IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

STUDENTS AND PARENTS FOR PRIVACY, a voluntary unincorporated association; C.A., a minor, by and through her parent and guardian, N.A.; A.M, a minor, by and through her parents and guardians, S.M. and R.M.; N.G., a minor, by and through her parent and guardian, R.G.; A.V., a minor, by and through her parents and guardians, T.V. and A.T.V.; and B.W., a minor, by and through his parents and guardians, D.W. and V.W.,	)	No. 1:16 CV 4945
Plaintiffs,	)	The Hon. Jorge L. Alonso, *District Judge*
v.	)	
UNITED STATES DEPARTMENT OF EDUCATION; JOHN B. KING, JR., in his official capacity as United States Secretary of Education; UNITED STATES DEPARTMENT OF JUSTICE; LORETTA E. LYNCH, in her official capacity as United States Attorney General; and SCHOOL DIRECTORS OF TOWNSHIP HIGH SCHOOL DISTRICT 211, COUNTY OF COOK AND STATE OF ILLINOIS,	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE AS DEFENDANTS OF STUDENTS A, B, AND C, BY AND THROUGH THEIR PARENTS AND LEGAL GUARDIANS, AND OF THE ILLINOIS SAFE SCHOOLS ALLIANCE

Students A, B, and C, by and through their parents and legal guardians Parents A, B, and C, and the Illinois Safe Schools Alliance (together, "Movants") seek to intervene as defendants as of right pursuant to Fed. R. Civ. P. 24(a)(2) or, alternatively, for permissive intervention under Rule 24(b)(1).[1] Federal Defendants oppose the motion to intervene as of right and take no

[1] The individual intervenors are minors and seek to proceed pseudonymously. If the Court grants Movants leave to intervene, Movants will file a motion to proceed pseudonymously setting out the basis for this request.

position on permissive intervention; the District Defendants take no position at this time; and Plaintiffs oppose this motion. In support of their motion, Movants state as follows:

BACKGROUND

Movants are Students A, B, and C and the Illinois Safe Schools Alliance ("Alliance"). The facts below are supported by the declarations of parents and guardians of each student Movant and of Owen Daniel-McCarter as representative of the Alliance. *See* Exhs. 1-4.[2]

Student A is a junior at William Fremd High School ("Fremd") in Township High School District 211 (the "District") in Palatine, Illinois. As numerous references to her throughout Plaintiffs' Complaint attest, Student A has been at the very center of the events that are the subject of this lawsuit. The facts set forth here are described in the declaration of her mother and legal guardian, Parent A, attached as Exhibit 1.

Although designated male at birth, Student A is female. She came out to her family as transgender in 2011, when she was in seventh grade. She has been diagnosed with Gender Dysphoria, the medical diagnosis for the clinically significant distress that individuals whose gender identity differs from the sex they were assigned at birth can experience. With the support of her parents and medical providers, Student A transitioned to living as female at the beginning of eighth grade in 2012. Since then she has lived her life as a girl by dressing as a girl, using a traditionally female name and pronouns, and using the girls' restrooms when at restaurants, stores, and other public places. During 2013, Student A started hormone therapy to give her a more feminine appearance and voice, completed a legal name change, and obtained a passport listing her gender as female.

[2] This motion satisfies Movants' responsibilities under Rule 24(c) because no pleading from any Defendant asserting a claim or defense is currently due. Movants will file such a pleading at the appropriate time if they are granted leave to intervene.

Wanting her entry into high school to go smoothly, Student A and her parents, at times with the support and assistance of the Alliance, asked administrators at the District prior to the start of her freshman year in 2013 to treat her as a girl in all ways, including by allowing her to use the girls' restrooms and locker rooms. The District told Student A she could use the girls' restrooms and wear girls' uniforms for athletic activities but would not be allowed to use the girls' locker rooms to change for gym class. Instead, she would have to use a separate restroom remote from the gym to change her clothes. Following additional meetings, the District administration proposed that Student A could change in a separate restroom that was not as remote, but continued to bar her from using the locker rooms where the other girls in her class change. The American Civil Liberties Union of Illinois (ACLU), whose lawyers are among Student A's counsel here, made additional requests that Student A be permitted to use the girls' locker rooms, but the District refused to change its position.

The District's proposal that Student A use a separate facility ostracized her by banning her from facilities all of the other girls were allowed to use and isolated her in a separate space, labeling her as distinct from her fellow students, male or female. This caused her embarrassment and emotional trauma, as well as logistical problems not shared by students allowed to use gender-appropriate locker rooms.

Student A (represented by the ACLU) filed a complaint with the U.S. Department of Education's ("ED") Office of Civil Rights ("OCR") in December 2013 alleging that the District was unlawfully discriminating against her. The District opposed her complaint. In June 2015, OCR informed Student A and the District of its findings that by prohibiting Student A from using female locker rooms the District had violated Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, which triggered a 90-day period to negotiate a resolution. Rather

than resolving the dispute, the District released a statement and held a press conference informing the public about Student A's complaint to ED and declaring that it would not permit transgender students to use the locker rooms consistent with their gender identity. *See* Dkt. 21-4 at 1; Dkt. 21-5 at 1. The District publicly defended its discriminatory actions, including in media appearances by District Superintendent Daniel Cates in which he addressed the "anatomy" of Student A. *See* Exh. 4. OCR publicly issued findings of a violation of Title IX on November 2, 2015. *See* Dkt. 21-10.

In December 2015, the District and OCR reached a resolution and signed an agreement which provides, in part, that "based on Student A's representation that she will change in private changing stations in the girls' locker rooms, the District agrees to provide Student A access to locker room facilities designated for female students" and "to take steps to protect the privacy of its students by installing and maintaining sufficient privacy curtains (private changing stations) within the girls' locker rooms to accommodate Student A and any students who wish to be assured of privacy while changing." The agreement is at Dkt. 21-3.

A dispute soon arose between the District and OCR in the media over the scope of the agreement (whether it applies District-wide or, as the District maintained, only to Student A) and what it requires (whether the District can compel Student A to change behind curtains while other students have an option to use those closed off areas, as the District maintained). Exh. 4.

Student A began using the private changing area in one of the girls' locker rooms in March 2016. This made a palpable difference in her life. She began to feel included in her school and athletic team, and felt fully accepted at her school for the first time. But as Plaintiffs' claims in this case arose, things have changed again. Aware that the controversy over her use of the locker rooms has again flared into public view, Student A has stopped using the girls' locker

rooms. She attends gym class in her street clothes rather than changing in the locker rooms. With Plaintiffs' claims hanging over her, Student A is concerned that not only her locker room access but her ability to use the girls' restrooms at school—which she has always had—are in jeopardy. *See* Exh. 1.

Student B is a twelve-year-old seventh-grade boy in junior high school. In the fall of 2017, Student B will begin ninth grade at the District's Fremd High School. Student B came out as transgender in August 2015 and since then has lived as a boy. He and his family anticipate that he will soon begin hormone therapy, which will give him a more masculine appearance and voice. *See* Exh. 2.

