IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

Rapides Parish School Board, *Plaintiff*, v. **United States Department of Health and Human Services**, et al., *Defendants*.	**Case No.** 1:25-cv-00070-DDD-JPM **Judge Dee D. Drell** **Magistrate Judge Joseph H.L. Perez-Montes** **Oral argument requested**

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff Rapides Parish School Board moves this Court for an order granting partial summary judgment under 5 U.S.C. § 706 and Fed. R. Civ. P. 54(b) & 56 on its claims that five federal gender-identity mandates lack statutory authority. Compl. [ECF 1] at ¶¶ 308–14, 340–47, 370–75, 395–401, 429–34.

Specifically, this Motion seeks an order to:

A. Under 5 U.S.C. §§ 701, 706, hold unlawful, set aside, vacate, and enjoin enforcement of the following agency actions to the extent that each agency action addresses gender identity and/or gender dysphoria:

1. The U.S. Department of Health and Human Services (HHS) Head Start Gender-Identity Mandate, most recently published as Health and Human Services Adoption of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 89 Fed. Reg. 80,055 (interim final rule October 2, 2024) (to be codified at 2 C.F.R. § 300.300), and *previously published as* Guidance for Federal Financial Assistance, 89 Fed. Reg. 30,046 (Apr. 22, 2024) (codified at 2 C.F.R. § 300.300); Health and Human Services Grants Regulation, 89 Fed. Reg. 36,684 (May 3, 2024) (codified at 45 C.F.R. § 75.300); and Health and Human Services Grants Regulation, 81 Fed. Reg. 89,393 (Dec. 12, 2016) (codified at 45 C.F.R. § 75.300).

2. The HHS Section 1557 rule, Nondiscrimination in Health Programs and Activities, 89 Fed. Reg. 37,522 (May 6, 2024), including the gender-identity provisions codified at 42 C.F.R. §§ 438.3, 438.206, 440.262, 457.495(e); 45 C.F.R. §§ 92.1, 92.5, 92.6, 92.7, 92.8, 92.9, 92.10, 92.101, 92.206–211, 92.301, 92.303, 92.304, and any other provisions of the rule that Defendants may use to claim authority to prohibit gender-identity discrimination using the rule.

3. The HHS Section 504 Gender-Identity Mandate, Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 40,066, 40,069 (May 9, 2024) (codified at 45 C.F.R. § 84.38).

4. The U.S. Equal Employment Opportunity Commission (EEOC) Gender-Identity Mandate, published as EEOC's Enforcement Guidance on Harassment in the Workplace (Apr. 29, 2024), https://perma.cc/7V7L-PN7P, and in various website guidance, Exs. 4–8[1], and developed in enforcement actions.

B. Issue a declaratory judgment and permanent injunction preventing Defendants, including their employees, agents, successors, and all persons in active concert or participation with them, from implementing, enforcing, or applying the respective agency gender-identity mandates, to the extent that the mandates address gender identity and gender dysphoria in any way, including:

1. That HHS may not apply Title IX of the Education Amendments of 1972, Section 1557 of the Affordable Care Act, or the Social Security Act to address discrimination on the basis of gender identity, including through sex stereotypes or any other theory.

2. That HHS may not apply Head Start statutes, other grant statutes, or any implementing regulations to encompass gender identity, gender dysphoria, gender expression, or similar concepts in the Head Start program.

3. That HHS may not apply Section 504 of the Rehabilitation Act, Section 1557 of the Affordable Care Act or any implementing regulations to encompass gender dysphoria or similar concepts as a disability.

4. That EEOC may not apply Title VII of the Civil Rights Act of 1964 or any implementing regulations or guidance to require employers to treat employees as the opposite sex, including in

[1] *See* attached exhibit list.

access to facilities or in speech, such as with self-selected pronouns.

5. That HHS may not require covered institutions to enroll students in P.E. classes or athletic programs based on students' gender identity instead of their sex.

6. That HHS and EEOC may not require covered institutions to open single-sex locker rooms, changing rooms, showers, overnight accommodations, and restrooms to individuals of the opposite biological sex.

7. That HHS and EEOC may not require covered institutions to mandate that students or staff participate in or affirm an employee or student's gender-transition efforts, including by requiring students or staff to use an opposite-sex name or personal pronouns or by adjusting curricula.

C. That, under Rule 54(b), this Court expressly determine that there is no just reason for delay for entry of final judgment on this claim, and that the judgment may be immediately appealable.

D. That this Court waive any security requirement and retain jurisdiction to enforce this Court's orders.

Plaintiff Rapides Parish School Board seeks partial summary judgment because each gender-identity mandate lacks statutory authority, and so each gender-identity mandate should be vacated and enjoined. The school board reserves the right to seek other forms of relief later, if necessary, on these claims and to raise its other statutory and constitutional claims later, if necessary, against all defendants. If the Court grants this Motion in whole or in part, the school board reserves the right to then move for an award of attorneys' fees and costs as the prevailing party. *See, e.g.*, 28 U.S.C. § 2412.

This Motion is supported by Plaintiff's complaint [Doc. 1] and the exhibits attached to this Motion. A supporting memorandum will be filed at a later date, pending this Court's ruling on Plaintiff's motion for leave to file excess pages.

This Court should waive any security requirement due to the strength of the case and the federal agencies' lack of financial harm. *Tennessee v. Becerra*,

739 F. Supp. 3d 467, 485 (S.D. Miss. 2024). Plaintiff respectfully requests oral argument on this Motion.

CONCLUSION

The Court should grant partial summary judgment.

Respectfully submitted this 3rd day of June, 2025.

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Rapides Parish School Board, *Plaintiff*, v. **United States Department of Health and Human Services**, et al., *Defendants*.	**Case No.** 1:25-cv-00070-DDD-JPM **Judge Dee D. Drell** **Magistrate Judge Joseph H.L. Perez-Montes**

PLAINTIFF RAPIDES PARISH SCHOOL BOARD'S
MEMORANDUM IN SUPPORT OF ITS
MOTION FOR PARTIAL SUMMARY JUDGMENT

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INTRODUCTION

Four federal gender-identity mandates force Plaintiff Rapides Parish School Board to ignore the biological distinction between male and female—or else face huge penalties and lose funding for kids' health care, education, and preschool.

Federal civil rights laws protect women's equal educational opportunities. But the prior administration twisted the words "sex" and "disability" in nondiscrimination laws to impose "gender identity" mandates. When the sister agency of Defendants here did the same thing in the Department of Education's Title IX rule, judges here and elsewhere enjoined and vacated that mandate nationwide. *Louisiana v. U.S. Dep't of Educ.*, 737 F. Supp. 3d 377 (W.D. La. June 13, 2024), *stay denied*, No. 24-30399, 2024 WL 3452887 (5th Cir. July 17, 2024), *stay denied*, 603 U.S. 866, 867–68 (2024); *Carroll Indep. Sch. Dist. v. U.S. Dep't of Educ.*, No. 4:24-cv-00461 (N.D. Tex. filed Feb. 19, 2025), ECF No. 86, *appeal docketed*, No. 25-10651 (5th Cir. May 27, 2025). Every Supreme Court justice agreed that "relief [was proper] as to … the central provision that newly defines sex discrimination to include discrimination on the basis of … gender identity." *Dep't of Educ. v. Louisiana*, 603 U.S. at 867.

The school board now seeks protection from four parallel mandates that the U.S. Department of Health and Human Services (HHS) and the U.S. Equal Employment Opportunity Commission (EEOC) imposed. To protect schools from the draconian penalties available under these regulatory mandates, this Court should vacate the mandates under the Administrative Procedure Act (APA), 5 U.S.C. § 706, or enjoin their enforcement.

BACKGROUND AND STATEMENT OF MATERIAL FACTS

I. Defendants imposed four gender-identity mandates.

On the theory that the categories of men and women are identity-based rather than biological, the prior administration sidestepped Congress and imposed sweeping gender-identity mandates. Agencies leveraged federal power to transform laws ensuring women's equal opportunities into mandates of gender ideology.

Here, the school board seeks to protect employees and students from four of these mandates. Although new executive orders suggest rescinding these mandates, rulemaking takes years, and the school board has no court protection of its own in the meantime. Exec. Order No. 14,168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, § 3, 90 Fed. Reg. 8615 (Jan. 20, 2025); Exec. Order No. 14,187, Protecting Children from Chemical and Surgical Mutilation, 90 Fed. Reg. 8771 (Jan. 28, 2025).

A. HHS's Section 1557 Gender-Identity Mandate

Under the prior administration, HHS imposed a Title IX mandate on schools through Section 1557 of the Patient Protection and Affordable Care Act (ACA), Pub. L. No. 111-148, 124 Stat. 119 (March 23, 2010). Section 1557 applies Title IX to healthcare like school-based Medicaid. 42 U.S.C. § 18116(a). In a rule, HHS claimed to "clarify" that "sex" in Title IX means "gender identity" and "sex stereotypes." Nondiscrimination in Health Programs and Activities, 89 Fed. Reg. 37,522, 37,691–92, 37,699, 37,701 (May 6, 2024) (codified at 42 C.F.R. §§ 438.3, 438.206, 440.262, 457.495(e); 45 C.F.R. §§ 92.1, 92.5, 92.6, 92.7, 92.8, 92.9, 92.10, 92.101, 92.206–211, 92.301, 92.303, 92.304) (the Section 1557 Rule); Compl. [Doc. 1] ¶¶ 57–98. This rule became final in May 2024, after which three courts delayed the effective date preliminarily. *Tennessee v. Becerra*, 739 F. Supp. 3d 467 (S.D. Miss. 2024); *Texas v. Becerra*, 739 F. Supp. 3d 522 (E.D. Tex. 2024), *modified on reconsideration*,

No. 6:24-cv-00211-JDK, 2024 WL 4490621 (E.D. Tex. Aug. 30, 2024); *Florida v. HHS*, 739 F. Supp. 3d 1091 (M.D. Fla. 2024).

No court order vacates this mandate. The new administration has not rescinded it, and rulemaking to do so has always taken years to accomplish.

B. HHS's Head Start Gender-Identity Mandate

Prior officials also imposed gender ideology on Head Start preschools and other HHS grant programs. HHS defines "sex" in 42 U.S.C. § 9849 (which applies to Head Start) to include "gender identity," "sex stereotypes," "sex characteristics," and "gender expression." Health and Human Services Adoption of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 89 Fed. Reg. 80,055 (interim final rule Oct. 2, 2024) (to be codified at 2 C.F.R. § 300.300), *previously published as* OMB Guidance for Federal Financial Assistance, 89 Fed. Reg. 30,046 (Apr. 22, 2024) (codified at 2 C.F.R. § 300.300), Health and Human Services Grants Regulation, 89 Fed. Reg. 36,684, 36,688–89 (May 3, 2024) (codified at 45 C.F.R. § 75.300), and Health and Human Services Grants Regulation, 81 Fed. Reg. 89,393 (Dec. 12, 2016) (codified at 45 C.F.R. § 75.300) (together, the Head Start Gender-Identity Mandate); Compl. ¶¶ 30–56.

The new administration has not rescinded this mandate. HHS cannot rescind this rule apart from the APA's notice-and-comment procedures, and it hasn't done that. HHS thus still directs grantees to this mandate. Ex. 1 at 4 (citing 45 C.F.R. § 75's "requirements"); *id.* at 80 ("Please see 45 CFR § 75.300").[1]

C. HHS's Section 504 Gender-Identity Mandate

In 2024, HHS imposed Medicaid and Head Start mandates on a duplicate theory—redefining "disability" in Section 504 of the Rehabilitation Act of 1973,

[1] An exhibit list accompanies the motion, as well as true and accurate copies of the documents forming the basis for this motion. *See* Ex. 15.

29 U.S.C. § 794, to include "gender dysphoria." Section 504 governs Head Start grants, and it applies to Medicaid providers via Section 1557. 42 U.S.C. § 18116(a). After notice and comment, HHS issued this mandate via preamble language describing Section 504 and its regulations. Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 40,066, 40,068–69 (May 9, 2024) (citing 45 C.F.R. § 84.4) (the Section 504 Gender-Identity Mandate); Compl. ¶¶ 99–131; Ex. 2 at 6 (noting the "updated definition of 'disability'"); *see* Ex. 3 at 3–4 (DOJ's position); Compl. ¶¶ 29, 72, 113, 122–24, 145 (describing the new mandate).

Just as with the Section 1557 Rule and the Head Start Gender-Identity Mandate, the new administration has not rescinded this rule through notice-and-comment rulemaking. HHS issued a notice (without public comment) declaring that the preamble language is "not enforceable." Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance; Clarification, 90 Fed. Reg. 15,412 (Apr. 11, 2025). But this particular preamble language was set forth in the proposed rule and finalized after public comment, so merely declaring it is not enforceable does not repeal it. *Cent. & S. W. Servs., Inc. v. EPA*, 220 F.3d 683, 689 n.2 (5th Cir. 2000) (a final and binding interpretation in a final preamble after notice and comment is a reviewable rule under the APA).

D. EEOC's Workplace Gender-Identity Mandate

In 2024, EEOC reinforced a gender-identity mandate it had long imposed on workplace facility and speech policies by overreading Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq. This mandate resides most recently in guidance published in 2024 after a notice-and-comment process, Ex. 4 at 1–4, 8, 15–

20, 25, 29–35, 52, 103–06, 108–09, 123–28, 134–38, 143, 156–64,[2] as well as on EEOC's website, Exs. 5–8,[3] and in enforcement actions, Compl. ¶¶ 178–221, (together, the EEOC Gender-Identity Mandate). EEOC makes employers use employees' self-selected pronouns and let males into female spaces.

The new administration admits it cannot rescind this mandate. President Trump told EEOC to do so, 90 Fed. Reg. at 8616, but Democrat commissioners rebuffed him.[4] This led the President to fire two of them, and now one commissioner is suing for reinstatement to keep blocking rescission. Errata Complaint at 14, *Samuels v. Trump*, No. 1:25-cv-01069 (D.D.C. Apr. 9, 2025), ECF No. 3. Meanwhile EEOC lacks a quorum. Ex. 9 at 1–2, 6. EEOC's Acting Chair halted enforcement, but she "cannot unilaterally remove or modify" the mandate. Ex. 10 at 3. *See also* Ex. 11 at 2 ("EEOC cannot rescind or modify the Enforcement Guidance on Harassment in the Workplace at this time").[5]

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[2] *See* EEOC, Enforcement Guidance on Harassment in the Workplace, https://perma.cc/5EY2-3EX3 (Ex. 4's present version, captured May 23, 2025).

[3] *See Sex-Based Discrimination*, EEOC, https://perma.cc/ZZF8-UVXJ (Ex. 5's present version, captured May 27, 2025); *Prohibited Employment Policies/Practices*, EEOC, https://perma.cc/TYK5-JU3X (Ex. 6's present version, captured May 27, 2025). EEOC recognizes that a court vacated Ex. 8. *Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity*, EEOC, https://perma.cc/V4ZX-636V (captured Jan. 13, 2025); *Texas v. EEOC*, 633 F. Supp. 3d 824, 840 (N.D. Tex. 2022).

[4] Jocelyn Samuels (@JSamuelsEEOC), *Statement of EEOC Commissioners Charlotte A. Burrows, Jocelyn Samuels, and Kalpana Kotagel on Trump Administration Day-One Executive Orders*, X (Jan. 21, 2025, 1:33 PM), https://x.com/JSamuelsEEOC/status/1881817519188795700.

[5] The school board's complaint also challenged a fifth gender-identity mandate—from the U.S. Department of Agriculture (USDA). Compl. ¶¶ 132–77. USDA has changed or is substantively changing this mandate. USDA's position has been that its regulations are—unlike other agencies' rules—not subject to time-consuming requirements for prior notice and public comment. *E.g.*, 5 U.S.C. § 553; 29 C.F.R. § 1695.6. As the extent of USDA's changes remains uncertain, the school board does not seek summary judgment on this challenge at this time.

II. The mandates force the school board to ignore the reality of sex.

Each of the four mandates exposes the school board to serious penalties unless it agrees to ignore the biological reality of sex. Ex. 13 ¶ 50. The school board is subject to HHS's mandates because it receives HHS Medicaid funds and HHS Head Start funds. *Id.* ¶¶ 11, 15, 18. It is subject to EEOC's unfunded mandate because it has 3,200 employees. *Id.* ¶ 6; 42 U.S.C. § 2000e(b).

The school board recognizes the reality that humans are male or female. *Id.* ¶¶ 35–49. It offers sex-specific athletics and P.E. classes. *Id.* ¶¶ 36–40. It separates private spaces like locker rooms, restrooms, showers, gymnasia, searches, and overnight accommodations by sex. *Id.* ¶¶ 40–46. It uses biological pronouns, not self-selected pronouns. *Id.* ¶ 48. And it has sex-specific policies, e.g., that "Classroom instruction … on … gender identity may not occur in pre-kindergarten through grade 12 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards." *Id.* ¶¶ 47 (quoting Ex. 13-B at 1).

Although the four gender-identity mandates stem from different agencies, each forces the school board to change its policies and harm students and employees. *Id.* ¶¶ 50–73. The mandates take healthcare, preschool, and other resources from kids—unless schools adopt new policies that threaten everyone's privacy, safety, and dignity. *Id.* ¶ 51. Compliance thus imposes not only financial costs but also incalculable harm to students and staff. *Id.* ¶¶ 61, 74–84.

III. Courts have held federal gender-identity mandates unlawful.

Last year, seven district courts and three circuit courts preliminarily enjoined the Department of Education's Title IX rule. *Alabama v. U.S. Sec'y of Educ.*, No. 24-12444, 2024 WL 3981994, at *1–2, *1 n.2 (11th Cir. Aug. 22, 2024) (per curiam) (collecting preliminary rulings on Nondiscrimination on the Basis of Sex in

Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33,474 (April 29, 2024)). All nine Supreme Court justices accepted relief against the rule's gender identity mandate. *Dep't of Educ. v. Louisiana*, 603 U.S. at 867. Two courts vacated this rule. *Carroll ISD*, No. 4:24-cv-00461 (N.D. Tex. filed Feb. 19, 2025), ECF No. 86, *appeal docketed*, No. 25-10651 (5th Cir. May 27, 2025); *Tennessee v. Cardona*, 762 F. Supp. 3d 615, 628 (E.D. Ky. 2025) (*Tennessee v. Cardona II*). Three courts also granted preliminary relief against HHS's Section 1557 Rule. *Tennessee v. Becerra*, 739 F. Supp. 3d 467; *Texas v. Becerra*, 739 F. Supp. 3d 522, *modified on reconsideration*, 2024 WL 4490621; *Florida v. HHS*, 739 F. Supp. 3d 1091. And one court ruled against EEOC's 2024 guidance. *Texas v. EEOC*, No. 2:24-CV-173, 2025 WL 1414332, at *16 (N.D. Tex. May 15, 2025).

