hayes Middle School	0	0	2	0	0
Hedgesville	1	1	0	0	0
Hedgesville Middle	0	0	0	0	0
Herbert Hoover High School	0	0	3	1	0
Horace Mann Middle	0	0	4	0	0
Horace Mann Middle School	0	0	3	0	0
Huntington East Middle	0	0	4	0	0
Huntington High	0	1	0	1	0
Huntington Middle School	0	2	3	0	0
Hurricane Middle	1	1	1	0	0
Independence High School	0	1	0	0	0
Jackson Middle School	0	0	2	0	0
James Monroe High School	0	0	0	0	0
Jefferson High School	0	2	0	1	0

1097

John Adams Middle School	0	2	4	0	0
John marshall	2	2	8	0	0
Kasson Elementary Middle School	0	0	0	0	0
Kermit pk-8	0	0	0	0	0
Keyser High School	0	0	0	0	0
Lenore PK8	0	0	0	0	0
Lewis County High School	1	1	1	0	0
Liberty High School	0	0	1	0	0
Lincoln County High School	0	0	0	0	0
Lincoln High School	0	0	2	1	0
Lincoln Middle School	0	0	0	0	0
Logan High School	0	4	1	0	0
Logan Middle	0	2	0	0	0
Long Drain School	1	0	0	0	0
Madison Middle School	0	0	0	0	0
Madonna	0	0	0	0	0
Madonna high school	0	0	0	0	0
Magnolia High School	0	1	2	0	0

1098

Man High School	0	0	0	0	0
Man Middle School	0	1	0	0	0
Mannington Middle School	0	0	0	0	0
Martinsburg High	0	1	0	0	0
Matewan PK-8	0	0	0	0	0
Meadow Bridge High School	0	1	0	0	0
Midland Trail High School	0	2	2	0	0
Mingo Central High School	0	0	0	0	0
Monongah Middle School	0	0	0	0	0
Montcalm High School	0	0	0	0	0
Moorefield High School	0	1	0	0	0
Morgantown High	0	0	4	2	0
Moundsville Middle School	1	1	0	1	0
Mountain Ridge Middle School	0	0	0	0	0
Mountain View Middle School	1	0	0	0	0

1099

Mountaineer Middle (H)	3	0	0	0	0
Mountaineer Middle Morgantown	0	0	0	0	0
Mountaineer middle school (Harrison)	3	1	0	0	0
Musselman HS	1	8	2	0	0
Musselman Middle	0	4	0	0	0
New Martinsville School	0	0	0	0	0
Nicholas County High School	0	0	2	0	0
Nitro High School	0	0	0	0	0
North Marion	0	0	0	2	0
Notre Dame High School	0	0	1	0	0
Oak Glen High School	0	1	2	1	0
OAK GLEN MIDDLE SCHOOL	0	1	0	0	0
Oak Hill High	0	0	1.	0	0
Oak Hill Middle School	0	0	0	0	0
Paden City High School We have grades 7-12	2	6	0	0	0
Park Middle	0	0	0	0	0

1100

Parkersburg Catholic High School (7-12)	0	1	1	1	0
Parkersburg South	0	0	2	3	0
Paw Paw	0	0	0	0	0
Pendleton County High School	0	0	0	0	0
Petersburg high/middle (7- 12)	0	0	1	0	0
Peterstown Middle School	0	0	0	0	0
PikeView High School	0	0	0	0	0
PikeView Middle School	0	0	1	0	0
Poca High School	0	3	0	0	0
Poca Middle School	1	1	0	0	0
Pocahontas County High School	1	0	1	0	0
Point Pleasant Jr./Sr. High School	4	1	0	0	0
Princeton Senior	0	1	1	0	0
Pt. Pleasant Jr/Sr HS	1	1	2	0	0
Ravenswood High School	1	0	1	1	0

1101

Richwood High School	0	0	.0..	0	0
Richwood Middle School	4	0	0	0	0
Ripley High School	1	0	4	0	0
Ripley middle school	0	0	.0	0	0
Ritchie County High School	0	1	1	0	0
River View High School	1	0	.0	0	0
Riverside	0	0	2	0	0
Rivesville Middle	0	0	0	0	0
Roane County High School	0	0	1	0	0
Robert C. Byrd High School	0	0	1	0	0
Robert L. Bland Middle School	0	0	.0	0	0
Romney Middle School	0	0	0	6	0
Saint Francis de Sales School	0	0	0	0	0
Scott High School	0	0	0	0	0
Shady Spring High School	0	4	0	19	0
Shepherdstown Middle	1	1	0	0	0
Sherman High School	1	0	2	1	0

1102

Sherrard	0	0	4	1	0
Sissonville High School	0	1	3	0	0
Sissonville Middle School	2	0	0	0	0
South Charleston High School	0	0	0	1	0
South Harrison	0	1	0	1	0
South Harrison middle school	2	0	0	0	0
Spring Mills High School	1	2	1	0	0
Spring Mills Middle School	0	0	0	0	0
Spring Valley	0	2	3	1	0
St albans	1	1	0	0	0
St. Francis Central Catholic School	0	0	0	0	0
St. Marys High	0	1	1	2	0
Summers County High School	0	0	1	0	0
Summersville Middle School	0	1	0	0	0
Tolsia high school	1	0	0	2	0
trap hill middle school	0	0	0	0	0
Triadelphia Middle	0	0	2	0	0

Trinity Christian School	0	0	1	0	0
Tucker County High School	0	0	0	0	0
Tucker Valley Middle	0	0	0	0	0
Tug Valley	0	0	0	0	0
Tygarts Valley	1	0	0	0	0
Tyler consolidated	0	1	1	0	0
Union High School	0	0	2	0	4
University	0	1	3	0	0
Valley High School (Wetzel)	0	0	0	0	0
Valley PK 8	0	0	0	0	0
Van Jr/Sr High School	0	0	0	0	0
WAHAMA JR/SR HIGH	0	1	2	1	0
Warm Springs Middle School	0	1	0	1	0
Warwood	0	0	0	0	0
Wayne HS	0	0	3	0	0
wayne middle	0	0	1	0	0
Weir high school	0	0	2	0	0
Weir Middle School	0	1	0	0	0
West Fairmont Middle School	1	0	0	0	0

1104

West Side Middle School	1	0	2	0	0
Western Greenbrier Middle School	0	0	0	0	0
Westside High School	0	0	0	0	0
Wheeling Central Catholic High School	0	0	2	0	0
Wheeling Middle	2	1	0	1	0
Wheeling Park High School	0	0	1	2	0
Wildwood Middle School	0	4	0	0	0
Williamson PK8	0	0	0	0	0
Winfield High School	0	2	0	20	0
Winfield middle	1	0	1	0	0
Wirt County High School	1	0	0	0	0
Wood county Christian school	0	0	0	0	0
Wyoming East High School	0	0	0	0	0
	60	133	147	87	9

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

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

Plaintiff,

vs.

Case 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,

LAINY ARMISTEAD,

Defendant-Intervenor.

**REMOTE VIDEOTAPED DEPOSITION OF
LAINY ARMISTEAD
Friday, March 11, 2022
Volume I**

[14]

LAINY ARMISTEAD,

having been administered an oath, was examined and testified as follows:

EXAMINATION

BY MR. BARR:

Q Good afternoon. My name is Andrew Barr. I'm with the law firm of Cooley, LLP. I'm located in Denver. I use the pronouns of he and him, and I'm [15] representing the plaintiff B.P.J. in this case. Would you please state your name and spell it for the record.

A Lainy Armistead, L A-I-N-E-Y A-R-M-I-S-T-E-A-D.

Q And which pronouns do you use?

A She/her.

Q Is it okay with you -- is it okay with you if I refer to you as "Ms. Armistead" today?

A That's okay.

Q Am I pronouncing your name correctly?

A Yes.

Q So before we get started, I want to discuss a few things about the process for today. The oath you've taken is the same oath you would take in a court of -- courtroom. Do you understand that?

A Yes.

Q That means you must testify truthfully and not leave out any important facts. Is there any reason you cannot testify truthfully today?

A No.

Q Okay. Please give verbal answers to my questions. Nonverbal answers, such as nodding or [16] shaking your head, can't be reflected in the transcript; and, therefore, I need you to answer verbally.

Do you understand?

A Yes.

Q If you don't understand a question that I ask, I promise you it isn't a trick question; I probably just worded it poorly. So just ask me to ask again, okay?

A Okay.

Q And what that does mean is if you do not ask me to reword it, I'll assume you understood the question, okay?

A Okay.

Q At no point today am I asking about the substance of communications that you've had with your attorneys. So if I ask a question and you think that's what I'm asking you, please do not give me any information you have, based on conversation with your attorney, okay?

A Got it.

Q We're obviously on the -- the Zoom platform, which makes it very important we don't speak over each other. So let me finish my question, and I will let you finish your answer. Understood?

[17]

A Got it.

Q And then we're here today talking about House Bill 3293 that's been codified at West Virginia Code 18-2-25d. I'm going to refer to that just as "H.B. 3923" -- or "3293." Is that okay?

A Yes.

Q I'm also certainly going to mess those numbers up and perhaps call it 3923 or something else. Do you understand that if I talk about House Bill 3293 or a similar set of numbers, I'm actually talking about House Bill 3293?

A Yes.

Q Okay. There's a couple of words we're going to be using today that I just want to explain to you what I mean by those words so that we have -- we all have a similar understanding about what I'm asking.

When I say the word "cisgender," I mean someone whose gender identity matches the sex they were assigned at birth.

Do you understand what that means?

MS. HOLCOMB: Objection to form.

MR. TRYON: Objection.

MR. BARR: And, defense counsel, I'm willing to give you a standing objection to terminology throughout this because I feel like we've established, [18] over the past couple of weeks, we're just going to have a fundamental disagreement on terminology, and I don't think there's a reason you should have to object every single time I say the word "transgender" or "cisgender."

MR. TRYON: I'm objecting -- I'm objecting to your definitional actions -- instructions. Excuse me.

MR. BARR: Understood.

BY MR. BARR:

Q Ms. Armistead, do you know what I mean when I say the word "cisgender"?

A I understand what you are referring to.

Q Okay. Just to be clear, what am I referring to? A You are talking about a biological male.

Q Well, let's -- let's make sure we're all talking about the same thing here.

When I say "cisgender," I'm saying someone whose gender identity matches the sex they were assigned at birth. Is that something that you are able to understand moving forward in this deposition?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: I understand what you are [19] referring to.

MR. BARR: Okay. Hold on. My lights just turned off for some reason.

I apologize. In making an effort to be environmentally friendly, my lights turn off every 47 minutes, so I'll try to avoid that.

BY MR. BARR:

Q Same thing, Ms. Armistead, when I say "transgender," what I'm referring to is someone whose gender identity does not match the sex they were assigned at birth.

Do you understand that?

MR. TRYON: Objection.

MS. HOLCOMB: Same objection.

THE WITNESS: I understand what you are referring to.

BY MR. BARR:

Q So when I say the word “cisgender” or “transgender” today, those are the definitions I am using.

A Okay.

Q When I say “B.P.J.,” I’m referring to the plaintiff in this case.

Do you understand that?

A Yes.

[20]

Q Did you prepare for this deposition?

A Yes.

Q How?

MS. HOLCOMB: And I’ll just object to the extent that it calls for any privileged attorney-client communications, but, Lainey, you can answer.

THE WITNESS: I prepared with my attorneys.

BY MR. BARR:

Q Other than speaking with your attorneys, did you do anything else to prepare for this deposition?

A No.

Q Did you review any documents?

A When I was speaking to my attorneys.

Q Okay. Which documents were those?

A Documents that have already been turned over to the plaintiff, such as my declaration.

Q Other than your declaration, what documents did you review?

A I reviewed documents that we turned over to the plaintiff.

Q I understand. I'm asking which ones.

A I don't recall all the documents that we reviewed or turned over to the plaintiff.

Q Well, let's just work on identifying some of those.

[21]

So you said the declaration. Beyond the declaration, what did you review to prepare for this deposition?

A I reviewed scholarship information. I reviewed text messages with my mom and my declaration.

Q Is that it?

A I don't recall all of the documents that I reviewed.

Q When did you review these?

A Within the last week.

Q But the only thing you remember looking at was your declaration, some text messages and scholarship information.

Did I understand that correctly?

A Yes.

Q Have you ever had your deposition taken before?

A No.

Q Have you ever testified at trial?

A No.

Q Did you bring anything with you today?

A My laptop.

Q Are you referring to your laptop during this deposition?

A What do you mean?

[22]

Q So explain to me why you brought your laptop to the deposition.

A So I could be in the deposition via Zoom.

Q Is there anyone else in the room with you?

A Yes.

Q Who else is in the room?

A Christiana and Catie.

Q And by “Christiana” and “Catie,” you’re referring to your attorneys?

A Yes.

Q Other than your laptop, did you bring anything else with you today?

A I brought water, snacks, a book bag, a laptop charger.

Q Any documents?

A No.

Q Have you ever been a party to a lawsuit?

A No.

Q Other than this case, have you ever intervened in a lawsuit?

A No.

Q Did you know what an intervenor was prior to this lawsuit?

A Kind of.

Q What is your understanding of an intervenor?

[23]

A My understanding is that it's someone who can intervene for a certain side that they support and hopefully maintain the bill or law and keep it in place.

Q And was that your understanding before or after you intervened in this case?

A After.

Q What was your understanding of an intervenor before this case?

A It was a vague understanding that I had heard from a TV show or something. It wasn't a clear understanding.

Q So what was that vague understanding?

A Someone who supports a bill or law.

Q Why did you decide to intervene in this case?

A Because I care about women's sports and the sport that I play, and I think that it's a good law.

Q How did you decide to actually intervene?

I understand you support the bill, but it sounds like you didn't really understand what an intervenor was prior to this lawsuit, so I'm trying to understand how you actually intervened in this case.

MS. HOLCOMB: And I'll just object to the extent it calls for any communications between Lainey and myself.

[24]

THE WITNESS: I don't know how to answer that question without divulging privileged information.

BY MR. BARR:

Q Let me ask it a different way.

Prior to discussing this case with the ADF, were you interested in intervening? And by "ADF," I mean your attorneys.

A No.

Q Was intervening an easy decision?

A No.

Q Why not?

A Because it's not always easy standing up for what you believe when you know other people do not also believe in that, and it's a public thing, and I was nervous about it.

Q Did you talk with anyone about the decision prior to making it?

MS. HOLCOMB: Same objection.

BY MR. BARR:

Q Other than your attorneys.

A Yes.

Q Who?

A My parents, my coach and my siblings.

Q Anyone else?

A I may have talked about it with my best friend [25] before I chose to intervene.

Q Explain to me those discussions with your parents.

A I asked them what they thought about the law and how they -- if they thought that intervening would be a good decision on my part, and they supported me.

Q Did you approach your parents about intervening, or did your parents approach you about intervening?

A I approached my parents.

Q And you said your parents supported your decision; is that right?

A Yes.

Q Did they explain why they supported your decision?

A Soccer is a huge deal in my family, and it's something that I grew up with, and my dad grew up coaching me and other female athletes and male athletes, and he thinks that it was a good -- he thinks that it's a good law because he's seeing the differences, and he encouraged me.

Q What about your mom?

A My mom is supportive in all that I do.

Q There's nothing you have done your mom doesn't support?

[26]

A She is supportive with everything that I do.

Q When did you reach out to your attorneys, ADF?

MS. HOLCOMB: Again, objection to the extent it calls for communications, Lainey, between your attorneys and you.

MR. BARR: I'm just asking about the initial reach-out. There certainly wouldn't have been a relationship between client and attorney at that point.

THE WITNESS: I don't recall the exact time when I first got in contact with ADF.

BY MR. BARR:

Q Was it before or after the bill had been passed?

A After.

Q So are -- are we thinking June timeframe of last year?

A I don't recall an exact date.

Q Just give me a -- a timeframe. I'm trying to understand the sequence of events.

A I would say it was sometime in 2021.

Q So you don't recall even time of year that you had reached out to them?

A I don't remember the first conversation I had with her, no.

Q And who is "her" in that sentence?

[27]

A My attorney, Christiana.

Q How did you find ADF when you decided you wanted to intervene?

A My mom has a friend who works for ADF.

Q Who is that friend?

A Jamie Metzger.

Q Did your mom speak with Jamie about this case?

MS. HOLCOMB: Object to form.

THE WITNESS: I can't comment on the conversations that my mom has with other people.

BY MR. BARR:

Q I didn't ask for the substance. I'm just asking if your mom reached out to her friend regarding this case.

MS. HOLCOMB: Again, object to form.

THE WITNESS: I'm not sure if my mom reached out to her or not.

BY MR. BARR:

Q So you spoke to your parents about intervening, your mom happened to have a friend at ADF, and that's how you got connected with ADF. Am I understanding that correctly?

A No.

Q So what happened?

A I don't know how to answer that question [28] without giving privileged information -- information with my attorney and I.

Q I certainly don't want privileged information.

Would it be fair to say that the first time you thought about intervening in this case was in connection with the discussion with your attorneys?

A Yes.

Q And you don't recall when that was?

A It was sometime last year.

Q Was it your -- your mom's friend Jamie who encouraged you to join as an intervenor?

A No.

Q Who encouraged you to join as an intervenor?

MR. TRYON: Objection.

THE WITNESS: I made the decision after talking with my -- I made the decision after a lot of thought, prayer and then communications with my parents.

BY MR. BARR:

Q What's Jamie's last name?

A Metzger.

Q Do you know what Jamie Metzger does at ADF?

A I do not.

Q How does your mom know Jamie?

MS. HOLCOMB: Object to form.

[29]

THE WITNESS: My -- through my mom's adoption agency.

BY MR. BARR:

Q Could you explain that with a little more detail, please?

A I'm not sure exactly how they know each other, but I do believe that it was from my mom's adoption agency, and Jamie writes articles about adoption.

Q Help me understand. Your mom knows Jamie because of articles that Jamie has written that pertain to adoptions?

A I believe so.

Q What's the nature of these articles?

MS. HOLCOMB: Object to form.

THE WITNESS: It's about adoption.

BY MR. BARR:

Q But specifically, what is -- what -- is Jamie -- what is Jamie saying in these articles about adoption?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know. You'd have to read them.

BY MR. BARR:

Q Have you read them?

A I might have read one of them. I don't really [30] recall. It was a long time ago.

Q Would you consider your mom friends with Jamie or just happens to read Jamie's articles?

A I'm not sure on their relationship. I can't speculate on that.

Q What's your understanding?

A I believe Jamie has interviewed my mom for adoption purposes.

Q Did Jamie reach out to your mom regarding this case?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: No.

BY MR. BARR:

Q So your mom reached out to Jamie; is that right?

A No.

MS. HOLCOMB: Object to form.

BY MR. BARR:

Q So explain to me what happened.

A What happened with what?

Q Well, you -- you told me that you found ADF because your mom was friends with Jamie. Did I get that right?

A Yes.

[31]

Q You also told me that Jamie didn't reach out to your mom and your mom didn't reach out to Jamie; right?

A Regarding this case.

Q Well, that's -- that's what I'm trying to understand.

How did you get connected with ADF for this case?

A I don't know how to answer that question without giving privileged information.

Q Okay. What did your siblings think about you intervening in the case?

A They were supportive.

Q Explain to me those discussions you had with them.

A I asked them what their opinion was on the law, and they agreed with the substance of the law, and they said that I would be brave to participate in the case.

Q What do you think they meant when they said you would be brave?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know -- I can't speculate on what they were thinking.

BY MR. BARR:

[32]

Q You know what the word "brave" means; right?

MS. HOLCOMB: Object to form.

THE WITNESS: I have an understanding of the word "brave."

BY MR. BARR:

Q So why would your siblings describe you as brave for intervening in a lawsuit?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know exactly what they were thinking whenever they described me as brave.

BY MR. BARR:

Q What did your coach think when you talked about intervening?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know what my coach was thinking.

BY MR. BARR:

Q What did your coach say to you in response to you telling your coach you might intervene in this case?

A She told me that she would be supportive, although she wasn't sure if she would want, herself, to get involved with the case, but she was supportive of my decision to get involved in the case.

Q Why didn't any of your teammates try to [33] intervene with you?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know why they did not decide to, but at least one of them was interested.

BY MR. BARR:

Q Who is that?