Student B informed the administration at his school that he identified as male and asked to be treated accordingly, including using a traditionally male name and pronouns. The school complied with this request. The school's acceptance of Student B as transgender in these respects has relieved much of the emotional distress he previously experienced. The school is also working to eliminate bullying that has been directed at Student B because he is transgender.

Student B uses the boys' restroom at school. He currently uses the girls' locker rooms to change for gym, but wishes to use the boys' locker rooms once he begins hormone therapy, which he expects to begin well in advance of entering Fremd. Because he is a boy, he anticipates that he will need to use the boys' restrooms and locker rooms there. Student B's mother believes that it would be emotionally devastating for him if he were not able to attend school at Fremd consistent with his gender identity, and that dismantling the resolution agreement or forcing District 211 to deny transgender students access to gender-appropriate restrooms would exacerbate and legitimize the bullying of Student B and other transgender students.

Student C is an eighth-grade boy who will attend the District's Hoffman Estates High School for the 2016-2017 academic year. Since coming out as transgender Student C has lived his life as a boy. He has legally changed his name to a traditionally male name, updated the gender marker on his state and other IDs to reflect that he is male, and refers to himself—and asks others to refer to him—using male pronouns. He plans to begin hormone therapy in the near future and will soon be exhibiting traditionally male characteristics. At his current junior high school, administrators, teachers and staff refer to him by his legal male name and male pronouns and treat him as they would any other boy at school. Other students have reacted well to, and are supportive of, his transition. Student C wants to use the boys' restrooms and locker rooms for gym when he attends high school. Student C's well-being has improved significantly now that he lives his life as a boy. He would feel extreme distress and discomfort if he were denied access to the boys' facilities at high school, which would separate him from the other boys and send him the message that he is different and should be ashamed of who he is. *See* Exh. 3.

The Illinois Safe Schools Alliance promotes safety, support, and healthy development for lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth in Illinois schools through advocacy, education, youth organizing, and research. In his capacity as the Policy and Advocacy Director of the Alliance, Owen Daniel-McCarter has worked with school districts in Illinois to draft transgender inclusion policies for school staff and administration. He has also conducted training for school staff and administration called "Transgender 101," which introduces transgender terminology, an overview of best practices for accommodating the legal rights of transgender students, and other types of training. In addition, the Alliance advocates for gender inclusivity in schools, LGBT-affirming curriculum, bullying prevention, and restorative school discipline practices to prevent student push-out from school. Alliance staff assisted

Student A in her efforts to use gender-appropriate facilities in the District and engaged in parent training in District high schools following entry of the resolution agreement. *See* Exh. 4.

ARGUMENT

A. Movants Satisfy the Requirements for Intervention as of Right.

Intervention as of right under Rule 24(a) must be granted if: "(1) the motion to intervene is timely filed; (2) the proposed intervenors possess an interest related to the subject matter of the action; (3) disposition of the action threatens to impair that interest; and (4) the named parties inadequately represent that interest." *Wis. Educ. Ass'n Council v. Walker*, 705 F.3d 640, 657–58 (7th Cir. 2013). In evaluating a request to intervene, courts "must accept as true the non-conclusory allegations of the motion." *Reich v. ABC/York-Estes Corp.*, 64 F.3d 316, 321 (7th Cir. 1995). Whether intervention as of right is warranted "is a highly fact-specific determination, making comparison to other cases of limited value." *Sec. Ins. Co. v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995). Movants easily satisfy their burden to show that their entry into this case is warranted.

1. The motion to intervene is timely and causes no prejudice.

Timeliness turns on "(1) the length of time the intervenor knew or should have known of his interest in the case; (2) the prejudice caused to the original parties by the delay; (3) the prejudice to the intervenor if the motion is denied; [and] (4) any other unusual circumstances." *Heartwood, Inc. v. U.S. Forest Serv.*, 316 F.3d 694, 701 (7th Cir. 2003). This test is "one of reasonableness." *Reich*, 64 F.3d at 321.

Intervention here is timely. Plaintiffs filed their Complaint on May 4, 2016, barely three weeks ago. Courts routinely grant intervention motions filed with similar promptness. *E.g.*, *Uesugi Farms v. Michael J. Navilio & Son*, 2015 WL 3962007, at *2 (N.D. Ill. June 25, 2015)

(one month after complaint); *Alarm Detection Sys. v. Bloomingdale Fire Prot. Dist.*, 2014 WL 4124251, at *2 (N.D. Ill. Aug. 20, 2014) (two months after amended complaint).

The short delay in filing this motion was necessary for Movants to consult with counsel (including Mayer Brown LLP counsel who are new to the matter), prepare declarations in support of intervention, and prepare intervention papers. During that period, the Court has not set any briefing schedule or issued any substantive decisions. *See Michigan v. U.S. Army Corps of Eng'rs*, 2010 WL 3324698, at *2–3 (N.D. Ill. Aug. 20, 2010) (motion to intervene timely when filed in "earliest stages" before court "issued any substantive decisions"). Thus no delay of the litigation or other prejudice to the parties will occur by allowing the intervenor defendants to participate. *See PAC for Middle Am. v. State Bd. of Elections*, 1995 WL 571893, at *4 (N.D. Ill. Sept. 22, 1995) (no prejudice when intervention occurs prior to the start of discovery). By contrast, denying intervention, as set forth below, would severely prejudice Movants.

2. Movants have a significant legal interest that would be impaired if ED's guidance were held unlawful or the District were ordered to stop allowing transgender students to use restrooms and locker rooms consistent with their gender identity.

Whether proposed intervenors have a sufficient connection to the action must be evaluated in terms of "the issues to be resolved by the litigation and whether the potential intervenor has an interest in those issues." *Reich*, 64 F.3d at 322. Because Movants are within the zone of interests protected by Title IX they have ample interest to warrant intervention to defend the District's agreement under Title IX, its policy regarding restroom use by transgender students, and ED's guidance as to Title IX's application to gender identity discrimination. *E.g.*, *Thompson v. N. Am. Stainless, LP*, 562 U.S. 170, 178 (2011) (party "with an interest 'arguably [sought] to be protected by the statute'" has standing).

This case concerns a significant issue in the daily lives of the individual intervenors, each of whom has a "direct, significant and legally protectable interest" in the question whether, despite Title IX's prohibition against sex discrimination, schools can treat transgender boys and girls differently than other boys and girls when using school facilities. *See Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 572 (7th Cir. 2009) (loss of statutorily-conferred benefits by persons whose interests the law was intended to protect is a sufficient interest to satisfy Rule 24(a)). Student A is the student at the center of the controversy that has resulted in this lawsuit. A substantial portion of her family's time and energy has been devoted to achieving a just result that allows her to use school facilities alongside other girls, including filing the ED complaint that led to the resolution agreement. Reflecting her central role in this case, Plaintiffs' Complaint is full of allegations about Student A personally and the District's dealings with her specifically. The challenged agreement between OCR and the District references her and establishes the terms of her access to the girls' locker rooms.

Student B will attend Fremd next year and will need to use the boys' restrooms and locker rooms. Student C will attend a District high school for the 2016-2017 academic year and will need to use the boys' restrooms and locker rooms. This case directly impacts Fremd's and other District schools' restroom and locker room policies applicable to transgender students like Students A, B, and C.