Because each mandate lacks statutory authority, the school board seeks vacatur, a permanent injunction, and partial final judgment on its statutory claims. Fed. R. Civ. P. 54(b) & 56; Compl. ¶¶ 308–14, 340–49, 370–75, 429–34.

IV. The Court should end the four gender-identity mandates.

It serves the public interest to stop forcing Americans to promote "gender transitions." Changing sex is impossible, Ex. 14 ¶ 39, and "transitions" lack a sound scientific basis, *id.* ¶¶ 4–9, 18–241. Gender dysphoria is "not characterized by any disability or impairment or ill health affecting any part of the physical body." *Id.* ¶¶ 45, 92. It cannot be confirmed or denied by a physical test. *Id.* ¶¶37, 41–45, 92, 139, 149. Nor is there any evidence that transition procedures improve mental health, *id.* ¶¶ 5, 177–87, or reduce suicide or suicidality, *id.* ¶¶ 62–65, 88–91, 96–97, 173–74, 209–21. The best large studies in fact show no mental health improvement. *Id.* ¶¶ 5, 138, 177–87. Nor is there reliable evidence of effectiveness on minors' mental health when weighed against less risky treatments. *Id.* ¶¶ 9, 138, 143, 145, 148–49. "Social transition" (such as using self-selected pronouns) is not associated

with improvement, *id.* ¶¶ 5, 146, 151–76, 231. In fact, multiple international healthcare systems that had performed or endorsed medicalized transition on minors are reversing course based on strong evidence that there is no benefit and based on systematic reviews concluding that any evidence suggesting a benefit is of poor quality. *Id.* ¶¶ 21–22, 30, 47–49, 82, 103–04, 130, 180–87, 229–41. That list now includes HHS. *Id.* ¶¶ 104, 170, 187, 195, 213–14, 240.

Transition procedures also impose serious risks. *Id.* ¶¶ 5, 9, 135, 188–208, 224–27. The many harms associated with administering puberty blockers or cross-sex hormones to children and adolescents include: sterilization without proven fertility preservation options, permanent loss of capacity for breastfeeding, lifetime lack of orgasm and sexual function, interference with neurodevelopment and cognitive development, substantially delayed puberty associated with medical harms, elevated risk of Parkinsonism in adult females, reduced bone density, lifetime dependance on hormone treatments, increased cardiovascular risk, and hormone-dependent cancers, among others. *Id.* ¶¶ 188, 190–208, 224–27. Assertions that puberty blockers act as a "fully reversible" "pause button" have no scientific basis and ignore recognized risks of permanent harm. *Id.* ¶¶ 152, 189–201.

STANDARD FOR GRANTING THE MOTION

Summary judgment is proper when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *Duffy v. Leading Edge Prods., Inc.*, 44 F.3d 308, 312 (5th Cir. 1995). Partial summary judgment is proper when "there is no just reason for delay" and upon an express direction of the entry of final judgment. Fed. R. Civ. P. 54(b). Under the APA, the court decides "whether the administrative action is consistent with the law." *Indep. Turtle Farmers of La., Inc. v. United States*, 703 F. Supp. 2d 604, 614 (W.D. La. 2010) (cleaned up).

Under the APA courts vacate, or "hold unlawful and set aside," rules "not in accordance with law," "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2). Vacatur does not depend on equitable factors. *Braidwood Mgmt., Inc. v. Becerra*, 104 F.4th 930, 951–52 (5th Cir. 2024), *cert granted on other grounds*, 145 S. Ct. 1038 (Jan. 10, 2025) (mem.).

A permanent injunction is appropriate when (1) the plaintiff succeeds on the merits, (2) the plaintiff faces irreparable injury and legal remedies, like damages, are inadequate; (3) when "the balance of hardships between the plaintiff and defendant" warrant relief; and (4) when relief is in the public interest. *Franciscan All., Inc. v. Becerra*, 553 F. Supp. 3d 361, 368 (N.D. Tex. 2021) (cleaned up).

ARGUMENT

I. This Court has jurisdiction.

A. The school board has standing.

For two reasons, the school board has standing based on the facts as they existed when it filed its complaint under the prior administration. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 569 n.4 (1992).

1. The mandates require and forbid the school board's actions.

"[R]egulations that require or forbid some action by the plaintiff almost invariably satisfy both the injury in fact and causation requirements." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 382 (2024). In cases concerning directly regulated parties—which is this situation—"standing is usually easy to establish." *Id.*

The school board has standing because it is directly regulated. The mandates regulate it because it receives funding that triggers each rule's applicability. And the mandates force the school board's compliance in two ways.

First, the four gender-identity mandates force schools to change policies and allow "access" to sex-specific programs and facilities based on gender identity. 89 Fed. Reg. at 37,593, 37,698–701 (45 C.F.R. §§ 92.101, 92.206) ("equal access" to programs and "intimate space[s]"); 89 Fed. Reg. at 36,686, 36,692–93 ("access" to single-sex programs); 89 Fed. Reg. at 40,068, 40,078, 40,187 (codified at 45 C.F.R. §§ 84.31, 84.45(a)) ("access to" and non-exclusion from education, including "housing"); Ex. 4 at 19 ("access to a bathroom or other sex-segregated facility").

The school board thus must allow access to sex-specific locker rooms, restrooms, showers, searches, and overnight accommodations based on gender identity. Ex. 13 ¶¶ 57–63, 65. And, because HHS's mandates apply to *all* school operations, the school board must allow males to play in female P.E. classes and sports teams, contrary to state law protecting fairness in women's sports. La. Stat. Ann. §§ 4:441–46 (2022). Ex. 13 ¶¶ 53–56. Females must compete against males who identify as girls for spots on their school's teams, and females must compete against males on opposing schools' female athletic teams. *Id.* ¶ 53.

Second, the mandates force schools to change policies about the biological reality of sex, including for speech. 89 Fed. Reg. at 37,596, 37,698–701 (to be codified at 45 C.F.R. §§ 92.101, 92.206) (refusing to disavow that "equal access" requires self-selected pronouns); 89 Fed. Reg. at 36,692–93 (same); 89 Fed. Reg. at 40,069 (similar); Ex. 4 at 19 (prohibiting "a name or pronoun inconsistent with … gender identity (misgendering)"); *Florida v. HHS*, 739 F. Supp. 3d at 1112. A school that refuses faces liability for harassment and hostility, 89 Fed. Reg. at 37,596, and for denying "equal program access," *id.* at 37,700–01.

Under this requirement, the school board must use self-selected pronouns, Ex. 13 ¶¶ 64–73, and it must change its policy against gender-identity classroom instruction, *id.* ¶ 70. *E.g.*, 89 Fed. Reg. at 36,692 (refusing to disavow effect on curricula). Schools must even say that males can get pregnant and give birth.

Nondiscrimination in Health Programs and Activities, 87 Fed. Reg. 47,824, 47,865 (Aug. 4, 2022). These mandates thus change how the school teaches health classes, and what library books can say about biology. Ex. 13 ¶ 71. It threatens to expose very young kids to inappropriate material and to teach them to question their gender, regardless of parents' views or knowledge. *Id.*

All this is injury. *Florida v. HHS*, 739 F. Supp. 3d at 1101–03, 1108–10. An object of a regulation has standing. *Texas Med. Ass'n v. HHS*, 110 F.4th 762, 773 (5th Cir. 2024). The mandates make the school board take down policies, Ex. 13 ¶ 73, change facility signs so males can access female spaces, *id.* ¶¶ 61, 65, and adopt, and implement policies that disregard the reality of sex, with employee training, *id.* ¶¶ 74–84. Because the mandates contemplate these policy changes, each "produces an injury in fact." *Tennessee v. EEOC*, 129 F.4th 452, 458 (8th Cir. 2025). That's why similar plaintiffs could challenge similar mandates. *E.g.*, *Tennessee v. Dep't of Educ.*, 104 F.4th 577, 596–98 (6th Cir. 2024); *Louisiana v. Dep't of Educ.*, 737 F. Supp. 3d at 392–95; *Tennessee v. Becerra*, 739 F. Supp. 3d at 475, 482–84.

2. The mandates impose economic losses.

The school board also has standing because it faces two forms of fiscal harm. This "economic injury is a quintessential injury upon which to base standing." *Tex. Democratic Party v. Benkiser*, 459 F.3d 582, 586 (5th Cir. 2006).

First, unless the school board complies it is ineligible for Medicaid and Head Start funds, and it faces enforcement and sanctions. Ex. 13 ¶¶ 11, 15, 18; Compl. ¶¶ 69–75, 110–31, 213, 220, 245, 291–92. Such "crippling financial penalties" are "untenable." *La. Coll. v. Sebelius*, 38 F. Supp. 3d 766, 775 (W.D. La. 2014).

Second, were the school board to comply, it would have to pay for new policies and facilities. Ex. 13 ¶¶ 61, 74–84. Obeying a rule "later held invalid almost always

produces the irreparable harm of nonrecoverable compliance costs." *Louisiana v. Biden*, 575 F. Supp. 3d 680, 694 (W.D. La. 2021), *aff'd*, 55 F.4th 1017 (5th Cir. 2022) (cleaned up). And here each mandate imposes compliance costs—schools must read regulations, revise policies, implement new policies, train employees, post notices, and more. *E.g.*, 7 C.F.R. §§ 15a.115, 15a.135, 15a.140; 89 Fed. Reg. at 37,693, 37,696–701 (45 C.F.R. §§ 92.1(b), 92.5, 92.8, 92.9, 92.10, 92.101, 92.206) (policy changes, training, assurances or certifications of compliance, documentation, and monitoring); 89 Fed. Reg. at 36,698 ("legal and other familiarization costs" from revising and implementing new policies); 89 Fed. Reg. at 40,176 ("revisions to policies and procedures and training for employees"); Ex. 4 at 73–78 (§ IV.C.2.b.i) (expecting new policies, complaint processes, training, and monitoring). Compliance takes time and money. Ex. 13 ¶¶ 61, 74–84. Some costs already began, *id.* 34 ¶ 74, and the remainder are more than "fairly likely," *Crawford v. Hinds Cnty. Bd. of Supervisors*, 1 F.4th 371, 376 (5th Cir. 2021).

These costs are "obvious" concrete harms. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021). They are particularized because they affect *this* school board. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339–40 (2016). The harms "will likely be redressed by" a final judgment. *Tennessee v. Becerra*, 739 F. Supp. 3d at 476.

B. The school board's claims are ripe.

The mandates are final agency actions subject to APA review. *Texas v. EEOC*, 933 F.3d 433, 441–42, 444, 446, 449, 451 (5th Cir. 2019). Whatever label an agency gives its mandate, it is a substantive rule if the agency binds itself "to a legal position [that] produce[s] legal consequences or determine[s] rights and obligations." *Id.* at 441. The mandates meet this standard because they do "more than merely 'track' and 'explain' existing statutory requirements." *Texas v. EEOC*, No. 2:21-CV-194, 2022 WL 22869778, at *6, *11 (N.D. Tex. May 26, 2022); *see Texas*

v. EEOC, 633 F. Supp. 3d 824, 840 (N.D. Tex. 2022); *supra* Pt.II. They expand[the law] to include … gender identity." *Texas v. EEOC*, 2025 WL 1414332, at *4–6.

The school board's claims are thus ripe. Each agency is "bound by its own regulations, which have the force and effect of law." *Gulf States Mfrs., Inc. v. NLRB*, 579 F.2d 1298, 1308 (5th Cir. 1978). Each mandate requires schools "to comply with its stated positions to avoid liability." *Tennessee v. U.S. Dep't of Educ.*, 615 F. Supp. 3d 807, 833 (E.D. Tenn. 2022). So the school board may "receive clarification" before risking punishment. *Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 927–28 (5th Cir. 2023)). It "need not wait for [an] agency to drop the hammer … to have [its] day in court. *Texas v. Cardona*, 743 F. Supp. 3d 824, 862 (N.D. Tex. 2024) (cleaned up).

Nor is further factual development necessary to make this case ripe. *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 812 (2003). The school board's "course of action is within the plain text" of each mandate. *Parents Defending Educ. v. Linn Mar Cmty. Sch. Dist.*, 83 F.4th 658, 667 (8th Cir. 2023). So its "loss of federal funds is a matter of when, not if." *Texas v. Becerra*, 739 F. Supp. 3d at 538. What's more, in an APA case, "[t]he 'entire case' on review is a question of law." *Am. Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1083 (D.C. Cir. 2001). And for these particular claims—whether the mandates exceed statutory authority—no administrative record is necessary beyond the mandates themselves. *See Tennessee v. Cardona*, Civ. Action No. 2:24-072, 2024 WL 3584361, at *2 (E.D. Ky. July 16, 2024) (refusing to delay summary judgment because the court can resolve Title IX's meaning on administrative record excerpts).

Courts can resolve APA cases on one legal theory and stay other theories until resolution becomes necessary. *Texas v. Becerra*, 89 F.4th 529, 537 (5th Cir. 2024). Indeed, when "relief on statutory grounds is possible, courts should avoid granting relief on constitutional grounds." *Braidwood Mgmt. v. EEOC*, 70 F.4th at

940 n.6. Resolving this case on a lack of statutory authority helps avoid constitutional claims. Compl. ¶¶ 331–37, 361–67, 386–92, 451–66. The Court can thus enter partial judgment now, as there is "no just reason for delay." Fed. R. Civ. P. 54(b).

C. Nothing has mooted the four mandates.

For three reasons, this case remains live even in the new administration.

First, no court has permanently and finally vacated these mandates. No court has entered any relief against HHS's Head Start Gender-Identity Mandate or HHS's Section 504 Gender-Identity Mandate. And the interim or non-final relief that courts have entered against the Section 1557 and the EEOC Gender-Identity Mandate have not provided the school board permanent or certain relief.

The three preliminary injunctions over the Section 1557 Rule do not cover the other rules challenged here, nor do they moot challenges to the Section 1557 Rule. Preliminary injunctions are temporary and only last the duration of other litigants' cases. *Tennessee v. Becerra*, 739 F. Supp. 3d at 486; *Texas v. Becerra*, 2024 WL 4490621. Delaying compliance dates does not repeal or vacate an already-final rule. *Career Colls. & Schs. of Tex. v. U.S. Dep't of Educ.*, 98 F.4th 220, 255 (5th Cir. 2024), *cert. granted in part*, 145 S. Ct. 1039 (2025) (mem.) (comparing stays and vacatur).

Nor is there a final, definitive vacatur against EEOC's mandate. A court vacated parts of EEOC's 2024 guidance. *Texas v. EEOC*, 2025 WL 1414332, at *16; Ex. 11 at 1–2. But it did not vacate EEOC's website mandates. Relief remains important against the full mandate. Plus, not all appeal deadlines have run from this limited order. *Cf. Carroll ISD*, No. 4:24-cv-00461, slip. op. at 2–3 (N.D. Tex. Feb. 19, 2025), ECF No. 86 (granting second vacatur of the Department of Education's Title IX rule while the first vacatur went on appeal). Courts routinely

grant multiple vacaturs or injunctions against rules. *Whitman-Walker Clinic, Inc. v. HHS*, 485 F. Supp. 3d 1, 56, 59–60 (D.D.C. 2020) (collecting cases).

Second, even now Defendants have not rescinded these mandates. The APA requires HHS to undergo notice-and-comment rulemaking to rescind HHS's Section 1557 Rule, Section 504 Gender-Identity Mandate, and Grants Rules, and that has not even begun. 5 U.S.C. § 553. EEOC even admits it has no quorum to rescind its 2024 gender-identity guidance. Ex. 9 at 1–2, 6; Ex. 10 at 3; Ex. 11 at 2; *see* 29 C.F.R. § 1695.6. To moot a challenge to a rule, the rule must actually be "repealed." *Franciscan All., Inc. v. Becerra*, 47 F.4th 368, 376 (5th Cir. 2022). That did not happen here. So "it is far from clear that the government has ceased the challenged conduct *at all*, let alone with the permanence required." *Tucker v. Gaddis*, 40 F.4th 289, 293 (5th Cir. 2022).

Third, mootness does not arise from HHS's recent assertion that it now treats as "unenforceable" the mandatory preamble language giving rise to the Section 504 Gender-Identity Mandate. 90 Fed. Reg. at 15,412. Read closely, HHS did not repeal this language or say that Section 504 means something else. *Id.* Nor did HHS bind itself not to enforce the mandate. *Id.* HHS just stated that preamble language "unenforceable." *Id.* Not only does that mere assertion not rescind the mandate, it is inconsistent with this circuit's view of the APA. Any text "contained in the preamble to a final rule setting forth the Agency's final and binding interpretation of the statute qualifies as a reviewable regulation for purposes of judicial review." *Cent. & S. W. Servs., Inc.*, 220 F.3d at 689 n.2. Courts thus often enjoin as final rules "guidance documents" not labeled as final rules. *E.g.*, *Texas v. Cardona*, 743 F. Supp. 3d at 889. A legal position—whether in a rule preamble, or in a freestanding document—is a reviewable rule based on its substance, not its label or location. *See Mock v. Garland*, 75 F.4th 563, 580 (5th Cir. 2023). Similarly, although HHS has advanced an enforcement position contrary to the Section 1557 mandate,

Complaint, *United States v. Me. Dep't of Educ.*, No. 1:25-cv-00173 (D. Me. Apr. 16, 2025), ECF No. 1, that does not negate the rule.