MS. HOLCOMB: And I will just object to the extent that this calls for communication in anticipation of litigation, but, Lainey, you may answer.

THE WITNESS: Sinead.

BY MR. BARR:

Q Could you say that name again, please?

A Sinead.

Q How do you spell that?

A S-I-N-E-A-D.

Q What's Sinead's last name?

A Samarczuk.

Q That's going to take a minute, so bear with us as we try to spell that one. Go ahead, please.

A S-A-M-A-R-C-Z-U-K.

Q Do you mind if I just refer to your teammate as "Sinead" because the last name I'm certainly going to mess up?

[34]

A That is fine.

Q Why did Sinead ultimately decide not to intervene?

MS. HOLCOMB: Object to form and to the extent it calls for privileged communications with counsel.

THE WITNESS: I don't know how to answer that without divulging confidential information -- privileged information.

BY MR. BARR:

Q You said Sinead's on your team; right?

A Yes.

Q You never discussed this with Sinead?

A Discussed it when with Sinead?

Q Well, let's start at the beginning. Tell me about the first discussion you had with Sinead about intervening in this lawsuit.

A I asked her if she would want to intervene with me.

Q You approached Sinead about interviewing. Did I get that right?

A Yes.

Q How did you get the idea to approach Sinead?

MS. HOLCOMB: Again, objection, to the extent it calls for privileged communications.

BY MR. BARR:

[35]

Q I'll rephrase.

Other than a discussion with your attorney, why did you approach Sinead to intervene in this case?

A She and I are very close friends.

Q Did you approach anyone else on your team?

A Yes.

Q Who?

A Brooklyn.

Q What's Brooklyn's last name?

A Pritt.

Q Anyone else?

A No, I did not approach anyone else on my team to intervene for this case.

Q Why didn't you ask your entire team, if this is an important lawsuit to protect women's sports?

A I'm not as close with all of my teammates for something that was such a big deal. They -- I'm very -- I love my teammates, we are close, but this is something that I was nervous about, intervening, and it was a big decision to make, so I just wanted to see what Brooklyn and Sinead thought about it.

Q Did you discuss that with Sinead and Brooklyn?

A Discuss what?

Q Did you invite them to intervene in the case?

A I asked them if they would be interested in [36] doing so.

Q And, presumably, they said no; right?

A By the time they had reached a decision, it was too late for other people to intervene, is my understanding.

Q Well, what decision did they reach?

A Both of them wanted to get involved in some type of way, but it was too late for Sinead, and Brooklyn is very, very busy with school and work and other things, so she just didn't have the time.

Q I asked a -- a little bit of a different question.

They ultimately both decided not to intervene; right?

A That wasn't their decision. It was too late for Sinead.

Q Had it not been too late, would Sinead have joined?

A I believe so, but I can't answer that for certain.

Q Is Sinead still a student at West Virginia State University?

A She is currently in England.

Q Is she still a student at West Virginia State University?

[37]

A I believe she's still enrolled, yes.

Q Is she still on your team?

A I believe she's still on the team. She's just taking a semester off, but -- she might return; she might not.

Q Is Brooklyn still a student at West Virginia State?

A Yes.

Q Is Brooklyn still on your team?

A Yes.

Q Are there any other of your teammates who you believe might be -- let me rephrase that. Are there any other of your teammates that you believe would have intervened but for a timing issue?

A It's possible.

Q A lot of things are possible. I'm asking if there's any specific names you have of someone you believe you would like to have intervened.

A I can't speculate on what other people want.

Q So you have no reason to think that there's another one of your teammates who would have liked to intervened?

MR. TRYON: Objection.

THE WITNESS: Again, I can't speculate on what other people want.

[38]

BY MR. BARR:

Q I'm not asking you to speculate.

Do you have reason to believe that any of your other teammates wanted to intervene in this case?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I don't know.

BY MR. BARR:

Q Can you provide me with the name of one of your teammates, other than Sinead and Brooklyn, who wanted to intervene in this case?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

The witness: I don't know what my teammates would have wanted to do.

BY MR. BARR:

Q Where are you from?

A Owensboro, Kentucky.

Q What's the closest big city to Owensboro, just so I can understand geography?

A Louisville, Kentucky.

Q Did you grew up a Cardinals fan?

A No.

Q Does that make you a UK fan?

A Yes.

[39]

Q How old are you?

A 21.

Q Did you grow up in the same house as your parents?

A Yes.

Q You mentioned siblings. How many siblings do you have?

A I have two biological brothers.

Q Only because of the way you phrased that, do you have a sibling that you wouldn't consider biological?

A I have two adopted siblings, but, unfortunately, I am not in contact with them anymore.

Q How old are your -- are -- are your adopted siblings also brothers?

A They are siblings, a brother and sister.

Q As you described it, your biological siblings, what are their names?

A Kyler and Declan.

Q Did you say Kyler, with a K?

A Yes.

Q What does Kyler do?

A Kyler works at UPS.

Q And what about Declan?

A He is a student athlete in university.

[40]

Q And where does Kyler live?

A Louisville, Kentucky.

Q And what school does Declan attend?

A Brescia University.

Q I'm sorry, what's it called?

A Brescia.

Q Where is that located?

A In Owensboro, Kentucky.

Q It's close to home.

What is your adopted brother's name?

A David.

Q What does David do?

A I'm not sure.

Q When is the last time you spoke with David?

A When I was 16.

Q Where does David live?

A I have no idea. I'm not sure.

Q What's your adopted sister's name?

A Gabby.

Q Are Gabby and David biological siblings?

A Yes.

Q When is the last time you spoke with Gabby?

A I'm not sure.

Q Was it around the last time you spoke to David or some other time?

[41]

MS. HOLCOMB: Object to form.

THE WITNESS: I'm not sure. It was a long time ago.

BY MR. BARR:

Q I take it you don't know where Gabby lives?

A No.

Q Are David and Gabby still in touch with your parents?

A I'm not sure.

Q Are David and Gabby still in touch with Kyler?

MS. HOLCOMB: Object to form.

THE WITNESS: I'm not sure.

[Redacted]

Q And Gabby went with him?

A No. She was older, so she was already out of our house.

[42]

Q Okay. What do you currently do?

A I am a student athlete.

MS. HOLCOMB: Just -- may I jump in here for a moment, Andrew?

MR. BARR: Yes.

MS. HOLCOMB: Do you need a break?

I -- I understand you may be moving to a different line of questioning.

Do you need a break? Okay.

Andrew, would you be amenable to --

MR. BARR: No worries. We'll take a break. How about we come back at 1:00? Does that work for you?

MS. HOLCOMB: That works great. Thank you.

THE VIDEOGRAPHER: Okay. We are going off the record -- sorry. We're going off the record. The time is 12:48 p.m., and this is the end of Media Unit No. 1.

(Recess.)

THE VIDEOGRAPHER: All right. We are back on the record at 1:00 p.m., and this is the beginning of Media Unit No. 2. Go ahead, please.

BY MR. BARR:

Q Ms. Armistead, you stated you were a student at West Virginia State University; is that right?

[43]

A Yes.

Q Are you employed anywhere?

A Yes.

Q Where do you work?

A I work as a work-study student, and I work at Red Lobster.

Q What's a work-study student?

A I work in the Dean's office of my college.

Q And what do you do there?

A I answer the phone, run errands, talk to professors.

Q Largely administrative tasks, am I understanding that correctly?

A Yes.

Q And what do you do at Red Lobster?

A I'm a server.

Q Any other jobs at the moment?

A If you consider soccer a job, then sure.

Q Do you consider soccer a job?

A I love it, but I have to show up, and I'm getting a scholarship for it, so...

Q Let's talk about soccer separately.

Other than Red Lobster and the Dean's office, do you have any other jobs?

A No.

[44]

Q Where is West Virginia State University?

A Like, the address?

Q The city.

A Dunbar.

Q If I call it "West Virginia State," will that be okay with you?

A Yes.

Q Did you grow up rooting for West Virginia State?

A No.

Q You mentioned UK earlier. Was that your team growing up?

A Sure.

Q You tell me. I'm just asking.

A I like it. I wouldn't say I necessarily had a team growing up.

Q What conference is West Virginia State in?

A The Mountain East Conference.

Q How many teams are in that conference?

A I'm not sure.

Q Is it closer to ten or closer to 20?

A Closer to ten.

Q Are those schools all located within West Virginia?

A I don't think so, but I'm not sure where [45] they're all located.

Q Are you aware that the NCAA has divisions?

A Yes.

Q What division is West Virginia State in for girls' soccer?

A Division II.

Q How many NCAA divisions are there?

A Three.

Q What is your understanding of the difference between Division I, II and III?

A I believe it's based off of school size and the ability for D-I and D-II to give athletic aid and scholarship.

Q Is one division generally thought to be more competitive than another?

A Division I is usually thought to be more competitive, but I think all three are very competitive. We're college athletes.

Q Do you think Division I is more competitive?

A I think --

MR. TRYON: Objection.

THE WITNESS: I think that we're all very competitive.

BY MR. BARR:

Q I don't take issue with that. I'm -- I'm sure [46] you're right there. I'm just asking if you believe Division I is more competitive than Division II.

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: What do you mean by "competitive"?

BY MR. BARR:

Q As a general matter, if a Division I women's soccer team played a Division II women's soccer team, who would you expect to win?

MS. HOLCOMB: Objection.

THE WITNESS: Generally, we would expect the Division I team to win.

BY MR. BARR:

Q How big is West Virginia State, in terms of student size?

A Couldn't tell you.

Q How did you pick West Virginia State?

A There were a myriad of reasons.

Q What -- what was the primary reason?

A Because of the opportunity that West Virginia State gave me.

Q What opportunity is that?

A To play soccer -- to play soccer and have a very good scholarship.

[47]

Q Did you consider going to any other colleges?

A Yes.

Q How many?

A How many did I visit or consider? What do you mean?

Q Let's start with, how many other colleges did you consider attending?

A I'm not sure.

Q Less than 20?

A Less than 20.

Q Less than ten?

A Seriously considered, yes, less than ten.

Q Less than five?

A Probably about five.

Q What -- what were the five colleges you seriously considered attending?

MS. HOLCOMB: Object to form.

MR. TRYON: I also object.

THE WITNESS: I didn't say that it was definitely five.

BY MR. BARR:

Q I'll rephrase. I'm not trying to put words in your mouth.

Tell me the colleges you seriously considered attending.

[48]

A West Virginia State, Austin Peay, Transylvania, Kentucky Wesleyan. And that's all of the ones that I seriously considered.

Q Other than West Virginia State, did you have an opportunity to play soccer at those schools?

A Yes.

Q Which ones?

A Kentucky Wesleyan and Transylvania.

Q Did Kentucky Wesleyan offer you a scholarship?

A For what?

Q For soccer.

A I had communications with their coach, but there was nothing official for an athletic scholarship.

Q To make sure I'm clear, there was no official offer of an athletic scholarship at Kentucky Wesleyan?

A I don't believe so.

Q Same question for Transylvania, were you offered an athletic scholarship for Transylvania?

A Transylvania is a D-III school, so they can't give athletic scholarship.

Q Were you offered an athletic scholarship for any school other than West Virginia State?

A Yes.

Q What school is that?

A Brescia University.

[49]

Q I'm sorry, you cut out. Could you repeat that?

A Brescia.

Q Is that the same school that your brother goes to?

A Indeed.

Q But you weren't seriously considering attending that school, were you?

A No.

Q Any other schools offer you an athletic scholarship?

A Many schools e-mailed me saying that they would give me scholarships, but I never really conversed with any others ones, no.

Q So no formal offers for athletic scholarships other than the two we just discussed?

A No formal offers, correct.

Q Is Kentucky Wesleyan a Division I or Division II school?

A Division II.

Q What do you study at West Virginia State?

A Political science.

Q Anything else?

A What do you mean?

Q Let me ask it a different way. What's your [50] major, currently?

A Political science.

Q Do you have a minor?

A I am on track to get a minor in psychology.

Q What year are you, in terms of freshman, sophomore, etcetera?

A I -- this will be my third year of college.

Q And when you say "this," as we sit here today, in March, you're a junior, or you are saying the upcoming school year that starts in August, you'll be a junior?

A What do you mean?

Q I'm trying to understand if you've been attending West Virginia State for four semesters or 6 semesters.

A I have attended it for six semesters, I think. Since fall of 2019, and I have continuously studied at West Virginia State.

Q Thank you. That's helpful. And that answers the question.

Are you on track to graduate at the end of next school year?

A I am not sure of my exact graduation plans yet.

Q What do you mean by that?

[51]

A I mean that I could graduate this May, tentatively, but I definitely want to utilize my NCAA eligibility and possibly continue playing and studying at West Virginia State.

Q I think I read you have two years of eligibility left; is that right?

A If I graduate in May, I'll actually have three years of eligibility left.

Q If you graduate in May, do you plan on using that eligibility either at West Virginia State or some other institution?

A I would love to.

Q Do you have any current plans to do that?

A My plans aren't set in stone yet. I had health concerns this past semester. So as long as I can figure that out and my body allows it, I would definitely want to continue playing soccer.

Q I certainly don't want to get into your health concerns at all. I am curious if they impact your ability to play soccer.

A They --

MR. TRYON: Objection.

THE WITNESS: They don't actually affect my abilities to play.

[52]

BY MR. BARR: Q So help me understand how that impacts your decision on graduation.

A Because I have to decide if I want to take medicine that would impair me to play, but as it currently is, I can play.

Q So I'm not a doctor, I don't understand how any of that works, but what I hear you saying is if you do whatever the doctors are saying is an option, you'd have to stop playing soccer; is that right?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: I'm not my doctor either. I just know the options, and I'm weighing them carefully to decide what my next step will be, and I'm not sure yet, but I would love to stay in West Virginia and play soccer. And I am still currently on the team, so...

BY MR. BARR:

Q Were you in with the roster for -- the season is over right now; right?

A We are in a spring semester, but yes, it is a fall sport.

Q So, currently, there's no practices or games; right?

A We are in the spring semester, so there is [53] practices, it's just not for our season.

Q I don't -- I don't understand. What do you mean?

A So, typically, in collegiate sports, you have a season, and right now, we're in our offseason, but we are still allowed to practice and play scrimmage games, according to NCAA rules.

Q And those are official practices and official scrimmages?

A With our coach in West Virginia, yes, West Virginia State.

Q Are you still participating in those practices and scrimmages?

A Yes.

Q As we sit here today, do you expect to be on the team next fall?

A I would love to be.

Q Slightly different question.

Do you expect to be?

A I am not sure what the future holds yet because of the health concerns, and I have to carefully see and weigh the options.

Q I understand that.

When do you think you'll have to make that decision? I assume your coach is interested.

[54]

A She hasn't given me a specific time to make the decision yet.

Q Do you have an expectation of when that timeframe will be?

A I don't make the rules.

Q Just asking if you have an expectation of when that timeframe will be, if you need to decide if you're going to play or not.

MS. HOLCOMB: Objection.

THE WITNESS: I don't have an expectation.

BY MR. BARR:

Q When is scholarship awarded for next school year?

A For whom?

Q For you.

A Typically, we re-sign the paper in the spring, stating our scholarship, but my coach can decide when to allow us to sign the papers. Some people sign in June, July, August. It's up to our coach.

Q When did you sign last year?

A Sometime in the spring.

Q February?

A I think that's winter.

Q Okay. When -- what month did you sign your scholarship award last year?

[55]

A I'm not sure.

Q Where would we have to go to find that date out?

A I don't know. I don't have any papers on it.

Q It sounds like you signed a paper, and I'm just trying to figure out when.

MS. HOLCOMB: Object to form.

THE WITNESS: I'm not sure of the exact date. It was sometime in 2021.

BY MR. BARR:

Q So what is the spring to you, if it doesn't include February?

MS. HOLCOMB: Object to form.

THE WITNESS: Maybe March through June.

BY MR. BARR:

Q So as you sit here today, you believe that you would have signed your scholarship award package sometime between March and June of last year; is that right?

A Yes.

Q Do you expect that that same timeframe would apply to this year?

A I don't know.

Q Do you have any reason to think it won't?

MR. TRYON: Objection.

[56]

THE WITNESS: My coach is very patient. And seeing as I'm a captain and a starter, I'm sure that she would give me as much time as she could to keep me on the team.

BY MR. BARR:

Q What is your coach's name?

A Lisa Mann.

Q How do you spell your coach's last name?

A M-A-N-N.

Q Have you had discussions with Coach Mann about the possibility of you not playing next year?

A Yes.

Q Explain -- when was the first conversation you had with Coach Mann regarding the possibility you don't play next year?

A Sometime in February.

Q How many discussions have you had with Coach Mann regarding the possibility you don't play next year?

A I'm not sure.

Q More than five?

A I'm not sure.

Q More than ten?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

[57]

BY MR. BARR:

Q More than 20?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't recall saying it was more than ten either.

BY MR. BARR:

Q It sounds like you're not sure. I'm just trying to get a range here.

A More than one, less than 20, probably.

Q And that's the closest estimate you can give on the number of discussions you've had with Coach Mann about this?

A Yes.

MR. TRYON: Objection.

BY MR. BARR:

Q What -- what was Coach Mann's response?

A She wants me to do what's best for me.

Q Did she say anything else?

A She would love for me to stay on the team.

Q Did she also say that she would like to use that scholarship award for a different player if you're not going to come back?

A She did not tell me that.

Q What else did she say?

A To keep her updated.

[58]

Q Have you kept her updated?

A As much as I possibly can, because I'm not sure what my future holds yet.

Q So what did you tell her in your first update?

A I don't recall what I told her on the first update.

Q So you've updated your coach at least once, but you have no recollection of what you told Coach Mann?

A I didn't say that. You asked what I said on my first update. I'm not sure. There's been a couple conversations, more than one, like I said.

Q Okay. If we take all the update meetings together, what have -- what have you conveyed to Coach Mann?

A I've conveyed that I am still wanting to practice and be a part of the team, and I'm not sure what my plans are for the fall.

Q At no point Coach Mann said, hey, it would be really nice to know by X date?

A She would like to know, but she's never given me an exact date, no.

Q Did she give you a timeframe?

A No.

Q If you graduate in May, can you still play on [59] the team?

A Yes.

Q How?

A Because I am interested in possibly getting a Master's degree at West Virginia State, and I still have three years of NCAA eligibility, which would mean I can continue playing in the fall.

Q So you would play as a graduate student; is that right?

A That is what I'm saying.

Q What Master's are you interested in pursuing?

A Master's of Public Administration.

Q When's the application due for that?

A I'm not sure. I'd have to ask the professor.

Q Have you looked into it?

A I see the chair of the department or of the Master's of Public Administration a couple times a week, and yes, we have discussed it.

Q How long of a program is that?

A It depends on the -- how many hours you take, but I would expect a year and a half.

Q Why are you interested in getting a Master's of Public Administration?

A It would mean continuing my academic career and athletic career, which are both things that I love.

[60]

Q Did I read somewhere you want to be a lawyer?

A Yes.

Q Does West Virginia State have a law school?

A No.

Q Have you considered, upon graduation, going to law school?

A Yes.

Q Did you take the LSAT?

A Yes.

Q Have you applied to law school?

A Yes.

Q Where did you apply?

A I applied to University of Florida, FSU and ASU.

Q Warm states. Totally understand.

Any other schools?

A I don't think I've sent in my official applications to any other schools, no.

Q What other schools are you planning to send an official application to?

A Possibly the University of Houston.

Q Any others?

A I haven't really considered it because I'm not sure if I'm even going to be going to law school in the fall.

[61]

Q You've applied to three programs; is that right? FSU, UF and ASU?

A Yes.

Q Have you been admitted?

A I haven't gotten any decisions.

Q When do you expect to hear back?

A Hopefully soon.

Q If you get in, will you go?

A I don't know, because I would still love to continue playing soccer. I'm not ready to give it up yet.

Q Is there any reason you can't play soccer at FSU or UF or ASU?

A I'm not sure if I would be able to play soccer and do law school.

Q So it's not an eligibility concern; it's just a timing concern?

A Yes.

Q Do you think you'd make the team at FSU?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I would hope so. That would be cool.

BY MR. BARR:

Q Am I mistaken? Didn't Florida State win the [62] national championship a couple of years ago for women's soccer?

A They could have. I don't keep up with FSU sports.

Q Do you expect you'd make the team at University of Florida?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I don't know.