The Alliance has an interest in the issues to be resolved because Alliance staff assisted Student A and her family in their dealings with the District prior to her filing of a complaint with ED and later participated in implementation of the resolution agreement trainings for the District. Furthermore, the Alliance has been involved in the development of transgender inclusion policies at other schools throughout Illinois, and its mission includes assisting transgender

students in using appropriate facilities. It too has a direct and substantial interest in Plaintiffs' challenge to Title IX's application to discrimination on the basis of gender identity.

Resolution of this suit certainly could impair Movants' interests. *See Reid L.*, 289 F.3d at 1017 (intervenor must show "at least potential impairment of [its] interest if the action is resolved without the intervenor"); *WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d 1192, 1199 (10th Cir. 2010) (this requirement "presents a minimal burden"). If Plaintiffs prevail on their claims, years of struggle by Student A to gain the right to use the locker rooms that correspond to her gender identity will have been to no avail. She will lose a critical protection that allows her to function as an integrated student without the stigma of separate changing facilities. Given that Plaintiffs' lawsuit has already begun to undo that psychological protection, Student A's interests are undeniably in the balance. Students B's and C's future ability to use gender-appropriate facilities, including restrooms, in the District is at issue. And the Alliance's efforts to assist students in using school facilities consistent with their gender identity will be undermined, if not prevented entirely, if ED's guidance is held unlawful.

3. Defendants do not adequately represent Movants' interests.

An intervenor can meet the third requirement under Rule 24(a) by showing "that representation of his interest 'may be' inadequate, and the burden of making that showing should be treated as minimal." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972). Although governmental bodies ordinarily are presumed to adequately represent those they are charged by law to protect, *Ligas ex rel. Foster v. Maram*, 478 F.3d 771, 774 (7th Cir. 2007), that presumption may be rebutted based on the history between the parties, *Ligas v. Maram*, 2010 WL 1418583, at *3 (N.D. Ill. Apr. 7, 2010), or where the intervenor does not have "the same

interest as" the governmental party, *United States v. S. Bend Cmty. Sch.*, 710 F.2d 394, 396 (7th Cir. 1983).

Thus, the Seventh Circuit has permitted intervention as defendants by students who had a personal stake in the outcome of their university's lawsuit against federal agencies charged with enforcing the law the university challenged. *Univ. of Notre Dame v. Sebelius*, 743 F.3d 547, 558 (7th Cir. 2014), *vacated on other grounds,* 135 S. Ct. 1528 (2015). After Notre Dame sued the United States over the contraception provisions of the Affordable Care Act, the students moved to intervene with the "concern that the university is seeking to obtain a ruling from this court that may thwart their right to contraception." *Id.* The court called this concern "exaggerated," but nonetheless decided that it "was sufficient to warrant intervention." *Id.* Thus, the Seventh Circuit allowed individuals with a clear stake in the litigation to enter the case despite existing government defendants. Likewise, in *Trbovich*, the Supreme Court allowed intervention by a union member on the same side as the U.S. Secretary of Labor, citing "sufficient doubt about the adequacy of representation to warrant intervention." 404 U.S. at 538. The same is true here.

a. The District does not adequately represent Movants' interests.

The District's history of recalcitrance with regard to Student A's use of locker rooms consistent with her gender identity establishes that the District does not adequately represent the interests of Movants. For over two school years, despite Student A's filing of a complaint with ED, the District refused to allow Student A access to the locker rooms that matched the gender she lives every day, announcing publicly that it would "not allow unrestricted access to its locker rooms as directed by OCR." Dkt. 21-4 at 1. As the ED noted in its November 2015 letter to the District, the district refused to allow Student A to use the girls' locker rooms even after constructing privacy curtains in one of the girls' locker rooms at Fremd. This refusal, ED noted,

deprived Student A of equal opportunity within her school and gave her "an ongoing sense of isolation and ostracism." Because of the District's actions, Student A had "to accept being treated differently," "changed separately from other students in a restroom down a 75-foot hallway," and "took a long and circuitous route daily in an attempt to enter the gymnasium unnoticed" among other slights and embarrassments. Dkt. 21-10 at 10.

The District's actions establish that its interests are aligned with Plaintiffs, not Federal Defendants or Movants. The District agreed to comply with Title IX only after being threatened with the loss of federal funding—and the District later threatened to back out of that agreement. *Deal for Transgender Student Now in Question Amid 'Bad Faith' Claims*, Chicago Tribune (Dec. 4, 2015), http://tiny.cc/e8rnby.

Moreover, the District announced in April 2016 that it would not adopt a policy allowing all students to use restrooms and locker rooms consistent with their gender identity. Peterson, *District 211 Decides Against Written Policy on Transgender Access*, Daily Herald (Apr. 29, 2016, 6:51 PM), http://tiny.cc/ vg5mby. In doing so, the District's policy board president stated that the board "found no way of having a written policy that would please everyone." *Id.* Accordingly, it is clear that, rather than representing Movants' interests, the District is focused on "pleas[ing] everyone," which includes appeasing those students and parents, including Plaintiffs in this suit, who oppose equal access for transgender students to gender-appropriate facilities. *See* Eldeib, *District 211 Keeps Deal on Transgender Student After Heated Debate*, Chicago Tribune (Dec. 8, 2015), http://tiny.cc/sasnby. Because the District represents many people whose interests conflict with those of Movants, it cannot adequately represent Movants' interests. *See Builders Ass'n v. City of Chicago*, 170 F.R.D. 435, 441 (N.D. Ill. 1996) (city was an inadequate representative of intervenors' who had direct stake in the outcome of the litigation).

b. Federal Defendants do not adequately represent Movants' interests.

Movants' interests in this case are acutely personal and differ in degree and kind from the interests of Federal Defendants. First, ED has taken the position that the resolution agreement applies only to Student A's use of the girls' locker rooms, *see* Eldeib, *supra*, while Movants take the position that the agreement applies to all students in the District. Transgender students such as Students B and C who will attend schools in the District receive no protection from ED's settlement with the District, and there has been no sign ED has re-engaged with the District to attain additional protections. Thus, Federal Defendants cannot be expected to adequately represent Movants' personal interests in equal access to the District's facilities. *See Ind. Petr. Marketers Ass'n v. Huskey*, 2013 WL 6507002, at *6 (S.D. Ind. Dec. 11, 2013) (a "conflict between [intervenors] and the State" may "rende[r] the State's representation inadequate").

Second, ED's recent brief in a case involving a transgender student's use of restrooms corresponding to his gender identity argues only that prohibiting such use violates Title IX. *Am. Cur.* Br. of the U.S., *GG v. Gloucester Cty Sch. Bd.*, No. 15-2056 (4th Cir., filed Oct. 28, 2015). Movants will argue that there is a still more fundamental *constitutional* defect with the prohibitions Plaintiffs seek, because they deny equal protection on the basis of sex. *See City of Chicago v. FEMA*, 660 F.3d 980, 985-86 (7th Cir. 2011) ("Cases allow intervention as a matter of right when an original party does not advance a ground that if upheld by the court would confer a tangible benefit on an intervenor who wants to litigate that ground"). Unless this constitutional issue is raised by a party it will not be available on appeal or on certiorari.