Here the preamble binds HHS to a mandatory meaning of statutory and regulatory text, 42 U.S.C. § 18116; 45 C.F.R. § 84.4. In this preamble language, HHS adopted *Williams v. Kincaid*, which reads Section 504 to require gender-identity exceptions to sex-specific housing and searches—and forbids "harassment" and "misgendering." 45 F.4th 759, 763–68 (4th Cir. 2022), *cert denied*, 143 S. Ct. 2414 (2023). HHS says that "gender dysphoria may rise to the level of a disability under section 504 and would provide protection against discrimination." 89 Fed. Reg. at 40,069. HHS warns that "restrictions that prevent, limit, or interfere with … individuals' access to care due to their gender dysphoria … may violate section 504." *Id.* at 40,068. This is a substantive rule. *Data Mktg. P'ship, LP v. U.S. Dep't of Lab.*, 45 F.4th 846, 854 (5th Cir. 2022).

The recent notice did not change course on the substance of this mandate, nor does the notice make "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *West Virginia v. EPA*, 597 U.S. 697, 720 (2022) (cleaned up). This notice was not a "legislative-like procedure[ ]" leading to real repeal, but an "ad hoc, discretionary, and easily reversible action[ ]." *Speech First, Inc. v. Schlissel*, 939 F.3d 756, 768 (6th Cir. 2019). Any "solicitude" for a mere notice as if it repeals language issued after notice and comment would be "irreconcilable" with precedent. *Netflix, Inc. v. Babin*, 88 F.4th 1080, 1089 n.12 (5th Cir. 2023).

D. Relief remains necessary.

The APA requires that any unlawful rule be held unlawful and set aside. 5 U.S.C § 706. Unless this Court vacates these rules, the school board is regulated.

It is not hyperbole to say making the school board wait for a rulemaking fix could take a decade or more. Back in May 2016, HHS first twisted Section 1557 to

address gender identity, and its rule was preliminarily enjoined. *Franciscan All.*, 47 F.4th at 372. The first Trump administration then needed most of its time in office to publish a rescission rule but, as soon as that rule was final in 2020, it too was preliminarily enjoined. *Walker v. Azar*, 480 F. Supp. 3d 417, 430 (E.D.N.Y. 2020). The Biden administration then needed another three-and-a-half years to promulgate its own rule, which was also promptly enjoined. *See Tennessee v. Becerra*, 739 F. Supp. 3d 467. Although this administration could issue a new rule, history shows it would likely take until 2028 to do so, and then it would promptly be enjoined again. That would leave the school board in perpetual limbo.

Any failure to proceed to final judgment would delay this case with no end in sight, enabling "an 'endless loop' of financially onerous regulatory activity by thwarting finality." *Lewis v. United States*, 88 F.4th 1073, 1079 (5th Cir. 2023). Even if the new administration could finalize four new rules before 2029, each would likely be enjoined before becoming effective—just as the 2016, 2020, and 2024 Section 1557 rules were. The Court should resolve the school board's motion now.

II. Congress never authorized the four gender-identity mandates.

The school board is entitled to summary judgment on its claims under the APA that these four mandates exceed each agency's statutory authority. Congress never imposed gender-identity mandates under the sex and disability nondiscrimination laws at issue here.

A. The Affordable Care Act incorporates Title IX and does not prohibit sex-specific programs, facilities, speech, or curricula.

1. Title IX allows and sometimes requires sex distinctions.

Title IX, which underlies the Section 1557 rule, does not contain a gender identity mandate. It states: "No person … shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination

under any education program or activity." 20 U.S.C. § 1681(a). It does not address gender identity. *Louisiana v. U.S. Dep't of Educ.*, 737 F. Supp. 3d at 398. In 1972, "on the basis of sex" referred to binary physical differences between males and females. *Id.* For instance, Title IX lets schools go from admitting "students of one sex" to admitting "students of both sexes." 20 U.S.C. § 1681(a)(2).

To promote equality between the sexes, Title IX permits and at times requires, "consideration of sex as well as separation on the basis of sex." *Tennessee v. Becerra*, 739 F. Supp. 3d at 486. Rather than prohibiting all sex distinctions, it prohibits "treating women worse than men and vice versa." *Texas v. Becerra*, 739 F. Supp. 3d at 528. Sex "discrimination" means not any sex distinction but "a negative distinction or differential treatment for the wrong reasons," *Texas v. Cardona*, 743 F. Supp. 3d at 873, measured in context. *Tennessee v. Becerra*, 739 F. Supp. 3d at 485.

Because men and women are sometimes not similarly situated in education, Title IX allows sex distinctions. *Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 814 (11th Cir. 2022) (en banc). In its rule of construction Congress said, "nothing contained herein shall be construed to prohibit … separate living facilities for the different sexes." 20 U.S.C. § 1686. As Senator Birch Bayh (D-IN) said, "I do not read [Title IX] as requiring integration of dormitories between the sexes, nor do I feel it mandates the desegregation of football fields. What we are trying to do is provide equal access for women and men students. … We are not requiring that intercollegiate football be desegregated, nor that the men's locker room be desegregated." 117 Cong. Rec. S. 30,407 (Aug. 6, 1971). Title IX also exempts "father-son or mother-daughter activities," 20 U.S.C. § 1681(a)(8), and fraternities and beauty pageants "limited to … one sex," *id.* § 1681(a)(6) & (a)(9). Though fraternities and beauty pageants are not strictly necessary, Congress protected them anyway, as single-sex spaces need not be discriminatory.

Contemporaneous Title IX regulations "permit, and sometimes even require, consideration of sex." *Tennessee v. Becerra*, 739 F. Supp. 3d at 482. They protect (1) single-sex sex education, 34 C.F.R. § 106.34(a)(3); (2) "separate toilet, locker room, and shower facilities on the basis of sex," *id.* § 106.33; (3) separate "physical education classes," *id.* § 106.34(a)(1); (4) "separate [sports] teams for members of each sex," *id.* § 106.41(b); and (5) "equal athletic opportunity for members of both sexes" in "sports and levels of competition" for "both sexes." *Id.* § 106.41(c).

This "postenactment history" sheds light on Title IX's "intended scope." *N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 530 (1982). Soon after Congress enacted Title IX, it passed the Javits Amendment directing HHS's predecessor to publish these rules implementing Title IX and submit them to Congress for review. Pub. L. No. 93-380, § 844, 88 Stat. 484, 612 (1974); 40 Fed. Reg. 24,128 (June 4, 1975). After "six days of hearings to determine whether the … regulations were consistent with the law and with the intent of the Congress in enacting the law," Congress let the rules take effect. *Bell*, 456 U.S. at 531–32 (cleaned up).

Congress again reaffirmed this construction when it amended Title IX in 1987. Civil Rights Restoration Act, Pub. L. 100-259; 102 Stat. 28 (Mar. 22, 1988) (codified at 20 U.S.C. §§ 1687 et seq.). They reaffirmed the "goal of achieving equity in all educational programs and activities, including athletics," and "cited the need to apply Title IX to athletics to remedy discrimination against female athletes" and to create "a more level playing field for female athletes." Jocelyn Samuels & Kristen Galles, *In Defense of Title IX: Why Current Policies Are Required to Ensure Equality of Opportunity*, 14 Marq. Sports L. Rev. 11, 23–24 (2003). Congress made an express finding supporting the "prior consistent and long-standing executive branch interpretation" of Title IX. Restoration Act § 2, 102 Stat. 28.

After all, making sex distinctions is critical to providing equal opportunities in sports and private facilities. *Cape v. Tenn. Secondary Sch. Athletic Ass'n*,

563 F.2d 793, 795 (6th Cir. 1977). And in places like restrooms, showers, and locker rooms, sex determines whether persons are similarly situated because it "is the sole characteristic on which [separate restrooms] are based." *Adams*, 57 F.4th at 803 n.6. But "if 'sex' were ambiguous enough to include 'gender identity' … the various [Title IX] carveouts … would be rendered meaningless." *Id.* at 813. Title IX "make[s] sense only if 'on the basis of sex' means 'on the basis of biological sex,' not 'on the basis of gender identity or sexual orientation.'" *Texas v. Becerra*, 739 F. Supp. 3d at 534. So for decades courts understood Title IX to permit women's sports teams. *E.g.*, *Mansourian v. Regents of Univ. of Cal.*, 602 F.3d 957, 973 (9th Cir. 2010); *Pederson v. La. State Univ.*, 213 F.3d 858, 871, 878 (5th Cir. 2000).

All this is why the Department of Education could not twist Title IX to impose a gender-identity mandate. *Dep't of Educ. v. Louisiana*, 603 U.S. at 867; *Texas v. Cardona*, 743 F. Supp. 3d at 869–85; *Tennessee v. U.S. Dep't of Educ.*, 615 F. Supp. 3d at 839; *supra* at 1, 6–7 (collecting cases). Neither can HHS twist Title IX through Section 1557.

2. The Affordable Care Act reflects the biological reality of male and female.

Section 1557 of the ACA applies Title IX to healthcare. It forbids in healthcare any discrimination "on the ground prohibited under … title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.)." 42 U.S.C. § 18116(a).

Like Title IX, the ACA does not address gender identity—Congress understood that biology matters in medicine. To address "women's unique health care needs," *Id.* § 1315a(b)(2)(B)(i), Congress ensured "that women have equal access to … healthcare services" and were not "placed at a competitive disadvantage to men." *La. Coll. v. Sebelius*, 38 F. Supp. 3d at 787. In 2010, Congress understood sex in binary, biological terms. In the ACA's single use of the term "sex" (Section 1557 only incorporates it by reference), the ACA requires data analysis "by sex" as

well as information for "women … on those areas in which differences between men and women exist." 21 U.S.C. § 399b. The ACA also refers to "women" separately from "men," like when it protects "women's unique health care needs." 42 U.S.C. §§ 1315a(b)(2)(B)(i); *e.g.*, *id.* §§ 237a, 242s, 280g-12(a)(3)(B), 280k(b)(1), 300gg-13(a)(4), 711(d)(4)(C), 712 (note), 713(c)(1), 1396d(l)(3)(B)(ii) & (bb)(1), 18201(1), 18202(a), 18203. Obstetrics and gynecological care likewise apply to a "female participant." *Id.* § 300gg-19a(d)(1)(A). The ACA also uses the term "pregnant women" in a sex-exclusive manner, *e.g.*, *id.* §§ 280k(b)(1), 711(d)(4), 1396w-3(b)(1)(F), 18203(d), referring, for example, to "a woman who is pregnant, and the father of the child," *id.* § 711(k)(2)(A). Plus, the ACA uses the binary pronouns "his or her," *e.g.*, 124 Stat. at 261, 670, 785, 809, 837, 966.

HHS claimed that Section 1557's reference to "the ground prohibited under … title IX" adopts only the provision barring sex discrimination, divorced from the bevy of surrounding Title IX provisions that allow for differential treatment of the sexes. 89 Fed. Reg. at 37,530–32. But HHS's "unworkable" interpretation would rip Section 1557 right out of Congress's accompanying text. *Tennessee v. Becerra*, 739 F. Supp. 3d at 481–82. Congress intended Section 1557 to incorporate all Title IX by using "et seq." *Et seq.*, Black's Law Dictionary (9th ed. 2009) ("And those (pages or sections) that follow"). And the provisions that follow, like Title IX's rule of construction at 20 U.S.C. § 1686, inform how courts understand sex discrimination.

Redefining "sex" to mean gender identity would undermine Congress's use of sex-based terms in medicine and would force healthcare entities to provide and promote gender-transition procedures. 89 Fed. Reg. at 37,522, 37,691–92, 37,699; *e.g.*, *Florida v. HHS*, 739 F. Supp. 3d at 1107. But nothing in the ACA "require[s] healthcare providers to perform novel 'gender-transition' procedures or force States to subsidize them." *Texas v. Becerra*, 739 F. Supp. 3d at 528. Nor does the ACA

require self-selected pronouns, new curricula, or males in sex-specific spaces. *Florida v. HHS*, 739 F. Supp. 3d at 1108–09, 1111–12.

The mandates in fact go far beyond *Bostock v. Clayton Cnty.*, 590 U.S. 644 (2020), in defining sex discrimination to include "gender identity" and "sex characteristics." 89 Fed. Reg. at 37,698–99, 37,701 (codified at 45 C.F.R. §§ 92.101(a)(2), 92.208, 92.209)); *see also supra* Bkgd.I. *Bostock* did not create any new protected classes. *Stollings v. Tex. Tech Univ.*, No. 5:20-CV-250, 2021 WL 3748964, at *10 (N.D. Tex. Aug. 25, 2021). All this is why three courts preliminarily enjoined the Section 1557 Rule, holding that in healthcare as in education, the word sex means sex. *Tennessee v. Becerra*, 739 F. Supp. 3d 467; *Texas v. Becerra*, 739 F. Supp. 3d 522, *modified on reconsideration* 2024 WL 4490621; *Florida v. HHS*, 739 F. Supp. 3d 1091. HHS thus cannot impose this mandate on Medicaid.

3. *Bostock* does not control Title IX or other sex discrimination statutes relevant here.

HHS claimed, based on *Bostock*, that failing to facilitate gender-identity practices violates Section 1557. But accepting that premise would remove all sex distinctions in education in violation of Title IX itself. It would prohibit schools "from installing or enforcing," *Adams*, 57 F.4th at 814, sex-specific "toilet, locker room, and shower facilities" under 34 C.F.R. § 106.33, and "schools could not consider sex to create sports teams." *Texas v. Cardona*, 743 F. Supp. 3d at 881.

Yet "nothing could be further from Title IX's ordinary meaning" than the idea that "any distinction or differential treatment based on sex violates Title IX." *Id.* at 873. To give females equal opportunities, schools and doctors often "must consider sex." *Meriwether v. Hartop*, 992 F.3d 492, 510 n.4 (6th Cir. 2021). Not so in deciding whether to hire or fire. *Tennessee v. Becerra*, 739 F. Supp. 3d at 482.

Bostock's "text-driven reasoning applies only to Title VII" in the hiring and firing context. *L.W. ex rel. Williams v. Skrmetti*, 83 F.4th 460, 484 (6th Cir. 2023).

The decision did not "sweep beyond Title VII to other federal or state laws that prohibit sex discrimination." *Bostock*, 590 U.S. at 681. Even under Title VII, *Bostock* declined to opine about "'bathrooms, locker rooms, or anything else of the kind,'" where sex is relevant. *Roe ex rel. Roe v. Critchfield*, 131 F.4th 975, 991 (9th Cir. 2025) (quoting *Bostock*, 590 U.S. at 681). But in education "biological sex is often relevant and sometimes critical." *Texas v. Becerra*, 739 F. Supp. 3d at 535.

Plenty of litigants have tried, and failed, to show that Title IX prohibits schools from noticing sex. When some schools cut men's sports teams to come into compliance with Title IX, male athletes sued for sex discrimination— and lost. *E.g.*, *Miami Univ. Wrestling Club v. Miami Univ.*, 302 F.3d 608, 615 (6th Cir. 2002); *Chalenor v. Univ. of N.D.*, 291 F.3d 1042 (8th Cir. 2002).

The proper statutory analysis, just described, doesn't require parsing the difference between the statutes' causation standards, "on the basis of" in Title IX, 20 U.S.C. § 1681(a), and "because of" in Title VII, 42 U.S.C. § 2000e-2(a). But the difference between these standards underscores why *Bostock* cannot extend beyond hiring and firing. *Bostock* concluded that "because of … sex" means but-for causation. *Bostock*, 590 U.S. at 656, 661. But "[w]hile 'because of' and 'on the basis of' are similar phrases, the use of the indefinite article—'the'—indicates that *the* basis of the discrimination must be the student's sex." *M.K. ex rel. Koepp v. Pearl River Cnty. Sch. Dist.*, No. 1:22-cv-25, 2023 WL 8851661, at *8 (S.D. Miss. Dec. 21, 2023), *appeal docketed*, No. 24-60035 (5th Cir. Jan. 22, 2024); *see also Tennessee v. Becerra*, 739 F. Supp. 3d at 477–82; *Neese v. Becerra*, 640 F. Supp. 3d 668, 679 (N.D. Tex. 2022). Sex must be more than just *one* cause—it must be *the* cause—to trigger Title IX. Thus a girl who must compete with males for roster spots is "excluded" "on the basis of sex" and is "denied the benefits of" that program, contrary to Title IX's other prohibitions. 20 U.S.C. § 1681(a). Unlike *Bostock*'s hiring-and-firing rationale, Title IX *does* operate to "ensure[ ] equal treatment between groups of men and

women," *Bostock*, 590 U.S. at 671, that is, "to achieve classwide equality between the sexes[,]" *id.* at 663–64, which a but-for causation test would preclude.

B. Head Start tracks Title IX.

Congress likewise protected the equal opportunities of girls in Head Start. Pub. L. 97-35, Title VI, § 654, Aug. 13, 1981, 95 Stat. 507. In language virtually identical to Title IX, Congress said in 1981 that "No person … shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity." 42 U.S.C. § 9849(b). Each Head Start "grant or contract" must say that "no person with responsibilities in the operation thereof will discriminate with respect to any such program, project, or activity because of … sex." *Id.* § 9849(a).

These statutes do not address gender identity. Just like in Title IX and the ACA, Congress used binary, biological terms and required sex distinctions. Many times in Head Start statutes Congress addressed the needs of "pregnant women." *Id.* §§ 9840(a)(5)(A)(iii) & (d)(3), 9840a(c)(1) & (i)(2)(G), 9852b(d)(2)(C). Congress required "outreach to fathers …to strengthen the role of those fathers in families," including by "targeting increased male participation." *Id.* § 9836(d)(2)(J)(vii). And, rather than require male access to girl's private facilities, Congress protected against "exposure of private body parts." *Id.* § 9852a. And, rather than require gender-identity classroom discussions, Congress said HHS may not "mandate, direct, or control, the selection of a curriculum, a program of instruction, or instructional materials, for a Head Start program." *Id.* § 9852c(a).

Head Start's sex-discrimination protections didn't displace Title IX's; they buttress them. Just as with Title IX and Section 1557, "it would be unworkable" if sex discrimination has a different meaning in Head Start than in Title IX. *Tennessee v. Becerra*, 739 F. Supp. 3d at 481–82. These laws apply to all of a

recipient's operations. If Congress conditioned Medicaid or Head Start eligibility on jettisoning Title IX's single-sex teams and facilities, no school could enroll.