BY MR. BARR:

Q I presume you don't know if you would make the team at Arizona State either?

MS. HOLCOMB: Same objection.

THE WITNESS: I don't make the decisions for those coaches.

BY MR. BARR:

Q If you get into law school, are you going to try out for the team, or that's the end of soccer?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know. I definitely don't think that I said if I get into law school, I'm definitely -- it's definitely the end of law school -- or soccer, I mean.

[63]

BY MR. BARR:

Q Have you reached out to the coaches at any of those programs?

A No. That would be illegal to do because I'm not in the transfer portal.

Q You're not transferring; you're graduating; right?

A I still --

MS. HOLCOMB: Object to the form.

MR. BARR: I'm sorry, could you repeat that? That got --

MS. HOLCOMB: I would like to put my objection back on the record, please.

You can go.

THE WITNESS: I still can't reach out to those schools.

BY MR. BARR:

Q When are you able to reach out to those schools?

A I haven't looked into that because I really love playing at West Virginia State University.

Q But if I understand you correctly, there's a possibility you end up in law school, come the fall; right?

MS. HOLCOMB: Object to form.

[64]

MR. TRYON: Objection.

THE WITNESS: As you said earlier, a lot of things are possible.

BY MR. BARR:

Q Well, you've applied to three of them, and you're waiting to hear back; right?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: I want to play soccer at West Virginia State.

BY MR. BARR:

Q But you couldn't do that if you were in law school; right?

MS. HOLCOMB: Object to form.

THE WITNESS: I could not do that if I was in law school, correct.

BY MR. BARR:

Q Is the only interest you have in the Master's of Public Administration to play soccer?

A That's not the only reason.

Q What other reasons are there?

A I would be learning and getting a better education while I was playing soccer and cultivating relationships and learning important school skills.

Q Why do you think you could play soccer in the [65] Master's program, but not during a law school program?

A I don't know if a Master's program is as vigorous as law school will be.

Q When do you intend to apply for the Master's program?

MS. HOLCOMB: Object to form.

THE WITNESS: As I said earlier, I still don't know what I'm going to be doing yet.

BY MR. BARR:

Q Would you say it's more likely than not that you graduate this May?

MR. TRYON: Objection.

THE WITNESS: I'm not sure.

BY MR. BARR:

Q What's your expectation, sitting here today?

MS. HOLCOMB: Object to form.

THE WITNESS: It's really not set in stone yet.

BY MR. BARR:

Q I'm not asking if it's set in stone. I'm just saying today, March 11th, are you expecting to graduate in May?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: It's possible.

[66]

BY MR. BARR:

Q Ms. Armistead, do you plan on graduating in May? It's two months away. It's a fairly straightforward question.

MS. HOLCOMB: Andrew, I don't mean to provide a speaking objection, but I do think this is getting a little bit

excessive and harassing. That has been asked and answered. I suggest that you move on.

MR. BARR: Attorney Holcomb, I'm asking a very simple question that hasn't been answered. I'm just asking what her expectation is for two months from today, that's it.

MS. HOLCOMB: And she has told you multiple times that she does not yet know. That is asked and answered. Please proceed.

MR. BARR: Well, the question stands.

THE WITNESS: I am not sure, but if I do, I would still like to continue my education at West Virginia State.

BY MR. BARR:

Q When do you expect that you'll know if you're going to graduate in May?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know. Hopefully before May.

[67]

BY MR. BARR:

Q Has Coach Mann talked to you about graduation?

MS. HOLCOMB: Object to form.

THE WITNESS: What do you mean?

BY MR. BARR:

Q When -- in one or more of those updates you've had with Coach Mann, have you talked about graduation with her?

A I think, yes.

Q What did Coach Mann say?

A She wants me to get my Master's degree at State, if I chose to graduate this May, or she would want me to not graduate and just get two Bachelor's degrees so I could continue on in the fall without graduating.

Q What other Bachelor degree are you considering?

MS. HOLCOMB: Object to form.

THE WITNESS: It's not -- I'm not certain. I would be interested in psychology.

BY MR. BARR:

Q Did you file a form to graduate in May?

A Yes.

Q When did you file that form?

A Sometime before the due date.

[68]

MR. BARR: Attorney Holcomb, can you produce that because that's certainly relevant to your discovery request?

MS. HOLCOMB: We can certainly see if we can obtain that.

MR. BARR: Thank you.

While we're at it, if you could obtain the scholarship agreements that happened in the last two years and their date of signature, that would also clearly fall within our discovery request.

MS. HOLCOMB: Yeah, we don't have access to those, Lainey does not have them in her possession, but we can see if we can obtain them.

MR. BARR: Thank you.

BY MR. BARR:

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.

Q But sitting here today, you have no plans to do that?

MS. HOLCOMB: Object to form.

[69]

THE WITNESS: Sitting here today, I am not sure what my future holds yet.

BY MR. BARR:

Q I understand that. But your future for the two -- next two months, do you plan on withdrawing that form?

MS. HOLCOMB: Objection to form.

MR. TRYON: Objection.

THE WITNESS: I'm not sure.

BY MR. BARR:

Q Have you talked to your parents about graduating?

A Yes.

Q Explain to me those discussions.

A We have talked about all of the different options that I have, one being which I could graduate, another where I continue without graduating and get another Bachelor's degree, another where I get a Master's degree at State or go to law school.

But as I said earlier, there are a lot of options that I have to weigh carefully, but I would definitely love to be at West Virginia State.

Q What would your dad like you to do?

A What?

MS. HOLCOMB: I'm sorry, could you please [70] restate the question?

MR. BARR: Yes, absolutely.

BY MR. BARR:

Q In having those discussions you just described, what is your understanding of what your dad would like you to do?

A He wants me to decide for myself, and he said that he would support my decision.

Q He has no preference?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know what my dad's preference is.

BY MR. BARR:

Q So you've had these discussions with your parents and your dad just stated whatever you decide is fine with him?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: He wants me to do what I deem best for myself. I'm the one who is going to be graduating or staying or playing soccer. So, ultimately, both of my parents want me to decide to do what's best for me.

Would he love to continue seeing me play because I've been playing since I was little? I'm – I [71] would assume he would.

BY MR. BARR:

Q Does your mom have a preference for what you do?

MS. HOLCOMB: Object to form.

THE WITNESS: She said that she would be supportive.

BY MR. BARR:

Q I understand that. And I'm sure your parents would be supportive. I'm just curious if your mom has a preference for what decision you make for yourself.

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I know she likes watching me play soccer, but I can't answer on what she wants me to do.

BY MR. BARR:

Q So you've had the discussions about graduating with your parents, and as far as you can tell, they're okay with whatever you choose?

MR. TRYON: Objection. Come on.

MS. HOLCOMB: Objection.

THE WITNESS: They'll be supportive, I believe.

[72]

BY MR. BARR:

Q Do your parents want you to go to law school?

MS. HOLCOMB: Object to form.

THE WITNESS: I'm not sure exactly what they want me to do with my life.

BY MR. BARR:

Q Have you talked to them about the Master's of Public Administration?

A Yes.

Q What did they say about that?

A They told me that they would be supportive of whatever I did. I believe my mom would like me to get my MPA.

Q Do you believe your dad wants you to get your MPA?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I don't know. My parents would want me to do whatever I see fit.

BY MR. BARR:

Q But sitting here today, you're just not sure what that is?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection again.

THE WITNESS: I don't think that's what I [73] said.

BY MR. BARR:

Q What did you say?

A They want me to do what I think is best for my future.

Q Maybe my question wasn't clear, I'm sorry.

My question was, sitting here today, you don't know what you think is best for your future?

MS. HOLCOMB: Object to form.

THE WITNESS: I know what I would love to do, and that's to continue playing the sport that I love.

BY MR. BARR:

Q But it's uncertain whether that will happen or not?

MS. HOLCOMB: Object to form.

MR. TRYON: I'm sorry, Mr. Barr, could you repeat that? I couldn't hear it.

MR. BARR: Yes, I said, and it's uncertain whether that will happen?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know yet.

BY MR. BARR:

Q Do you know who B.P.J. is?

A I know that that's the plaintiff.

Q What do you know about B.P.J.?

[74]

A There's nothing that I know for certain about B.P.J. other than she's the plaintiff.

Q What do you mean there's nothing you know for certain?

A You asked me what I knew about her. I don't know who that is. I don't know who -- I know that P.B. -- B.P.J. is the plaintiff.

Q You've never met or spoke with B.P.J. before?

A No.

Q Are you aware that B.P.J. is 11 years old?

A I don't know.

Q Are you aware that B.P.J. ran cross-country on her middle school's girls' cross-country team last year?

A I don't know.

Q You don't know that?

A (No response.)

Q I'm sorry, that was a question.

You -- you're not -- you're not aware that B.P.J. ran on her middle school's girls' cross-country team last fall?

A I don't know.

Q You don't know, or you're not aware of that?

MS. HOLCOMB: Objection.

THE WITNESS: I don't know.

[75]

BY MR. BARR:

Q Are you aware that B.P.J.'s middle school supports her inclusion on the girls' team?

A I don't know.

Q Are you aware that B.P.J.'s school has a transgender support plan for B.P.J.?

A I don't know.

Q Do you know anything about B.P.J.'s athletic interests?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q Sitting here today, do you know anything about B.P.J. at all other than the fact --

MS. HOLCOMB: Object to form.

BY MR. BARR:

Q -- that B.P.J. is the plaintiff?

MS. HOLCOMB: Object to form.

THE WITNESS: I believe that B.P.J. doesn't like the law from West Virginia.

BY MR. BARR:

Q What law is that?

A H.B. -- sorry, the numbers, I forget -- 3293.

Q You -- I get distracted with the numbers all the time, so don't worry about that.

[76]

So other than your understanding that B.P.J. doesn't like H.B. 3293, do you know anything else about B.P.J.?

A No.

Q Would you be surprised to learn that B.P.J.'s school didn't have to cut any girls when they allowed B.P.J. to play on the girls' team last year?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q What is your understanding of how B.P.J. placed in the cross-country events that she participated in last year?

A I don't know.

Q Do you have any understanding at all? First? Last? Middle of the pack?

A I don't know.

Q Do you know how many events B.P.J. participated in last year for cross-country?

A No.

Q Did you run cross-country growing up?

A No. I would run races, but it wasn't organized cross-country.

Q What kind of races?

A Just in elementary school, we would have races [77] once a year.

Q Explain -- explain that to me. Some sort of -- everybody in the school goes down to the field and runs a distance, something like that?

A Something like that, divided by grade and gender.

Q Did you win?

A Yes.

Q Every time?

A Yes.

Q Were you first for everyone in your grade?

A For all the girls, yes.

Q What years is this?

A Kindergarten through fifth grade.

Q Have you been a part of any other organized or semiorganized running events, other than that?

A No.

MR. BARR: Let's go off the record.

THE VIDEOGRAPHER: All right. I was on mute. Okay. We're going off the record. The time is 1:52 p.m., and this is the end of Media Unit Number 2.

One moment.

(Recess.)

THE VIDEOGRAPHER: Okay. We are back on the [78] record at 2:06 p.m., and this is the beginning of Media Unit No. 3.

Go ahead, please.

MR. BARR: Ms. Armistead, I just introduced to you and your counsel what has been previously marked as West Virginia Exhibit 34. Let me know you've got that in front of you.

THE WITNESS: I have it in front of me.

BY MR. BARR:

Q Do you recognize this document?

A It looks like H.B. 3293.

Q Have you read this before?

A Sorry?

Q Have you read what is now Exhibit WV-34 prior to seeing it now?

A I have read a little bit of it before, but not the whole thing.

Q What part of it did you read before?

A The -- article 2, paragraph 1 and 2.

Q Did you read anything else?

A Not a full read, no.

Q So prior to today, article 2, section 1 and 2, you've -- you've read, but everything else -- this will be -- I'm just trying to gauge timing -- it will be new for you?

[79]

A Yeah.

Q What is your understanding of the impact of H.B. 3293?

A My understanding is that it will keep biological women competing with biological women in sports.

Q Where did you get that understanding?

MS. HOLCOMB: I'll just object to the extent it calls for any communications with counsel, but Lainey, you may answer.

THE WITNESS: Through conversations with my attorney.

BY MR. BARR:

Q Other than in discussions with your attorney, do you have any other reason to think that's what H.B. 3293 does?

A I had heard that that's what they did too.

Q Who did you hear that from?

A I don't remember exactly.

Q Do you remember when you had that conversation?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know how to answer that question without giving privileged information.

[80]

BY MR. BARR:

Q Let me ask it a different way.

Is your entire understanding of the impact of H.B. 3293 based on discussions with your attorney?

A Yes.

Q Under this law, can B.P.J. play on a girls' school sports team?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I can't make a legal determination.

BY MR. BARR:

Q Is it your understanding that this law would prohibit B.P.J. from playing on her school's girls' team?

A I'm not sure.

Q So sitting here today, you don't know one way or the other whether B.P.J. could play on the girls' team based -
-

MS. HOLCOMB: Ob- --

BY MR. BARR:

Q -- on this law?

MS. HOLCOMB: Sorry. Object to form.

THE WITNESS: I'm not sure because I'm not an attorney.

[81]

BY MR. BARR:

Q What is your understanding of what happens if you win in this lawsuit?

A I'm not sure.

Q Why did you think it would be important to intervene if you don't understand the impact of intervening?

A I believe that keeping this law in place will result in fair and equitable playing for women in -- in sports.

MR. BARR: That wasn't my question.

Court Reporter, can you read back the question, please.

(Record read.)

MS. HOLCOMB: I'll just object to form.

THE WITNESS: I understand that intervening means that I think that the bill is a good step of legislation, and I believe that it will help keep the playing fields even and equal, and that's why I thought it was so important to intervene.

BY MR. BARR:

Q That brings me back to -- maybe I just didn't understand your answer before.

What happens if you win?

A I guess the law stays as it is.

[82]

Q And what happens if you lose?

A I can't speculate on what will happen if I lose. I'm not sure.

Q Do you have any understanding at all?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I don't know.

BY MR. BARR:

Q Why did you intervene in the lawsuit if you don't know what happens if you win or lose?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: Again, that's not what I said.

I understand that if -- if this law stays in place, that women will be protected and it will keep the playing field even and equitable for women in sports.

BY MR. BARR:

Q Which women?

A Women --

MR. TRYON: Objection.

THE WITNESS: I'm confused on your question.

BY MR. BARR:

Q Well, you said that the law will protect women's sports, something along those lines, and I'm [83] asking, which women is it protecting?

A Women.

Q All women?

A Biological women in sports.

Q When did you first become aware of this law?

MS. HOLCOMB: Object to form and also to the extent that it calls for privileged information again.

MR. BARR: You know, Christiana, I would be willing to just -- I'm not trying to get any privileged information at all. And if the answer is that Ms. Armistead didn't know about this law until she spoke with your office, I'll -- I'll move on. I'm just trying to understand.

MS. HOLCOMB: Sure. We've -- this is also asked and answered a couple of times, which is in part while I raised the objection again. But yes, I will continue to maintain attorney-client privileged objections.

BY MR. BARR:

Q Okay. So I'll ask again, when did you first become aware of this law?

MS. HOLCOMB: Same objection.

THE WITNESS: I can't answer that without divulging privileged information with my attorney.

BY MR. BARR:

[84]

Q Was Jamie Metzger part of that conversation?

A No.

Q I don't want to know anything that was said, but who was at that -- who was present for that conversation?

A Christiana.

Q Anyone else?

A No.

Q But you don't recall when that conversation happened?

MS. HOLCOMB: Objection to form again.

THE WITNESS: Sometime in 2021.

BY MR. BARR:

Q Was it on the phone?

A I don't recall.

Q Was it in person?

A No.

Q So it was in some type of virtual format, phone, computer, something like that?

A Yes.

Q Did Ms. Holcomb reach out to you, or did you reach out to Ms. Holcomb?

MS. HOLCOMB: Again, objection to the extent it calls for privileged information.

And I'm not sure why we're retreading ground [85] that's already been covered, Counsel.

MR. BARR: I went back and looked at the transcript, and I still don't fully understand, so I'm just trying to make sure we have clarify on the record.

MS. HOLCOMB: I also want to just state my objection to revisiting ground already trod.

MR. BARR: Noted.

THE WITNESS: I don't know how to give you an answer without divulging attorney-client privileges.

BY MR. BARR:

Q Ms. Holcomb can certainly correct me, but the manner in -- who -- who reached out to who wouldn't be a privileged communication, I'm aware of, and I didn't hear Ms. Holcomb direct you not to answer based on privilege. So I'll ask the question again.

Did Ms. Holcomb reach out to you?

A Yes.

Q Does this law apply to club sports?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q Does it apply to grade school sports?

MS. HOLCOMB: Objection to form.

MR. TRYON: Objection.

[86]

THE WITNESS: I don't know.

BY MR. BARR:

Q Does it apply to intramural sports at West Virginia State?

MR. TRYON: Objection.

MS. HOLCOMB: Objection to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q Does it apply to all the schools in your conference?

MS. HOLCOMB: Objection.

MR. TRYON: Objection.

THE WITNESS: I don't know.

BY MR. BARR:

Q Does it apply to all school-sponsored sports in West Virginia?

MS. HOLCOMB: Object to form.

MS. MORGAN: Object to form.

MR. TRYON: Objection.

THE WITNESS: I don't know.

BY MR. BARR:

Q Tell me what you do know about this law.

A I don't know anything because I'm not an attorney.

Q So to the extent you've said things about this [87] law in other contexts, you didn't have a basis to say that?

MS. HOLCOMB: Object to form.

THE WITNESS: Can you repeat the question?

BY MR. BARR:

Q Sure. I understood your last answer to be that you don't understand the scope or impact of this law because you're not a lawyer. Did I say that correctly?

MS. HOLCOMB: Object to form.

THE WITNESS: That's not what I said.

BY MR. BARR:

Q What did you say?

A I said I'm not going to make legal commentation on something that I can't make legal commentation on because I'm not an attorney.

Q And by "legal commentation," you mean whether or not the law applies to a particular school or a particular person; is that right?

MS. HOLCOMB: Object to form.

BY MR. BARR:

Q You tell me what you meant by “legal commentation.”

A Any legal commentary, I’m going to say I don’t know.

[88]

Q And discussing the impact of this law would fall in legal commentary, as far as you understand it?

A What do you mean, the impact?

Q Well, I asked if you knew if this law applied to club sports. Is that something that you would consider legal commentary?

A I don’t know if it applies.

Q And then I asked if this law applied to every school in your conference. Is that something you would consider legal commentary?

A I said I don’t know.

Q And then I said, tell me what you do know about this law.

MS. HOLCOMB: Object to form.

THE WITNESS: What my understanding is, is that this will protect women in sports.

BY MR. BARR:

Q What do you mean by “protect”?

A Women are built different than biological men. Biological men are stronger, fitter, faster, have a bigger stature, in general, than women. So this law, it was put into

place to protect women, women's safety and their interests.

Q Is this law accomplishing what you just said by excluding transgender women?

[89]

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: Can you restate the question, please?

MR. BARR: Is --

Court Reporter, could you read the question back, please.

(Record read.)

MS. HOLCOMB: Same objection.

THE WITNESS: Can you restate it in a different way?

BY MR. BARR:

Q Is it that you don't understand the question?

MS. HOLCOMB: Object to form.

THE WITNESS: I just would like you to restate it in a different way.

BY MR. BARR:

Q You just told me a series of things that you believe the law is accomplishing; is that right?

A Yes.

Q And you said fairness, and I believe you said safety; is that right?

A Correct.

Q And my question to you is, how is this law accomplishing those goals?

[90]

MS. HOLCOMB: Object to form.

THE WITNESS: By -- by protecting fairness and safety for biological women in sports.

BY MR. BARR:

Q I understand that that's what you believe the goal of the law to be. I'm asking how it does that.

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: That's not for me to interpret.

BY MR. BARR:

Q Well, you're intervening in this lawsuit to protect the law. I'm trying to understand why.

What do you think this law is doing? How does it accomplish those goals?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I don't know. I think I already answered your question.

BY MR. BARR:

Q So you don't know how the law accomplishes those goals; you're just aware that those are the goals of the law?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: I'm aware that that's what, I [91] believe, the law would be doing if it's in effect, yes.

BY MR. BARR:

Q If the law is in effect, can B.P.J. play on a girls' team?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q If the law is in effect, can a transgender woman play on a girls' team?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I don't know.