Furthermore, beyond Administrative Procedure Act claims, Plaintiffs' Complaint raises other federal and state constitutional and statutory claims based on the right to privacy and to control the upbringing of children as well as the freedom of religion. There is no reason to

believe Federal Defendants' views on these issues mirror those of Movants, let alone that Federal Defendants will adequately represent Movants' interests in areas far beyond ED's core expertise. Movants intend to provide their own arguments regarding these novel claims and to introduce evidence of their personal experiences in the District, which Movants believe will assist the Court in resolving the issues in this case. *See Builders Ass'n of Greater Chi. v. City of Chicago*, 170 F.R.D. 435, 441 (N.D. Ill. 1996).

B. Alternatively, Permissive Intervention Should Be Granted.

Movants easily satisfy the standard for permissive intervention under Rule 24(b)(1). Permissive intervention lies in the sound discretion of the trial court. *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 949 (7th Cir. 2000). Indeed, "the court may permit anyone to intervene" who has a "defense that shares with the main action a common question of law or fact." Rule 24(b)(1)(B). Courts in this district have exercised their discretion liberally to grant permissive intervention, and here too permissive intervention is warranted.[3]

Movants include the student at the center of this controversy, students who will be in the same position in the near future, and an organization with a mission to promote the interests of transgender students in Illinois. Because their interests are at stake—dismantling the resolution agreement, the District's transgender restroom policy, and ED's guidance would fundamentally change the individual Movants' lives and the Alliance's advocacy work—Movants are uniquely qualified to illuminate the relevant facts and tie them to their legal arguments. Their participation would enable this Court to "address important issues in this case once, with fairness and finality." *Sec. Ins. Co.*, 69 F.3d at 1381; *see United States v. Bd. of Sch. Comm'rs*, 466 F.2d 573, 576 (7th

[3] *E.g.*, *Hanover Ins. Co. v. L&K Dev't*, 2013 WL 1283823, at *3 (N.D. Ill. Mar. 25, 2013) (intervention "perfectly appropriate" as intervenors sought to present same defense as defendant and avoidance of separate litigation promoted judicial economy); *Select Retrieval, LLC v. ABT Elecs.*, 2013 WL 6576861, at *3 (N.D. Ill. Dec. 13, 2013); *FDIC v. FBOP Corp.*, 2014 WL 4344655 (N.D. Ill. Sept. 2, 2014); *United States v. Metro. Water Recl. Dist.*, 2012 WL 3260427 (N.D. Ill. Aug. 7, 2012).

Cir. 1972) (intervention by particularly affected persons promotes "consideration of all aspects of [a] societally affected legal problem").

CONCLUSION

For the foregoing reasons, Movants respectfully ask this Court to GRANT their Motion to Intervene.

Dated: May 25, 2016

Respectfully submitted,

/s/ *Britt M. Miller*_____

John Knight
ROGER BALDWIN FOUNDATION OF ACLU, INC.
180 North Michigan Avenue
Suite 2300
Chicago, IL 60601
Telephone: (312) 201-9740 ext. 335
Facsimile: (312) 288-5225
jknight@aclu-il.org

- and –

Ria Tabacco Mar*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad St., 18th Floor
New York, NY 10004
Telephone: (212) 549-2627
Facsimile: (212) 549-2650
rmar@aclu.org

** application for pro hac vice admission forthcoming*

Britt M. Miller
Timothy S. Bishop
Laura R. Hammargren
Linda X. Shi
MAYER BROWN LLP
71 South Wacker Drive
Chicago, IL 60606
Telephone: (312) 782-0600
Facsimile: (312) 701-7711
bmiller@mayerbrown.com
tbishop@mayerbrown.com
lhammargren@mayerbrown.com
lshi@mayerbrown.com

- and –

Catherine A. Bernard
MAYER BROWN LLP
1999 K Street, N.W.
Washington, DC 20006-1101
Telephone: (202) 263-3000
Facsimile: (202) 263-3300
cbernard@mayerbrown.com

Counsel for Students A, B, and C, and the Illinois Safe Schools Alliance

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

STUDENTS AND PARENTS FOR PRIVACY, a voluntary unincorporated association; C.A., a minor, by and through her parents and guardians, S.M. and R.M.; N.G., a minor, by and through her parent and guardian, R.G.; A.V., a minor, by and through her parents and guardians, T.V. and A. T.V.; and B.W., a minor, by and through his parents and guardians, D.W. and V.W.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF EDUCATION; JOHN B. KING, JR., in his official capacity as United States Secretary of Education; UNITED STATES DEPARTMENT OF JUSTICE; LORETTA E. LYNCH, in her official capacity as United States Attorney General; and SCHOOL DIRECTORS OF TOWNSHIP HIGH SCHOOL DISTRICT 211, COUNTY OF COOK AND STATE OF ILLINOIS.

Defendants.

Civil Action No. 1:16-cv-04945

Hon. Jorge L. Alonso

DECLARATION OF PARENT A
IN SUPPORT OF MOTION TO INTERVENE BY STUDENT A, A MINOR CHILD,
BY AND THROUGH HER MOTHER AND LEGAL GUARDIAN, PARENT A

I, Parent A, declare:

1. I am the mother and legal guardian of the high school student referenced as "Student A" throughout the complaint in the above-captioned case. Student A's motion to intervene in the case is brought through me on her behalf. I am over eighteen (18) years of age, and if called as a witness, I could and would testify competently as to the matters set forth below.

2. Student A is a seventeen year-old girl currently in her junior year of high school at William Fremd High School in Palatine, Illinois, which is part of Township High School District 211 ("District 211"). Student A will be in Fremd High School's senior class during the 2016-2017 school year and expects to graduate in May 2017.

3. Student A is an outgoing young woman who receives good grades, participates on athletic teams and in various clubs at Fremd High School, and is close with her friends and family.

4. Student A is transgender. Although designated male at birth, Student A has identified as female from a young age. She came out to her father and me as transgender in spring 2011, when she was in seventh grade. With the help and support of her father and I, and under the supervision of medical providers, Student A transitioned to living consistently with her female gender identity in the fall of 2012, as she began her eighth grade year. She was diagnosed with Gender Dysphoria in January 2013.

5. As part of her treatment for Gender Dysphoria, Student A's [health care provider] has recommended and prescribed that she live her life full-time as female. Accordingly, Student A has continued to live her life full-time as a girl by dressing as female, using a female name and pronouns, and using female bathrooms and any other facilities that are divided by sex. Student A completed a legal name change in May 2013, and obtained a passport listing her gender as female in July 2013. She has also taken steps to transition medically.

6. As Student A began high school at Fremd High School in fall of 2013, the three of us (Student A, her father and I), at times with the support and assistance of the Illinois Safe Schools Alliance, had several discussions with administrators at both Fremd High School and

District 211 to request that Student A be treated by the school as a female in all ways, including participation on girls' athletic teams and access to the girls' restrooms and locker room.