C. Section 504 of the Rehabilitation Act does not consider "gender dysphoria" a disability.

Under Section 504, no "individual with a disability … shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination" in funded programs. 29 U.S.C. § 794(a). Both Section 504 and the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 et seq., require "reasonable accommodations for disabled individuals." *Silver v. City of Alexandria*, 470 F. Supp. 3d 616, 620–21 (W.D. La. 2020) (cleaned up).

1. Section 504 contains no gender identity mandate.

Section 504 does not create a gender-identity mandate. Just as in Title IX and the ACA, Congress considered sex a biological binary in Section 504. Congress prohibited discrimination against an individual "by reason of *her or his* disability." 29 U.S.C. § 794(a) (emphasis added). Congress preserved a person's eligibility despite "*his or her* current illegal use of drugs if *he or she* is otherwise entitled." *Id.* § 705(20)(C)(iii) (emphasis added).

Section 504's disability definition itself does not encompass gender identity. It defines "disability" as "a physical or mental impairment that constitutes or results in a substantial impediment to employment." *Id.* § 705(9)(A) & (20). It also incorporates the ADA's definition of disability, *id.* § 705(9)(B) , as "a physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C. § 12102(1)(A) & (2). Identifying contrary to sex need not result in a substantial impediment to employment or substantially limit major life activities.

Congress moreover excluded from "disabilities" all "transvestism, trans-sexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not

resulting from physical impairments, or other sexual behavior disorders." 29 U.S.C. § 705(20)(F)(i); *see* 42 U.S.C. § 12211(a), (b)(1) (same). When Congress passed the ADA in 1990, the American Psychiatric Association defined a gender-identity disorder as a "persistent or recurrent discomfort and sense of inappropriateness about one's assigned sex." Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* (3d. ed., rev. 1987) (DSM-III-R). The "essential feature" was "an incongruence between assigned sex …and gender identity." *Id*. Congress knew this criterion. 135 Cong. Rec. 19,871, 19,884-85 (1989); H.R. Rep. No. 101-596, at 88 (Conf. Rep.). Later, when Congress amended the Rehabilitation Act in 1998, gender identity disorders remained "characterized by strong and persistent cross-gender identification accompanied by persistent discomfort with one's assigned sex." Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* (4th. ed., 1994) (DSM-IV). Today this concept is the same as a "transgender" identity or gender dysphoria. *See Doe v. Northrop Grumman Sys. Corp.*, 418 F. Supp. 3d 921, 929–30 (N.D. Ala. 2019). That's because in 2013 the American Psychiatric Association replaced the term "gender identity disorder" with "gender dysphoria," defining it as "incongruence between one's experienced/expressed gender and assigned gender" with "clinically significant distress or impairment." Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2013) (DSM-V).

Gender dysphoria thus falls right in Congress's exclusion. "Congress intended to exclude" all "gender identity disorders not resulting from physical impairment as a general category," not just the exact "*diagnosis* of 'gender identity disorder' as previously set forth in the DSM." *Duncan v. Jack Henry & Assocs., Inc.*, 617 F. Supp. 3d 1011, 1056–57 (W.D. Mo. 2022).

2. Gender identity cannot be imported into Section 504 by parsing the phrase "gender dysphoria."

HHS asserted that gender dysphoria falls outside the statutory exclusion because "gender identity disorders" only include "a person's mere identification with a different gender," while gender dysphoria also involves "clinically significant distress or impairment." 89 Fed. Reg. at 40,069 (adopting *Williams v. Kincaid*, 45 F.4th at 763–68, *cert denied* 143 S. Ct. 2414). But this view rests on three errors.

First, even though gender dysphoria may be an acute or distressing type of gender-identity disorder, gender dysphoria still falls under the exclusion for *all* gender identity disorders and sexual-behavior disorders. *Kincaid v. Williams*, 143 S. Ct. at 2417–18 (Alito, J., dissenting from the denial of certiorari). As most courts long held, "Congress intended to exclude … both disabling and non-disabling gender identity disorders that do not result from a physical impairment." *Parker v. Strawser Constr., Inc.*, 307 F. Supp. 3d 744, 754 (S.D. Ohio 2018). Gender-identity disorder means any condition with "stress and discomfort from identifying with a gender other than the one assigned at birth." *Williams v. Kincaid*, 50 F.4th 429, 431 (4th Cir. 2022) (Quattlebaum, J., dissenting from denial of rehearing en banc).

Second, individuals with gender dysphoria (or who otherwise identify contrary to sex) do not have a "physical impairment" removing them from the exclusion just because their sex differs from how they identify—as that would read "not resulting from physical impairments" out of the statute. *Duncan*, 617 F. Supp. 3d at 1054 (collecting cases). Gender dysphoria is "not characterized by any disability or impairment or ill health affecting any part of the physical body." Ex. 14 ¶¶ 45, 92. It cannot be confirmed or denied by a physical test. *Id.* ¶¶ 37, 41–45, 92, 139, 149. So a person who lacks a physical disorder of sex development, or some other rare but "manifest physical condition that causes one's gender identity disorder," does not have a covered "disability." *Lange v. Hous. Cnty.*, 608 F. Supp.

3d 1340, 1363 n.18 (M.D. Ga. 2022). Vanishingly few gender-identity disorders stem from physical impairments. *Williams v. Kincaid*, 45 F.4th at 788 (Quattlebaum, J., dissenting); *see also Kastl v. Maricopa Cnty. Cmty. Coll. Dist.*, No. Civ.02-1531, 2004 WL 2008954, at *5 (D. Ariz. June 3, 2004). But HHS says "that Section 504 generally defines gender dysphoria as a disability—subject to some exceptions—even though the opposite is true." *Texas v. EEOC*, 633 F. Supp. 3d at 838. That's because the rule "does not meaningfully distinguish physical impairments from mental impairments." *Kincaid v. Williams*, 143 S. Ct. at 2417–18 (cleaned up) (Alito, J., dissenting from the denial of certiorari).

Third, HHS ignores statutory text and context providing for sex-based distinctions. Sex-specific sports teams and facilities depend on sex distinctions—they're not disability distinctions. *Melnick v. Polis*, No. 21-CV-01695, 2023 WL 11918117, at *3 (D. Colo. Dec. 1, 2023) (holding that "gender dysphoria was not the *reason* Plaintiff was denied treatment as a female" because "Plaintiff was not *denied* [access to female facilities] on account of the disability; he wanted access to it on account of the disability."). And requiring gender-dysphoria "accommodations" to sex-specific policies is just as "unworkable" here as it would be under Section 1557 or Head Start. *Tennessee v. Becerra*, 739 F. Supp. 3d at 481–82.

D. Title VII does not require gender-identity exemptions from sex-specific workplace facility and speech policies.

Congress likewise intended "sex" in Title VII to mean the biological difference between male and female. *Bostock*, 590 U.S. at 655 (assuming that sex means "biological distinctions between male and female," not "gender identity" "norms"). Although *Bostock* covers refusing to hire (or deciding to fire) someone for "being … transgender," *id.* at 651, it did not extend to workplace interactions.

Title VII does not prohibit "innocuous differences in the ways men and women routinely interact with members of the same sex and of the opposite sex."

Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 81 (1998). As EEOC's Acting Chair said, "It is not harassment to acknowledge these truths—or to use language like pronouns that flow from these realities." Ex. 12 at 1–2. Title VII thus allows for sex as a bona fide employment qualification, 42 U.S.C. § 2000e-2(c)(1), a provision that loses its purpose if a man qualifies as a woman based on gender identity.

Unlike the hiring-and-firing decisions in *Bostock*, sex-specific policies such as pronoun and bathroom use do not make distinctions because of anyone "being transgender," 590 U.S. at 651–52. Instead, they treat all males the same, and all females the same, based on biology. *Texas v. EEOC*, 2025 WL 1414332, at *11–12. No matter how a man identifies, he cannot enter female facilities, and vice versa. *Id.* That's how a policy can "classify on the basis of biological sex without unlawfully discriminating on the basis of transgender status." *Adams*, 57 F.4th at 809.

Nor is it unlawful to have sex-specific policies. Title VII liability requires showing that a plaintiff was treated "worse than others who are similarly situated" under like circumstances. *Bostock*, 590 U.S. at 657. Under *Bostock*'s but-for test, courts "change one thing at a time and see if the outcome changes." *Id.* at 656. But "sex-specific bathrooms" and other sex-specific policies "do not treat one sex worse than the other." *Bear Creek Bible Church v. EEOC*, 571 F. Supp. 3d 571, 625 (N.D. Tex. 2021), *vacated in part on other grounds sub nom. Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th at 940. All males access male facilities, and all females access female facilities. Each individual has accurate pronouns—and all classroom instruction rests on age-appropriate facts. Ex. 13 ¶¶ 70–71. The specific form of the facilities or speech just varies based on "enduring" "[p]hysical differences." *United States v. Virginia*, 518 U.S. 515, 533 (1996).

Biology, not impermissible intent, keeps individuals of one sex from being so "similarly situated" to individuals of the other sex that their bodies or pronouns are interchangeable. *Cf. Fortner v. Thomas*, 983 F.2d 1024, 1030 (11th Cir. 1993)

(recognizing common sense of bodily privacy against exposure of private parts to people of the other sex). *Bostock* found the similarly situated test met because "transgender status is not relevant to [hiring and firing] decisions." 590 U.S. at 660. But sex *is* relevant to locker rooms, overnight stays, and sex-based speech like pronouns and classroom biology discussions. *Adams*, 57 F.4th at 808. Employers could not prevent harassment if males access female showers. *See* Ex. 12 at 1–4. Nor could teachers teach accurately if they must say men are women. On *Bostock*'s own terms EEOC fails the but-for test—to show a differential outcome EEOC must change not just "one thing," but both sex *and* the policy's purpose. *D.H. by A.H. v. Williamson Cnty. Bd. of Educ.*, 638 F. Supp. 3d 821, 834 (M.D. Tenn. 2022).

Determining that males count as male for these sex-specific policy purposes, or that females count as females, is moreover not sex discrimination. EEOC's mandate rests on the notion that a sex-based definition of female is underinclusive because it includes females but not men who identify as women—because it rests on biological reality. But while "[s]eparating bathrooms by sex treats people differently on the basis of sex," "the mere act of determining an individual's sex," using a biology-based rubric "for both sexes, does not treat anyone differently on the basis of sex." *Adams v. Sch. Bd. of St. Johns Cnty.*, 3 F.4th 1299, 1326 (11th Cir. 2021) (W. Pryor, C.J., dissenting), *rev'd en banc*, 57 F.4th 791. The recognition of biological reality is "not a stereotype." *Nguyen v. INS*, 533 U.S. 53, 68 (2001).

Employers need not make policy *exceptions* to facilitate expression of an employee's gender identity—facilitating some employees to act as a sex that they are not. *Texas v. EEOC*, 633 F. Supp. 3d at 840–41. Title VII does not require employers to facilitate, or "accommodate," volitional behavior or attributes associated with a protected class. *Id.* at 829–31. Title VII requires employers to "accommodate" employees' observance and practice *only* for religion. 42 U.S.C. § 2000e(j); *Texas v. EEOC*, 2025 WL 1414332, at *12.

Thus *Bostock* declined to opine about "'bathrooms, locker rooms, or anything else of the kind,'" where sex is relevant. *Roe*, 131 F.4th at 991 (quoting 590 U.S. at 681). *Bostock* concerned "transgender *status*"—Title VII does not cover "correlated conduct" like "sex-specific" "bathroom" and "pronoun" "practices." *Texas v. EEOC*, 633 F. Supp. 3d at 829–31. EEOC thus "misread *Bostock* by melding 'status' and 'conduct' into one catchall protected class covering all conduct correlating to … 'gender identity.'" *Id.* at 831, 833, 839–40.

III. Constitutional canons of construction prohibit the four gender-identity mandates.

For three reasons, agencies would also need a clear statement from Congress to require changes to schools' sex-specific athletics, facilities, speech, and curricula.

First, the major questions doctrine applies, as each rule is "'an enormous and transformative expansion'" of agency authority. *Tennessee v. Cardona*, 737 F. Supp. 3d 510, 536 (E.D. Ky. 2024) (*Tennessee v. Cardona I*) (quoting *Utility Air Regul. Grp. v. EPA*, 537 U.S. 302, 324 (2014)). "Only Congress can make this definitional change." *Texas v. Cardona*, 743 F. Supp. 3d at 884. Yet Congress "consistently rejected proposals" for these mandates. *Tennessee v. Becerra*, 739 F. Supp. 3d at 472 (noting "the absence of Congressional action"); *e.g.*, Equality Act, H.R. 5, 117 Cong. § 9(2) (2021); Title IX Take Responsibility Act of 2021, H.R. 5396, 117 Cong.

Second, Congress must use "exceedingly clear language" to "significantly alter the balance between federal and state power," *Sackett v. EPA*, 598 U.S. 651, 679 (2023), or to use Spending Clause authority, *Cummings v. Premier Rehab Keller, PLLC*, 596 U.S. 212, 216 (2022). Unmistakably clear text "must come directly from the statute." *Tex. Educ. Agency v. U.S. Dep't of Educ.*, 992 F.3d 350, 361 (5th Cir. 2021). Yet Congress never, "with a 'clear voice,' adopted an ambiguous or evolving definition of 'sex.'" *Tennessee v. Becerra*, 739 F. Supp. 3d at 480, 486. Congress never let males access female athletics, "restrooms, locker rooms, shower

facilities, and overnight lodging," *Roe*, 131 F.4th at 991–92, or made anyone use inaccurate pronouns and affirm transition procedures, *Florida v. HHS*, 739 F. Supp. 3d at 1108–09, 1111–12. HHS' claimed to "clarify" gender identity from the statute because it is not actually there in the text. Health and Human Services Grants Regulation, 88 Fed. Reg. 44,750, 44,757 (proposed July 13, 2024); *see id.* at 44,753–54, 44,756–58; *see also* 87 Fed. Reg. at 47,828–29, 47,852, 47,865, 47,891.

Third, construing statutes under their longstanding public meaning avoids more serious constitutional infirmities. *Tennessee v. Cardona II*, 762 F. Supp. 3d at 624–25; Compl. ¶¶ 331–37, 361–67, 386–92, 451–66 (listing violations). Courts should construe a law subject to "competing plausible interpretations," *Clark v. Martinez*, 543 U.S. 371, 381 (2005), to avoid the conclusion that it is unconstitutional. *Almendarez-Torres v. United States*, 523 U.S. 224, 237 (1998).

Bostock did not grapple with these doctrines. *Roe*, 131 F.4th at 991. *Bostock* instead admitted its conclusion was "unanticipated" and "unexpected." *Bostock*, 590 U.S. at 679–80 (cleaned up). *Bostock* "cannot be reconciled with an argument that Congress spoke clearly." *Texas v. Cardona*, 743 F. Supp. 3d at 887–88.

No other statute provides enough clarity to save the mandates. HHS in passing claims power from a hodgepodge of other laws, including the Social Security Act (SSA). 89 Fed. Reg. at 37,691–92, 37,698–701 (42 C.F.R. §§ 438.3, 438.206, 440.262, 457.495, 460.98, 460.112; 45 C.F.R. §§ 92.101(a), 92.206(a), 92.208–98.211). But neither do these provisions clearly "authorize" the mandates. *Texas v. Becerra*, 739 F. Supp. 3d at 536–37; *see also Florida v. HHS*, 739 F. Supp. 3d at 1108, 1110.

IV. The four gender-identity mandates should be vacated.

This Court should thus grant "the only statutory remedy" that "an APA violation call[s] for—vacatur of the [provisions on] 'gender identity.'" *Franciscan All.*, 47 F.4th at 374–75. Vacatur is "the default rule," *All. for Hippocratic Med. v.*

FDA, 78 F.4th 210, 255 (5th Cir. 2023), *rev'd on other grounds*, 602 U.S. 367 (2024), and this case is not exceptional. Each mandate "suffers from a fundamental substantive defect that the [agency] could not rectify on remand." *Rest. L. Ctr. v. U.S. Dep't of Lab.*, 120 F.4th 163, 177 (5th Cir. 2024).

Vacatur wipes out each mandate; it does not just apply to the parties. *Braidwood Mgmt. v. Becerra*, 104 F.4th at 951–52. When "regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed." *Career Colls.*, 98 F.4th at 255 (cleaned up). The "court vacates" a rule as "an appellate court vacates the judgment of a trial court." *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 830 (2024) (Kavanaugh, J., concurring). The APA "empower[s] the judiciary to act directly against the challenged agency action." *Griffin v. HM Fla.-ORL, LLC*, 144 S. Ct. 1, 2 n.1 (2023) (Kavanaugh, J., statement respecting the denial of application). Unlike an injunction, which operates in personam by telling officials not to enforce a mandate, vacatur operates on the action in rem—so it "cannot reasonably depend on the specific party before the court." *Corner Post, Inc.*, 603 U.S. at 842 (Kavanaugh, J., concurring). So vacatur is inherently universal. *Texas v. U.S. Dep't of Transp.*, 726 F. Supp. 3d 695, 724–26 (N.D. Tex. 2024). "To vacate is to void." *Id.* at 726.

V. The school board meets the factors for permanent injunctive relief.

The mandates exceed statutory authority, and so vacatur is appropriate without considering the equities. *Braidwood Mgmt. v. Becerra*, 104 F.4th at 951–52. But alternatively the school board meets the factors for universal injunctive relief.

A. The school board faces irreparable harm.

The school board faces irreparable harm in two forms. *First*, the rule forces the school board to change its policies and ignore the biological reality of sex. *Supra* Pt.I.A. *Second*, the mandates "threaten the existence" of many programs. *Atwood*

Turnkey Drilling, Inc. v. Petroleo Brasileiro, S.A., 875 F.2d 1174, 1179 (5th Cir. 1989); *Supra* Pt.I.B. But sovereign immunity makes these harms irreparable. *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 48 (2024).

Relief would preserve the status quo for the last 50 years, ensuring that schools across the country do not face penalties or funding losses, *Texas v. Becerra*, 739 F. Supp. 3d at 537, or compliance costs, *Tennessee v. Becerra*, 739 F. Supp. 3d at 482–83. *Supra* Pt.I.B. Universal relief also protects students and employees from the mandates even when they travel to events in other states. Ex. 13 ¶ 40.