BY MR. BARR:

Q Does this law apply to contact sports?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q Does this law apply to noncontact sports?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q Do you have any understanding what sports this law applies to?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

[92]

BY MR. BARR:

Q Do you know if this law applies to esports, when people sit around and play video games on behalf of their school?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q Do you know if this law is different than the NCAA's policy regarding transgender women playing school sports?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q You said it's your understanding this law will protect women for safety and fairness reasons. Did I understand that correctly?

A Yes.

Q Are there any other things that this law does?

MS. HOLCOMB: Object to form.

THE WITNESS: I told you what my understanding was.

BY MR. BARR:

Q I'm just trying to make sure I'm comprehensive in understanding what you told me. I heard "fairness and safety." Is there anything else?

[93]

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q Would you be surprised to learn that this law does not apply to every school in your conference?

MS. HOLCOMB: Objection.

MR. TRYON: Objection.

THE WITNESS: I don't know.

BY MR. BARR:

Q You don't know if you would be surprised, or you didn't know that that was the case?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I just don't know.

BY MR. BARR:

Q I heard you. I'm trying to figure out what you don't know. Do you not know that the law doesn't apply to every school in your conference?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I don't know. No, I don't know.

BY MR. BARR:

Q Is this law changing things from the way they were before?

[94]

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I don't know.

BY MR. BARR:

Q Would you expect that if a law is passed, it's meant to change things?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I don't know.

BY MR. BARR:

Q Do you know any transgender people?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: I have an -- had an acquaintance a few years ago, that there are rumors that they have transitioned or started a transition or something, but I'm really not certain.

BY MR. BARR:

Q Who is that person?

A I don't know the name they currently go by.

Q Well, I appreciate you not using their former name. Other than that person, do you know any transgender people?

MS. HOLCOMB: Object to form.

[95]

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

BY MR. BARR:

Q Have you ever competed in a soccer game with or against someone who's transgender?

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

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

MR. TRYON: Objection.

THE WITNESS: I don't know.

BY MR. BARR:

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

A No.

Q If I asked you to tell me what that phrase means, would you be able to do that?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: No.

BY MR. BARR:

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

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

Q But nothing specific comes to mind?

A Correct.

[96]

Q What do you know about puberty blockers?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q Have you ever heard of puberty blockers?

A I've heard of that.

Q What is your understanding of what puberty blockers are?

MR. TRYON: Objection.

MS. HOLCOMB: Same objection.

THE WITNESS: I don't know.

BY MR. BARR:

Q So you've heard of it, but you don't have an understanding of what it means?

A Correct.

Q Have you ever heard of hormone replacement therapy?

A Yes.

Q Do you have an understanding of what that is?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q I'm sorry, I didn't hear you.

A I don't know.

[97]

Q Do you have any thoughts about what happens to someone who starts puberty blockers before going through puberty?

A I don't know.

Q Have you ever read anything that describes what might happen to someone who takes puberty blockers before going through puberty?

A I'm not sure.

Q Do you think transgender girls are faster than you?

MR. TRYON: Objection.

A I think in general, biological males are stronger, fitter, faster and have a bigger stature than women do.

BY MR. BARR:

Q My question was, do you think transgender girls are faster than you?

MR. TRYON: Objection.

MS. HOLCOMB: Objection; form.

THE WITNESS: I think in general, biological males are faster than me, yes.

BY MR. BARR:

Q So if I'm hearing you correctly, and I'm not trying to put words in your mouth, your response was that all biological males are faster than you?

[98]

MR. TRYON: Objection.

MS. HOLCOMB: Objection.

BY MR. BARR:

Q Is that what you said?

A I believe I said in general.

Q Do you believe that all transgender girls -- let me rephrase it. Do you believe, in general, transgender girls are faster than you?

MS. HOLCOMB: Objection --

MR. TRYON: Objection; asked and answered.

THE WITNESS: I already answered that.

BY MR. BARR:

Q You answered about biological males. I'm asking about transgender girls.

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I believe biological males are in gen-- are generally faster than females.

BY MR. BARR:

Q Every time that I ask about a transgender girl and you respond with "biological males," are we, from your perspective, talking about the same thing, the same group of people?

A Yes.

[99]

Q So if I ask a question and you respond saying "biological males," I can understand you to be, from my perspective, my definition, meaning a transgender girl; is that right?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I'm just going to answer the questions how I know to answer the questions.

BY MR. BARR:

Q I understand, but I'm just trying to speed this up for both of us. If I can understand that when I say

“transgender girl” and you respond with “biological male,” if we’re -- if you’re answering the question I’m asking, and we’re all talking about the same group of people with our understood difference of opinion there, it’s going to allow us to run through the next set of questions faster, but I’m happy to not do that if you don’t want to.

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I’m still going to answer how I’ve been answering.

BY MR. BARR:

Q Okay. Do you believe that transgender girls are bigger than you?

[100]

MS. HOLCOMB: I’m sorry, Andrew, we didn’t fully hear your question.

MR. BARR: I asked if it was her belief that transgender girls are bigger than her.

THE WITNESS: In general, biological men are bigger than women, yes.

BY MR. BARR:

Q Where did you form that opinion?

A Observation.

Q Is that it?

A Yes. Looking around, in everyday life, I can see that biological men are typically bigger than me.

Q Do you recognize there’s a difference between transgender women and biological men?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q Why do you keep using the phrase "biological male"?

MS. HOLCOMB: Object to form.

THE WITNESS: Because that's my vocabulary.

BY MR. BARR:

Q Why don't you also say "biological female," then?

MS. HOLCOMB: Object to form.

[101]

MR. TRYON: Objection.

THE WITNESS: I don't know.

BY MR. BARR:

Q So a typical conversation, you'll say "women" and "biological males"?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know. Probably not.

BY MR. BARR:

Q So why do you keep saying that today?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: Because I'm choosing to.

BY MR. BARR:

Q Why are you making that decision?

MS. HOLCOMB: Object to form.

THE WITNESS: That's how I'm choosing to answer your questions.

BY MR. BARR:

Q Okay. Well, let me -- help me. What is a biological male?

MS. HOLCOMB: Object to form.

THE WITNESS: Someone who -- I believe someone whose gender is male, assigned male at birth and is a male.

[102]

BY MR. BARR:

Q That's a biological male?

A Yes.

Q What word do you describe someone who was assigned male at birth, but their gender identity is female?

MS. HOLCOMB: Object to form.

THE WITNESS: I would say "biological male."

BY MR. BARR:

Q So explain to me the difference between what I ask and what you're saying for biological male.

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: I'm sorry?

BY MR. BARR:

Q If I heard you correctly, you said a biological male is someone who is assigned the sex of male at birth, has a gender -- gender identity of male. Did I get that correct?

MS. HOLCOMB: Object to form.

THE WITNESS: I'm not sure. I'm not a doctor.

BY MR. BARR:

Q Okay. Let's -- let's start over. I must have misheard you. What is your understanding of what a biological male is?

[103]

A I'm not a doctor.

Q I -- I understand that you're not a doctor. What is your understanding of what a biological male is?

A I don't know.

Q The court reporter could tell us, but I bet you used the word -- the phrase "biological male" more than 30 times. What does it mean?

MS. HOLCOMB: Object to form.

MR. TRYON: I'm just going to object. Asked and answered.

THE WITNESS: Someone who was -- I think someone who was assigned male at birth and identifies as a male.

BY MR. BARR:

Q Okay. That's what I heard you say the first time, so I appreciate you clarifying that. What do you call someone who was assigned male at birth but identifies as a female?

MS. HOLCOMB: Object to form.

THE WITNESS: Biological male.

BY MR. BARR:

Q So regardless how the person identifies, you would call them a biological male?

MR. TRYON: Objection.

[104]

THE WITNESS: I didn't say what I would call them. That's just how I'm referring to what you're asking today, biological males.

BY MR. BARR:

Q So if it wasn't today, what would you refer to them as?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I would think it's someone who's a biological male.

MR. BARR: Court Reporter, could you read the answer prior to the last answer, please.

(Record read.)

BY MR. BARR:

Q So what would you call them?

MS. HOLCOMB: Object to form.

THE WITNESS: If someone asks me to call them by a certain name, then I would, but that doesn't mean that it changes what I am considering a biological male.

BY MR. BARR:

Q Could you explain that? Because that doesn't make any sense to me.

A I would respect what someone would want their name to be called.

[105]

Q So if somebody walked up and said, I'm a transgender female, you would refer to them as a transgender female?

A I --

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: If someone asked me to call them by "Joe," then I would call them by their name -- by what name that they told me that they wanted to be called, which would be "Joe," "Michael," whatever it would be, but that doesn't change my answer of biological male.

BY MR. BARR:

Q I think I understand what you're -- you are saying that you would respect the name that they would like to be called, but regardless, you would still consider someone who was assigned male at birth a biological male?

A Yes.

Q Where did you learn that phrase? That's not how most people talk in day-to-day conversation, so I'm trying to understand why you're choosing to use it today.

A I thought it would clarify the conversation so you would know what I was talking about.

[106]

Q And why did you think that?

A Because of your terms that you've been using.

Q I don't -- I don't understand. The terms that I'm using have led -- let you to use the term "biological male"?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: I think it's -- it's clarifying the conversation, but I will just refer to all biological males as "males" from now on, if you would prefer.

BY MR. BARR:

Q No, you should answer however you feel most comfortable. I'm just trying to make sure I understand. When did you first use the phrase "biological male"?

A I couldn't tell you.

Q You've been using it your whole life?

A I might have said it a long time ago at some point. I'm not sure.

Q If you were to introduce me to your brother, would you say, This is Declan, a biological male?

MR. TRYON: Objection; harassment.

MS. HOLCOMB: Object to form.

[107]

THE WITNESS: No.

BY MR. BARR:

Q How would you introduce me to Declan?

A "This is Declan."

Q So what changed that you want to use the phrase "biological male" today if you don't use it in common speak?

MR. TRYON: Objection; asked and answered about three times now.

MS. HOLCOMB: Object to form.

THE WITNESS: I think I answered that.

BY MR. BARR:

Q Just give me a moment. Did I hear you say earlier that you're not aware of having been on a team with a transgender girl?

A I'm not aware of that, no.

Q Have you ever been injured by a transgender girl?

A Not to my knowledge.

Q Have you ever been harmed by a transgender girl?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: Not to my knowledge.

[108]

BY MR. BARR:

Q Do you play any sports at West Virginia State other than soccer?

A No.

Q Do you have plans to play any other sports at West Virginia State other than soccer?

A No.

Q Do you believe that H.B. 3293 applies to the West Virginia women's soccer team?

MS. HOLCOMB: Object to form.

THE WITNESS: I'm not sure.

BY MR. BARR:

Q What position do you play?

A Left center back.

Q Have you always played that position?

A No.

Q What position did you play before that?

A I've played in many different positions on the soccer field.

Q And when did you become a left center back as a regular position?

A My sophomore year of college.

Q What position were you your freshman year of college?

A Left wingback or left center back.

[109]

Q Why did you change?

A I was needed for the left center back position.

Q Your choice or the coach's choice?

MS. HOLCOMB: Object to form.

THE WITNESS: My coach's choice.

BY MR. BARR:

Q You don't seem happy with that choice; is that right?

MS. HOLCOMB: Object to form.

THE WITNESS: I love both positions probably equally.

BY MR. BARR:

Q Well, I was a wingback, and I loved running, you know, the edges of the field, so I would understand if you were a little upset about it, but in any event. Is your team good?

A Yes.

Q How long has West Virginia State had a team, a women's soccer team?

A Since fall of 2019.

Q You were on the inaugural team; right?

A Yes.

Q Did you play your freshman year?

A Yes.

[110]

Q Did you start?

A Yes.

Q Every game?

A I was injured, but other than that, yes.

Q How were you injured?

A I had to sit out one game for a fractured foot, and I think that's it for my freshman year.

Q What was your record freshman year?

A I don't recall. Good. It was good, though.

Q More wins than losses?

A Yes.

Q Did you go to the conference tournament that year?

A Since it was an inaugural season, no.

Q The conference didn't allow you to play? Explain that.

A For first-year teams, although we were playing games and competing, it was not for the title. That is how I still have an extra year of NCAA eligibility and one of the reasons that I decided to come to West Virginia State.

Q I understood the part about eligibility. Why did that encourage you to attend West Virginia State?

A Because it would let me play soccer for [111] longer.

Q What was your team's record last year, 2020?

A I'm not sure of the record, but we qualified for the tournament.

Q Did you win the tournament?

A No.

Q Did you make it to the finals?

A No.

Q How did you guys do?

A We lost in the first round.

Q What about this year, 2021?

A Oh, I was answering for this last season, sorry.

Q No, that's okay. So in 2021, this year, you qualified for the tournament, but didn't make it past the first round; is that right?

A Yes.

Q What happened in 2020, last year? I imagine COVID impacted your season or something, but I'm still curious how you-all did.

A Yes, COVID impacted it. So instead of the fall, we played a shorter spring season. And I don't remember how we did, but we didn't get into the tournament.

[112]

Q I imagine it was a big step to -- to qualify this year.

A Yes. It was impressive for our first official season in the NCAA.

Q Over the last three years, have you played a college called "Notre Dame"? And I'm not talking about the Fighting Irish. I'm talking about the Notre Dame in your conference.

A Yes.

Q Did you play the Fighting Irish?

A No, we didn't.

Q So if I -- if I talk about Notre Dame, you'll understand I'm talking about the Notre Dame in your conference?

A Yes.

Q Do you know where Notre Dame is located?

A I'm not sure.

Q Would it surprise you to find out it is not in West Virginia?

MS. HOLCOMB: Object to -- object to form.

THE WITNESS: That wouldn't surprise me.

BY MR. BARR:

Q How about a school called "Frostburg"?

A What about it?

Q Have you played a game against Frostburg?

[113]

A Yes.

Q Do you know where Frostburg is located?

A Not in West Virginia.

Q I'm asking you.

A I don't know. It was a guess.

Q Would you be surprised to find out it's not in West Virginia?

MS. HOLCOMB: Object to form.

THE WITNESS: No.

BY MR. BARR:

Q Do you have any understanding of whether H.B. 3293 applies to Notre Dame?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q The same question for Frostburg.

MS. HOLCOMB: Same objection.

MR. TRYON: Objection.

THE WITNESS: I don't know.

BY MR. BARR:

Q If you end up playing on the team next year, do you anticipate you'll play against Notre Dame?

MS. HOLCOMB: Object to form.

THE WITNESS: Most likely.

[114]

BY MR. BARR:

Q And you say most likely because they're one of the schools in your conference; right?

A Right.

Q Do you also expect that if you were to play on the team next year, you would play against Frostburg, given that Frostburg is in your conference?

MS. HOLCOMB: Object to form.

THE WITNESS: It's likely.

BY MR. BARR:

Q Do you have any understanding whether a transgender woman can play on Frostburg or Notre Dame's team?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q If you found out that a transgender woman was on Notre Dame or Frostburg's team, what would you do?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: I would play a soccer game.

BY MR. BARR:

Q I understand you have a medical concern that may impact soccer, but assuming that everything goes [115] well for you and that doesn't impact your game, do you plan on playing competitive soccer after college?

MS. HOLCOMB: Object to form.

THE WITNESS: What kind of competitive soccer?

BY MR. BARR:

Q Do you have -- fair. I'll ask a different question. Do you have any plans to play soccer postgraduation, of any kind?

A If the opportunity arises, I would love to continue playing soccer.

Q What type of opportunities are you aware of for playing soccer postgraduation?

A I'm sure in many cities there are women's teams that I could join for things like that.

Q So some type of recreational, fun league is what you're referencing?

A Yes.

Q Any plans of trying out or trying to join the U.S. women's national team?

A No.

Q Do you know anybody on that team?

A No.

Q Would you agree with me they're probably the best players in the country, if not the world, when it [116] comes to women's soccer?

MS. HOLCOMB: Object to form.

THE WITNESS: I think that they are amazing athletes.

BY MR. BARR:

Q What was your reaction when you saw that they recently got equal pay for women on the national team?

MS. HOLCOMB: Object to form.

THE WITNESS: I was happy for them.

BY MR. BARR:

Q Did you happen to see their game last month in Texas?

A I did not.

Q Did you see the team came out publicly supporting transgender youth?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: I did not see that.

MR. BARR: We can go off the record.

THE VIDEOGRAPHER: All right. We are going off the record. The time is 3:03 p.m., and this is the end of Media Unit No. 3.

(Recess.)

THE VIDEOGRAPHER: We where back on the record at 3:13 p.m., and this is the beginning of Media Unit [117] No. 4. Go ahead, please.

BY MR. BARR:

Q Ms. Armistead, do you know what Title IX is?

A I -- I've heard of it before.

Q What is your understanding of Title IX?

A I believe it's to give equal opportunities to women.

Q Do you have any other understandings about Title IX?

A I don't know for certain.

Q So if I heard you correctly, Title IX is about protecting women's rights; is that right?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: In my opinion, yes.

BY MR. BARR:

Q How did you form that opinion?

A I believe we have to have Title IX trainings to participate in collegiate athletics.

Q And those are annual, aren't they?

A Yes.

Q So at this point, you've attended three Title IX trainings; is that right?

A I'm not sure about the third one yet.

[118]

Q So you know you've attended two and possibly a third; is that fair?

A I believe so, yes.

Q Who conducts that training?

A I think it might be online. I'm not for sure.

Q That wasn't a fair question, I'm sorry. Is that put on by your school?

A Yes.

Q So as a student athlete, you're required to sit through a Title IX training on some type of basis. Is that accurate?

A Yes.

Q What did you learn at those trainings?

A I don't recall specifics.

Q Do you believe that your school complies with Title IX?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I don't know.

BY MR. BARR:

Q Do you have any reason to think your school doesn't comply with Title IX?

A I have no reason to think that, no.

Q Do women's rights include transgender women's rights?

[119]

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I believe that women's -- whenever I am referring to women's rights, I'm referring to biological women's rights.

BY MR. BARR:

Q Does that mean transgender women don't have rights?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: That's definitely not what I said.

BY MR. BARR:

Q If Title IX protects women's rights, but not transgender women's rights, what rights do transgender women have?

MR. TRYON: Objection; asked and answered.

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q Do you think transgender women should be protected by the law?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

By what law?

[120]

BY MR. BARR:

Q Just any law.

MS. HOLCOMB: Object to form.

THE WITNESS: I believe that living in the United States allows all people in the United States to have rights and protections under the Constitution.

BY MR. BARR:

Q And that would include transgender women?

MR. TRYON: Objection.

THE WITNESS: That would include everyone.

BY MR. BARR:

Q Does West Virginia State do a good job of protecting women's rights?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't have any reason to think that it doesn't.

BY MR. BARR:

Q Have any of your school's policies regarding Title IX harmed you?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know what you're asking.

BY MR. BARR:

Q Has your school ever done something, on the premise that Title IX requires them to do so, that you disagree with?

[121]

MS. HOLCOMB: Object to form.

THE WITNESS: Not to my knowledge.

BY MR. BARR:

[Redacted]

MR. BARR: Let's go off the record.

MS. HOLCOMB: Yeah, that sounds great.

THE VIDEOGRAPHER: Hang on. Hang on. Hang on.

We're going off the record. The time is 3:21 p.m.

(Recess.)

THE VIDEOGRAPHER: All right. We are back on the record at 3:29 p.m.

Go ahead, please.

(Lainey Armistead left the room.)

[Redacted]

[122]

[Redacted]

(Lainey Armistead entered the room.)

MR. BARR: Ms. Armistead, I've introduced an exhibit, Exhibit 43. Let me know when you've got it in front of you.

(Exhibit 43 was marked for identification by the court reporter and is attached hereto.)

THE WITNESS: Got it.

MS. HOLCOMB: If you'll hold for just one moment, I don't.

Okay. You're good to proceed. Thank you.

BY MR. BARR:

Q Do you recognize the document, Ms. Armistead?

[123]

A Um.

Q I can ask a different question.

Is this the policy that would have presented to you on an annual basis as part of the Title IX training at West Virginia State University?

A It could have been.

Q So this document, Exhib- -- Exhibit 43, is entitled "Unlawful Discrimination and Harassment, Sexual Harassment, Grievance Procedures, Child Abuse and Neglect Reporting and Relationships."

