

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

JOEL DOE, a minor; by and through his  
Guardians JOHN DOE and JANE DOE;  
MARY SMITH; JACK JONES, a minor;  
by and through his Parents JOHN  
JONES and JANE JONES; and MACY  
ROE

Plaintiffs,

vs.

BOYERTOWN AREA SCHOOL  
DISTRICT; DR. RICHARD FAIDLEY,  
in his official capacity as  
Superintendent of the Boyertown Area  
School District; DR. BRETT COOPER,  
in his official capacity as Principal; and  
DR. E. WAYNE FOLEY, in his official  
capacity as Assistant Principal.

Defendants.

Case No. 17-1249-EGS

AMENDED VERIFIED COMPLAINT

JURY TRIAL REQUESTED

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AMENDED VERIFIED COMPLAINT

Plaintiffs Joel Doe, a minor, by and through his guardians John Doe and Jane Doe; Mary Smith; Jack Jones, a minor, by and through his parents John Jones and Jane Jones; and Macy Roe state as follows:

1. This case is about the intentional violation of students' fundamental right to bodily privacy contrary to constitutional and statutory principles, including the Fourteenth Amendment, Title IX, invasion of seclusion, and the Pennsylvania's Public School Code of 1949, which requires separate facilities on the basis of sex.

JURISDICTION AND VENUE

2. This action arises under 42 U.S.C. §§ 1983 *et seq.* (the "Civil Rights Act")

to redress the deprivation of rights secured by the Fourteenth Amendment to the United States Constitution, 20 U.S.C. §§ 1681 *et seq.* (“Title IX”), the Pennsylvania Constitution and common law, and the Public School Code of 1949.

3. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1361, and 1367.

4. The Court has jurisdiction to issue the requested declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57.

5. The Court has jurisdiction to award nominal and compensatory damages under 28 U.S.C. § 1343(a)(4).

6. The Court has jurisdiction to award reasonable attorneys’ fees and costs under 28 U.S.C. § 2412, 42 U.S.C. § 1988.

7. Venue lies in this district pursuant to 28 U.S.C. § 1391(b) and (e), because a substantial part of the events or omissions giving rise to all claims occurred in this district where the District Defendant is located.

8. This Court has personal jurisdiction over Defendants because they are domiciled in Pennsylvania.

## PARTIES

### *Plaintiffs*

9. Plaintiffs and their family members are citizens of the United States and residents of Pennsylvania.

10. Plaintiff Joel Doe is a minor boy. He is a student who began his junior year at Boyertown Area High School, a public high school in the Boyertown Area

School District, in August of 2016. Because Joel Doe is a minor, this action is brought on his behalf by and through his legal guardians.

11. Plaintiff Mary Smith is an 18 year old girl. She is a student who began her junior year at Boyertown Area High School, a public high school in the Boyertown Area School District, in August of 2016.

12. Plaintiff Jack Jones is a minor boy. He is a student who began his junior year at Boyertown Area High School, a public high school in the Boyertown Area School District, in August of 2016. Because Jack Jones is a minor, this action is brought on his behalf by and through his parents.

13. Plaintiff Macy Roe is an 18 year old girl. She is a student who began her senior year at Boyertown Area High School, a public high school in the Boyertown Area School District, in August of 2016.

*Defendant Boyertown Area School District*

14. Boyertown Area School District (“Boyertown Area SD” or “District”) is organized under the laws of the Commonwealth of Pennsylvania.

15. The District includes public educational institutions that provide students a kindergarten through 12th-grade education.

16. The District and its schools receive federal funds and so are subject to the requirements of Title IX.

17. District schools include seven K-6 elementary schools, two 7-9 junior high schools, and one senior high school serving grades 10, 11 and 12.

18. The District is governed by the Board of School Directors (the “School

Board”), a nine-member elected body that sets policy for the District and delegates responsibility for the administration of the District to its Superintendent of Schools, who oversees a number of district-level administrators.

19. District Defendant is responsible for the enforcement of policies through its Superintendent, administrators, teachers, and other employees.

***Defendant Superintendent Dr. Richard Faidley***

20. Defendant Faidley is the current Superintendent of the District and is sued in his official capacity. At all times relevant to the events described herein, Superintendent Faidley acted within the scope of his employment as an employee, agent, and representative of the School Board. In such capacity, he implemented a new policy in which students of one sex are permitted to enter and use restrooms, locker rooms and shower facilities designated for members of the opposite sex. Upon information and belief, he did so with the consent, knowledge, or ratification of the School Board; under the School Board’s authority, control, and supervision; and with the actual or apparent authority of the School Board. Upon information and belief, Superintendent Faidley has final policymaking authority for the District in circumstances not otherwise provided for in the School District Bylaws and Policies.