B. The balance of equities and the public interest favor relief.

The equities and the public interest favor universal relief, for five reasons.

First, final relief would not harm the federal government because it has no right to exceed the law. *Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758, 766 (2021). Any purported harms rest on "a clear misreading of the governing statutes," *Texas v. Becerra*, 739 F. Supp. 3d at 540. There is no public interest in the perpetuation of unlawful agency action. *Louisiana v. Biden*, 55 F.4th 1017, 1035 (5th Cir. 2022).

Second, any impact on the federal government pales in comparison to the impact on millions schoolchildren and covered entities. "It is a given of administrative law that agencies must follow their own regulations." *Nat'l Auto. Dealers Ass'n v. FTC*, 127 F.4th 549, 553 (5th Cir. 2025). These rules impose "significant, unrecoverable compliance costs," *Louisiana v. U.S. Dep't of Educ.*, 2024 WL 3452887, at *2, or huge penalties and funding ineligibility, *Tennessee v. Becerra*, 739 F. Supp. 3d at 482–83, unless schools risk kids' equality and safety.

Third, complete relief requires ensuring that no agency can re-impose these mandates. The federal government claimed that even without rules it may enforce mandates directly under statutes, *e.g.*, *Texas v. EEOC*, 2022 WL 22869778, at *11–12, or on other legal theories, such as "gender expression" or "sex stereotyping," *e.g.*,

89 Fed. Reg. at 37,574. But any such enforcement is still unlawful, and so no agency should be able to skirt an adverse judgment by inventing new theories down the road. *Franciscan All.*, 47 F.4th at 378–79. The decades-long regulatory ping-pong over federal gender-identity mandates also shows that vacatur is "insufficient" to prevent the mandates' reimposition. *Franciscan All.*, 553 F. Supp. 3d at 377.

Fourth, the public interest supports "maintaining our constitutional structure." *BST Holdings, LLC v. OSHA*, 17 F.4th 604, 618–19 (5th Cir. 2021). The federal government purports to preempt state laws protecting women's sports, preserving privacy in single-sex facilities, and protecting children from transition procedures. *E.g.*, 89 Fed. Reg. at 37,535, 36,690–89, 40,067, 40,095, 40,177–78. This preemption harms States. *Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018). Relief would also ensure that States will not lose funding for declining to provide or pay for transition procedures. *Tennessee v. Becerra*, 739 F. Supp. 3d at 482–83; *Texas v. Becerra*, 739 F. Supp. 3d at 537–40; *Florida v. HHS*, 739 F. Supp. 3d at 1108–17.

Fifth, universal relief promotes the public interest by ensuring that no one need promote risky and experimental transition efforts. *Florida v. HHS*, 739 F. Supp. 3d at 1108–17. It is impossible to change sex, Ex. 14 ¶ 39, and "transitions" lack a scientific basis, *id.* ¶¶ 4–9, 18–241. No evidence shows that transitions improve mental health, *id.* ¶¶ 5, 146, 151–87, 231, or reduce suicide or suicidality, *id.* ¶¶ 62–65, 88–91, 96–97, 173–74, 209–21. The best evidence in fact shows no mental health improvement. *Id.* ¶¶ 5, 138, 177–87. Nor is there reliable evidence of effectiveness when weighed against less risky treatments. *Id.* ¶¶ 9, 138, 143, 145, 148–49. And evidence shows that these procedures carry serious risks. *Id.* ¶¶ 5, 9, 135, 188–208, 224–27. Even HHS agrees. *Id.* ¶¶ 104, 170, 187, 195, 213–14, 240.

CONCLUSION

The Court should grant this motion for partial summary judgment.

Respectfully submitted this 3rd day of June, 2025.

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EXHIBIT 1

Excerpts from the
HHS Grants Policy Statement
(effective Apr. 16, 2025)

HHS Grants Policy Statement

Effective date: April 16, 2025

This HHS Grants Policy Statement (GPS) replaces all prior versions

Contact grantpolicyreq@hhs.gov with GPS feedback

Contents

Introduction and General Information

The Grants Policy Statement (GPS) is incorporated by reference in the official Notice of Award (NoA) as a standard term and condition.

The GPS provides information on HHS agencies that make awards, the award process, and where to find and apply for awards. The GPS also provides information about the legal and regulatory rules that apply to your award and will be used for enforcement purposes. The GPS will be updated to reflect changes in law and policy.

The latest version of the GPS is at www.hhs.gov/grants/grants/grants-policies-regulations/index.html and it includes:

- Introduction and General Information
- Pre-Award
- Post-Award
- Single Audit
- Appendices

    A. Awarding Agency Overview
    B. Abbreviations and Glossary
    C. Post-Award Considerations by Type of Program, Activity, or Recipient
    D. HHS Administrative and National Policy Requirements
    E. Financial Assistance General Certifications and Representations

Supersession

This GPS replaces the HHS Grants Policy Statement dated January 1, 2007.

This GPS reflects the current 45 CFR part 75 regulation and eight flexibilities from 2 CFR part 200 (effective October 1, 2024). It will be updated in 2025 to reflect the HHS adoption of 2 CFR part 200 in its entirety and the retention of certain HHS specific provisions in 2 CFR part 300. From this date on, HHS plans to update the GPS annually to make sure it reflects changes in statutes, regulations, and policies.

Applicability

The 2024 HHS GPS applies to awards and award modifications that add funding made on or after April 16, 2025. This includes supplements to award, competing and non-competing continuations. The GPS applies to all HHS recipients and the requirements flow down to subrecipients.

The HHS GPS does not apply to awards made by the National Institutes for Health (NIH). For NIH awards, please see the National Institutes of Health Grants Policy Statement (NIHGPS), which is the policy document describing the requirements that serve as the terms and conditions of NIH awards.

The HHS GPS does not apply to non-discretionary awards or to awards made to individuals. HHS agencies have the discretion to apply certain parts of the GPS to non-discretionary awards and other policies to your non-discretionary or individual award.

Agencies that administer HHS awards include:

- Administration for Children and Families (ACF)
- Administration for Community Living (ACL)
- Agency for Healthcare Research and Quality (AHRQ)
- Assistant Secretary for Planning and Evaluation (ASPE)
- Assistant Secretary for Preparedness and Response (ASPR)
- Assistant Secretary for Technology Policy and Office of the National Coordinator for Health Information Technology (ASTP)
- Centers for Disease Control and Prevention (CDC)
- Centers for Medicare & Medicaid Services (CMS)
- Food and Drug Administration (FDA)
- Health Resources and Services Administration (HRSA)
- Indian Health Service (IHS)
- National Institutes of Health (NIH)
- Office of the Assistant Secretary for Health (OASH)
- Office of the Inspector General (OIG)
- Substance Abuse and Mental Health Services Administration (SAMHSA)

See Appendix A for more information.

Requirements

The following impose requirements on your award and are addressed in the GPS:

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards (45 CFR § 75)
- Eight provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200):

    1. 2 CFR § 200.1 Modified Total Direct Cost Definition, Equipment Definition, Supplies Definition
    2. 2 CFR § 200.313(e) Equipment Disposition
    3. 2 CFR § 200.314(a) Supply Disposition
    4. 2 CFR § 200.320 Micro-purchase Threshold
    5. 2 CFR § 200.333 Fixed Amount Subawards Amount
    6. 2 CFR § 200.344 Closeout Provisions
    7. 2 CFR § 200.414(f) Indirect Cost Rate Provisions
    8. 2 CFR § 200.501 Audit Provisions

- The Notice of Award (NoA)
- The Notice of Funding Opportunity (NOFO), if stated in the NOA

Other regulations or statutes with more requirements might apply to your award. These include:

- Grants for Research Projects 42 CFR part 52
- Procedures of the Departmental Grant Appeals Board 45 CFR part 16
- Claims Collection 45 CFR part 30
- Equal Treatment for Faith-Based Organizations 45 CFR part 87
- Restrictions on Lobbying 45 CFR part 93
- Metric Conversion Policy for Federal Agencies 15 CFR part 273
- Public Health Service Policies on Research Misconduct 42 CFR part 93
- Protection of Human Subjects, 45 CFR part 46

See Appendix D for more information.

Terms and Conditions

HHS states the requirements of an award in the award terms and conditions:

- The GPS is incorporated by reference as a standard term and condition of awards.
- The NoA includes all terms and conditions of a specific award.
- Notice of Funding Opportunities (NOFOs) describe program requirements, which may be included as terms and conditions.

Types of HHS Awards

Awards fall into two main types:

- Discretionary: HHS chooses who gets the award and how much. Selection of these awards are generally competitive. The amount of an award can be competitive or by a set formula. Types of discretionary awards include research, training, services, construction, and conference support.
- Non-discretionary: A statute determines the recipients and amounts, either directly or by a formula (i.e., each State gets an award of a certain amount). This includes block grants and entitlement programs.

Award Instruments

Award instruments are legal agreements between an awarding agency and a recipient. The two kinds generally addressed in the GPS are:

- Grants: The awarding agency is not substantially involved in the project (31 USC 6302, 6304).
- Cooperative agreements: The awarding agency is substantially involved in the project (31 USC 6302, 6305).

Timely Release of Research Data and Tools

Investigators should share their final research data and tools either when their main findings are accepted for publication or when they submit findings to the awarding agency. This ensures timely sharing.

Protection of Certain Data

HHS knows data sharing can be complicated due to various rules and laws, including the HIPAA Privacy Rule, Human Research Protections, and others. We must always protect the privacy of project participants and their data.

For wider use, data must not include any indicators that could reveal the identity of individual participants. Researchers need to ensure that data from human cells or tissues also can't reveal the identity of the original donors.

Researchers can share materials through their lab or organization or submit them to a repository. They should send unique biological data, like DNA sequences, to the appropriate data banks. When sharing unique resources, investigators must provide details about the nature, quality, or characterization of the materials.

Conference Awards

If you have questions about conference awards or what's allowed under your award, ask your GMS.

Here are definitions and details about costs related to conference awards:

- Conference: Events like meetings, retreats, or seminars that share technical information. They must be necessary and reasonable for the award's success.
- International conference: A meeting open to attendees from at least two countries other than the U.S. or Canada. It can be anywhere, even in the U.S. But, if it's outside the U.S. or Canada, award funds can't cover general support. They can cover specific parts, like a workshop or panel.
- Domestic conference: A meeting in the U.S. or Canada mainly for attendees from these two countries. Award funds can support these conferences, whether they're domestic or international.

Equity in Representation

For HHS-supported meetings, ensure diverse participation. Recipients of HHS financial assistance awards must make sure all those eligible for the HHS funded project are able to participate and receive the benefits from the project. When administering HHS-funded meetings, programs, activities, projects, assistance, and services, the recipient must make sure no one able to participate is discriminated against, to the extent doing so is prohibited by Federal statute. Please see 45 CFR § 75.300 and Advancing Equity at HHS for more information.

Appendix D: HHS Administrative and National Policy Requirements

Please go to the following page to see updated HHS requirements:
https://www.hhs.gov/sites/default/files/hhs-administrative-national-policy-requirements.pdf

Additional Information on Uniform Administrative Requirements

As stated in the information linked above, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards (45 CFR § 75) apply to all HHS awards, unless specifically exempted by 45 CFR § 75.101(d) or (e).

As of October 1, 2024, the following provisions from 2 CFR part 200 are effective for all new HHS awards or monetary actions (new, continuation, and supplements):

2 CFR § 200.1 Definitions: Modified Total Direct Cost (MTDC), which increases the exclusion threshold of subawards from $25,000 to $50,000 for modified total direct costs, definition of Equipment, which increases the threshold for determining equipment from $5,000 to $10,000, definition of Supplies, which increases the threshold for determining supplies from $5,000 to $10,000;

2 CFR § 200.313 (e) Equipment: Increases from $5,000 to $10,000 the value of equipment that at the end of the grant period "may be retained, sold, or otherwise disposed of with no further responsibility to the Federal agency" (*see 2 CFR section 200.313(e)(1)*). The provision also clarifies that Indian Tribes may use their own procedures for use, management, and disposal of equipment. If they do not have procedures, then they must follow the ordinary guidance.

2 CFR § 200.314(a) Unused Supplies: Increases from $5,000 to $10,000 the value of unused supplies that recipients of Federal funds are required to sell at the end of the grant award period as well as clarifying that this amount is the total amount of remaining unused supplies, not just like items (*see 2 CFR section 200.314*).

2 CFR § 200.320 Micro-purchase Threshold: Increases the micro-purchase threshold to $50,000 (*see 2 CFR 200.320*).[1]

2 CFR § 200.333 Fixed Amount Awards Subawards: Increases from $250,000 to $500,000 the amount of fixed amount subawards that a recipient may provide with prior written approval from the Federal agency (*see 2 CFR section 200.333*).

2 CFR § 200.344 Closeout: Increases the time period for recipients to submit final reports in support of closeout of the award from 90 to 120 days (*see 2 CFR 200.344*).[2]

2 CFR § 200.414(f) De Minimis Indirect Rate: Increases from 10% to 15% the rate that recipients of Federal funds may use for indirect costs without negotiating an alternative rate with the relevant

[1] This provision has already been adopted by HHS by operation of law, Pub. L. No. 115-91, and OMB Memorandum 18-18. It is included to be clear that this regulation is in force for HHS.

[2] This provision has already been adopted by HHS. See 88 FR 63591 (Sept. 15, 2023). It is included to be clear that this regulation is in force for HHS.

EXHIBIT 2

HHS Dear Colleague Letter

(Jan. 7, 2025)

DEPARTMENT OF HEALTH & HUMAN SERVICES Office of the Secretary

Director

Office for Civil Rights

Washington, D.C. 20201

January 7, 2025

Re: Nondiscrimination on the Basis of Disability: Section 504 of the Rehabilitation Act and Section 1557 of the Affordable Care Act

Dear Colleagues:

On May 9, 2024, the U.S. Department of Health and Human Services' (Department) Office for Civil Rights (OCR) published a final rule updating regulations implementing Section 504 of the Rehabilitation Act of 1973 (Section 504),[1] which prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance. The rule went into effect on July 8, 2024. This rule clarifies and strengthens civil rights protections for people with disabilities in health and human service programs funded by the Department. In addition, on April 26, 2024, the Department issued a final rule updating regulations implementing Section 1557 of the Affordable Care Act (Section 1557),[2] which prohibits discrimination based on race, color, national origin, sex, age, or disability in covered health programs and activities.

To help recipients of Department financial assistance better understand their obligations under these rules, this letter highlights some of the key disability nondiscrimination requirements, including new obligations that require specific actions.

Overview of Disability Sections in Section 504 and Section 1557

Section 504 prohibits discrimination against qualified individuals with disabilities in health and human services programs and activities that receive Federal financial assistance. HHS has updated its Section 504 regulations to address nondiscrimination in modern health care systems and to clarify how Section 504 applies to key areas including medical treatment, value assessment methods, kiosks, web content and mobile apps, medical diagnostic equipment (MDE), effective communication, and integration.

Section 1557 also contains numerous protections for qualified individuals with disabilities that supplement the protections in Section 504. For instance, Section 1557 includes sections on disability protections related to effective communication, building accessibility, information and communication technology (ICT) accessibility, reasonable modifications, patient care decision support tools, and telehealth.

New Obligations Under Section 504

Medical Treatment, § 84.56

[1] 29 U.S.C. 794. The regulations are contained at 45 CFR part 84.
[2] 42 U.S.C. 18116. The regulations are contained at 45 CFR part 92.

While Section 504 has prohibited discrimination in any program or activity receiving Federal financial assistance since it was enacted in 1973, people with disabilities still face inequities in the medical treatment options that providers offer to them. Discrimination on the basis of disability in accessing medical care leads to significant health disparities and poorer health outcomes for people with disabilities. Stereotypes and bias too often play fundamental roles in denying people with disabilities access to health care. Research, including reports by the National Council on Disability, states that large proportions of practicing physicians hold biased or stigmatized perceptions of people with disabilities, perceiving them to have a lower quality of life because of their disabilities.[3]

Under the updated rule, health care providers must not deny or limit medical treatment to qualified individuals with disabilities based on biases or stereotypes about the patient's disability, judgments that the qualified individual will be a burden on others due to their disability, or on the belief that the life of a person with a disability has lesser value than the life of a person without a disability. Treatment also cannot be denied if it would be offered to a similarly situated individual without a disability. In addition, a recipient cannot offer treatment that would not be offered to a similarly situated person without a disability unless the disability impacts the effectiveness or ease of administration of the treatment itself, or has a medical effect on the condition to which the treatment is directed.

Section 504 contains genuine nondiscriminatory exceptions to its medical treatment decision obligations. The provision of medical treatment is not required where the recipient has a legitimate, nondiscriminatory reason for denying or limiting that service or where the disability renders the individual not qualified for the treatment. For example, where a patient's prognosis affects whether treatment is likely to be effective, it may be permissible to consider prognosis in determining whether a treatment should be provided. Similarly, where a treatment is likely to have substantial side effects that may outweigh the likely benefits to the patient, it may be permissible to take these into account in determining whether a treatment should be provided. However, consideration of a patient's prognosis may not include bias or stereotypes about a patient's disability or a judgment that the life of a person with a disability is not worth living or will be a burden on others due to their disability.

In addition, a recipient is not required to provide medical treatment when the treatment is outside their scope of practice (e.g., an orthopedic surgeon may decline to provide treatment to children with disabilities because pediatric surgery is not within her scope of service). Nor are recipients required to provide medical treatment if they have not obtained consent from an individual with a disability or their authorized representative, but recipients may not unduly pressure individuals with disabilities to consent to provide, withhold, or withdraw treatment. A recipient may provide information on the implications of different courses of treatment based on current medical knowledge or the best available objective evidence.