7. Representatives from Fremd High School and District 211 told us that Student A would be allowed to use the girls' restrooms and participate on girls' athletic teams, but that she would not be allowed to use the girls' locker room to change for her daily gym class or for athletic team practices or competitions. Instead, Student A was asked to use restrooms separate and apart from the locker room to change for gym and her athletic teams.

8. This ban from using the girls' locker room caused several logistical problems for Student A. One of the restrooms that she changed in was located far away from the locker room and was locked, and Student A sometimes had to locate someone to unlock it for her before she could change, which caused her to be late to class. Student A also, in trying to avoid entering the gym from a different door than the other students, had to take longer routes to get to the gym.

9. Student A was also allowed to use the nurse's office, and later, a restroom closer to the locker room, but even then Student A was not able to keep her belongings in the locker area where other girls kept their belongings. This would sometimes force Student A to keep her belongings in her car during after-school activities, again causing her inconvenience and making her late for participating in athletic teams. When Student A did go into the girls' locker room, to, for example, put her belongings in a locker, she was reprimanded.

10. During the swim unit in Student A's gym class, separate changing arrangements in another restroom were again made. Unlike the other female students, who had standard showers in a locker room, Student A only had access to a "rinse" shower and limited amenities to get ready after class. The rinse shower was less private, located in a narrow hallway through which all students had to pass to enter or exit the girls' swimming locker room.

11. On another occasion, Student A did not receive an announcement made in the locker room, stating that students would not have to dress for gym. Student A was embarrassed when she arrived in her gym uniform while others wore their street clothes, and had to go and change again.

12. The most important aspect of this, however, was how difficult this was for Student A on an emotional level. Although she would put on a brave face in front of other students, the stress and trauma of having to deal with these issues would frequently lead to her expressing anxiety and frustration at being treated differently by the school. Student A would talk about feeling alone and isolated in having to be in a separate space for changing, and feeling singled out as being different from other girls. Being singled out was embarrassing for her, and invited questions and speculation about her transgender status from other students. Student A would often not change for gym class, miss gym class, or even miss school related to her feelings of being isolated, upset and embarrassed related to this issue.

13. Student A, her father and I continued to try and get Student A access to the girls' locker room. After Fremd High School and District 211 confirmed their position that she would not be allowed such access, we engaged lawyers from the American Civil Liberties Union, who wrote several letters to Fremd High School and District 211 on our behalf requesting that Student A be allowed to change in the girls' locker room.

14. On December 5, 2013, when Fremd High School and District 211 would not change their position, the ACLU filed a discrimination complaint on our behalf with the Chicago Office of the Office for Civil Rights ("OCR") of the United States Department of Education. Student A and I fully participated in OCR's investigation. During the investigation, we learned

that District 211 had taken the position with OCR that they had not discriminated against Student A in prohibiting her from accessing the girls' locker room.

15. In June 2015, OCR advised us and District 211 of its findings. OCR had found that the District violated the Title IX regulation by, on the basis of sex, excluding Student A from participation in and denying her the benefits of its education program, providing her different benefits or benefits in a different manner, subjecting her to different rules of behavior, and subjecting her to different treatment. OCR gave District 211 a 90-day period before the findings would be released to try to reach an agreement with OCR to resolve District 211's Title IX violation voluntarily. In October 2015, District 211 stated publicly it would not resolve the Title IX violation voluntarily.

16. On November 2, 2015, OCR issued publicly the correspondence containing its findings that District 211 was in violation of Title IX. OCR found that the evidence showed that, as a result of District 211's denial of access to the girls' locker room, Student A not only received an unequal opportunity to benefit from District 211's educational program, but also experienced an ongoing sense of isolation and ostracism throughout her high school enrollment at the Fremd High School. OCR's findings can be found at http://www.aclu-il.org/wp-content/uploads/2015/12/2015-11-02-DOE-Findings.pdf, which was last visited on May 21, 2016.

17. On December 3, 2015, we were notified that OCR and District 211 reached a settlement and signed a resolution agreement. This agreement provided that Student A was to be provided equal access to the girls' locker room at Fremd High School. District 211 was to provide OCR with documentation of its compliance by January 15, 2016. The resolution

agreement can be found at http://www.aclu-il.org/wp-content/uploads/2015/12/OCR-Agreement-12-2-2015.pdf, which was last visited on May 21, 2016.

18. Since January 15, 2016, Student A has been allowed to use the girls' locker room at Fremd High School. For reasons unrelated to any issue in this case, she did not begin using the locker room with regularity until early March 2016.

19. During the time that Student A was allowed full access to the girls' locker room, she was noticeably happier, more confident and more comfortable going to school. She talked about feeling more bonded with the other girls at school, and more connected to the athletic teams on which she participates. She no longer felt like she was missing out on part of these important high school experiences. She was more willing and eager to participate in after school activities. Student A talked about her access to the locker room making a big difference in everyone's acceptance of her at school, as it signaled to others that Student A should be treated equally with other girls.

20. Student A was devastated when she learned of this lawsuit and the threat of having the locker room access that she just gained taken away again. Having to use separate restrooms to change her clothes instead of the girls' locker room inconvenienced, stigmatized and embarrassed Student A, and led to her being very upset on a regular basis, disrupting her education and her overall self-assurance. Student A is not only concerned that the lawsuit will take away her locker room access, but also her ability to use the girls' restrooms at school, which she has always been allowed to use. Denying Student A access to the girls' restrooms would cause Student A inconvenience, embarrassment, and distress.

21. This lawsuit brought the entire controversy back to the attention of the students at Fremd High School. Since the lawsuit was filed, Student A has been reluctant to use the girls' locker room, attending gym class in her street clothes or missing gym class or school altogether.

22. Student A's use of the girls' locker room is essential for affirming her female gender identity and is consistent with that identity and with her prescribed course of medical treatment for Gender Dysphoria. We have observed that the more she is treated equally with the other girls, the more joyful, confident, and free she is to be herself. Continuing to allow her equal access to the girls' locker room and restrooms will improve Student A's emotional well-being so that she can achieve her full potential and will help others be more accepting of her.

I declare under penalty of perjury of the laws of the United States that to the best of my knowledge, information, and belief, the foregoing is true and correct. Executed in Palatine, Illinois on May 24, 2016.

[redacted]

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

STUDENTS AND PARENTS FOR PRIVACY, a voluntary unincorporated association; C.A., a minor, by and through her parents and guardians, S.M. and R.M.; N.G., a minor, by and through her parent and guardian, R.G.; A.V., a minor, by and through her parents and guardians, T.V. and A. T.V.; and B.W., a minor, by and through his parents and guardians, D.W. and V.W.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF EDUCATION; JOHN B. KING, JR., in his official capacity as United States Secretary of Education; UNITED STATES DEPARTMENT OF JUSTICE; LORETTA E. LYNCH, in her official capacity as United States Attorney General; and SCHOOL DIRECTORS OF TOWNSHIP HIGH SCHOOL DISTRICT 211, COUNTY OF COOK AND STATE OF ILLINOIS,

Defendants.