***Defendant Principal Dr. Brett Cooper***

21. Defendant Cooper is the current Principal of Boyertown Area High School and is sued in his official capacity. In such capacity, he implemented a new policy in which students of one sex are permitted to enter and use restrooms, locker rooms and shower facilities designated for members of the opposite sex. Upon

information and belief, he did so with the consent, knowledge, or ratification of the School Board; under the School Board's authority, control, and supervision; and with the actual or apparent authority of the School Board. Upon information and belief, Principal Cooper has final policymaking authority for Boyertown Area High School with respect to the day-to-day enforcement of the District's policies, including the newly adopted policy or practice permitting students of one sex to enter and use private facilities like restrooms, locker rooms and shower facilities with members of the opposite sex.

*Defendant Assistant Principal Dr. E. Wayne Foley*

22. Defendant Foley is the current Assistant Principal of Boyertown Area High School and is sued in his official capacity. In such capacity, he implemented a new policy in which student(s) of one sex are officially authorized to enter and use restrooms, locker rooms, and shower facilities designated for members of the opposite sex. Upon information and belief, he did so with the consent, knowledge or ratification of the School Board; under the School Board's authority, control, and supervision; and with the actual or apparent authority of the School Board. Upon information and belief, Assistant Principal Foley has final policymaking authority for Boyertown Area High School with respect to the day-to-day enforcement of the District's policies, including the newly adopted policy or practice permitting students of one sex to enter and use private facilities like restrooms, locker rooms and shower facilities with members of the opposite sex.

## INTRODUCTION

23. The importance of privacy has long been considered central to our western notions of freedom: a measure of personal isolation and personal control over the conditions of privacy's abandonment is of the very essence of personal freedom and dignity.

24. Defendants purposefully violated Plaintiffs' privacy rights and further attempted to harass and coerce the Plaintiffs into further privacy violations.

25. No student should be forced to use multi-user private facilities at school, like locker rooms and restrooms, with students of the opposite sex. No school district ought to violate its students' constitutional and statutory rights, especially when it means abandoning a common sense practice that long protected every student's privacy and access to education. Yet the Defendants have taken precisely these actions in this case.

26. A woman's right to bodily privacy does not spring into existence, or cease to exist, depending on what a man believes about the nature of his own internal sense of "gender identity." Her right to bodily privacy is hers and hers alone.

27. A man's right to bodily privacy does not spring into existence, or cease to exist, depending upon what a woman believes about the nature of her own internal sense of "gender identity." His right to bodily privacy is his and his alone.

28. The term "sex" refers to one's biological/anatomical status as either male or female.

29. Sex is fixed at conception, binary, objectively verifiable, and rooted in

our human reproductive nature.

30. The Defendants, without parent or student notification, authorized multiple students to have unrestricted access to enter and use the private facilities of the opposite sex.

31. Upon information and belief, Defendants' policy is grounded in gender identity theory, which asserts that a person's subjective perception of his or her own "gender" should prevail over one's biological sex as either male or female.

32. Under gender identity theory, gender is subjectively ascertained, not objectively verifiable, exists on a continuum, and is sometimes fluid.

33. By adopting gender identity theory as the basis for regulating access to private facilities, Defendants are violating sex discrimination law by not protecting students based on sex but instead imposing an individual's subjective perception of their gender on other students who value their privacy based on anatomical differences between the sexes.

34. This practice has had a severe and negative impact on Plaintiffs.

35. Plaintiff Joel Doe has experienced embarrassment and humiliation, both in terms of being viewed and viewing a student of the opposite sex in a state of undress and because of the stigmatization and criticism he received from other students and adults, fueled by the administration's policy and actions. He feels stress, intimidation, apprehension and distress throughout his day knowing that to obtain an education he must attend to his most personal needs in private facilities unprotected from the entrance, presence, or exposure of a female. He also fears the

future embarrassment of meeting students of the opposite sex in the locker room while changing or while using the bathroom. He now avoids using these spaces because of the ongoing risk of having his privacy violated.

36. Plaintiff Jack Jones has experienced embarrassment and humiliation, since being viewed by a student of the opposite sex in a state of undress, fueled by the administration's policy and actions. He feels stress, intimidation, apprehension and distress throughout his day knowing that to obtain an education he must attend to his most personal needs in private facilities unprotected from the entrance, presence, or exposure of a female. He also fears the future embarrassment of meeting students of the opposite sex in the locker room while changing or while using the bathroom. He now avoids using these spaces because of the ongoing risk of having his privacy violated.