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[3] *See, e.g.,* Nat'l Council on Disability, Bioethics and Disability Report Series (2019), https://ncd.gov/publications/2019/bioethics-report-series; Tara Lagu et al., *The Axes of Access—Improving Care Quality for Patients with Disabilities,* 370 N. Engl. J. Med. 1847 (May 2014); Tara Lagu et al., *Ensuring Access to Health Care for Patients with Disabilities,* 175 JAMA Internal Med. 157 (Feb. 2015); Tim Gilmer, *Equal Health Care: If Not Now, When?,* New Mobility (July 1, 2013), http://www.newmobility.com/equal-health-care-if-not-now-when; Gloria L. Krahn et al., *Persons with Disabilities as an Unrecognized Health Disparity Population,* 105 Am. J. of Public Health S198 (2015); Kristi L. Kirschner et al., *Structural Impairments that Limit Access to Health Care for Patients with Disabilities,* 297 JAMA 1121 (Mar. 2007).

OCR recommends that health care providers examine their policies and procedures and, where necessary, work with their staff to ensure that stereotypes and biases do not play a role in the provision of health care in their programs and activities.

Value Assessment Methods, § 84.57

Section 84.57 prohibits recipients from using any value measure, assessment, or tool that discounts the value of life extension on the basis of disability to deny or afford an unequal opportunity to qualified individuals with disabilities with respect to any eligibility determination or referral for, or provision or withdrawal of aid, benefit, or service. Value measures, assessments, or tools inform decisions for cost containment and quality improvement efforts in healthcare and help determine whether a particular intervention, such as medicine or treatment, will be provided and under what terms.

The rule does not prohibit the use of any specific method of value assessment because the determination that a value assessment method will be prohibited depends on the specific context and purpose for which that method is used. For example, some methods that are impermissible for purposes of reimbursement or utilization management decisions may be permitted for academic research.

Section 1557 contains similar nondiscrimination requirements for covered entities. Under § 92.210(a) of the Section 1557 regulations, covered entities may not discriminate on the basis of disability in their health programs or activities through the use of patient care decision support tools. In addition, § 92.210(b)-(c) places an ongoing duty on covered entities to make reasonable efforts to identify uses of patient care decision support tools that employ input variables or factors that measure disability and, for each patient care decision support tool identified as employing variables or factors that measure disability, each covered entity must make reasonable efforts to mitigate the risk of discrimination resulting from the tool's use, which go into effect on May 1, 2025.

Accessibility of Kiosks, § 84.83

The expanded use of self-service kiosks in medical settings has allowed recipients to automate portions of their programs and activities, but potentially limits accessibility for people with disabilities. The rule includes a general statement of nondiscrimination requiring accessible programs and activities when kiosks are used but it does not require compliance with any specific standard. To make their programs accessible, recipients may need to modify their policies, practices, and procedures to allow people with disabilities who cannot use kiosks because of their inaccessible features to access the program without using kiosks. Such alternate procedures must afford persons with disabilities the same access, the same convenience, and the same confidentiality that the kiosk system provides.

Web Content and Mobile App Accessibility, §§ 84.82 - 84.89

Health care programs increasingly rely on websites and mobile apps to convey information, schedule appointments, and even provide health services via telehealth. Unfortunately, some of this information provided via web content and apps remains inaccessible to people with certain disabilities.

The Section 504 rule requires that recipients ensure their web content and mobile applications are accessible to people with disabilities by complying with the success criteria of the Web Content and Accessibility Guidelines (WCAG) 2.1 AA. WCAG 2.1 AA, an internationally recognized private standard that the rule adopts, focuses on ensuring that web content and mobile apps are perceivable, operable, understandable, and robust for individuals with disabilities.

Recipients with fifteen or more employees must ensure that their web content and mobile apps conform with WCAG 2.1 AA by May 11, 2026, while recipients with fewer than fifteen employees must ensure conformance by May 10, 2027. Although there are exceptions for specific types of web content and mobile apps, including exceptions for archived web content, certain pre-existing conventional electronic documents, certain content posted by a third party, individualized, password-protected documents or otherwise secured conventional electronic documents, and preexisting social media posts, these exceptions do not supersede other requirements of the rule, such as the effective communication[4] and reasonable modification[5] requirements which took effect on July 8, 2024. There are limited exceptions for actions that would result in a fundamental alteration or undue financial and administrative burdens.

Similarly, **§** 92.204 of the Section 1557 regulations requires covered entities to ensure that health programs and activities provided through information and communication technology are accessible to individuals with disabilities, subject to the same limitation regarding actions that would result in a fundamental alteration or undue financial and administrative burdens. The section also requires recipients and State Exchanges to ensure that health programs and activities provided through websites and mobile applications comply with the requirements of Section 504. In addition, § 92.211 of the Section 1557 regulations prohibits discrimination in the delivery of telehealth services.

Medical Diagnostic Equipment (MDE), § § 84.90 - 84.94

Accessible MDE, including MDE that patients lie on, sit on, transfer to, use while seated in a wheelchair, or stand to use, is vital for health equity, person-centered care, and access to care for patients with disabilities. Researchers have demonstrated and documented that the scarcity of accessible MDE constitutes a significant barrier to access to care for patients with disabilities, resulting in a lack of preventative care and diagnostic exams and contributing to poorer health outcomes and lower life expectancies.[6] Patients with disabilities have told HHS that they have been unable to receive proper medication dosages because their doctors do not have wheelchair-

[4] 45 CFR §§ 84.77-81.
[5] 45 CFR § 84.68(b)(7).
[6] *See, e.g.*, Nat'l Council on Disability, Enforceable Accessible Medical Equipment Standards: A Necessary Means to Address the Health Care Needs of People with Mobility Disabilities (2021), https://www.ncd.gov/assets/uploads/reports/ncd_medical_equipment_report_508.pdf; Nat'l Council on Disability, 2021 Progress Report: The Impact of Covid on People with Disabilities (2021), https://www.ncd.gov/assets/uploads/reports/2021/ncd-2021-progress-report-covid-19.pdf (''the lack of accessible examination and medical equipment in medical care means that people with disabilities, specifically people with mobility disabilities, receive substandard primary care compared to people without disabilities.''); Anna Marrocco and Helene J Krouse, *Obstacles to preventive care for individuals with disability: Implications for nurse practitioners*, J. Am. Ass'n of Nurse Pract. 2017 May; 29(5):282–293 (2017) at 289; U.S. Dep't of Health & Human Servs., Off. of the Surgeon Gen., The Surgeon General's Call To Action To Improve the Health and Wellness of Persons with Disabilities, (2005), *available at* https://www.ncbi.nlm.nih.gov/books/NBK44667/ (last visited Dec. 2, 2021).

accessible scales or they have not been able to receive a proper physical exam because existing exam tables do not lower (or do not lower sufficiently) for them to transfer onto.[7] .

Beginning July 8, 2024, the rule requires that when recipients purchase, lease, or otherwise acquire MDE, they acquire accessible MDE until they meet scoping thresholds required by the final rule. These thresholds are 20% of diagnostic equipment for programs and activities that specialize in treating conditions related to mobility and 10% for all other programs and activities.[8] This newly acquired accessible MDE must meet the Standards for Accessible MDE issued by the U.S. Access Board.[9]

The rule also requires that, if recipients use exam tables or weight scales, they must have in place one accessible type of this equipment by July 8, 2026, if the recipient has fifteen or more employees and by July 8, 2027, if the recipient has fewer than fifteen employees.

Recipients must ensure their staff are qualified to successfully operate accessible MDE, assist with transfers, and ensure program accessibility of MDE.

Regarding existing MDE, the rule requires that recipients operate their programs and activities offered through or with the use of MDE so that, when viewed in their entirety, they are readily accessible to and usable by individuals with disabilities. Recipients are not necessarily required to make each piece of MDE they use accessible.

Like other sections of the rule, there are limited exceptions for actions that would result in a fundamental alteration of the program or activity or undue financial and administrative burdens.

Other Key Provisions

Effective Communications, §§ 84.77 - 84.81

Communication failures in health services can be life-altering or even fatal. Ensuring that communications with individuals with disabilities are as effective as communications with others helps to avoid such failures and helps protect the health of people with disabilities. Over the years, OCR has received numerous complaints alleging that recipients denied people with disabilities effective communication or failed to provide appropriate auxiliary aids and services like sign language interpreters, assisted listening devices, or documents in Braille. To address this persistent manifestation of discrimination against individuals with disabilities, the rule requires recipients to take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.

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[7] *See* DeSouza, *Analysis of Low Wheelchair Seat Heights and Transfer Surfaces for Medical Diagnostic Equipment*, https://www.access-board.gov/research/human/wheelchair-seat-height/ (providing research on wheelchair seat heights and percentages of wheelchair users that can transfer to 17, 18, and 19 inch surfaces). *See also*, U.S. Access Board, *Access Board Review of MDE Low Height and MSRP* (Dec. 5, 2022), https://www.regulations.gov/docket/ATBCB-2023-0001 (providing more details on accessible exam table heights and prices).

[8] *See* 45 CFR 84.92(b)(1) and (2).

[9] Section 504 and the Standards for Accessible MDE contain one key difference. Section 504 requires a low transfer height for exam tables and chairs of 17-19 inches, while the Access Board recently published a final rule updating the Standards for Accessible MDE to require a low transfer height of 17 inches (89 FR 60307 (July 25, 2024).

Section 92.202 of the Section 1557 regulations similarly requires that covered entities provide appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the health program or activity in question. Such auxiliary aids and services must be provided free of charge, in accessible formats, in a timely manner, and in such a way to protect the privacy and the independence of the person with a disability. Section 92.8 requires each covered entity to implement a written policy in its health programs and activities that, at minimum, states the covered entity does not discriminate on the basis of race, color, national origin, sex, age, or disability; that the covered entity provides language assistance services and appropriate auxiliary aids and services free of charge, when necessary for compliance with section 1557 or this part; that the covered entity will provide reasonable modifications for individuals with disabilities; and that provides the current contact information for the Section 1557 Coordinator required by § 92.7 (if applicable). Additionally, § 92.9 requires training relevant employees on these procedures.

Integration, § 84.76

Recipients have a longstanding, affirmative obligation under the integration requirement of Section 504 to administer a program or activity in the most integrated setting appropriate to the needs of a qualified person with a disability. As the United States Supreme Court held in *Olmstead v. L.C.,* the unjustified segregation of persons with disabilities constitutes discrimination.[10]

This Section 504 final rule clarifies how to comply with this integration requirement and codifies that recipients have obligations to people with disabilities who currently receive services in the community and who are at serious risk of institutionalization.

The Section 1557 final rule contains a new obligation at **§** 92.207(b)(6) that explicitly prohibits recipients from having or implementing benefit designs that do not provide or administer health insurance coverage or other health-related coverage in the most integrated setting appropriate. That obligation also prohibits benefit designs that result in serious risk of institutionalization or segregation.

Revisions Made for Consistency with the Americans with Disabilities Act (ADA) and Additional Section 1557 Protections

The vast majority of recipients have been covered by the ADA since 1990. The Section 504 rule was updated to reflect these provisions, including by adding sections on an updated definition of "disability;" reasonable modifications to policies, practices, and procedures; illegal use of drugs; maintenance of accessible features; retaliation or coercion; personal devices and services; service animals; mobility devices; direct threat; accessibility standards; and defenses.

The Section 1557 regulations also contain several disability provisions, some of which were added for consistency with the ADA. Regarding accessibility standards applicable to buildings and facilities, § 92.203 prohibits discrimination against qualified individuals with disabilities because facilities are inaccessible or unusable by those individuals. The Section 504 regulation contains a similar provision on program accessibility regulations at §§ 84.21 - 84.23. As in §

[10] *Olmstead v. L. C.*, 527 U.S. 581 (1999).

84.68(b)(7) of the Section 504 regulations, § 92.205 of the Section 1557 regulations requires covered entities to make reasonable modifications to policies, practices, or procedures when such modifications are necessary to avoid discrimination on the basis of disability, unless the covered entity can demonstrate that making the modifications would fundamentally alter the nature of the health program or activity. Section 92.8 of the Section 1557 regulations requires covered entities to implement written reasonable modification policies and procedures. Section 1557 also contains detailed training and notice requirements at §§ 92.9-11.

Conclusion

This letter contains some of the obligations in the Section 504 and Section 1557 final rules. Health care providers are encouraged to visit the OCR Section 504 web page and the Section 1557 web page for additional information on their disability nondiscrimination obligations. While the disability nondiscrimination obligations of Section 504 and Section 1557 are similar, there are some deviations, and it is the responsibility of the recipient/covered entity to ensure that they comply with both laws.

We call your attention to these new requirements so that you can take steps to understand them and ensure that you are compliant before their effective dates so that you may avoid inadvertent discriminatory acts that result in enforcement actions by OCR. For the web content and mobile app accessibility and MDE requirements that will go into effect in two (2) and three (3) years' time, we encourage you to begin planning for their implementation as soon as possible.

OCR remains committed to ensuring accessibility for people with disabilities while informing covered entities of their obligations so they can voluntarily comply. OCR will continue to update its guidance documents and provide technical assistance and outreach whenever possible to advance these goals.

Sincerely,

/s/

Melanie Fontes Rainer

Director, Office for Civil Rights

EXHIBIT 3

DOJ Letter from Kristen Clarke

(Mar. 31, 2022)

U.S. Department of Justice

Civil Rights Division

Assistant Attorney General
950 Pennsylvania Ave, NW - RFK
Washington, DC 20530

March 31, 2022

Dear State Attorneys General:

The U.S. Department of Justice (the Department) is committed to ensuring that transgender youth, like all youth, are treated fairly and with dignity in accordance with federal law. This includes ensuring that such youth are not subjected to unlawful discrimination based on their gender identity, including when seeking gender-affirming care. We write to remind you of several important federal constitutional and statutory obligations that flow from these fundamental principles.

People who are transgender are frequently vulnerable to discrimination in many aspects of their lives, and are often victims of targeted threats, legal restrictions, and anti-transgender violence.[1] The Department and the federal government more generally have a strong interest in protecting the constitutional rights of individuals who are lesbian, gay, bisexual, transgender, queer, intersex, nonbinary, or otherwise gender-nonconforming,[2] and in ensuring compliance with federal civil rights statutes. The Department is also charged with the coordination and enforcement of federal laws that protect individuals from discrimination in a wide range of federally-funded programs and activities.[3]

Intentionally erecting discriminatory barriers to prevent individuals from receiving gender-affirming care implicates a number of federal legal guarantees. State laws and policies that prevent parents or guardians from following the advice of a healthcare professional regarding what may be medically necessary or otherwise appropriate care for transgender minors may infringe on rights protected by both the Equal Protection and the Due Process Clauses of the Fourteenth Amendment. The Equal Protection Clause requires heightened scrutiny of laws that discriminate on the basis of sex[4] and prohibits such discrimination absent an "exceedingly

[1] *See, e.g.*, Michelle M. Johns et al., Ctrs. for Disease Control and Prevention, *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students—19 States and Large Urban School Districts, 2017*, Morbidity and Mortality Weekly Report 68: 67-71 (2019), https://www.cdc.gov/mmwr/volumes/68/wr/mm6803a3.htm?s_cid=mm6803a3_w (finding that transgender youth reported higher levels of violence victimization compared to their cisgender peers).

[2] *See, e.g.*, Exec. Order No. 13,988, § 1, 86 Fed. Reg. 7023 (Jan. 20, 2021); Pamela S. Karlan, Principal Deputy Assistant Attorney General, Civ. Rts. Div., U.S. Dep't of Justice, Memorandum, *Application of Bostock v. Clayton County to Title IX of the Education Amendments of 1972* (Mar. 26, 2021), https://www.justice.gov/crt/page/file/1383026/download.

[3] Exec. Order No. 12,250, § 1-201, 45 Fed. Reg. 72,995 (Nov. 2, 1980).

[4] *See*, *e.g.*, *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 610-13 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *reh'g en banc denied*, 976 F.3d 399 (4th Cir. 2020), *cert. denied*, 2021 WL 2637992 (June 28, 2021); *Whitaker* v.

persuasive" justification.[5] Because a government cannot discriminate against a person for being transgender "without discriminating against that individual based on sex,"[6] state laws or policies that discriminate against transgender people must be "substantially related to a sufficiently important governmental interest."[7]

A law or policy need not specifically single out persons who are transgender to be subject to heightened scrutiny. When a state or recipient of federal funds criminalizes or even restricts a type of medical care predominantly sought by transgender persons, an intent to disfavor that class can "readily be presumed."[8] For instance, a ban on gender-affirming procedures, therapy, or medication may be a form of discrimination against transgender persons, which is impermissible unless it is "substantially related" to a sufficiently important governmental interest.[9] This burden of justification is "demanding."[10] Such a law or policy will not withstand heightened scrutiny when "the alleged objective" differs from the "actual purpose" underlying the classification.[11] In addition, the Due Process Clause protects the right of parents "to seek and follow medical advice" to safeguard the health of their children.[12] A state or local government must meet the heavy burden of justifying interference with that right since it is well established within the medical community that gender-affirming care for transgender youth is not only appropriate but often necessary for their physical and mental health.[13]

In addition to these constitutional guarantees, many federal statutes require recipients of federal financial assistance to comply with nondiscrimination requirements as a condition of receiving those funds. Relevant statutes include:

- **Section 1557 of the Affordable Care Act**[14] protects the civil rights of people—including transgender youth—seeking nondiscriminatory access to healthcare in a range of health

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Kenosha Unified Sch. Dist. No. 1 Bd. of Educ., 858 F.3d 1034, 1051 (7th Cir. 2017), *cert. dismissed*, 138 S. Ct. 1260 (2018); *see also* Brief for the United States as Amicus Curiae Supporting Plaintiffs-Appellees, *Brandt v. Rutledge*, No. 21-2875 (8th Cir. Jan. 21, 2022); En Banc Brief for the United States as Amicus Curiae Supporting Plaintiff-Appellee, *Adams v. School Board of St. John's County*, No. 18-13592 (11th Cir. Nov. 26, 2021); Brief for the United States as Amicus Curiae Supporting Plaintiffs-Appellees, *Corbitt v. Taylor*, No. 21-10486 (11th Cir. Aug. 2, 2021).

[5] *United States v. Virginia*, 518 U.S. 515, 531 (1996) ("Parties who seek to defend gender-based government action must demonstrate an 'exceedingly persuasive justification' for that action.") (quoting *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982)).

[6] *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1741 (2020).

[7] *Grimm*, 972 F.3d at 608 (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 441 (1985) (internal quotations omitted)).