Civil Action No. 1:16-cv-04945

Hon. Jorge L. Alonso

DECLARATION OF PARENT B
IN SUPPORT OF MOTION TO INTERVENE BY STUDENT B, A MINOR CHILD,
BY AND THROUGH HIS MOTHER AND LEGAL GUARDIAN, PARENT B

I, Parent B, declare:

1. I am the mother and legal guardian of Student B, a twelve-year-old boy. Student B's motion to intervene in the case is brought through me on his behalf. I am over eighteen (18) years of age and if called as a witness, I could and would testify competently to the facts set forth below.

2. Student B is a twelve-year-old seventh-grader at Plum Grove Junior High School ("Plum Grove") in Rolling Meadows, Illinois. In the fall of 2017, Student B will begin ninth grade at William Fremd High School in Palatine, Illinois, where the individual referenced in the above-captioned case as "Student A" is currently a student. Student B lives with me and his older brother, who is currently a senior at Fremd High School.

3. Student B is a sweet, intelligent boy who is close to his family and friends. He loves to read and listen to music and belongs to a writers' club at his school.

4. Student B is transgender. In August 2015, shortly after beginning seventh grade, Student B came out to me as transgender. He told me that he had been thinking about it for a long time, and had been certain for the past year that he identified as male.

5. Since then, with my full support, Student B has lived his life full-time as a boy. He has adopted a traditionally male name and uses male pronouns; most of his family and all of his friends also use male pronouns to refer to him. Student B dresses as male: he wears boys' clothing, keeps his hair short, and wears a sports bra to bind his chest.

6. Student B has just begun to see a therapist at the Howard Brown Health Center for Gay, Lesbian, Bisexual and Transgender Citizens in Chicago. Based on my conversations with the therapist, it is my understanding that Student B will be diagnosed with Gender Dysphoria. Gender Dysphoria is the medical diagnosis for the clinically significant distress that individuals whose gender identity differs from the sex they were assigned at birth can experience.

7. It is my further understanding that, as part of Student B's treatment for Gender Dysphoria, Student B is likely to receive hormone therapy to give him a more masculine

appearance and voice. Student B is eager to begin hormone therapy, and I support his doing so as soon as his therapist and medical doctors believe it is appropriate.

8. A few days after coming out to me, Student B told the principal at Plum Grove, Dr. Kerry Wilson, that he identified as male, wanted to be called by his chosen male name, and wanted teachers, administrators, staff, and students at the school to refer to him using male pronouns. Dr. Wilson then called me and informed me of that conversation. To my and Student B's great relief, Dr. Wilson immediately expressed support of Student B and his preferences and complied with his requests. The teachers, administrators, and staff at Plum Grove have made an effort to treat Student B consistent with his gender identity.

9. Before coming out to me as transgender, Student B suffered from serious depression and anxiety. He was often withdrawn and uncommunicative, had difficulty sleeping, and had exhibited self-harming behaviors. He had been getting therapy, and it had made some difference, but he was still visibly unhappy much of the time.

10. Since coming out as transgender, however, Student B's mood and demeanor have changed radically. I have observed that he is visibly happier, more confident, and more comfortable in his everyday life. He no longer secludes himself in his room after school. His sleep issues have decreased in both frequency and severity. He talks to me all the time, and we are closer than we have ever been. He sings around the house, and loves to share with me the music he is interested in. Student B has developed an interest in drawing and painting, and together we created a little "studio" for him in our house. He has begun baking, which is something he never showed any interest in before. I feel like I am finally getting to know my preteen child, and I am loving every minute of it.

11. It is obvious to me that coming out and being accepted as transgender has relieved much of the significant emotional distress Student B was experiencing. He can now be on the outside what he has always been on the inside, and that is a huge relief and source of joy for him.

12. At first, I was not comfortable with Student B's using the boys' restrooms and locker rooms at Plum Grove. I wasn't sure that Student B was ready for that, and I didn't want Student B to be in an uncomfortable position in case he changed his mind. But it quickly became clear to me that this is who Student B is and always has been, and that he not only will not, but cannot just stop living consistent with his gender identity.

13. Currently, Student B uses the boys' restrooms at school, with my permission. Dr. Wilson and the other administrators, teachers, and staff at his school are supportive of his choice to use the boys' restrooms, and his friends encourage him to do so.

14. Student B has gym class twice a week, and is required to change his clothes to participate. Student B still uses the girls locker rooms to change for gym, but he has told me that once he begins hormone therapy, he would like to use the boys' locker rooms. Dr. Wilson has indicated that the administration at Plum Grove will be supportive if he makes that choice.

15. With one exception, Student B has not received or heard about any complaints from any students related to his use of the boys' restrooms. His impression, and mine, is that most of the students are supportive of or simply indifferent to his transgender status. The exception is one of the boys who is bullying him as described in the paragraph below, who complained about Student B's use of the boys' restrooms only after Student B reported his participation in the bullying.

16. Unfortunately, there are two boys in Student B's class who are bullying him on account of his transgender status. These boys regularly make nasty, rude comments to and in

front of Student B. For example, they have asked him if he is going to "grow a dick" and how he masturbates, and have announced, while Student B is nearby and within earshot, that Student B is not a "real boy" and is "faking." The Plum Grove administration is taking the bullying very seriously and is working to eliminate it. Nonetheless, it has been very upsetting to Student B.

17. When Student B and I learned about the settlement between Student A and Fremd High School in January 2016, he was overjoyed. Student B knows Student A from a support group, and knows how happy Student A was when she was given full access to the girls' locker rooms. Student B also was excited by the settlement because he believed that it meant that he would be able to use the boys' restrooms and locker rooms without incident once he began ninth grade at Fremd.

18. Student B was shocked and disappointed when he learned of this lawsuit. He read the complaint and was appalled at its egregious and hurtful use of the male gender to refer to Student A, and told me that he does not understand why anyone would want to harm Student A in this way.

19. Student B is terribly upset at the thought if this lawsuit is successful, he will not be able to use the boys' restrooms and locker rooms when he begins high school at Fremd. He expects that by then, he will be in hormone therapy and exhibiting traditionally male characteristics. As a result, he will be extremely uncomfortable in and embarrassed to use girls' facilities.

20. Given how compassionate and supportive the administration, staff, and teachers at Plum Grove have been towards Student B, I believe that entering an atmosphere where he is unable to live consistent with his true gender identity will be devastating to him emotionally. I

am equally afraid that a victory in this lawsuit will exacerbate and legitimize the bullying of Student B and other transgender kids.

21. All that Student B wants is to be able to live and be treated like any other boy. Student B has had a difficult adolescence as a result of his transgender status, and embracing his true gender identity has been a source of healing and solace. The more he is treated equally with other boys, the more free he is to be himself.

I declare under penalty of perjury of the laws of the United States that to the best of my knowledge, information, and belief, the foregoing is true and correct.

Executed in PALATINE, Illinois on May 24, 2016.