37. Mary Smith has experienced embarrassment and humiliation, since viewing a student of the opposite sex in the female restrooms, fueled by the administration's policy and actions. She feels stress, intimidation, apprehension and distress throughout her day knowing that to obtain an education she must attend to her most personal needs in private facilities unprotected from the entrance, presence, or exposure of a male. She also fears the future embarrassment of meeting students of the opposite sex in the locker room while changing or while using the bathroom. She now avoids using these spaces because of the ongoing risk of having her privacy violated.

38. Macy Roe experiences anxiety, stress, intimidation, apprehension and



distress throughout her day knowing that to obtain an education she must attend to her most personal needs in private facilities unprotected from the entrance, presence, or exposure of a male. She fears the future embarrassment of meeting students of the opposite sex in the locker room while changing or while using the bathroom. She now avoids using these spaces because of the ongoing risk of having her privacy violated.

39. Because of the district's policy and actions, Plaintiffs do not feel secure in the locker rooms or restrooms that are properly set aside for the exclusive use of members of one sex to protect their privacy from exposure to members of the opposite sex.

40. Joel Doe, Mary Smith, Jack Jones, and Macy Roe do not object to students of the same sex using private facilities with them, and welcomes them no matter how they self-identify their gender, and they have no expectation of privacy from such students.

41. Defendants' policy and actions violate Plaintiffs' fundamental right to bodily privacy, Title IX, intrusion upon seclusion, as well as Pennsylvania law requiring separate facilities at our public schools.

42. Plaintiffs ask this Court to declare the Defendants' policy and actions unlawful and order the other relief requested herein.

## FACTUAL BACKGROUND

### Plaintiff – Joel Doe

43. Joel Doe is a student at Boyertown Area High School, where he is enrolled in a physical education ("PE") course.

44. PE is a mandatory course at the District and is a requirement to graduate.

45. It is mandatory that students in PE class change into clothing appropriate for PE class.

46. The PE locker rooms have signs which indicate they are either for girls or for boys.

47. Joel Doe has always used the boys' locker room and bathrooms because his sex is male.

48. Joel Doe has a reasonable expectation of privacy in the locker rooms and bathrooms in the school from viewing members of the opposite sex or from being viewed by members of the opposite sex.

49. Joel Doe absolutely does not object to students of the same sex using private facilities with him regardless of how they may subjectively self-identify their gender, and he has no expectation of privacy from members of the same sex.

50. On or about October 31, 2016, Joel Doe began changing in the locker room for PE class, and when he was standing in his underwear about to put his gym clothes on, he suddenly realized there was a member of the opposite sex changing with him in the locker room, who was at the time wearing nothing but shorts and a bra.

51. Joel Doe experienced immediate confusion, embarrassment, humiliation, and loss of dignity upon finding himself in this circumstance and quickly put his clothes on and left the locker room.

52. Joel Doe, along with various classmates, went to speak to the Assistant Principal, Dr. Foley, after gym class to let him know what had happened.

53. Joel Doe informed Dr. Foley that there was a girl in their locker room. Dr. Foley indicated that the legality of the practice was up in the air but that students who “mentally” identify with the opposite sex could choose the locker room and bathroom to use, and physical sex did not matter.

54. Joel Doe asked whether there was anything that Dr. Foley could do to protect him from this situation.

55. Dr. Foley responded that there was nothing he could do and he did not know what the end result will be.

56. Dr. Foley told Joel Doe to “tolerate” it and make it as “natural” as he possibly can.

57. Prior to Joel Doe leaving, Dr. Foley repeated himself a second time as Joel Doe was leaving the office, telling him again to be as “natural” as possible.

58. The District intentionally and purposefully caused Joel Doe’s privacy to be violated.

59. The District did not inform Joel Doe or his Guardians, John Doe and Jane Doe, before this incident that they were permitting students of one sex to enter locker rooms and bathrooms of students of the opposite sex.

60. The District had not informed Joel Doe or his Guardians that despite the signs on locker room and restroom doors designating boys’ use, they would no longer protect Joel Doe’s expectation of privacy from viewing or being viewed by

members of the opposite sex when he is present in multi-user private facilities such as bathrooms and locker rooms.

61. The District's directive to Joel Doe was that he must change with students of the opposite sex and make it as natural as possible and that anything less would be intolerant and bullying against students who profess a gender identity with the opposite sex.