[8] *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 270 (1993) ("Some activities may be such an irrational object of disfavor that, if they are targeted, and if they also happen to be engaged in exclusively or predominantly by a particular class of people, an intent to disfavor that class can readily be presumed.").

[9] *Virginia*, 518 U.S. at 533.

[10] *Id.*

[11] *Miss. Univ.*, 458 U.S. at 730.

[12] *Parham v. J.R.*, 442 U.S. 584, 602 (1979).

[13] *See, e.g.*, *Brandt v. Rutledge*, 551 F. Supp. 3d 882, 891, 893 (E.D. Ark. 2021).

[14] 42 U.S.C. § 18116.

programs and activities.[15] Categorically refusing to provide treatment to a person based on their gender identity, for example, may constitute prohibited discrimination under Section 1557. As the U.S. Department of Health and Human Services has stated, restricting an individual's ability to receive medically necessary care, including gender-affirming care, from their health care providers solely on the basis of their sex assigned at birth or their gender identity may also violate Section 1557.[16]

- **Title IX of the Education Amendments of 1972**[17] prohibits sex discrimination, including sex-based harassment, by recipients of federal financial assistance that operate education programs and activities.[18] Policies and practices that deny, limit, or interfere with access to the recipient's education program or activity because students are transgender minors receiving gender-affirming care may constitute discrimination on the basis of sex in violation of Title IX.

- The **Omnibus Crime Control and Safe Streets Act of 1968**[19] prohibits sex discrimination in certain law enforcement programs and activities receiving federal financial assistance.[20] If a law enforcement agency takes a transgender minor who is receiving gender-affirming care into custody or arrests the child's parents on suspicion of child abuse because the parents permitted such medical care, that agency may be violating the statute's nondiscrimination provision.

- **Section 504 of the Rehabilitation Act of 1973**[21] protects people with disabilities, which can include individuals who experience gender dysphoria.[22] Restrictions that prevent, limit, or interfere with otherwise qualified individuals' access to care due to their gender

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[15] *See, e.g.*, Notification of Interpretation and Enforcement of Section 1557 of the Affordable Care Act and Title IX of the Education Amendments of 1972, reprinted at 86 Fed. Reg. 27,984 (May 25, 2021).
[16] U.S. Dep't Health & Hum. Servs., *Notice and Guidance on Gender Affirming Care, Civil Rights, and Patient Privacy* (Mar. 2, 2022), https://www.hhs.gov/sites/default/files/hhs-ocr-notice-and-guidance-gender-affirming-care.pdf.
[17] 20 U.S.C. § 1681, *et seq*.
[18] *See* Karlan, *supra* note 2; *see also Doe v. Snyder*, --- F.4th ---, 2022 WL 711420, at *9 (9th Cir. Mar. 10, 2022); *Grimm*, 972 F.3d at 619.
[19] 34 U.S.C. § 10101, *et seq*.
[20] *See* 34 U.S.C. § 10228(c)(1); *see also* Kristen Clarke, Assistant Attorney General, Civ. Rts. Div., U.S. Dep't of Justice, Memorandum, *Interpretation of Bostock v. Clayton County regarding the nondiscrimination provisions of the Safe Streets Act, the Juvenile Justice and Delinquency Prevention Act, the Victims of Crime Act, and the Violence Against Women Act* (Mar. 10, 2022), https://www.justice.gov/crt/page/file/1481776/download.
[21] 29 U.S.C. § 794. Additionally, Title II of the Americans with Disabilities Act extends disability civil rights protections with respect to all programs, services and activities of state and local governments, regardless of the receipt of federal financial assistance. *See* 42 U.S.C. § 12132.
[22] *See, e.g.*, *Doe v. Penn. Dep't of Corrections*, No. 1:20-cv-00023-SPB-RAL, 2021 WL 1583556, at *12 (W.D. Pa. Feb. 19, 2021), report and recommendation adopted in relevant part, 2021 WL 1115373 (W.D. Pa. March 24, 2021); *Lange v. Houston Cnty.*, 499 F. Supp. 3d 1258, 1270 (M.D. Ga. 2020); *Doe v. Mass. Dep't of Correction*, No. 1:17-cv-12255-RGS, 2018 WL 2994403 at *6 (D. Mass. June 14, 2018); *Blatt v. Cabela's Retail, Inc.*, No. 5:14-CV-04822, 2017 WL 2178123 (E.D. Pa. May 18, 2017).

dysphoria, gender dysphoria diagnosis, or perception of gender dysphoria may violate Section 504.

All persons should be free to access the services, programs, and activities supported by federal financial assistance without fear that they might face unlawful discrimination for doing so. Courts have held that many nondiscrimination statutes contain an implied cause of action for retaliation based on the general prohibition against intentional discrimination, and agencies have made this clear in regulations.[23] Thus, any retaliatory conduct may give rise to an independent legal claim under the protections described above.

* * *

Thank you for your continued commitment to improving the well-being of children and their families. The Department is always available to help ensure that state and local governments, many of which are recipients of federal financial assistance, meet their obligations under federal law. Please feel free to contact the Department's Civil Rights Division for assistance if you have further questions.

Sincerely,

Kristen Clarke
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice

[23] *See, e.g.*, *Jackson v. Birmingham Bd. of Ed.*, 544 U.S. 167, 173 (2005) ("Retaliation against a person because that person has complained of sex discrimination is another form of intentional sex discrimination…"). Examples of agency regulations that prohibit retaliation include 24 C.F.R. § 1.7(e) (Dep't of Housing and Urban Development); 34 C.F.R. § 100.7(e) (Dep't of Education); 38 C.F.R. § 18.7(e) (Dep't of Veterans Affairs); and 45 C.F.R. § 80.7(e) (Dep't of Health and Human Services). Other relevant regulations can be found in the Civil Rights Division's Title VI Legal Manual. Civ. Rts. Div., U.S. Dep't of Justice, *Title VI Legal Manual*, Section VIII, https://www.justice.gov/crt/book/file/1364106/download.

EXHIBIT 4

Excerpts from the
April 29, 2024 EEOC Enforcement Guidance on Harassment in the Workplace
(archived Jan. 16, 2025)

Enforcement Guidance on Harassment in the Workplace

This guidance document was issued upon approval by vote of the U.S. Equal Employment Opportunity Commission.

OLC Control Number:	EEOC CVG 2024 1
Concise Display Name:	Enforcement Guidance on Harassment in the Workplace
Issue Date:	04-29-2024
General Topics:	Harassment, Race, Color, Religion, Sex, National Origin, Age, Disability, Genetic Information
Summary:	This document addresses how harassment based on race, color, religion, sex, national origin, age, disability, or genetic information is defined under EEOC-enforced statutes and the analysis for determining whether employer liability is established.
Citation:	Title VII, ADEA, ADA, GINA, 29 CFR Part 1601, 29 CFR Part 1604, 29 CFR Part 1605, 29 CFR Part 1606, 29 CFR Part 1625, 29 CFR Part 1626, 29 CFR Part 1630, 29 CFR Part 1635

Document Applicant:	Employers, Employees, Applicants, Attorneys and Practitioners, EEOC Staff
Previous Revision:	Yes. This document replaced Compliance Manual Section 615: Harassment (1987); Policy Guidance on Current Issues of Sexual Harassment (1990); Policy Guidance on Employer Liability under Title VII for Sexual Favoritism (1990); Enforcement Guidance on Harris v. Forklift Sys., Inc. (1994); and Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors (1999).

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

[redacted]	***NOTICE***	Number
EEOC		915.064
		Date
[redacted]		4/29/24

SUBJECT: Enforcement Guidance on Harassment in the Workplace

PURPOSE: This transmittal issues the Commission's guidance on harassment in the workplace under EEOC-enforced laws. It communicates the Commission's position on important legal issues.

EFFECTIVE DATE: Upon issuance.

EXPIRATION DATE: This Notice will remain in effect until rescinded or superseded.

OBSOLETE DATA: This Enforcement Guidance supersedes *Compliance Manual Section 615: Harassment* (1987); *Policy Guidance on Current Issues of Sexual Harassment* (1990); *Policy Guidance on Employer Liability under Title VII for Sexual Favoritism* (1990); *Enforcement Guidance on* Harris v. Forklift Sys., Inc. (1994); and *Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors* (1999).

ORIGINATOR: Office of Legal Counsel

Charlotte A. Burrows
Chair

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I. Introduction

A. Background

In 1986, the U.S. Supreme Court held in the landmark case of *Meritor Savings Bank, FSB v. Vinson*[1] that workplace harassment can constitute unlawful discrimination under Title VII of the Civil Rights Act of 1964 (Title VII). Decades later, harassing conduct remains a serious workplace problem. For the five fiscal years (FY) ending with FY 2023, over one third of the charges of employment discrimination received by the Equal Employment Opportunity Commission ("the Commission" or "the EEOC") included an allegation of unlawful harassment based on race, sex, disability, or another statutorily protected characteristic.[2] The actual cases behind these numbers reveal that many people experience harassing conduct at work that may be unlawful.[3]

This Commission approved enforcement guidance presents a legal analysis of standards for harassment and employer liability applicable to claims of harassment under the equal employment opportunity (EEO) statutes enforced by the Commission, which prohibit work related harassment based on race, color, religion, sex (including pregnancy, childbirth, or related medical conditions; sexual orientation; and gender identity), national origin, disability, genetic information, and age (40 or over).[4] This guidance also consolidates and supersedes several earlier EEOC guidance documents: *Compliance Manual Section 615: Harassment* (1987); *Policy Guidance on Current Issues of Sexual Harassment* (1990); *Policy Guidance on Employer Liability under Title VII for Sexual Favoritism* (1990); *Enforcement Guidance on* Harris v. Forklift Sys., Inc. (1994); and *Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors* (1999).

This guidance serves as a resource for employers, employees, and practitioners; for EEOC staff and the staff of other agencies that investigate, adjudicate, or litigate harassment claims or conduct outreach on the topic of workplace harassment; and

for courts deciding harassment issues. This document is not intended to be a survey of all legal principles that might be appropriate in a particular case.[5] The contents of this document do not have the force and effect of law, are not meant to bind the public in any way,[6] and do not obviate the need for the EEOC and its staff to consider the facts of each case and applicable legal principles when exercising their enforcement discretion. Nothing in this document should be understood to prejudge the outcome of a specific set of facts presented in a charge filed with the EEOC. In some cases, the application of the EEO statutes enforced by the EEOC may implicate other rights or requirements including those under the United States Constitution; other federal laws, such as the Religious Freedom Restoration Act (RFRA); or sections 702(a) and 703(e)(2) of Title VII.[7] The EEOC will consider the implication of such rights and requirements on a case-by-case basis.

B. Structure of this Guidance

In explaining how to evaluate whether harassment violates federal EEO law, this enforcement guidance focuses on the three components of a harassment claim. Each of these must be satisfied for harassment to be unlawful under federal EEO laws.

- Covered Bases and Causation: Was the harassing conduct based on the individual's **legally protected characteristic** under the federal EEO statutes?
- Discrimination with Respect to a Term, Condition, or Privilege of Employment: Did the harassing conduct constitute or result in **discrimination with respect to a term, condition, or privilege of employment**?
- Liability: Is there a basis for holding the employer **liable** for the conduct?

This guidance also addresses systemic harassment and provides links to other EEOC harassment related resources.[8]

II. Covered Bases and Causation

Harassment must be based on an employee's legally protected characteristic.

Under the first part of a harassment claim, harassment (or harassing conduct) is only covered by federal EEO laws if it is based on one (or more) of the individual's characteristics that are protected by these laws. In this document, the terms "harassment" and "harassing conduct" are generally used interchangeably. The terms refer to conduct that can, but does not necessarily always, constitute or contribute to unlawful harassment, including a hostile work environment. Not all harassing conduct violates the law, even if it is because of a legally protected characteristic. As discussed throughout this guidance, whether specific harassing conduct violates the law must be assessed on a case-by-case basis.

Section II.A of this guidance identifies the **legally protected characteristics** covered by the federal EEO laws enforced by the EEOC.

Section II.B of this guidance explains how to determine whether harassing conduct is **because of** a legally protected characteristic.

Taken together, these two sections address whether conduct is based on a protected characteristic and, therefore, whether it can contribute to creating a hostile work environment. S**ection II** does not address whether such conduct reaches the point of creating a hostile work environment. The next section of this guidance, **section III**, discusses how to determine whether harassing conduct rises to the level of a hostile work environment.

Example 7: Harassment Based on Religious Coercion. Sandra, an exterminator for a pest control service, is a Christian. The owner of the pest control service, Fabian, is a self-described "spiritual guru" who believes he is called by the universe to help people transcend the Judeo Christian belief system. Fabian regularly makes comments to Sandra denigrating Judeo-Christian tenets; asks Sandra probing questions about her faith; distributes tracts arguing that "traditional religion" is the cause of all ills in modern society; and states a "strong hope" that Sandra will attend his lunchtime lectures, which consistently focus on Fabian's religious beliefs. While Fabian claims he would never require employees to share his beliefs, attend his lectures, or read the material he distributes, he also keeps track of which employees do and do not participate in his religious activities and tends to act with favoritism toward employees who agree with or are receptive to his religious messages. Sandra feels she must feign interest in Fabian's beliefs or else she will be subject to ostracism or possibly even termination. Based on these facts, Fabian's harassing conduct toward Sandra is based on religion.[24]

5. Sex

Title VII prohibits employment discrimination, including unlawful harassment based on sex. Under Title VII, "sex" includes "pregnancy, childbirth, and related medical conditions" and sexual orientation and gender identity, as discussed in this section.

a. Harassing Conduct of a Sexualized Nature or Otherwise Based on Sex

Harassing conduct based on sex includes conduct of a sexualized nature, such as unwanted conduct expressing sexual attraction or involving sexual activity (e.g., "sexual conduct"); sexual attention or sexual coercion, such as demands or pressure for sexual favors; rape, sexual assault, or other acts of sexual violence; or discussing or displaying visual depictions of sex acts or sexual remarks.[25]

Harassment based on sex under Title VII[26] also includes non-sexual conduct based on sex,[27] such as sex based epithets; sexist comments (such as remarks that women do not belong in management or that men do not belong in the nursing profession); or facially sex-neutral offensive conduct motivated by sex (such as bullying directed toward employees of one sex).[28]

> **Example 8: Sex-Based Harassment.** John, an employee in a supermarket bakery department, works with a coworker, Laverne, who rubs up against him in a sexual manner, tells sexual jokes, and displays dolls made from dough in sexual positions. Based on these facts, Laverne's harassing conduct toward John is based on his sex.
>
> **Example 9: Sex-Based Harassment.** Aiko, a construction worker on a road crew, is subjected to sex-based epithets and other demeaning sex-based language by her supervisor, such as "sandwich maker" and "baby." This supervisor also disparages women's participation in the construction industry, for example by stating that road construction is "a man's job." Based on these facts, the supervisor's harassing conduct toward Aiko is based on sex.
>
> **Example 10: Sex-Based Harassment.** Ferguson, a millwright at a cabinet manufacturer, has just returned from a short period of medical leave taken to recover from a vasectomy. Immediately upon his return, some of Ferguson's coworkers repeatedly ridicule Ferguson

for the vasectomy, calling him "gelding," "eunuch," and "numb nuts," and saying things such as "why did you neuter yourself like a dog?" and "a real man would never get a vasectomy." Based on these facts, the coworkers' harassing conduct toward Ferguson is based on sex.

b. Pregnancy, Childbirth, or Related Medical Conditions Under Title VII[29]

Sex based harassment under Title VII includes harassment based on pregnancy,[30] childbirth, or related medical conditions.[31] This can include issues such as lactation;[32] using or not using contraception;[33] or deciding to have, or not to have, an abortion.[34] Harassment based on these issues generally would be covered if it is linked to a targeted individual's sex including pregnancy, childbirth, or related medical conditions.

Example 11: Pregnancy-Based Harassment. Kendall, a veterinary assistant at a nationwide veterinary clinic chain, recently announced to coworkers that she is pregnant. After Kendall's announcement, one of her supervisors, Veronica, begins berating Kendall's work as slow, shoddy, and scatter brained, and accuses Kendall of focusing more on getting ready for her new baby than doing her job. Veronica also begins to scrutinize Kendall's bathroom usage and, on at least one occasion, yelled at Kendall for "always" being in the bathroom. As Kendall's pregnancy progresses, Veronica refers to Kendall as a "heifer," and makes the comment, "We don't treat livestock at this office." Based on these facts, Veronica's harassing conduct toward Kendall is based on sex (pregnancy).

Example 12: Harassment Based on Pregnancy-Related Medical Condition (Lactation). Lisbet, a

software engineer for a video game publisher, recently returned to work after giving birth. Lisbet uses a lactation room at work as needed in order to express breastmilk. Lisbet's coworker, Nathaniel, knocks loudly on the lactation room door while Lisbet is inside and pretends that he is going to enter. Nathaniel also refers to Lisbet's breasts as "milk jugs," makes suckling noises when Lisbet enters and exits the lactation room, and asks Lisbet if he can have a squirt of milk for his coffee.[35] Nathaniel also refers to the lactation room as "Lisbet's getaway" and asks why he is not allowed to take breaks in private rooms. Based on these facts, Nathaniel's harassing conduct toward Lisbet is based on a pregnancy-related medical condition (lactation).