[redacted]

EXHIBIT 3

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

STUDENTS AND PARENTS FOR PRIVACY, a voluntary unincorporated association; C.A., a minor, by and through her parents and guardians, S.M. and R.M.; N.G., a minor, by and through her parent and guardian, R.G.; A.V., a minor, by and through her parents and guardians, T.V. and A. T.V.; and B.W., a minor, by and through his parents and guardians, D.W. and V.W.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF EDUCATION; JOHN B. KING, JR., in his official capacity as United States Secretary of Education; UNITED STATES DEPARTMENT OF JUSTICE; LORETTA E. LYNCH, in her official capacity as United States Attorney General, and SCHOOL DIRECTORS OF TOWNSHIP HIGH SCHOOL DISTRICT 211, COUNTY OF COOK AND STATE OF ILLINOIS.

Defendants.

Civil Action No. 1:16-cv-04945

Hon. Jorge L. Alonso

DECLARATION OF PARENT C
IN SUPPORT OF MOTION TO INTERVENE BY STUDENT C, A MINOR CHILD,
BY AND THROUGH HIS FATHER AND LEGAL GUARDIAN, PARENT C

I, Parent C, declare:

1. I am the father and legal guardian of Student C, a 14-year-old transgender boy. Student C's motion to intervene in the case is brought through me on his behalf. I am over eighteen (18) years of age and if called as a witness, I could and would testify competently to the facts set forth below.

2. Student C is a fourteen-year-old boy currently attending junior high school in District 54. He will be starting as a freshman at Hoffman Estates High School in District 211 for the 2016-2017 academic year. Student C lives with me, my wife, and his younger brother.

3. My son is a bright boy who does very well in school. He is enrolled in a number of advanced and honors classes. He is particularly interested in engineering. He has entered and has been selected for state academic contests.

4. Student C has been identifying as male for about six months. Before then, he identified as gender queer but has presented himself in a masculine manner since at least spring 2015.

5. Since coming out as transgender—and with his family's full support—Student C has lived his life as a boy. Student C has legally changed his name to a traditionally male name. He has also completed a social security gender marker change, and he has changed the gender on his state ID to male. Student C refers to himself using male pronouns, and he has asked other people to do the same.

6. I am proud that Student C is a vocal advocate for himself at school. Student C's school records identify him as male with his legal name (his male chosen name), and he has asked that students and teachers refer to him using his male name and male pronouns. Although there are occasional slip ups, the administrators, teachers, and staff at Student C's school refer to him by his legal male name and male pronouns and treat him as they would treat any other boy at the school.

7. Other students in Student C's school have reacted well to, and are supportive of, his transition. The school's psychologist facilitated a meeting for Student C to tell the other students in his class about his transition.

8. Student C is currently seeing a medical doctor at Ann & Robert H. Lurie Children's Hospital of Chicago and a therapist. His medical providers have prescribed hormone suppressant therapy for him. I am supportive of ensuring that my son has the medical treatment his therapist and physician prescribe for him.

9. After coming out as transgender, Student C has become more outgoing and confident. Student C has grown into himself since transitioning, and I have noticed that he is more likely to ask for what he wants. He is also now much more social and is less apt to hide in his room. Overall, he is a lot happier and more carefree now that he can live his life as a boy.

10. Student C currently uses male restrooms in public, and he wants to use the boys' restrooms and locker rooms once he begins high school. There are a handful of students from his junior high school who are going to Hoffman Estates High School in the upcoming school year. He would like to enter high school in an environment where everyone identifies him and knows him as a boy. Part of presenting himself as a boy in high school includes the ability to enter and use the boys' restrooms and locker rooms. Student C would feel extreme distress and discomfort if he were denied access to the boys' facilities in a school where students otherwise identify him as a boy. Forcing my son to use a single-use restroom or to dress apart from the other boys is simply not an option, since it would separate him from the other students and send him the message that he is different and should be ashamed of who he is.

11. Given that Student C plans to begin hormone therapy in the near future, I expect that he will soon be exhibiting additional traditionally male characteristics. As a result, he would feel horribly embarrassed and uncomfortable being forced to use the girls' restrooms and locker rooms.

12. It is apparent to me that my son's confidence and well-being have improved significantly since coming out as transgender. I have witnessed how much happier Student C is living as a boy consistent with his gender identity, and I am afraid that denying him access to the boys' restrooms and locker rooms will be emotionally distressing to him. Student C is a boy and wants others to accept him as a boy.

I declare under penalty of perjury of the laws of the United States that to the best of my knowledge, information, and belief, the foregoing is true and correct. Executed in Chicago, Illinois on May 25, 2016.

[redacted]

EXHIBIT 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

STUDENTS AND PARENTS FOR PRIVACY, a voluntary unincorporated association; C.A., a minor, by and through her parent and guardian, N.A.; A.M., a minor, by and through her parents and guardians, S.M. and R.M.; N.G., a minor, by and through her parent and guardian, R.G.; A.V., a minor, by and through her parents and guardians, T.V. and A.T.V.; and B.W., a minor, by and through his parents and guardians, D.W. and V.W.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF EDUCATION; JOHN B. KING, JR., in his official capacity as United States Secretary of Education; UNITED STATES DEPARTMENT OF JUSTICE; LORETTA E. LYNCH, in her official capacity as United States Attorney General, and SCHOOL DIRECTORS OF TOWNSHIP HIGH SCHOOL DISTRICT 211, COUNTY OF COOK AND STATE OF ILLINOIS.

Defendants.

Civil Action No. 1:16-cv-04945

Hon. Jorge L. Alonso

DECLARATION OF OWEN DANIEL-MCCARTER
IN SUPPORT OF MOTION TO INTERVENE BY
ILLINOIS SAFE SCHOOLS ALLIANCE

I, Owen Daniel-McCarter, hereby declare:

1. I am the Policy and Advocacy Director of the Illinois Safe Schools Alliance (the "Alliance"). I am over eighteen (18) years of age, make this declaration based on my own personal knowledge, and if called as a witness, I could and would testify competently as to the matters set forth below.

2. The Illinois Safe Schools Alliance is a public interest organization headquartered in Chicago and operating programs throughout Illinois. The Alliance works to promote the safety and healthy development for lesbian, gay, bisexual, transgender, and questioning ("LGBTQ") youth in Illinois schools and communities.

3. The Alliance works to achieve this mission through educational and advocacy activities that will result in the inclusion of sexual orientation and gender identity issues in the programs and policies of Illinois schools that support the safety and well-being of LGBTQ youth, such as Student A in the above-captioned case. Specifically, the Alliance advocates for LGBTQ youth in discussions with school district administrators, provides training for school personnel, and assists on technical aspects of existing or emerging gay-straight alliances formed by LGBTQ youth.

4. One of the central objectives of the Alliance is to partner with school districts and individual schools to ensure all policies communicate the value of inclusion based on sexual orientation and gender identity. The Alliance has worked with districts and schools on guidelines and administrative procedures related to non-discrimination, equal employment, equal educational opportunity, working with transgender students, bullying prevention, and school discipline. The Alliance helps the schools: draft effective language, institute procedures for communicating these guidelines to the entire school community, establish how such guidelines will be enforced and how complaints will be handled, and implement systems to regularly review the efficacy of the guidelines.