62. After Joel Doe's privacy was violated, the District's actions marginalized and shamed Joel Doe, and unlawfully attempted to coerce and intimidate Joel Doe into accepting continuing violations of his bodily privacy.

63. The anxiety, embarrassment, and stress he feels as a direct result of Defendants' practice and actions has caused him to refrain from using restrooms as much as possible, stress about when and if he can use a given restroom without running into persons of the opposite sex, and opting to hold his bladder rather than using the school's restroom. This has caused an ever-present distraction throughout the school day, including during class instructional time.

64. Failing to timely void urine has direct and adverse physiological effects, and the Defendants' policy inhibits Joel Doe from timely voiding.

65. Joel Doe's guardians made an appointment to speak with the assistant principal shortly thereafter, and met with Defendant Dr. Foley on or about November 2, 2016.

66. Joel Doe's guardians explained how Joel Doe's bodily privacy had been violated by the District's actions and sought answers to ensure it did not happen

again. It was then that Dr. Foley indicated that the school district is “all-inclusive” and that if Joel Doe had a problem changing or using restrooms with people of the opposite sex, he would get him permission to go to the nurse’s office to change.

67. Joel Doe’s guardians subsequently met with Dr. Cooper, the principal of Boyertown Area High School to voice their concerns. Dr. Cooper was condescending to Joel Doe’s guardians and stated that he would not do anything because Joel Doe can simply change in the nurse’s office from now on if he does not want to change around people of the opposite sex.

68. By mandating that Joel Doe use a nurse’s office to change if he wants privacy, Defendants have prevented him from using the facilities that, by state and federal law, are provided for use solely by males and that are required to ensure that students of one sex have their privacy protected from members of the opposite sex.

69. The District further marginalized, intimidated and shamed Joel Doe, by contacting the principal at the Vo-Tech school, Berks Career and Technology School – Oley Campus (BCTS), where Joel Doe also attended half of the day, to disclose the fact that Joel Doe had gone to the Assistant Principal over the violation of his bodily privacy.

70. On or about November 2, 2016, just two days after the incident where Plaintiff’s right to privacy was violated, the principal of BCTS, Mr. Jenkins, pulled Joel Doe out of class to have what Mr. Jenkins called a “casual conversation” about the incident at Boyertown Area High School and stated “he wanted to make sure none of that negativity was going to happen at his school.”

71. Joel Doe felt harassed, shamed, and bullied by the District's publication to BCTS about the incident and his concerns.

72. Joel Doe's guardians scheduled a meeting with the Defendant Superintendent Dr. Faidley, and Dr. Faidley indicated that if Joel Doe was uncomfortable changing with those of the opposite sex, or with using the nurse's office, then he could just withdraw from school and be home schooled, while still attending Vo-tech if he wished.

73. The District's actions have forced Joel Doe to stop changing for PE class, which has resulted in disciplinary action and poor grades by only receiving half of the day's credit for participating in street clothes rather than gym clothes.

74. Joel Doe feels violated, humiliated, and embarrassed by the invasion of privacy.

75. Because of the privacy violation, as well as the District's subsequent actions, Joel Doe also experiences anxiety, stress, intimidation, fear, apprehension and loss of dignity.

76. These daily persistent feelings of anxiety, stress, humiliation, embarrassment, apprehension, distress, and violation of privacy stay with Joel Doe and impact him throughout the day, distracting him from instructional time.

77. Joel Doe is suffering and will continue to suffer irreparable harm because of the Defendants' actions.

78. Joel Doe has no adequate remedy at law.

Plaintiff – Jack Jones

79. Jack Jones is a student at Boyertown Area High School, where he is enrolled in a physical education (“PE”) and Health course.

80. PE is a mandatory course at the District and is a requirement to graduate.

81. It is mandatory that students in PE class change into clothing appropriate for PE class.

82. The PE locker rooms have signs which indicate they are either for girls or for boys.

83. Jack Jones has always used the boys’ locker room and bathrooms because his sex is male.

84. Jack Jones has a reasonable expectation of privacy in the locker rooms and bathrooms in the school from viewing members of the opposite sex or from being viewed by members of the opposite sex.

85. Jack Jones absolutely does not object to students of the same sex using private facilities with him regardless of how they may subjectively self-identify their gender, and he has no expectation of privacy from members of the same sex.

86. On or about the first week of November, 2016, Jack Jones began changing in the locker room for PE class, and when he was standing in his underwear about to put his gym clothes on, he saw classmates gesturing and looking at something behind him. When he turned, he saw a member of the opposite sex in the locker room with him, while he was in his underwear.

87. Jack Jones experienced immediate confusion, embarrassment,