Did I read that correctly, Ms. Armistead?

A Yes.

Q And this is published by the West Virginia State University Board of Governors as BOG Policy No. 14.

Did I read that correctly?

A Yes.

Q You have the right to read this whole policy, if you would like; otherwise, I can direct you to specific questions. You let me know what you prefer.

A You can direct me.

Q Okay. If you go to the bottom of page 1, you'll see section 3.1. Tell me when you see that.

A Got it.

Q Cognoscente of the break we just had, I'm

[124]

going to just pinpoint a couple of specific words and phrases for you; however, if you would like to read the whole paragraph, you're more than welcome to do so, okay?

3.1 says (as read):

"Title IX of the Education Amendments...and other state and federal laws prohibit unlawful discrimination on the basis of sex."

Do you see that?

A I do see that.

Q Did I read that correctly?

A Yes.

Q If you keep going, it says (as read):

"In accordance with The West Virginia Higher Education Policy Commission and Board of Governors Policy #17, the University considers" --

And I'm going to skip through some of these.

(As read):

-- sex and gender and gender identity as protected under federal, state and local antidiscrimination laws as protected characteristics and will not permit unlawful discrimination or [125] harassment.

Did you follow that?

A Yes.

Q What do you understand the phrase “basis of sex” mean -- to mean?

A I believe that that is referring to the gender of someone.

Q Do you have any reason to dispute your school’s statement that Title IX and other state and federal laws prohibit unlawful discrimination on the basis of sex?

MS. HOLCOMB: Object to form.

THE WITNESS: I don’t know.

BY MR. BARR:

Q You don’t know if you have a reason to dispute it, or you just don’t know if that’s true?

MS. HOLCOMB: Object to form.

THE WITNESS: I don’t know if I have a reason to dispute it.

BY MR. BARR:

Q Does that mean you don’t have a reason to dispute it?

MS. HOLCOMB: Object to form.

THE WITNESS: I don’t know.

[126]

BY MR. BARR:

Q Okay. Scroll down and you’ll go to section 5.1. Are you there?

A Yes.

Q All right. The very first clause, and that’s where we’ll stop, it says (as read):

"The University prohibits Protected Class Discrimination and Harassment."

Did I read that correctly?

A Yes.

Q Do you know what discrimination is?

MS. HOLCOMB: Object to form.

THE WITNESS: I have heard that word before.

BY MR. BARR:

Q What is your understanding of the meaning of the word "discrimination"?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: I think it's a broad word, and it would be hard for your -- me to give you a definition without looking it up.

BY MR. BARR:

Q Okay. How about harassment, do you know what the word "harassment" means?

MS. HOLCOMB: Object to form.

[127]

MR. TRYON: Objection.

THE WITNESS: I have a good idea of what the word "harassment" means.

MR. BARR: Okay. Let's --

MR. TRYON: Excuse me, Andrew, can we excuse the witness for a minute? I'd like to talk about something on the record without -- without the witness.

MS. HOLCOMB: You can step out.

(Lainey Armistead left the room.)

MR. TRYON: Christiana, is she out of the room?

MS. HOLCOMB: Yes, she is now.

MR. TRYON: So, you know, forgive me, but I don't understand how this witness could possibly provide any useful information about a school policy that is full of legalisms, and if you want to depose somebody on it, it ought -- ought to be the school, about what the school -- school's view is on this form.

What her form -- her views on this form are seem to me to be completely irrelevant, and I'm not sure why we're going through this. I -- I suppose you can -- can do this, but it seems like a waste of time.

And could you just kind of enlighten me how you think this is in some way relevant, especially with this witness?

[128]

MR. BARR: This is the Title IX policy in a case about Title IX, and I'm just curious what the witness's understanding of Title IX is.

MR. TRYON: But it doesn't matter what this witness's understanding of Title IX is. That is in fact the legal dispute across the country about what Title IX means.

So how is this witness in any way relevant to what Title IX --

MR. BARR: Mr. Tryon --

MR. TRYON: -- actually means?

MR. BARR: Mr. Tryon, do you want to have this discussion off the record, or no?

MR. TRYON: No, I wanted it on the record so I can understand what you're doing --

MR. BARR: Okay. And --

MR. TRYON: -- and why we're going to spend an hour talking about a form that she just can't possibly give a legal interpretation on.

MR. BARR: I'm not asking for a legal interpretation. I have every right to ask about this, as you acknowledged. So if we're going to stay on the record, let's just keep going.

MR. TRYON: I didn't really acknowledge that, but go ahead. So you're not -- you can't justify to me [129] why we're doing this?

MR. BARR: I just told you why we're doing this.

MR. TRYON: Yeah, but she can't -- she's not competent -- she's not a competent witness to talk about this policy. And anything you get from her is going to be completely irrelevant at trial.

Can't we just cut this part out and move on?

MR. BARR: No, Mr. Tryon, we cannot.

MR. TRYON: All right. Well, I'm --

MR. BARR: I recall there is --

MR. TRYON: -- making my objection on the record for any further questions on this, for this witness.

MS. HOLCOMB: I'll likewise object.

If we're ready, I'll have her brought back in.

MR. BARR: Thank you.

(Lainey Armistead entered the room.)

BY MR. BARR:

Q Sorry for all the up-and-down, Ms. Armistead.

If you could scroll down to section 23, please. And inside 23, go to the definition of Title IX. It's maybe four pages after the section starts.

A Okay.

[130]

MR. TRYON: I'm sorry, where are we?

MR. BARR: Mr. Tryon, we are looking at the definition of Title IX in section 23 of Exhibit 43.

BY MR. BARR:

Q Ms. Armistead --

MR. TRYON: Thank you.

BY MR. BARR:

Q Ms. Armistead, do you see that it says (as read):

“‘Title IX’ means Title IX of the Education Amendments of 1972. Title IX prohibits discrimination on the basis of sex in education programs or activities receiving federal financial assistance”?

Did I read that correctly?

A Yes.

Q Okay. So let's stay in section 23. Scroll up just a little bit, and you'll see a definition for on the basis of sex. Tell me when you're there.

A Got it.

Q (As read):

“‘On the Basis of Sex’ or ‘Based on Sex’ means gender, gender identity, including transgender status, sexual

[131] orientation and/or stereotypical notions of what is female/feminine versus male/masculine or a failure to conform to those gender stereotypes.”

Did I read that correctly?

A Yes.

Q Scroll up just a little bit further and you’ll see a definition for education program or activity. Tell me when you see that.

A Got it.

Q (As read):

“‘Education Program or Activity’ includes locations, events, or circumstances over which the University exercises substantial control” --

I’m going to skip through the next part and then go to “athletic programs.”

Do you see that?

A Yes.

Q Did I read that correctly, knowing that I excerpted part of that definition?

A Yes.

Q So let’s scroll back down to the definition of Title IX, the first definition you looked at.

[132]

Q Do you see that?

A Yes.

Q So according to this policy, Title IX prohibits discrimination on the basis of sex.

We just looked at what the definition of basis of sex is, and it includes transgender status, doesn't it?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: That was --

BY MR. BARR:

Q We can scroll up -- I'm sorry, I didn't mean to cut you off. What did you say?

A That was written on -- what I read, yes.

Q Okay. So according to this policy, on the basis of sex includes transgender status; is that correct?

A That is what I read.

Q And according to this policy, on the basis of sex includes gender identity; right?

MR. TRYON: I'm objecting to any further questions on this document for this witness. Will you give me a standing objection for that, please?

MR. BARR: Noted.

THE WITNESS: I don't know.

[133]

BY MR. BARR:

Q Do you want to go back up and look at the definition on the basis of sex again?

A That's not necessary.

Q Do you agree with me that on the basis of sex, as it relates to this policy, includes transgender status and gender identity?

MS. HOLCOMB: Object to form.

THE WITNESS: That's what I read.

BY MR. BARR:

Q And that education programs or activities includes school-sponsored athletics; right?

MS. HOLCOMB: Object to form.

THE WITNESS: It could mean that.

BY MR. BARR:

Q We just looked at the definition of education programs and activities, and it included school-sponsored athletics; right?

MS. HOLCOMB: Object to form.

THE WITNESS: That was the definition that was presented.

BY MR. BARR:

Q So using the definitions that were presented in this policy, Title IX prohibits discrimination on the basis of transgender status or gender identity and [134] school-sponsored athletics receiving federal financial assistance; right?

MS. HOLCOMB: Object to form.

THE WITNESS: I'm not really sure exactly what the policy is talking about.

BY MR. BARR:

Q Would you agree with me that I read that correctly, using the definitions provided in the policy?

A I heard what you said based on the document that you presented.

Q Did I say it correctly based on the document that I presented?

A Yes.

Q Isn't that exactly what you are seeking to do in this lawsuit?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: No.

BY MR. BARR:

Q How isn't it?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I don't know.

[135]

BY MR. BARR:

Q If you win in this lawsuit, wouldn't that mean that B.P.J. would be excluded on the basis of her transgender status and gender identity from participating on the school-sponsored girls' team?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: I'm not a lawyer, so I can't answer that.

BY MR. BARR:

Q In any of the discovery responses that you've prepared for this case, did you acknowledge that B.P.J. would be excluded from the girls' team at her school because of H.B. 3293?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q Did you review the discovery responses before they were sent over to us?

A Yes.

Q Do you recall any discovery responses regarding whether B.P.J. would be excluded from her -- her school's girls' cross-country team?

A I don't recall.

Q Let's keep talking about B.P.J. We earlier [136] discussed that B.P.J. participated in several cross-country events in the fall of 2021.

Do you remember that?

A I remember what you said about that.

Q And if I remember what you said, you didn't have a - an understanding of whether B.P.J. participated, how many times she participated or how she did. Is that accurate?

A Correct.

Q And, in fact, you didn't have an understanding of what B.P.J. had done at all as it relates to athletics, if I understood you correctly?

A I don't know anything -- I don't really know B.P.J., the plaintiff, so I can't comment on her personal -- their personal successes or how they do in events.

Q Okay. I'm not asking you to accept my terminology here, okay?

Will you accept that B.P.J. is a transgender girl who played on a girls' team, just for the purposes of this question? I'm not asking you to understand or agree with my terminology.

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

[137]

BY MR. BARR:

Q I'll just ask the question. I'm not trying to be tricky. I just want to make sure that you understand what I'm asking.

Given that B.P.J. is a transgender girl, do you expect that she won the events that she participated in?

MS. HOLCOMB: Object to form.

THE WITNESS: I --

MR. TRYON: Objection.

THE WITNESS: -- don't know.

BY MR. BARR:

Q What's your expectation based on what you told me earlier about advantages?

MS. HOLCOMB: Same objection.

MR. TRYON: Objection.

THE WITNESS: I don't know how B.P.J. performed, and I wouldn't be expected to know how she -- they performed.

BY MR. BARR:

Q Would you be surprised if B.P.J. got last place?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

[138]

BY MR. BARR:

Q I realize you don't know how B.P.J. placed, and I'm not asking that question.

My question is, would you be surprised if B.P.J. got last?

A I understood your question, and again, I don't know.

Q So you have no -- nothing would surprise you, whether B.P.J. got first or last or something in between?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: That's not what I said.

BY MR. BARR:

Q Okay. What did you say?

A I just said I don't know, from your question. In general, I would think that -- I believe that biological males have advantages, but does that mean in all cases that happens? Maybe; maybe not.

But I don't really know the specifics or what to be expected from B.P.J. because I don't know that person.

Q Okay. You raised a good question.

Do you expect that there might be exceptions to these advantages that you've talked about?

[139]

A I think that it's -- I'm bigger than some biological males, but in general, biological males are bigger,

stronger, faster than me, and it should -- and only biological women should be competing against me.

Q And that was for two reasons, fairness and safety; right?

A Yes.

Q What safety concern do you have with middle school cross-country and B.P.J. participating on the girls' team?

MS. HOLCOMB: Object to form.

THE WITNESS: I'm intervening for all women athletes and sports, and that includes contact sports that I'm a part of.

BY MR. BARR:

Q B.P.J. is the plaintiff here, and B.P.J. doesn't play a contact sport. So I'm asking where the safety issue comes up -- comes in on middle school cross-country.

MS. HOLCOMB: Same objection.

MR. TRYON: Objection.

THE WITNESS: My concerns are fairness and safety for all women athletes in all sports.

BY MR. BARR:

Q Understood. What is the safety concern for [140] middle school cross-country and B.P.J. participating on the girls' team?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q When it comes to fairness, what fairness are you concerned about?

A In general, biological males are faster than biological women.

Q So I'm not putting words in your mouth.

Is the concern that the transgender girl would win the race to the detriment of the cisgender girl? Is that the fairness concern?

MR. TRYON: Objection.

MS. HOLCOMB: Object to form.

THE WITNESS: That is not the only concern.

BY MR. BARR:

Q What are the other concerns?

A It's just not fair for biological males to compete with biological women in any sports.

Q I heard you say that. I'm trying to understand why you believe that.

MS. HOLCOMB: I'm sorry, was there a question?

MR. BARR: Yes.

[141]

BY MR. BARR:

Q Why do you believe that?

A I believe I already answered that question.

Q Could you tell me it again because I certainly didn't hear it. I'm trying to understand why you believe that B.P.J. creates a fairness issue running middle school cross-country on the girls' team?

MS. HOLCOMB: Objection to form.

MR. TRYON: Objection.

THE WITNESS: Because, in general, biological males are stronger, fitter, faster than biological women.

BY MR. BARR:

Q And if I understand you, the concern would be that transgender girls would win and cisgender girls would not because of these advantages you're talking about; is that right?

MS. HOLCOMB: Objection to form.

THE WITNESS: I'm aware of my blessings and opportunities that I was able to have because of the fair playing that I have seen throughout my life, and I want to make sure that I fight for that for other women, to make sure that they are not having to compete with biological males, in whatever sport that they do.

[142]

BY MR. BARR:

Q I understand. And you've told me that you want to do that for two reasons, safety and fairness; is that right?

A Yes.

Q And we talked about safety with middle school cross-country, and you stated you don't know what the safety issue is with B.P.J. running cross-country on the girls' team; right?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q Right. So the two things that you're concerned about, safety and fairness, we've talked about safety, and now I'm trying to understand what would be unfair about B.P.J.

running cross-country on the girls' team at her middle school.

MR. TRYON: Objection.

MS. HOLCOMB: Objection to form.

THE WITNESS: H.B. 3293 is to promote equality for all women in all sports, so I think that that answers my -- your question.

BY MR. BARR:

Q Perhaps I'm just not following. I don't know how that answers the question about what fairness issue [143] arises with B.P.J. running on the girls' cross-country team at her middle school.

MS. HOLCOMB: I'm going to object as asked and answered multiple times.

MR. BARR: Attorney Holcomb, if you can tell me what the answer is, I'll be happy to move on. I haven't heard an answer yet.

MS. HOLCOMB: I think she's answered your question at least three times to the best of her ability. So it's asked and answered.

MR. BARR: I'll -- I'll try it a different way.

BY MR. BARR:

Q Ms. Armistead, can you point to any specific fairness issue you're concerned about as it relates to B.P.J. running on the girls' cross-country team at her middle school?

MS. HOLCOMB: Objection to form.

THE WITNESS: I am not certain for specifics on her -- on B.P.J., but I do know that this law promotes fairness and equality for all women, including those who run cross-

country at age 11 and college athletes in a contact sport, such as myself.

BY MR. BARR:

Q Okay. Just to make sure that I've understood [144] you, you -- do not have a specific fairness issue to point to based on my last question. Did I understand that correctly?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: That's not what I said. I just said overall it's -- it wouldn't be fair for all women.

BY MR. BARR:

Q But specifics, there's no specific thing you can point to for B.P.J.; right?

A I don't know.

MR. BARR: I -- I've introduced an exhibit. It's actually previously marked as Exhibit 39. Let me know when you have it.

THE WITNESS: Got it.

BY MR. BARR:

Q Have you ever heard of the Doddridge Invitational cross-country meet?

A No.

Q If you would like to read the e-mail and look at the exhibit, please let me know; otherwise, I'll just ask my question. It's whatever is best for you.

A I read it.

Q Okay. If you could scroll down to page 2, please, you'll see two tables. The table on the left [145] says "BMS XC-Boys," and the table on the right says "BMS XC-Girls."

Do you see that?

A Yes.

Q Do you know what BMS references?

A I do not.

Q I'll represent to you that it's Bridgeport Middle School.

Have you ever heard of Bridgeport Middle School?

A No.

Q Okay. And then on the table on the right, it also says "BMS," which, again, is Bridgeport Middle School.

Do you know what XC-Girls means?

A Yes.

Q What does that mean?

A Cross-country girls.

Q Okay. So let's focus on the table on the right.

Do you see that there are approximately 20 names -- or 20 times listed? The names have been redacted for privacy reasons. Do you see that?

A Yes.

Q And you see that one name has not been [146] redacted, and that's B P J.

Do you see that?

A Yes.

Q I'm going to represent to you that B P -J is B.P.J., the plaintiff in this case, okay?

A Okay.

Q What do you think this table that is entitled "BMS XC-Girls" is telling us?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q Does it look like it may be a listing of individual students' times at the Doddridge Invitational on Thursday, September 16th?

A Yes.

Q And if we look at that table on the right, it has three columns, one for distance, one for actual time and one for pace per mile.

Do you see that?

A Yes.

Q And this table on the right, we're just talking about girls; right?

MS. HOLCOMB: Object to form.

THE WITNESS: That is what the document says.

[147]

BY MR. BARR:

Q Okay. How did B.P.J. do at the Doddridge Invitational, according to this table?

A B.P.J. ran 1.9 miles in 21 minutes and 50 seconds.

Q B.P.J. finished towards the back of the Bridgeport Middle School girls; right?

MS. HOLCOMB: Object to form.

THE WITNESS: B.P.J. wasn't in the lead, no.

BY MR. BARR:

Q In fact, B.P.J. finished in 13th of 16 finishes; right?

MS. HOLCOMB: Object to form.

THE WITNESS: That might be what the table shows.

BY MR. BARR:

Q Do you see on the table how a few of the times are highlighted yellow and the rest are white?

A Yes.

Q What does that yellow highlighting mean?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q Do you know how middle school cross-country team times are determined?

[148]

A No.

Q Would you have any basis to state that B.P.J. impacted the team time --

MS. HOLCOMB: Object to form.

Sorry, I didn't mean to cut you off.

THE WITNESS: I don't know.

BY MR. BARR:

Q You don't know how the team time is determined?

A Correct.

Q And, therefore, you would have no basis to state whether B.P.J.'s times impacted the Bridgeport Middle School team time; correct?

A I don't know.

Q I just want to make sure we're clear on the record.

You don't know what?

A What was your question again?

Q I'm asking if you have any basis to state whether B.P.J. impacted the Bridgeport Middle School team time at the Doddridge Invitational.

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q You don't know whether B.P.J. did or didn't [149] impact it?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know.

BY MR. BARR:

Q So you wouldn't be in a position to state that B.P.J. led to some other student's time not being included in the team time; right?

A Can you say that again, please?

Q Sure. You're not in a position to state one way or the other whether B.P.J.'s time impacted another student's time included on the team time at the Doddridge Invitational?

MS. HOLCOMB: Object to form.

THE WITNESS: Correct. I don't run cross-country. I do know about soccer, though.

MR. BARR: I've introduced another exhibit. It's previously been marked as Exhibit 40. Please let me know when it appears.

THE WITNESS: Got it.

MS. HOLCOMB: I'm sorry, give me one moment. Mine is still attempting to refresh.

MR. BARR: No problem. Tell me when you're ready.

MS. HOLCOMB: All right. I'm ready. Thank you.

[150]

MR. BARR: Sure.

BY MR. BARR:

Q Ms. Armistead, Exhibit 40, do you see tables similar to the tables we just saw on Exhibit 39?

A They look similar.

Q But in this case, the right-hand table says "BMS," which we've discussed is Bridgeport Middle School, "XC-Girls," cross-country girls, for the Ritchie County event on Saturday, October 1st.

Do you see that?

A Yes.

Q Do you have any understanding of what the highlighted parts of this table mean?

A No.

Q How did B.P.J. do in this event?

MS. HOLCOMB: Object to form.

THE WITNESS: According to the table, she didn't place -- B.P.J. didn't place in the top half.