5. Through my work with the Alliance, I have helped draft the transgender inclusion guidelines and administrative procedures in the following school districts and organizations:

a. Berwyn South School District 100. This procedure can be found at http://www.bsd100.org/apps/pages/index.jsp?uREC_ID=345130&type=d&pREC_ID=826517, which was last visited on May 24, 2016.

b. Chicago Public School District 299. This guideline can be found at http://cps.edu/SiteCollectionDocuments/TL_TransGenderNonconformingStudents_Guidelines.pdf, which was last visited on May 24, 2016.

c. Harlem School District 122. This procedure can be found at http://backup.microscribepub.com/cgi-bin/om_isapi.dll?clientID=1616322894&depth=2&infobase=harlem.nfo&jump=710-AP&softpage=Document42#JUMPDEST_710-AP, which was last visited on May 24, 2016.

d. Model policy for student gender support. This policy can be found at https://www.luriechildrens.org/en-us/care-services/conditions-treatments/gender-development/Documents/model-policy-for-student-gender-support.pdf, which was last visited on May 24, 2016.

6. The Alliance also provides educational workshops and training programs focusing on sexual orientation and gender identity to school personnel, social service providers, and government officials. The Alliance's educational workshops and training programs include topics such as "Safety for all: Addressing anti-LGBTQ bullying and harassment in schools" and "Keeping students safe, accountable, and in school: Understanding the negative impact of exclusionary school discipline and utilizing restorative practices in schools." I have also conducted training for school staff and administration called "Transgender 101," which introduces transgender terminology, an overview of best practices for accommodating the legal rights of transgender students, and other types of training. I have provided training sessions and parents' information nights on transgender inclusion issues to school districts and schools across the state, including William Fremd High School and Palatine High School.

7. Through the Alliance, I have also worked to oppose Illinois' proposed HB 4474 bill, which would ban schools from allowing transgender students from using the facilities that correspond to their gender identity.

8. To further its mission to promote the safety and healthy development of LGBTQ youth in Illinois schools, the Alliance specifically assisted the Illinois student referenced in the complaint in the above-captioned case as "Student A." In the fall of 2012, when Student A was entering high school, the Alliance provided support to her and her parents (including by attending a meeting with district and school administrators) in their request to Student A's high school and District 211 that Student A be treated as a female in all ways, including using the girls' restrooms and locker rooms. When District 211 would not change its position prohibiting Student A from the girls' locker rooms, the Alliance referred Student A and her family to lawyers at the American Civil Liberties Union of Illinois ("ACLU"), who helped Student A and her family make a complaint against District 211 with the Office for Civil Rights ("OCR") of the U.S. Department of Education.

9. The Alliance started to again provide general support for Student A and her family in October 2015. In that month, representatives from District 211 held a press conference in which they stated their disagreement with findings by OCR that District 211 violated Title IX for excluding Student A from the girls' locker room. District 211 went on to publicly defend its actions, including media appearances by District 211's superintendent Daniel Cates in which he addressed the "anatomy" of Student A.

10. On December 3, 2015, after OCR publicly issued correspondence containing its findings that District 211 was in violation of Title IX, a resolution agreement between District 211 and OCR was issued (the "Agreement"). The Agreement provided that Student A was to be

provided equal access to the girls' locker room as other girls at her high school. District 211 was to provide OCR with documentation of its compliance by January 15, 2016. The Agreement can be found at http://www.aclu-il.org/wp-content/uploads/2015/12/OCR-Agreement-12-2-2015.pdf, which was last visited on May 24, 2016.

11. After the Agreement was signed, the Alliance learned that District 211 and OCR had continued discussions about their disagreements over the scope of the Agreement (for example, whether the Agreement applied to students other than Student A) and District 211's compliance with the Agreement (for example, whether Student A could be required to change behind privacy curtains even though other students would not be so required).

12. The Alliance also learned that District 211's Board of Education (the "Board") was considering whether to rescind the Agreement. In addition to the Alliance's work to organize over 100 LGBTQ youth supporters to attend that meeting, I attended the December 7, 2015 Board meeting and spoke against rescinding the Agreement. The Board voted not to rescind the Agreement.

13. The Agreement required District 211 to "[e]stablish a support team . . . to ensure that [Student A] has access and opportunity to participate in all District programs and is otherwise protected from gender-based discrimination at school." *See* Agreement at 3, *available at* http://www.aclu-il.org/wp-content/uploads/2015/12/OCR-Agreement-12-2-2015.pdf. I became a member of the support team, along with Jennifer Leininger (program manager of the Gender & Sex Development Program at Ann & Robert H. Lurie Children's Hospital of Chicago), Tracey Salvatore (school counselor in District 99), and Student A's parents. I have attended three gender support team meetings for Student A, two of which Student A attended. Staff from the Alliance also conducted parent trainings in the District following entry of the Agreement.

14. Any court order that would prohibit transgender students at schools in Illinois from using facilities, including restrooms and locker rooms, consistent with their gender identity would severely impact the Alliance's work in promoting the healthy development of LGBTQ youth and protecting them from harassment and discrimination.

15. The Alliance advocates for gender inclusivity in schools, LGBTQ-affirming curriculum, bullying preventions, and restorative school discipline practices to promote greater acceptance for LGBTQ youth and to help those students reach their full potential at school. The Alliance has been specifically working to promote policies and procedures in schools that allow transgender students full use of facilities that correspond to their gender identity, and any court order restricting such use would directly undermine that work.

16. Further, where school policies and programs prevent LGBTQ students from having full use of school facilities and programming consistent with their gender identity, the Alliance has seen the school community be less accepting of LGBTQ students, and impacted LGBTQ students talk of feeling ostracized and stigmatized, a problem that the Alliance will need to work to address. Thus, any policy prohibiting a transgender student from using school facilities consistent with their gender identity requires the Alliance to devote more time and resources to students impacted by that policy, and takes resources away from the Alliance's other activities.

17. Further, such policies often create an adversarial relationship between school districts and the Alliance, based on the Alliance's goal to abolish such policies. Participation by districts and schools in the Alliance's programming, however, is totally voluntary. In the Alliance's experience, when there is an adversarial relationship between a school district and the Alliance on a particular issue, the school district will be reluctant to participate in any

programming with the Alliance, which hinders the Alliance from being able fully conduct its advocacy work.

18. Any impact to the Agreement or Student A's use of the girls' locker rooms would be particularly harmful to the Alliance's work. The Alliance staff assisted Student A and her family in their dealings with the District prior to her filing of a complaint with OCR, and later participated in implementation of the Agreement. If the Agreement is not enforced, the Alliance's abilities regarding its efficacy in advocacy may be called into question by LGBTQ students and their parents and may diminish its credibility with other school districts.

19. Finally, employees of the Alliance work with schools across Illinois, and are often traveling to and spending time in those schools. The Alliance employees have an interest in working in schools with policies and procedures that promote inclusion. In particular, the Alliance has employees, including myself, who are transgender, and we have an interest in the ability to enter and use facilities that correspond to our gender identities.

I declare under penalty of perjury of the laws of the State of Illinois and of the United States that the foregoing is true and correct. Executed this 25th day of May, 2016 in Carbondale, Illinois.

By: _____
Owen Daniel-McCarter