BY MR. BARR:

Q And I'm happy for you to look at the rest of Exhibit 40, and you can take as much time as you would like, but I'll represent to you that B.P.J. never has times that are highlighted in this exhibit.

But my understanding is you don't have an understanding whether the highlighting has some [151] indication one way or the other; is that right?

MS. HOLCOMB: Object to form.

THE WITNESS: As stated, I am not a cross-country runner, so no, I don't know.

BY MR. BARR:

Q If you could scroll to the last page of Exhibit 40.

Are you there?

A Yes.

Q You'll see at the top it says "Time Trial Comparison."

Did I read that correctly?

A You did.

Q And then in the two columns to the right of that, there's the cross-country time trial at Bridgeport City Park on October 7th, 2021, and the column to the right of that is the cross-country time trial, Bridgeport City Park, on August 24th, 2021.

Do you see that?

A Yes.

Q Inside those columns, on the far left side, there's a subcolumn that says "TT Place."

Do you see that?

A Yes.

Q What do you think TT Place means?

[152]

MR. TRYON: Objection.

MS. HOLCOMB: I'm going to object to form.

THE WITNESS: I have no idea.

BY MR. BARR:

Q If I told you it meant time trial place, would you be willing to accept that for purposes of this exhibit?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: Yes.

BY MR. BARR:

Q On October 7th, 2021, what place did B.P.J. earn?

MS. HOLCOMB: Object to form.

THE WITNESS: According to this document, 24th.

BY MR. BARR:

Q How many participants are indicated to have participated, on this document?

A 28.

Q So on October 7, 2021, according to Exhibit 40, B.P.J. got 24th of 28 participants; is that right?

A That's what the document indicates.

Q And let's move over to August 24th.

[153]

What place did B.P.J. get on August 24th?

MS. HOLCOMB: Object to form.

THE WITNESS: 30th.

BY MR. BARR:

Q And I'm not going to ask you the total participants, because that column is very hard to interpret and I don't want to be unfair, but you would agree with me that B.P.J. was at the very low end of that table as well?

A Lower than others.

Q Lower than almost everybody else; right?

MS. HOLCOMB: Object to form.

THE WITNESS: That is what the document indicates.

BY MR. BARR:

Q Do you still think it's unfair for B.P.J. to participate?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: It also looks like B.P.J. was competing against people in sixth, seventh and eighth grade. So I don't know if sixth-graders are typically in the top of their class.

BY MR. BARR:

Q Based on this document, do you still think [154] it's unfair for B.P.J. to have participated?

MS. HOLCOMB: Object to form.

MR. TRYON: Objection.

THE WITNESS: Based on this document, I don't know.

BY MR. BARR:

Q Do you still believe B.P.J. has superior speed compared to her classmates, having seen these documents?

MR. TRYON: Objection.

MS. HOLCOMB: Objection to form.

THE WITNESS: This document doesn't really give a fair comparison.

BY MR. BARR:

Q Why not?

A As I said, B.P.J. is competing with people in sixth, seventh and eighth grade. And in my experience, whenever I was in sixth grade, playing soccer, I was having difficulties against the seventh- and eighth-graders.

MR. BARR: Attorney Holcomb, we've been going for about an hour. Do you want a break, or do you want to keep going?

MS. HOLCOMB: Would you like a break, Lainey?

THE WITNESS: Let's go.

[155]

MS. HOLCOMB: Andrew, any estimate of how much longer you plan to go?

MR. BARR: No, sorry. Some of these questions that I expected to go quick have taken a little longer than anticipated. So I would hate to give any false expectations there.

MS. MORGAN: Andrew, this is Kelly Morgan. I'm just asking because of family obligations again here. Are we looking at an hour or two --

THE VIDEOGRAPHER: Are we going to go off --

MR. BARR: Let's go off the record.

THE VIDEOGRAPHER: Are we going to --

MR. BARR: Yeah, let's go off the record.

THE VIDEOGRAPHER: Okay. One moment. We're going off the record. The time is 4:18 p.m., and this is the end of Media Unit No. 4.

(Recess.)

THE VIDEOGRAPHER: All right. We are back on the record at 4:37 p.m., and this is the beginning of Media Unit No. 5. Please go ahead.

BY MR. BARR:

Q Ms. Armistead, I was going through my notes and realized I didn't ask you the question I thought was most important, which is, what's your favorite [156] soccer team? Do you have one?

A Chelsea.

Q Kind of going through some tough times with ownership of Chelsea at the moment, but -- okay. So you do follow professional soccer?

A A little bit, yes.

Q Do you -- do you follow any women's professional teams?

A I keep up with the U.S. women's national team a little bit.

Q But other than the national team?

A No.

Q I'm a Liverpool fan, so I had to ask.

Okay. So, clearly, you love soccer. I understand all that. I want to understand why you love soccer. And, specifically, what do you get out of it?

A I get an opportunity to compete and -- I get so much out of soccer. It keeps me in shape. I have the ability to make great friends and lasting connections with my teammates. And I'm still friends with teammates from high school and club teams. And I've learned a lot about perseverance and teamwork, cooperation. There's so much that soccer has taught me throughout my life, and I wouldn't be the person I am today without it.

[157]

Q I know you focused on soccer, but do you think that would be true of most athletes' experience, having played sports in a -- you know, as a child or adult?

MS. HOLCOMB: Object to form.

THE WITNESS:

I believe that a lot of people probably have the same experiences as I do, but I can't speak for sure on other people's experiences.

BY MR. BARR:

Q Understood. You said you played club -- club soccer. Did I hear that right?

A Yes.

Q Do you still play club stocker?

A No. I'm unable to do so due to being a college athlete.

Q When did you start playing club soccer?

A Probably around seven or eight years old.

Q Did your school offer a soccer team when you were seven or eight years old?

A I don't believe so. I just played club until I was able to play in middle school.

Q When did you stop playing club soccer?

A My senior year of high school.

Q Were you ever invited to an ODP program, Olympic developmental program?

A Yes.

[158]

Q Did you attend?

A I attended for a little bit before moving school -- or before moving across the state, so...

Q Where were you living before Owensboro?

A I am from Owensboro, and then I moved to Louisville, Kentucky, and then I moved back to Owensboro.

Q And those two cities are far enough apart you had to change club teams as part of that move?

A Yes.

Q And did I understand that one of those teams offered the ODP and the other one did not; is that right?

A ODP is more of a state -- a state development program. So I could have continued to do so, but where I moved, it would have been three hours to drive instead of just right beside my hometown.

Q How long did you participate in the ODP?

A I don't recall. Not long.

Q Not long?

Did you have the opportunity to do any traveling for ODP?

A Not ODP, but I had the opportunity to travel for my club team.

Q What -- what was the name of your club team?

[159]

A Kentucky Fire.

Q Was that the -- did you have a different club team when you moved and what was the name of that?

A Owensboro.

Q And it was when you were on Kentucky Fire that you had the ODP opportunities; is that right?

A Yes.

Q How old were you when that happened?

A I don't remember.

Q I'm -- was it seven or eight when you started? Was it when you were 18 as --

A Probably middle school.

Q Did you benefit from the ODP?

A I did not benefit from ODP, but I definitely benefitted from club.

Q Did any of your schools offer a women's soccer team before West Virginia State?

A High schools?

Q Sure. Did your high school have a women's soccer team?

A Yes.

Q Did you play on it?

A I did.

Q Was your club team or your high school team better?

[160]

MS. HOLCOMB: Object to form.

THE WITNESS: I would probably say my club team was better.

BY MR. BARR:

Q That's generally true, right, the club team is a more select group of athletes than any particular school, as a general matter?

A In general, yes.

Q Any of your club teammates play college soccer?

MS. HOLCOMB: Object to form.

THE WITNESS: Yes.

BY MR. BARR:

Q Any of them playing with or against you in Mountain East Conference?

A No.

Q Do you think those athletes benefitted from soccer similarly to the way you did?

MS. HOLCOMB: Object to form.

THE WITNESS: I can't speak on their experiences.

MR. TRYON:

Excuse me, sorry to interrupt, but Kelly just texted me, and she said she's in the waiting room trying to get in, if the court reporter could let her in.

[161]

THE REPORTER: Ms. Morgan, are you in?

MS. MORGAN: Yes, I am. Thank you.

THE REPORTER: Okay. Sorry about that.

BY MR. BARR:

Q Do you have any social media accounts?

A Yes.

Q I admittedly don't, so please bear with me in clunky language, but what platforms do you have an account with?

A I have an account with Twitter, Instagram, Facebook, Snapchat. And those are the only ones that I use.

BY MR. BARR:

Q Do you use them daily?

A Most days.

Q Have people ever reached out to you on those platforms to talk about this law or your participation in the lawsuit?

A Yes.

Q Does it happen regularly?

A No.

Q Has it happened one time? five times? ten times?

A I'm not sure. Not very many times.

Q More than once, less than 20; is that fair?

[162]

A Yes.

Q More than five times, less than 20?

A I would probably just say less than ten, and that's as close as I would feel comfortable getting.

Q Do you remember if that was via Facebook or one of the other platforms you described?

A I think it was on Facebook and Twitter.

Q Have you ever sent a message or reached out to people about this lawsuit or the law using one of those social media accounts?

A No.

Q Has anyone ever e-mailed you about this law, other than your attorneys?

A I don't think so.

Q Have you ever e-mailed anyone about this law?

A I shared information with a friend who was interested in intervening.

Q Is that one of the friends you told me about earlier, Sinead or Brooklyn?

A Yes. Sinead.

Q Are you familiar with the NCAA's image and likeness policy?

A I am.

Q What's your understanding of how the -- is it okay if I call it the NIL policy?

[163]

A Yes.

Q What's your understanding of the NIL policy?

A My understanding is that athletes can benefit from their name; and, two, they are -- sign contracts with companies and be a name for a -- for a brand and get paid for doing so.

Q Is it okay with you if I reference what you just described as an endorsement?

A If that's how you want to reference it, sure.

Q We can call it whatever you'd like. I just am trying to use a faster word than that whole description.

A That's fine.

Q Are you currently under an endorsement deal with anyone?

A No.

Q Do you have any plans to be under an endorsement deal?

A I'm not sure. I would like to try. That would be something I would be interested in. Of course, it was just a very recent law that was created, a new -- a new policy, so I haven't really looked into it too much yet.

Q Is it accurate to say you'd be interested in it, but sitting here today, you don't have any specific [164] plans to enter into an endorsement deal?

A Yes.

Q Have you ever been interviewed related to this lawsuit by someone other than your attorney?

A No.

Q No reporters, TV appearances, anything like that?

A No.

Q Do you know who Selina Soule is?

A No.

Q Do you know who Chelsea Mitchell is?

A No.

Q Do you know who Christina Mitchell is?

A No.

Q Do you know who Alanna Smith is?

A No.

Q Do you know who Lanay Sultz is?

A No.

Q Do you know who Margaret O'Neil is?

A No.

Q Do you know who Cynthia Monteleone is?

A No.

Q Do you know who Madison Kenyon is?

A No.

Q Do you know who Mary Kate Marshall is?

[165]

A No.

Q Do you know who Darcy Ashoff is?

A No.

Q Do you know anyone on the University of Pennsylvania's women's swimming or diving team?

A I do not.

Q Do you know who Haley Tan is?

A No.

Q And just to make sure I'm being fair with you, there's a chance the last name is Tani.

So do you know anyone named Haley Tani?

A No.

Q Do you know anyone who claims to have been harmed by a transgender girl or woman playing on a girls' team, specifically?

MS. HOLCOMB: Object to form.

THE WITNESS: No, I don't know personally.

BY MR. BARR:

Q Have you spoken with any of the people I just named?

A No, I don't think so. No.

Q I have a list of about 25 more people. I can cut that short if I just understand that you haven't spoken to anyone who's claimed to have been harmed by a transgender woman's participation on a girls' team. Is [166] that accurate?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't -- I don't know the names -- I don't know how to give you that information without --

BY MR. BARR:

Q I'll just go through them. That's fine. I was just trying to make this --

A I -- I wouldn't know the names. I've talked to two girls that were clients of Christiana's, but I don't know -- or recall their names.

Q Are those two girls a party to this lawsuit?

A No.

Q When did you speak to them?

A After I decided to intervene, probably. Maybe before.

Q How did you locate these two girls?

MS. HOLCOMB: And I'll just object generally to the extent it calls for attorney-client privileged communications.

You may answer.

THE WITNESS: Just by Christiana.

BY MR. BARR:

Q What did you discuss with these two girls?

A They just told me about their experiences that [167] they've had in their lawsuits, and that was the extent of it.

Q Did you ask to speak with them, or did they ask to speak with you?

MS. HOLCOMB: Object to form.

THE WITNESS: I don't know how to answer that without divulging client-attorney privilege.

BY MR. BARR:

Q I'll -- I'll ask a different way because I certainly don't want any privileged communications.

Did you ask to be put in touch with these two girls?

A I could have. I don't recall.

Q You don't know their names?

A I do not recall their names.

Q And if I'm understanding correctly, you found these two girls through your counsel?

A Yes.

Q Did these two girls encourage you to intervene in this case?

A They just told me about their experiences.

Q What experiences are you talking about?

A Their experience with their lawsuits.

Q What did they tell you?

A I don't recall specifics of the conversation, [168] but it was encouraging, what they told me. That's what I remember from it.

Q What do you mean it was encouraging, what they told you? Encouraging what?

A It wasn't encouraging anything specifically. It was just encouraging to me what they were saying.

Q I understood. I misunderstood.

So you found the conversation encouraging.

I -- I feel like I might have misunderstood that.

So is that what you're saying, you found the conversation encouraging?

A Yes.

Q And you don't remember if this happened before or after you decided to intervene?

MS. HOLCOMB: Objection to form.

THE WITNESS: I do not recall.

BY MR. BARR:

Q Was it before or after you were put in touch with your attorney?

MS. HOLCOMB: Objection to form.

THE WITNESS: Well, I said -- I already answered that.

BY MR. BARR:

Q Maybe I misunderstood.

[169]

Your -- so your -- your attorney put you in touch with these people; you just don't remember who asked for the contact; is that correct?

A Yes.

Q Have you spoken with those two girls more than once?

A No.

Q Other than those two girls, have you spoken with anyone else about this lawsuit beyond your family, those two friends you told me about and your attorneys?

A Yes.

Q Who else?

A My best friend.

Q And who is that?

A Allison.

Q You might have told me that earlier, and I may have forgotten, so I apologize if that's what happened.

What is Allison's last name?

A Raymond.

Q Is Allison a classmate of yours?

A No. She is a hometown friend. We went to high school together.

Q Anyone else?

A Yes. Two other hometown friends.

Q Who -- who are those friends?

[170]

A Savanna and Haley.

Q Anyone else?

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

Q What was the nature of those discussions?

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

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

Did you write an op-ed?

A I'm sorry?

Q Did you write an opinion piece for a newspaper?

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

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

MS. HOLCOMB: Objection to form.

THE WITNESS: I don't know.

MR. BARR: Okay. That's it for me. I'm happy to turn it over to everyone else. I do want a couple of minutes just to make sure that my notes are clean. [171] So I do reserve that right, but I'm happy to pass it to Mr. Tryon or whoever else is in line.

And -- and, Ms. Armistead, thank you for your time today. I apologize for a long day on a Friday, but hopefully you're able to make whatever -- whatever plans you had tonight still.

THE WITNESS: Thank you.

MR. TRYON: Hello, Ms. Armistead. How are you?

THE WITNESS: I'm good. How are you?

MR. TRYON: I'm good. So thank you so much for your time. We always appreciate when deponents come in and take their time to participate in these -- these situations.

And I have no questions, so thank you for your time.

MS. DENIKER: This is Susan Deniker. I have no questions. Thank you.

MS. MORGAN: This is Kelly Morgan. I don't have any questions. Thank you, Lainey.

MS. ROGERS: This is Shannon Rogers. I don't have any questions. Thank you.

MR. TRYON: So can we go off the record now? Are we done?

MR. BARR: I believe Attorney Holcomb may or [172] may not have questions. I just want to make sure that it's clear.

MS. HOLCOMB: I do not have any questions. Thank you. Just wanted to confirm there were no further defendants.

MR. BARR: And with -- we -- we can go off the record. And there's too many people on the same thing to understand who is going to speak next, so I -- I understand that.

THE VIDEOGRAPHER: So we -- are we done for the day, then, or are we going to come back on?

MR. BARR: I -- I believe we're finished unless I hear otherwise -- from counsel.

THE VIDEOGRAPHER: Okay. So I'm -- I'm going to close the record then. All right?

Okay. We are off the record at 5:04 p.m., and this ends today's testimony given by Lainey Armistead. The total number of media used was five and will be retained by Veritext Legal Solutions.

(TIME NOTED: 5:03 p.m.)

**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,

and

LAINIEY ARMISTEAD,

Defendant-Intervenor.

**DECLARATION AND EXPERT REPORT OF
DEANNA ADKINS, MD**

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

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

3. I have knowledge of the matters stated in this declaration and expert report and have collected and cite to relevant literature concerning the issues that arise in this litigation in the body of this declaration.

4. In preparing this declaration and expert report, I reviewed the text of House Bill 3293 at issue in this matter. I also relied on my scientific education and training, my research experience, and my knowledge of the scientific literature in the pertinent fields. The materials I have relied upon in preparing this declaration and expert report are the same types of materials that experts in my field of study regularly rely upon when forming opinions on these subjects. I may wish to supplement these opinions or the bases for them as a result of new scientific research or publications or in response to statements and issues that may arise in my area of expertise.

BACKGROUND AND QUALIFICATIONS

5. I received my medical degree from the Medical College of Georgia in 1997. I served as the Fellowship Program Director of Pediatric Endocrinology at Duke University School of Medicine for fourteen years and am currently the Director of the Duke Center for Child and Adolescent Gender Care.

6. I have been licensed to practice medicine in the state of North Carolina since 2001.

7. I have extensive experience working with children with endocrine disorders and I am an expert in the treatment of children with differences or disorders of sex development and in the treatment of children with gender dysphoria.

8. I am a member of the American Academy of Pediatrics, the North Carolina Pediatric Society, the

Pediatric Endocrine Society, and The Endocrine Society. I am also a member of the World Professional Association for Transgender Health (“WPATH”), the leading association of medical and mental health professionals in the treatment of transgender people.

9. I am the founder of the Duke Center for Child and Adolescent Gender Care (“Gender Care Clinic”), which opened in 2015. I currently serve as the director of the clinic. The Gender Care Clinic treats children and adolescents aged 7 through 22 with gender dysphoria and/or differences or disorders of sex development. I had been caring for these patients in my routine practice for many years prior to opening the clinic.

10. I currently treat approximately 400 transgender and intersex young people from North Carolina and across the Southeast at the Gender Care Clinic. I have treated approximately 500 transgender and intersex young people in my career.

11. As part of my practice, I stay familiar with the latest medical science and treatment protocols related to differences or disorders of sex development and gender dysphoria.

12. I am regularly called upon by colleagues to assist with the sex assignment of infants who cannot be classified as male or female at birth due to a range of variables in which sex-related characteristics are not completely aligned as male or female.

13. I have testified twice as an expert at trial or deposition in the past four years.

TREATMENT PROTOCOLS FOR TRANSGENDER PEOPLE

14. A transgender person has a gender identity that differs from the person's sex assigned at birth.

15. A person's gender identity refers to a person's inner sense of belonging to a particular gender, such as male or female. Everyone has a gender identity.

16. Children usually become aware of their gender identity early in life.

17. For some people, their gender identity does not align with the sex they are assigned at birth. This misalignment can create significant distress, known as gender dysphoria, for people with this experience and can be felt in children as young as 2 years old.

18. A person's gender identity (regardless of whether that identity matches other sex-related characteristics) cannot be voluntarily changed, and is not undermined or altered by the existence of other sex-related characteristics that do not align with it.

19. According to the American Psychiatric Association's Diagnostic & Statistical Manual of Mental Disorders ("DSM V"), "gender dysphoria" is the diagnostic term for the condition where clinically significant distress results from the lack of congruence between a person's gender identity and the sex they are designated at birth. In order to be diagnosed with gender dysphoria, the incongruence must have persisted for at least six months and be accompanied by clinically significant distress or impairment in social, occupational, or other important areas of functioning.

20. Gender dysphoria is a serious medical condition that, if left untreated, can result in severe anxiety and depression, self-harm, and suicidality.¹

21. Before receiving treatment, many people with gender dysphoria have high rates of anxiety, depression, and suicidal ideation. I have seen in my patients that without appropriate treatment, this distress impacts every aspect of life.

22. Experiences of discrimination and gender-minority stress associated with rejection and non-affirmation are correlated with suicidal ideation and suicidality, respectively.² The only treatment to avoid this serious harm is to recognize the gender identity of patients with gender dysphoria and follow appropriate treatment protocols to affirm gender identity and alleviate distress.

23. When appropriately treated, gender dysphoria is easily managed. I currently treat hundreds of transgender patients. All of my patients have suffered

¹ Spack NP, Edwards-Leeper L, Feldmain HA, et al. Children and adolescents with gender identity disorder referred to a pediatric medical center. *Pediatrics*. 2012; 129(3):418-425. Olson KR, Durwood L, DeMeules M, McLaughlin KA. Mental health of transgender children who are supported in their identities. *Pediatrics*. 2016; 137:1-8.

² World Professional Association for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Chapter Draft for Public Comment-Mental Health (8th Version, forthcoming 2022). https://www.wpath.org/media/cms/Documents/SOC%20v8/SOC8%20Chapters%20for%20Public%20Comment/SOC8%20Chapter%20Draft%20for%20Public%20Comment%20-%20Mental%20Health.pdf?_t=1638409644

from persistent gender dysphoria, which has been alleviated through clinically appropriate treatment.

24. The Endocrine Society and the World Professional Association for Transgender Health have published widely accepted standards of care for treating gender dysphoria,³ including the forthcoming Standards of Care Version 8. The precise treatment for gender dysphoria depends on each person's individualized need, and the medical standards of care differ depending on whether the treatment is for a pre-pubertal child, an adolescent, or an adult.

25. The medical treatment for gender dysphoria is to eliminate the clinically significant distress by helping a transgender person live in alignment with their gender identity. This treatment is sometimes referred to as “gender transition,” “transition related care,” or “gender affirming care.” The American Academy of Pediatrics agrees that this care is safe, effective, and medically necessary for the health and wellbeing of children and adolescents suffering from gender dysphoria.⁴

26. The Endocrine Society Guidelines were developed through rigorous scientific processes which “followed the

³ Hembree WC, et al. Endocrine treatment of gender-dysphoria/gender incongruent persons: An Endocrine Society clinical practice guideline. *J Clin Endocrinol Metab* 2017; 102: 3869-3903; World Prof 1 Ass'n for Transgender Health, Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People (7th Version, 2011), https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English2012.pdf?t=1613669341

⁴ Rafferty J, Committee on Psychosocial Aspects of Child and Family Health, Committee on Adolescence and Section on Lesbian, Gay, Bisexual, and Transgender Health and Wellness, *Pediatrics* October 2018; 142(4): 2018-2162.

approach recommended by the Grading of Recommendations, Assessment, Development, and Evaluation group, an international group with expertise in the development and implementation of evidence-based guidelines.” The guidelines affirm that patients with gender dysphoria often must be treated with “a safe and effective hormone regimen that will (1) suppress endogenous sex hormone secretion determined by the person’s genetic/gonadal sex and (2) maintain sex hormone levels within the typical range for the person’s affirmed gender.”

27. Before puberty, treatment does not include any drug or surgical intervention. For this group of patients, treatment is limited to “social transition,” which means allowing a transgender child to live and be socially recognized in accordance with their gender identity. This can include allowing children to wear clothing that aligns with their gender identity, to cut or grow their hair, to use new or different names and pronouns, and to access activities in line with their gender identity instead of the sex assigned to them at birth. Social transition is a critical part of treatment of patients with gender dysphoria of all ages and it is the only treatment for pre-pubertal children. There are no known risks to social transition or to affirming transgender youth who have been properly diagnosed with gender dysphoria by competent medical providers.

28. It undermines social transition — a critical part of gender dysphoria treatment — to force a person with gender dysphoria to live in a manner that does not align with the person’s gender identity. For example, requiring a girl who is transgender to participate in single-sex activities for boys can be deeply harmful and disruptive to treatment. In the context of activities like athletics, which

are typically separated by sex, I know from experience with my patients that it can be extremely harmful for transgender youth to be excluded from the team consistent with their gender identity.

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

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

31. When treating a transgender young person, when medically indicated, I prescribe puberty blocking treatment at the Tanner 2 stage of puberty. For girls who are transgender, this means that puberty is put on pause usually around the time that the patient has circulating testosterone at a level of 50 ng/dL or 1.735 nMol/L. If managed appropriately, a patient that undergoes puberty blocking treatment at this stage and then proceeds to gender-affirming hormone therapy will never have circulating testosterone above what is typical of girls who are not transgender.

32. Under the Endocrine Society Clinical Guidelines, once a transgender youth establishes further maturity and competence to make decisions about additional treatment along with their parent and/or guardian, it may

then be medically necessary and appropriate to provide gender-affirming hormone therapy to initiate puberty consistent with gender identity. For girls who are transgender, this means administering both testosterone suppressing treatment as well as estrogen to initiate hormonal puberty consistent with the patient's female gender identity. For boys who are transgender, this means administering testosterone.

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

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

35. For many patients, social transition and hormone therapy are sufficient forms of treatment for gender dysphoria. Others also need one or more forms of surgical treatment to alleviate gender dysphoria. Boys who are transgender may receive chest reconstruction surgery no

earlier than 16. Genital surgery for women and men who are transgender is not performed until the person has reached the age of at least 18. Genital surgery for women who are transgender can result in a vulva and vagina—external genitalia typical of women—as well as removal of the testes, which eliminates the need for medical testosterone suppression. Because surgery does not produce ovaries, women who are transgender who have had this form of surgery typically continue to need estrogen therapy.

36. Consistent with extensive research literature, my clinical experience with my patients has been that they suffer and experience worse health outcomes when they are ostracized from their peers through policies that exclude them from spaces and activities that other girls and boys are able to participate in consistent with gender identity.

SEX ASSIGNMENT AND BIOLOGICAL SEX CHARACTERISTICS

37. HB 3293 requires school athletics to be separated based on “biological sex” defined as “an individual’s physical form as a male or female based solely on the individual’s reproductive biology and genetics at birth.” W. Va. Code §18-2-25d(b)(1). In addition to being counter to medical science, the notion of a singular “biological sex,” is inherently flawed.

38. When a child is born, a sex assignment is usually made based on the infant’s externally visible genitals. This designation is then recorded and usually becomes the sex designation listed on the infant’s birth certificate.

39. Usually, though not always, a person’s gender identity aligns with the sex designation based on the person’s genitals at birth.

40. For people who are transgender and people with differences of sex development (DSDs), however, there is not complete alignment between gender identity and physical sex-related characteristics.

41. Sex-related characteristics include external genitalia, internal reproductive organs, gender identity, chromosomes, and secondary sex characteristics. These biological sex-related characteristics do not always align as completely male or completely female in a single individual. And none of these characteristics exists in a binary. As the Endocrine Society guidelines explain, the terms “[b]iological sex, biological male or female . . . are imprecise and should be avoided.” Generally speaking, “[t]hese terms refer to physical aspects of maleness and femaleness [but] these may not be in line with each other (e.g., a person with XY chromosomes may have female-appearing genitalia).”⁵

42. Although we generally label infants as “male” or “female” based on observing their external genitalia at

⁵ Hembree, Wiley C., et al., Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline, *J Clin Endocrinol Metab*, Vol. 102, Issue 11, 1 November 2017, 3869-3903.; Berenbaum S., et al., Effects on gender identity of prenatal androgens and genital appearance: Evidence from girls with congenital adrenal hyperplasia. *J Clin Endocrinol Metab* 2003; 88(3): 1102-6; Dittmann R, et al., Congenital adrenalhyperplasia. I: Gender-related behavior and attitudes in female patients and sisters. *Psychoneuroendocrinology* 1990; 15(5-6): 401-20; Cohen-Kettenis P. Gender change in 46,XYpersons with 5alpha-reductase-2 deficiency and 17beta-hydroxysteroid dehydrogenase-3 deficiency. *Arch Sex Behav* 2005; 34(4): 399-410; Reiner W, Gearhart J. Discordant sexual identity in some genetic males with cloacal exstrophy assigned to female sex at birth. *N Engl J Med* 2004; 350(4): 333-41.

birth, external genitalia are not always clearly identifiable as typically male or typically female. And external genitalia do not account for the full spectrum of sex-related characteristics nor are they alone a proxy for how we understand sex.

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

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

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

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

47. At least one out of every 300 people in the world has an intersex variation, meaning that the person's sex

characteristic do not all align as typically male or typically female.

48. Some examples of these variations include:

- a. People with Complete Androgen Insensitivity (CAIS) have 46-XY chromosomes, and internal testes that produce testosterone, but do not have the tissue receptors that respond to testosterone or other androgens. The body, therefore, does not develop a penis, thicker facial hair, or other secondary sex characteristics more commonly associated with men. At birth, based on the appearance of the external genitalia, people with CAIS are generally assigned female. If their testes are left in place, the body will convert the hormones into estrogen. Many do not find out they have XY chromosomes or testes until they do not start menstruating at the expected age.
- b. Androgen Insensitivity can also be partial (known as PAIS). People with PAIS have XY chromosomes, testes, and some (but still lower than typical) response to testosterone. They may be born with genitals that appear like a typical penis, a typical vulva, or somewhere in between.
- c. People with Swyer Syndrome have XY chromosomes and “streak” gonads (gonadal tissue that did not develop into testes or ovaries). Externally, a child with Swyer Syndrome usually develops a vulva. Because their gonads do not produce hormones, they will not develop most secondary sex characteristics without hormone treatment.
- d. People with Klinefelter Syndrome have 47,XXY chromosomes and internal and external genitalia

typically associated with males, however, their testicles may have reduced testosterone production. This may lead to breast development, low muscle mass and body hair, and infertility.

- e. People with Turner Syndrome have 45,X0 chromosomes which means they have one fewer copy of the X chromosome than expected. In utero, they form sex characteristics typically associated with females, including internal structures like a uterus and fallopian tubes, but the ovaries may degenerate before birth (or in some cases, not until young adulthood), leading to an inability to make estrogen. Many people with Turner Syndrome will not go through puberty without hormone therapy.
- f. People with Mosaicism have different sets of chromosomes in different cells. Mosaic karyotypes happen as a result of atypical cell division early in embryonic development and could involve various combinations among XX, XY, XO, XXY, and other chromosome patterns. Configuration of gonadal tissue, genitals, and hormone production and response can all vary.
- g. People with ovotestes (sometimes known as Ovotesticular DSD) have gonads that contain both ovarian and testicular tissue. Their chromosomes may be XX, XY, or Mosaic. Genital appearance at birth can be male-typical, female-typical, or something else.
- h. Congenital Adrenal Hyperplasia (CAH) can occur in people with XX or XY chromosomes. People with CAH and 46,XX chromosomes have ovaries, a uterus, and a higher-than-typical production of androgens in utero that can lead to the

development of genital differences at birth — such as an enlarged clitoris that may look like a penis, or the lack of a vaginal opening. CAH can also cause the development of typically masculine features like increased muscle mass and body hair.

- i. People with 5-alpha reductase deficiency (5-ARD) have XY chromosomes, but they have an enzyme deficiency that inhibits conversion of testosterone to dihydrotestosterone (the active form of testosterone) to varying degrees. This can impact genital development, and at birth, people with 5-ARD may have genitals that appear female-typical, neither male-typical nor female-typical, or mostly male-typical with differences like hypospadias (where the urethra is located somewhere other than the tip of the penis). During puberty, hormonal changes allow them to make more dihydrotestosterone, causing the development of some secondary sex characteristics typically associated with males, as well as genital masculinization.

49. As the examples above underscore, from a medical perspective, chromosomes, reproductive anatomy, and endogenous hormones alone do not determine a person's sex, nor does a single sex-related characteristic.

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

Executed on

1/21/2022

/s/ Deanna Adkins, MD

1260

Deanna Adkins, MD

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24. Wylie et al. (2017); Euling SY, Herman-Giddens ME, Lee PA, et al. Examination of U.S. puberty-timing data from 1940 to 1994 for secular trends: panel Findings. *Pediatrics*. 2008;1221: S172—S191.

25. Wyshak, Grace, PhD and Frisch, Rose E., Evidence for a Secular Trend in Age of Menarche, April 29, 1982, *N Engl J Med* 1982; 306:1033-1035.

DUKE UNIVERSITY MEDICAL CENTER
CURRICULUM VITAE

Date Prepared: January 21, 2022

Name:	Deanna Adkins, BS, MD
Primary Academic Appointment:	Associate Professor of Pediatrics, Career Track
Primary Academic Department :	Pediatrics
Secondary Appointment:	n/a
Present Academic Rank and Title:	Associate Professor
Date and Rank of First Duke Faculty Appointment:	July 1, 2004 Clinical Associate
Medical Licensure:	Since March 15, 2001
License #:	200100207 NC

Date:	06/29/2022 expires
Specialty Certification(s) and Dates:	10/16/2001-2018 General Pediatrics 8/18/2003 and current- Pediatric Endocrinology
Date of Birth:	06/29/1970
Place:	Albany, GA USA
Citizen of:	USA
Visa Status:	n/a

Education	Institution	Date (Year)	Degree
High School	Tift County High School	1988	Graduated with High Honors
College	Georgia Institute of Technology	1993	BS Applied Biology/Genetics High Honors

Graduate or Professional School	Medical College of Georgia	1997	MD

Professional Training and Academic Career

Institution	Position/Title	Dates
University of North Carolina Hospitals, Chapel Hill, North Carolina	Pediatrics Resident	1997-2000
University of North Carolina Hospitals, Chapel Hill, North Carolina	Pediatric Endocrine Fellow	2000-2004
Duke University Medical Center, Durham, North Carolina	Clinical Associate/Medical Instructor	2004-2008
Duke University Medical Center, Durham, North Carolina	Assistant Professor Track IV	2008-2020
Duke University Medical Center, Durham, North Carolina	Fellowship Program Director Pediatric Endocrinology- Associate PD-	2008-2010 & 2014-12/2019 2010-2014
Duke University Medical Center,	Director Duke Child and Adolescent Gender Care Clinic	July 2015-present

Durham, North Carolina		
Duke University Medical Center, Durham, North Carolina	Medical Director-Duke Children's Specialty of Raleigh	3/2017-1/2022
Duke University Medical Center, Durham, North Carolina	Associate Professor Pediatrics	1/2020-present
Duke University Medical Center, Durham, North Carolina	Co-Director Duke Sexual and Gender Health and Wellness Program	10/2021-present

Publications

Refereed Journals

Original Manuscripts:

1. Zeger M, **Adkins D**, Fordham LA, White KE, Schoenau E, Rauch F, Loechner KJ. “Hypophosphatemic rickets in opsismodysplasia,” J Pediatr Endocrinol Metab. 2007 Jan;20(1):79-86. PMID: 17315533
2. Worley G, Crissman BG, Cadogan E, Milleson C, **Adkins DW**, Kishnani PS “Down Syndrome Disintegrative Disorder: New-Onset Autistic Regression, Dementia, and Insomnia in Older Children and Adolescents With Down Syndrome”, J Child Neurol. 2015 Aug;30(9):1147-52. doi:

- 10.1177/0883073814554654. Epub 2014 Nov 3. PMID:25367918
3. Tejjwani R, Jiang R, Wolf S, **Adkins DW**, Young BJ, Alkazemi M, Wiener JS, Pomann GM, Purves JT, Routh JC,” Contemporary Demographic, Treatment, and Geographic Distribution Patterns for Disorders of Sex Development”.*Clin Pediatr* (Phila). 2017 Jul 1:9922817722013. doi: 10.1177/0009922817722013. PMID:28758411
 4. Lapinski J1, Covas T2, Perkins JM3, Russell K4, **Adkins D** 5, Coffigny MC6, Hull S7. “Best Practices in Transgender Health: A Clinician’s GuidePrim Care”. 2018 Dec;45(4):687-703. doi: 10.1016/j.pop.2018.07.007. Epub 2018 Oct 5. PMID: 30401350 DOI: 10.1016/j.pop.2018.07.007
 5. Paula Trief, Nicole Foster, Naomi Chaytor, Marisa Hilliard, Julie Kittelsrud, Sarah Jaser, Shideh Majidi, Sarah Corathers, Suzan Bzdick, **Adkins DW**, Ruth Weinstock; “Longitudinal Changes in Depression Symptoms and Glycemia in Adults with Type 1 Diabetes”, *Diabetes Care*; 2019 Jul;42(7):1194-1201. doi: 10.2337/dc18-2441. Epub 2019 May; PMID: 31221694
 6. Mann, Courtney M., Kristen Russell, Alexy Hernandez, Nicole Lucas, Erik Savereide, Dane R. Whicker, **Deanna W. Adkins**, Nancy L. Zucker, Raye Dooley, and Bryce B. Reeve. “Concept elicitation for the development of quality measures in transgender health.” In *Quality of Life Research*, 28:S104—S104. SPRINGER, 2019.
 7. M. Hassan Alkazemi, MD, MS, Leigh Nicholl, MS, Ashley W. Johnston, MD, Steven Wolf, MS, Gina-Maria Pomann, PhD, Diane Meglin, MSW,

Deanna Adkins, MD, Jonathan C. Routh, MD, MPH; Community Perspectives on Difference of Sex Development (DSD) Diagnoses: a Crowdsourced Survey, 2020 Jun;16(3):384.e1-384.e8. doi: 10.1016/j.jpuro.2020.03.023. Epub 2020 Apr 27.PMID: 32409277

8. McGuire H, Frey L, Woodcock LR, Dake E, Carl A, Matthews D, Russell K, **Adkins DA** “Differences in Patient and Parent Informant Reports of Depression and Anxiety Symptoms in a Clinical Sample of Transgender and Gender Diverse Youth” *LGBT Health* 2021-LGBT Health. Aug-Sep 2021;8(6):404-411. doi: 10.1089/lgbt.2020.0478. Epub 2021 Aug 12

Non Author publications

1. Turner DA, Curran ML, Myers A, Hsu DC, Kesselheim JC, Carraccio CL and the Steering Committee of the Subspecialty Pediatrics Investigator Network (SPIN). Validity of Level of Supervision Scales for Assessing Pediatric Fellows on the Common Pediatric Subspecialty Entrustable Professional Activities. *Acad Med*. 2017 Jul 11. doi: 10.1097/ACM.0000000000001820. PMID:28700462
2. Mink R, Carraccio C, High P, Dammann C, McGann K, Kesselheim J, Herman B. Creating the Subspecialty Pediatrics Investigator Network (SPIN). Creating the Subspecialty Pediatrics Investigator Network Richard Mink, MD, MACM1, Alan Schwartz, PhD2, Carol Carraccio, MD, MA3, Pamela High, MD4, Christiane Dammann, MD5, Kathleen A. McGann, MD6, Jennifer Kesselheim, MD, EdM7, *J Peds* 2018

Jan;192:3-4.e2. PMID: 29246355 DOI: 10.1016/j.jpeds.2017.09.079

3. Erratum 2018. PMID: 29246355 DOI: [10.1016/j.jpeds.2017.09.079](https://doi.org/10.1016/j.jpeds.2017.09.079)
4. Mink RB¹, Myers AL, Turner DA, Carraccio CL. Competencies, Milestones, and a Level of Supervision Scale for Entrustable Professional Activities for Scholarship. *Acad Med* 2018 Jul 10. doi: 10.1097/ACM.0000000000002353. [Epub ahead of print] PMID: 29995669 DOI:10.1097/ACM.0000000000002353 Mink RB, Schwartz A, Herman BE,

Editorials

- a. Editorial Charlotte News and Observer-”**NC pediatric specialists say HB2 ‘flawed’ and ‘harmful,’ call for repeal**”; April 18, 2016; authors: Deanna Adkins, Ali Calikoglu, Nina Jain, Michael Freemark, Nancie MacIver, Robert Benjamin, Beth Sandberg, etc.
- b. Editorial Raleigh News and Observer-”**Beverly Gray: Repeal HB2**” May 2016: authors Beverly Gray, Deanna Adkins, Judy Sidenstein, Jonathan Routh, Haywood Brown, Clayton Afonso, William Meyer, Kristen Russell, Caroline Duke, Nancy Zucker, Kevin Weinfurt, Jennifer St. Claire, Angela Annas, Katherine Keitcher

Chapters in Books

1. Endocrinology Chapter writer and editor in **Fetal and Neonatal Physiology for the Advanced Practice Nurse**; Editors: Amy Jnah DNP, NNP-BC, Andrea Nicole Trembath MD, MPH, FAAP. December 21, 2018 ISBN-10 0826157319

2. Chapter in **Dental Clinics of North America Adolescent Oral Health Edition** Understanding and Caring for LGBTQ+ Youth for the Oral Health Care Provider; Authors Joshua Raisin, DDS, Deanna Adkins MD, Scott B. Schwartz, DDS, MPH. 2021

3. Intersex Identity and Gender Assignment; **Encyclopedia of Adolescent Health**; Editor Brian Eichner, MD; Author Deanna Adkins MD 2021-pending

Selected Abstracts:

1. Redding-Lallinger RC, **Adkins DW**, Gray N: The use of diaries in the study of priapism in sickle cell disease. Poster Abstract in Blood November 2003

2. **Adkins, D.W.** and Calikoglu, A.S.: Delayed puberty due to isolated FSH deficiency in a male. Pediatric Research Suppl. 51: Abstract #690. page 118A, 2004

3. Zeger, M.P.D., **Adkins, D.W.**, White, K., Loechner, K.L.: Opsismodysplasia and Hypophosphatemic Rickets. Pediatric Research Suppl.-from PAS 2005

4. Kellee M. Miller^s, David M. Maahs², **Deanna W. Adkins**³, Sureka Bollepalli⁴, Larry A. Fox^y, Joanne M. Hathway⁶, Andrea K. Steck², Roy W. Beck^s and Maria J. Redondo⁷ for the T1D Exchange Clinic Network; Twins Concordant for Type 1 Diabetes in the T1D Exchange - poster at ADA scientific sessions 6/2014

5. Laura Page, MD; Benjamin Mouser, MD; Kelly Mason, MD; Richard L. Auten, MD; **Deanna Adkins, MD** CHOLESTEROL SUPPLEMENTATION IN SMITH-LEMLI-OPITZ: A Case of Treatment During Neonatal Critical Illness; - poster 06/2014

6. Lydia Snyder, MD, **Deanna Adkins, MD**, Ali Calikoglu, MD; Celiac Disease and Type 1 Diabetes: Evening of Scholarship UNC Chapel Hill 3/2015 poster

7. **Deanna W. Adkins, MD**, Kristen Russell, LCSW, Dane Whicker, PhD, Nancy Zucker, Ph. D: Departments of Pediatrics and Psychiatry, Duke University Medical Center; Evaluation of Eating Disturbance and Body Image Disturbance in the Trans Youth Population; WPATH International Scientific Meeting June 2016; Amsterdam, The Netherlands

8. Rohit Tejwani, **Deanna Adkins**, Brian J. Young, Muhammad H. Alkazemi, Steven Wolf⁶, John S. Wiener, J. Todd Purves, and Jonathan C. Routh; Contemporary Demographic and Treatment Patterns for Newborns Diagnosed with Disorders of Sex Development; Poster presentation at AUA meeting 2016

9. S.A. Johnson, **D.W. Adkins**, Case Report: The Co-diagnosis of Hypopituitarism with Klinefelter in a patient with short stature; Pediatric Academic Society Meeting 2018

10. Lapinski J, Dooley R, Russell K, Whicker D, Gray, B, **Adkins DW**; **Title:** Developing a Pediatric Gender Care Clinic at a Major Medical Setting in the South; Workshop Philadelphia Trans Wellness Conference 2018

11. Jessica Lapinski, DO, Deanna Adkins, MD, Tiffany Covas, MD, MPH, Kristen Russell, MSW, LCSW; An Interdisciplinary Approach to Full Spectrum Transgender Care; WPATH Conference Buenos Aires, Argentina, November 3, 2018

12. Leigh Spivey, MS, Nancy Zucker, PhD, Erik Severiede, B.S., Kristen Russell, LCSW, Deanna Adkins,

MD; USPATH Washington, DC Sept. 2019. Platform presentation; “Psychological Distress Among Clinically Referred Transgender Adolescents: A latent Profile Analysis”

Non-Refereed Publications

i. Print

- i. Editorial Charlotte News and Observer-
”NC **pediatric specialists say HB2 ‘flawed’ and ‘harmful,’ call for repeal**”;
April 18, 2016
- ii. Editorial News and Observer-HB2 May
2016 -”**Beverly Gray: Repeal HB2**” May
2016

ii. Digital

- i. Supporting and Caring for Transgender
Children-HRC guide 2017
- ii. Initial endocrine workup and referral
guidelines for primary care Providers-
Pediatric Endocrine Society Education
Committee Website Publication
- iii. Only Human Podcast August 2, 2016;
<https://www.wnycstudios.org/podcasts/only-human/episodes/id-rather-have-living-son-dead-daughter>

iii. Media and Community Interviews

- i. Greensboro News and Record Community
Forum October 2017-*Transgender Panel
Moderator*

- ii. Playmakers Repertory Company-Chapel Hill: *Draw the Circle* Transgender Community Panel 2017
- iii. Duke Alumni Magazine
- iv. Duke Stories
- v. DukeMed Alumni Magazine
- vi. NPR Podcast Only Human piece on caring for transgender youth and follow up piece 1 year later
- vii. ABC11, WRAL, WNCN News Coverage
- viii. News and Observer: Charlotte and Raleigh
- ix. Duke Chronicle and Daily Tarheel Article
- x. Huffington Post Article
- xi. <https://www.businessinsider.com/the-olympics-uses-testosterone-to-treat-trans-athletes-like-cheaters-2021-7>
- xii. <https://www.wral.com/top-transgender-doctor-warns-teen-treatment-ban-could-be-deadly/19618762/>
- xiii. <http://www.ncpolicywatch.com/2021/04/07/experts-bills-targeting-trans-people-get-the-science-wrong/>

Published Scientific Reviews for Mass Distribution

Position and Background Papers

Other Publications

Editorial Experience

Editorial Boards

Ad Hoc scientific review journals

Hormone Research, Lancet, NC Medical journal,
Journal of Pediatrics, Pediatrics, Transgender
Health, International Journal of Pediatric
Endocrinology, Journal of Adolescent Health

Consultant Appointments

North Carolina Newborn Screening Committee

Human Rights Campaign Transgender Youth
Advisory Board

Scholarly Societies

Professional Awards and Special Recognitions

ESPE Fellows Summer School, 2001

NIH Loan Repayment Program Recipient

Lawson Wilkins AstraZeneca Research Fellow,
2003-2004

HEI 2017 Leaders in LGBTQ Healthcare
Equality

Inside Out Durham Appreciation Award
Duke Health System Diversity and Inclusion
Award January 2018

America's Top Doctor's 2020, 2021

Duke Health System Diversity and Inclusion
Award January 2020- CDHD Course Team
Teaching for Equity Fellow 2021

Organizations and Participation

Organization	Role	Dates
American Academy of Pediatrics	Member Council on Information Technology Member Reviewer COCIT	1998 to present
	Member Section on Endocrinology	2004 to present
Pediatric Endocrine Society	Member Member Education Committee SIG member-Transgender, DSD, liaison to Advocacy SIG Writer Web Publication for Pediatricians	2000 to present
NC Pediatric Society	Member	1998 to present
Endocrine Society	Member	2000 to present

WPATH- International Transgender Society	Member	2014 to present
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External Support

<u>Approximate Duration</u>	<u>PI</u>	<u>% Effort</u>	<u>Purpose</u>	<u>Amount Duration</u>
<u>Past</u>	<u>JAEB Center-Deanna Adkins</u>	0.5%	<u>Type 1 diabetes research</u>	<u>\$ 5yr</u>
<u>Past</u>	<u>Josiah Trent Foundation Grant-Deanna Adkins</u>	0.5%	<u>Transgender and eating disorder research</u>	<u>\$5000 3 yr</u>
<u>Pending: Submitted</u>	<u>NIH-Kate Whetten</u>	0.1%	<u>Analysis of Transgender Health in Adolescents in Rural Africa, India, and Thailand</u>	<u>Consultant</u>
<u>Re-Submitting June 2021</u>	<u>NIH R21 Deanna Adkins</u>	2%	Development of New Gender Dysphoria	<u>Co PI</u>
<u>Re-Submitting June 2021</u>	<u>NIH R21 Sarah Legrand</u>	2%	Measures in Youth Glow and Grow	<u>consultant</u>
<u>Submitted November 2020</u>	<u>CMS-Deanna Adkins</u>	1%	<u>Innovations Grant</u>	<u>Co PI</u>

	<u>and Rob Benjamin</u>			
<u>Submitted Sept 2020</u>	<u>Kate Whetten</u>	2%	SAHMSA Grant for development of multidisciplinary education	<u>Co PI</u>
<u>Gifts</u>	<u>Private Family</u>			

Mentoring Activities

Faculty	
Fellows, Doctoral, Post docs	Nancie MacIver-fellow
	Dorothee Newbern-fellow
	Krystal Irizarry-fellow
	Kelly Mason-fellow
	Laura Page-fellow
	Elizabeth Sandberg fellow UNC
	Dane Whicker- psychology post doc Leigh Spivey-psychology post doc Joey Honeycutt, Chaplain Intern

	Kathryn Blew-research mentor
Residents	Yung-Ping Chin-mentor
	Kristen Moryan-mentor
	Jessica Lapinski-mentor
	Kathryn Blew-research mentor
	Matthew Pizzuto, Briana Scott-Coach, Laura Hampton Coach
Medical Students	Tulsi Patel-continuity clinic mentor Sonali Biswas-research mentor 3rd year project Katha Desai-research mentor 3rd year project
Undergraduates	Erik Severeide-Duke University Lindsay Carey-Dickinson College Jeremy Gottlieb-Duke University Jay Zussman-Duke University Beles Abebe-Duke University
High School Students	Aeryn Colton-Intern Apex High School

Graduate Student MBS program	Nicholas Hastings
UNC Gillings School of Public Health MPH students	Lauren Frey, Emily Dake, Alexandra Carle, Lindsay Woodcock, Hunter McGuire
Nurse Practitioners	ECU, Duke-multiple
DNP candidates	Ethan Cicero-PhD committee member Amanda Lund-PhD committee member
Pediatric Dental Fellow UNC	Joshua Raisin-research associate

Education / Teaching Activities

Didactic classes

High School

c. Cary Academy: Work Experience Program 2021

Undergraduate

1. Creating Excellence and Ambulatory Nursing 2008
2. Profile in Sexuality Research Series at Duke CGSD 2016
3. Duke School of Nursing BSN Course on Sexual and Gender Health guest lecturer: fall 2017, spring 2018, fall 2018, spring 2019, fall 2019, spring 2020, fall 2020, spring 2021, fall 2021
4. Duke School of Nursing Lecture on Transgender Care-recorded for reuse

5. Duke Physician Assistant Program guest lecturer; fall 2017, spring 2018
6. Duke Global Health Course guest lecturer fall 2016
7. Duke Neuroscience course on Gender and Sex guest lecturer fall 2016
8. Duke Ethics Interest group guest lecturer fall 2018, 2020
9. Duke EMS group lecture fall 2018
10. Duke Physician Assistant Program LGBTQ+ Rotation Educator 2019 to present
11. Global Health Sexual and Gender Minority Seminar Lecturer 2020

UME:

1. Cultural Determinants of Health and Health Disparities Course: Facilitator and developed one class; 2017-18 and 2018-19, 2019-20, 2020-21, 2021-22; Steering Committee member for course development
2. UNC School of Medicine Lecturer for LGBTQ Health series 2016-recorded for reuse
3. Duke Pediatrics Interest Group lecture Nov 2020
4. Duke Med Pediatrics Interest Group lecture fall 2018, 2020
5. Lecturer Body and Disease Course MS1 2019, 2020, 2021 Clinical Correlation Differences of Sex Development
6. Lecturer Body and Disease Course MS1 2020, 2021 Transgender Medicine

7. Lecture on Cancer in Transgender and Intersex Individuals April 14, 2021 Mount Sinai School of Medicine
8. Lecture on Transgender Medicine Univ. of Tenn. Health Science Center School of Medicine May 7, 2021

Graduate School Courses:

1. Master of Biomedical Science Program-guest lecturer on Transgender Medicine fall 2016
2. School of Nursing Graduate Intensive Course Lecturer on Sexual and Gender Health; fall 2017, spring 2018, fall 2018, spring 2019, Fall 2019
3. Fuqua School of Business Med Pride Panel and presentation fall 2017
4. Master of Biomedical Science Program Mentor 2019-2020
5. Endocrinology for Nurse Practitioners Duke Neonatal Nurse Practitioner Program August 2021

DUHS Employee Education

1. Annual Duke Human Resources Lunch and Learn on Gender Diversity 2016, 2017, 2018
2. Over 100 lectures across the institution on gender including CHC front desk/nursing staff, hospital wide social work/case management, radiology, PDC clinic front desk/nursing staff
3. Steering Committee for Sexual and Gender Identity Epic Module development and Educational module development
4. DCRI Pride invited speaker
5. Duke Children's staff update 2021

GME:

1. Adult Endocrinology Fellows every year on growth and/or gender
2. Pediatric Residency Noon conferences on Growth and Gender-yearly
3. Reproductive Endocrinology Noon Conferences every 2 to 3 years
4. Psychiatry Noon Conferences periodically
5. Family Practice Noon Conference periodically
6. Pediatric Endocrine Fellow lectures twice a year or more
7. Pediatrics grand rounds: Vitamin D, Type 2 diabetes, Pubertal Development, Gender Diverse Youth
8. Duke Urology Grand Rounds 2016
9. Duke Ob/Gyn Grand Rounds 2017
10. Webinar for Arkansas Children's Hospital on transgender care 2018
11. Reproductive Challenges for Transgender people- Reproductive Endocrinology-2020
12. Metabolic Bone Disease in Neonates-NICU fellows 2019
13. Duke Psychiatry Grand Rounds 2017
14. Duke Pathology Grand Rounds fall 2020
15. Duke Family Medicine Community Rotation Educator 2019 to present
16. NC NAPNAP Symposium Keynote Speaker October 10, 2020

17. Duke Internal Medicine LEADS program speaker; Transgender Care 8/3/2021
18. Equity and Social Justice Webinar: Clinical Advocacy and Care of Transgender and Gender Diverse Youth October 27, 2021 Harvard Equity and Social Justice Webinar

Development of Courses Educational programs

1. Pituitary Day October 2019-full day multispecialty seminar for caregivers of patients with hypopituitarism-Organized and developed the curriculum
2. Development of Gender Diversity Education for Health System education
3. Steering Committee for Cultural Determinants and Health Disparities Course
4. Helping to Adapt Resident Coaching Program to Pediatric Fellowships
5. Developed half day course for Duke Student Health on Care of the Gender Diverse Student with multiple disciplines included
6. Course Director: American Diabetes Association Camp Carolina Trails rotation for fellows and residents: 2009, 2011 — 2019
7. Medical Education for Camp Morris 2019, 2021

Development of Assessment Tools and Methods

1. Currently under development with Population Health Sciences-method to assess gender dysphoria; received Brief High Intensity Production (BHIP) grant for this collaboration; NIH grant Submitted March 2020; I am writing

the portion of grant giving background on the population and the need for better measures.

2. Collaborating with the Duke Chaplain group to develop a spiritual assessment tool for gender diverse children and their families. Completed 2019

Educational leadership roles

1. Fellowship Program Director Pediatric Endocrinology 2008-2019
2. Course Director: American Diabetes Association Camp Carolina Trails rotation for fellows and residents: 2009, 2011 to 2019

Educational Research

1. Working with coaching program for residents modified and applied in pediatric fellows
2. Worked with the Council on Pediatric Subspecialties EPA study

Invited Lectures and Presentations

1. NC Peds Conference: Pubertal Development 2016
2. Trent Center for Ethics Lecture May 2017: Transgender Medicine: a Wealth of Ethical Issues
3. Visiting Professorship: ECU Brody School of Medicine Invited Professor October 2017
4. College of Diplomates-pediatric dentistry society- Webinar on transgender care 4/1/2020
5. NAPNAP keynote speaker Annual Meeting October 2020
6. Wake County Duke CME program: Type 2 diabetes treatments in pediatrics 2019

7. Lecture on Cancer in Transgender and Intersex Individuals April 14, 2021 Mount Sinai School of Medicine
8. Lecture on Transgender Medicine Univ. of Tenn. Health Science Center School of Medicine May 7, 2021
9. Equity and Social Justice Webinar: Clinical Advocacy and Care of Transgender and Gender Diverse Youth October 27, 2021 Harvard Equity and Social Justice Webinar

International Meetings

1. WPATH Amsterdam 2016
2. WPATH Buenos Aires 2018

National Scientific Meetings (invited)

1. Transgender SIG Developing a Patient Registry
2. Patient Advocacy for Transgender Youth Philadelphia 2018

Instructional Courses, Workshops, Symposia (National)

1. Time to Thrive Arkansas Children's Hospital April 2018
2. National Transgender Health Summit UCSF Jan 2018: Providers as Advocates Workshop
3. Magic Foundation-Chicago, IL Annual Speaker on Precocious Puberty, Adrenal Insufficiency, and Growth Hormone at National Conference 2016, 2017, 2019, 2020, 2021
4. The Seminar-Fort Lauderdale, FL Invited Speaker on Care of Transgender Youth 2017

Regional Presentations and Posters

- a. North Carolina Pediatric Society: Pubertal Development Presentation—Pinehurst, NC 2017
- b. North Carolina Psychiatric Association: Caring for Transgender Children Presentation and Workshop on key concepts in care of transgender child-Asheville, NC 2017
- c. ECU Campus Health Presentation Caring for Transgender Patients 2018
- d. Radiology Technology Symposium Presentation on Caring for Transgender Patients 2018
- e. Duke CME in Wake County-Update on Type 2 Diabetes Treatments Feb 2019
- f. Hilton Head Pediatric CME Course-Update on Type 2 Diabetes, Short Stature, and Caring for Transgender Patients June 2019
- g. Wake County Duke Pediatrics CME Type 2 diabetes treatments Feb 2019
- h. NAPNAP Annual Meeting Keynote Speaker 2020
- i. Sexual and Gender Minorities Research Symposium Duke Feb 2020; speaker and organizer

Local Presentations

1. Grand Rounds: 2016 to present-Duke Pediatrics twice, Moses Cones Pediatrics, ECU Ob/Gyn,

Duke Ob/Gyn, Duke Psychiatry, Duke Urology,
Duke Adult Endocrinology, Duke Pathology

2. Prior to 2016-Rex Grand rounds: Salt and Water balance, New treatments in Pediatric Diabetes, Adrenal Insufficiency, Duke peds grand rounds Bone Health, Type 2 Diabetes Mellitus
3. Duke Women's Weekend 2018 hosted by Duke Alumni Association
4. NCCAN Social Work Training 2016
5. NAPNAP lecture 2016 and 2018 and 2020
6. Profiles in Sexuality Research Presentation at Duke Center for Sexual and Gender Diversity 2017
7. Duke LGBTQ Alumni Weekend Presentation 2017
8. UNC Chapel Hill Campus Health Presentation 2018
9. Duke Student Health Presentation 2017, 2018, 2019 (workshop)

Clinical Activity

1. Duke Consultative Services of Raleigh-2.5 days per week in endocrinology and diabetes
2. Duke Child and Adolescent Gender Care Clinic 1.2 day per week at the CHC
3. Inpatient Consult Service Pediatric Endocrinology 1 week per month

Administrative and Leadership Positions

1. Medical Director Duke Children's and WakeMed Consultative Services of Raleigh
2. Director Duke Child and Adolescent Gender Care Clinic

3. Pediatric Endocrinology Fellowship Program
Director 2008-2019

Committees

1. Graduate Medical Education Committee-2008-2019
2. School of Medicine Sexual and Gender Diversity Council 2015 to present
3. Pediatrics Clinical Practice Committee-2015? To present
4. Pediatric Diversity and Inclusion Committee

Community

1. Test proctor local schools
2. Guest lecture GSA multiple years
3. Diabetes Camp over 10 years
4. 100 Women who give a hoot
5. Collaborated to bring "Becoming Johanna" to Duke along with multiple screenings with the director and the lead actor
6. Teddy Bear Hospital volunteer both years