Example 13: Harassment Based on Pregnancy-Related Medical Condition (Morning Sickness). Kristina, a graphic designer at a marketing firm, is experiencing pregnancy related morning sickness. Kristina's employer accommodates her limitations due to morning sickness by permitting Kristina to telework up to three days per week and utilize flexible scheduling on the days she comes into the office. Kristina's colleagues complain that pregnant women always get special perks and privileges and accuse Kristina of getting pregnant "just so she can kick back, relax at home on the couch, and collect a paycheck." During a team meeting to discuss staffing a new, high-priority portfolio, when Kristina requests to be considered, her coworkers scoff that "if Kristina is so sick that she cannot come into the office, how can she be well enough to work on such an important account?" Based on these facts, the coworkers' harassing conduct toward Kristina is based on a

pregnancy-related medical condition (morning sickness).

c. Sexual Orientation and Gender Identity

Sex based discrimination under Title VII includes employment discrimination based on sexual orientation or gender identity.[36] Accordingly, sex-based harassment includes harassment based on sexual orientation or gender identity, including how that identity is expressed.[37] Harassing conduct based on sexual orientation or gender identity includes epithets regarding sexual orientation or gender identity;[38] physical assault due to sexual orientation or gender identity;[39] outing (disclosure of an individual's sexual orientation or gender identity without permission);[40] harassing conduct because an individual does not present in a manner that would stereotypically be associated with that person's sex;[41] repeated and intentional use of a name or pronoun inconsistent with the individual's known gender identity (misgendering);[42] or the denial of access to a bathroom or other sex segregated facility consistent with the individual's gender identity.[43]

> **Example 14: Harassment Based on Sexual Orientation.** Heidi, a staff journalist at a media conglomerate, recently attended a company award ceremony with her wife, Naomi. After the ceremony, one of Heidi's coworkers, Trevor, approaches Heidi and says, "I did not know you were a d*ke, that's so hot." Trevor asks Heidi questions such as, "because you are both girly girls, who is the man in your marriage?" and "who wears the pants at home?"[44] Trevor also repeatedly sends the scissor emoji and images of scissors to Heidi, which Trevor intends as a euphemism for Heidi having sex with her wife. Based on these facts, Trevor's harassing conduct toward Heidi is based on her sexual orientation.

Example 15: Harassment Based on Gender Identity. Chloe, a purchase order coordinator at a retail store warehouse, is approached by her supervisor, Alton, who asks whether she was "born a man" because he had heard a rumor that "there was a transvestite in the department." Chloe disclosed to Alton that she is transgender and asked him to keep this information confidential. After this conversation, Alton instructed Chloe to wear pants to work because a dress would be "inappropriate," despite other purchase order coordinators being permitted to wear dresses and skirts. Alton also asks inappropriate questions about Chloe's anatomy and sexual relationships. Further, whenever Alton is frustrated with Chloe, he misgenders her by using, with emphasis, "he/him" pronouns, sometimes in front of Chloe's coworkers. Based on these facts, Alton's harassing conduct toward Chloe is based on her gender identity.[45]

6. Age

The Age Discrimination in Employment Act (ADEA)[46] prohibits age-based discrimination, including unlawful harassment, of employees forty or older because of their age.[47] This includes harassment based on negative perceptions about older workers.[48] It also includes harassment based on stereotypes about older workers, even if they are not motivated by animus, such as pressuring an older employee to transfer to a job that is less technology focused because of the perception that older workers are not well suited to such work or encouraging an older employee to retire.[49]

Example 16: Age-Based Harassment. Lulu, age sixty-eight, is a makeup artist and salesperson at a department store. Lulu's manager repeatedly asks Lulu about her retirement plans, despite Lulu expressing

standards that apply to particular harassing conduct will depend on whether the conduct is being challenged as part of a harassment claim, a retaliation claim, or both.

For a more detailed discussion of retaliation, see EEOC, *Enforcement Guidance on Retaliation and Related Issues* (2016), **https://www.eeoc.gov/laws/guidance/enforcement-guidance-retaliation-and-related-issues (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/laws/guidance/enforcement-guidance-retaliation-and-related-issues)** .

10. Cross-Bases Issues

Discussed below are some issues that apply to all of the covered bases.

Harassment based on the perception that an individual has a particular protected characteristic—for example, the belief that a person has a particular national origin, religion, or sexual orientation is covered by federal EEO law even if the perception is incorrect.[66] Thus, harassment of a Hispanic person because the harasser believes the individual is Pakistani is national origin-based harassment, and harassment of a Sikh man wearing a turban because the harasser thinks he is Muslim is religious harassment, even if the perception in both instances is incorrect.

The EEO laws also cover "associational discrimination." This includes harassment because the complainant associates with someone in a different protected class[67] or harassment because the complainant associates with someone in the same protected class.[68] For example, the EEO laws apply to harassment of a White employee because his spouse is Black[69] or harassment of a Black employee because she has a biracial child.[70] Although the association often involves a close relationship, such as with a close relative or friend, the degree of closeness is irrelevant to whether the association is covered.[71]

Harassment that is based on the complainant's protected characteristic is covered even if the harasser is a member of the same protected class (intraclass harassment).[72]

steal. Based on these facts, Mackenzie's harassing conduct toward Sydney is based on race.

Example 26: Harassment Based on Stereotypes About National Origin. Mirlande, a Haitian American, is an esthetician at a luxury resort and spa. One of Mirlande's coworkers, Celine, believes that all Haitians practice voodoo and, based on this cultural assumption about Haitians, repeatedly makes voodoo related remarks, such as that Mirlande will curse staff members and clients, knows a witch doctor, and has voodoo dolls at home. Based on these facts, Celine's harassing conduct toward Mirlande is based on national origin.

As discussed below in section II.B, harassing conduct need not explicitly refer to a protected characteristic to be based on that characteristic where there is other evidence establishing causation.

B. Establishing Causation

1. Generally

Causation is established if the evidence shows that the complainant was subjected to harassment *because of* the complainant's protected characteristic, whether or not the harasser explicitly refers to that characteristic or targets a particular employee.[83] If an employee experiences harassment in the workplace but the evidence does not show that the harassment was based on a protected characteristic, the EEO statutes do not apply.[84]

Example 27: Insufficient Evidence That Harassment Was Based on a Protected Characteristic. Isaiah, a customer service representative at a financial services firm, alleges he was subjected to harassment based on his national origin and color by his coworker, Zach.

Isaiah asserts that last winter Zach became increasingly hostile and rude, throwing paper at Isaiah, shoving him in the hall, and threatening to physically harm him. Zach's misconduct started shortly after a disagreement during a league basketball game during which Isaiah, captain of the firm's basketball team, benched Zach. No evidence was found during the investigation to link Zach's threats and harassment to Isaiah's national origin or color; therefore, Isaiah cannot establish that Zach's misconduct subjected him to harassment because of a protected characteristic.[85]

Example 28: Sufficient Evidence That Harassment Was Based on a Protected Characteristic. Julius, who is Black, works on a line operation crew for a pharmaceutical manufacturer. All line crew members are Black, and they are supervised by Murphy, who is White. Murphy frequently refers to himself as a "zookeeper" and to the crew, including Julius, as "my animals." Murphy does not refer to members of other line crews, which are comprised of non-Black employees, as "animals"; likewise, Murphy does not refer to supervisors of those other line crews as "zookeepers." Following an investigation, evidence shows that Murphy calls Julius and crew members "animals" because of their race, even though Murphy does not directly refer to race. Based on these facts, Julius can establish that Murphy subjected him to harassment because of race, a protected characteristic.[86]

The determination of whether hostile work environment harassment is based on a protected characteristic will depend on the totality of the circumstances.[87] Although causation must be evaluated based on the specific facts in a case, the principles

discussed below will generally apply in determining causation. Not all principles will necessarily apply in every case.

2. Facially Discriminatory[88] Conduct

Conduct that explicitly insults or threatens an individual based on a protected characteristic such as racial epithets or graffiti, sex based epithets, offensive comments about an individual's disability, or targeted physical assaults based on a protected characteristic—discriminates on that basis.[89] The motive of the individual engaging in such conduct is not relevant to whether the conduct is facially discriminatory. Such conduct also need not be directed at a particular worker based on that worker's protected characteristic, nor must all workers with the protected characteristic be exposed to the conduct. For example, degrading workplace comments about women in general, even if they are not related to a specific female employee, show anti-female animus on their face, so no other evidence is needed to show that the comments are based on sex.[90] Further, derogatory comments about women are sex based even if all employees are exposed to the comments.[91]

> **Example 29: Causation Established Where Harassment Is Facially Discriminatory.** Kiran, an archivist at a non-profit foundation, is an individual with a neuropathic condition that causes his muscles to atrophy and degenerate. As a result of his condition, Kiran walks with a limp and must wear leg braces. On a near daily basis his coworkers make fun of his limp and leg braces by mimicking his gait and calling him names like "Forrest Gump" and "cr*pple." Based on these facts, Kiran has been subjected to harassment based on disability that is facially discriminatory.[92]

3. Stereotyping

Harassment is based on a protected characteristic if it is based on social or cultural expectations be they intended as positive, negative, or neutral regarding how persons of a particular protected group may act or appear.[93] This includes harassment based on sex-based assumptions about family responsibilities,[94] suitability for leadership,[95] gender roles,[96] weight and body types,[97] the expression of sexual orientation or gender identity,[98] or being a survivor of gender based violence. Similarly, harassment based on race includes derogatory comments involving racial stereotypes, such as referring to Black employees as drug dealers[99] or suggesting that Black employees have the propensity to commit theft.[100]

Such stereotyping need not be motivated by animus or hostility toward that group.[101] For example, age based harassment might include comments that an older employee should consider retirement so that the employee can enjoy the "golden years."[102] Likewise, sex-based harassment might include comments that a female worker with young children should switch to a part time schedule so that she can spend more time with her children.[103]

> **Example 30: Causation Established Based on Sex Stereotyping.** After Eric, an iron worker, made a remark that his foreman, Josh, considered "feminine," Josh began calling Eric "Erica," "princess," and "f*ggot." Several times a week, Josh approached Eric from behind and simulated intercourse with him. More than once, Josh exposed himself to Eric. Based on these facts, Josh targeted Eric based on his perception that Eric did not conform to traditional male stereotypes and subjected Eric to harassment based on sex.[104]

> **Example 31: Causation Established Based on Sex Stereotyping.** Maria, a receptionist, has recently experienced domestic violence. Because Maria must attend court dates related to the domestic violence,

she discloses her situation to her supervisor, Nolan. Nolan warns Maria that she should not take "too much" leave and should not bring "drama" into the workplace because "women can be histrionic and unreliable." Nolan also comments that "women think everything is domestic violence" and that "a good wife doesn't have to worry about anything in her marriage." Nolan begins to criticize Maria's decision-making skills, stating that Maria can't be relied on to make good choices because she can't even manage her personal problems. Based on these facts, Nolan targeted Maria based on his sex-based perception of victims of gender based violence and subjected Maria to harassment based on sex.

4. Context

Conduct must be evaluated within the context in which it arises.[105] In some cases, the discriminatory character of conduct that is not facially discriminatory becomes clear when examined within the specific context in which the conduct takes place or within a larger social context. For example, the Supreme Court observed that use of the term "boy" to refer to a Black man may reflect racial animus depending on such factors as "context, inflection, tone of voice, local custom, and historical usage."[106] In some contexts, terms that may not be facially discriminatory when viewed in isolation, such as "you people," may operate as "code words" that contribute to a hostile work environment based on a protected characteristic.[107]

Example 32: Causation Established by Social Context. Ron, a Black truck driver, finds banana peels on his truck on multiple occasions. After the third of these occasions, Ron sees two White coworkers watching his reaction to the banana peels. There is no evidence that banana peels were found on any other truck or that Ron found any trash on his truck besides

the banana peels. Based on these facts, the appearance of banana peels on Ron's truck is likely not coincidental. Further, because banana peels are used to invoke "monkey imagery," it would be reasonable to conclude, given the history of racial stereotypes against Black individuals, that the banana peels were intended as a racial insult. Therefore, the conduct under these circumstances constitutes harassment based on race.[108]

5. Link Between Conduct That Is Not Explicitly Connected to a Protected Basis and Facially Discriminatory Conduct

Conduct that is neutral on its face may be linked to other conduct that is facially discriminatory, such as race-based epithets or derogatory comments about individuals with disabilities. Facially neutral conduct therefore should not be separated from facially discriminatory conduct and then discounted as non discriminatory.[109] In some instances, however, facially discriminatory conduct may not be sufficiently related to facially neutral conduct to establish that the latter also was discriminatory.[110]

Example 33: Facially Neutral Conduct Sufficiently Related to Religious Bias. Imani, a devout Christian employed as a customer service representative, alleges that coworkers made offensive comments or engaged in other hostile conduct related to her religious beliefs and practices, including suggesting that Imani belonged to a cult; calling her religious beliefs "crazy"; drawing devil horns, a devil tail, and a pitchfork on her Christmas photo; and cursing the Bible and teasing her about Bible reading. In addition, the same coworkers excluded Imani from office parties and subjected her to curse words that the coworkers knew Imani regarded as offensive because of her religion. Although some of

> the coworkers' conduct was facially neutral with respect to religion, that conduct was closely related to the religious harassment and thus the entire pattern of harassment was based on Imani's religion.[111]

6. Timing

If harassment began or escalated shortly after the harasser learned of the complainant's protected status, including religion, pregnancy, sexual orientation, or gender identity, the timing may suggest that the harassment was discriminatory.[112]

> **Example 34: Timing as Evidence of Causation.** Sami, a security guard at an electronics store, discloses his Egyptian ancestry to coworkers during a conversation about turmoil in the Middle East. Following this disclosure, Sami's colleagues, who had made offensive comments about Middle Eastern people during the conversation, begin to avoid and ostracize him. Approximately one week after Sami disclosed his national origin, Sami arrives late for his shift, and a coworker asks, "Did your camel break down?" Another coworker begins to hum the Bangles' "Walk Like an Egyptian" and mime the music video's dance moves when Sami walks by. The timing of the coworkers' conduct, in addition to the content of the conduct, provides evidence that Sami has been subjected to discrimination based on national origin.

7. Comparative Evidence

Evidence showing qualitative and/or quantitative differences in the conduct directed against individuals in different groups can support an inference that the

be viewed in the context of her vulnerability as a survivor of dating violence, is sufficiently severe or pervasive to create an objectively hostile work environment.

Example 46: Harassment Based on Gender Identity Creates an Objectively Hostile Work Environment. Jennifer, a female cashier who is transgender and works at a fast food restaurant, is regularly and intentionally misgendered by supervisors, coworkers, and customers over a period of several weeks. One of her supervisors, Allison, intentionally and frequently uses Jennifer's prior male name, male pronouns, and "dude" when referring to Jennifer, despite Jennifer's requests for Allison to use her correct name and pronouns. Other managers also intentionally refer to Jennifer as "he" whenever they work together. In the presence of customers, coworkers ask Jennifer questions about her sexual orientation and anatomy and assert that she is not female. After hearing these remarks by employees, customers also intentionally misgender Jennifer and make offensive comments about her transgender status. Based on these facts, which must be viewed in the context of Jennifer's perspective as a transgender individual, Jennifer has been subjected to an objectively hostile work environment based on her gender identity that includes repeated and intentional misgendering.[195]

Conduct also must be evaluated in the context of the specific work environment in which it occurred. For example, in some instances, conduct may be more likely to create a hostile work environment if the complainant works in a remote location alone with the harasser.[196] There is, however, no "crude environment" exception to Title VII.[197] Prevailing workplace culture, likewise, does not excuse discriminatory

because a complainant rejects sexual demands (e.g., denying a promotion) constitutes a tangible employment action. Finally, fulfilling a promise to provide a benefit because the complainant submits to sexual demands (e.g., granting a promotion or not terminating the complainant after the complainant submits to sexual demands) constitutes a tangible employment action.[262]

b. Hostile Work Environment Without a Tangible Employment Action: Establishing the *Faragher-Ellerth* Affirmative Defense

If harassment by a supervisor creates a hostile work environment that did not include a tangible employment action, the employer can raise an affirmative defense to liability or damages. In *Faragher* and *Ellerth*, the Supreme Court explained that the defense requires the employer to prove that:

- the employer exercised reasonable care to prevent and correct promptly any harassment; and
- the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to take other steps to avoid harm from the harassment.[263]

In establishing this affirmative defense, the Supreme Court sought "to accommodate the agency principles of vicarious liability for harm caused by misuse of supervisory authority, as well as Title VII's equally basic policies of encouraging forethought by employers and saving action by objecting employees."[264] The Court held that this carefully balanced defense contains "two *necessary* elements:"[265] (1) the employer's exercise of reasonable care to prevent and correct promptly any harassing behavior, and (2) the employee's unreasonable failure to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.[266] Thus, in circumstances in which an employer fails to establish one or both prongs of the affirmative defense, the employer will be liable for the unlawful harassment. For example, if the employer is able to show that it exercised reasonable care but cannot show that the employee unreasonably failed to take advantage of preventive or corrective opportunities, the employer will not be able to establish the defense.

Example 62: Employer Fails to Establish Affirmative Defense. Chidi, who is of Nigerian heritage, was subjected to national origin and racial harassment by his supervisor, Ang. The employer does not have a written anti-harassment policy and does not offer comprehensive anti harassment training. Instead, employees are told to "follow the chain of command" if they have any complaints, which would require Chidi to report to Ang. During meetings with Chidi and his coworkers, Ang repeatedly directed egregious racial and national origin-based epithets at Chidi, and Ang's conduct was sufficient to create a hostile work environment. Chidi reported Ang's harassment to his manager (who was also Ang's supervisor) on at least two separate occasions. Each time, the manager simply responded, "That's just Ang don't take it seriously." Based on these facts, the employer cannot establish either prong of the affirmative defense. The employer did not exercise reasonable care to prevent or to promptly correct the harassment. Further, the employer cannot establish that Chidi unreasonably failed to take advantage of the employer's complaint process. Based on these facts, the employer is liable for Ang's harassment of Chidi.

Example 63: Employer Avoids Liability by Establishing Affirmative Defense. Kit was subjected to a hostile work environment by their supervisor because of race. The supervisor's harassment was not severe at first but grew progressively worse over a period of months. The employer had an effective anti-harassment policy and procedure, which it prominently displayed on its employee website and provided to all employees through a variety of other

means. In addition, the employer was not aware of any harassment by this supervisor in the past.[267] Kit never complained to the employer about the harassment or took steps to avoid harm from the harassment. The employer learned of the supervisor's conduct from Kit's coworker, who observed the harassment. After learning about it, the employer took immediate corrective action that stopped the harassment. Based on these facts, the employer is not liable for the supervisor's harassment of Kit, because the employer had an effective policy and procedure and took prompt corrective action upon receiving notice of the harassment *and* Kit could have used the effective procedure offered by the employer or taken other appropriate steps to avoid further harm from the harassment but did not do so.

i. First Prong of the Affirmative Defense: Employer's Duty of Reasonable Care

The first prong of the affirmative defense requires an employer to show that it exercised reasonable care *both* to prevent harassment *and* to correct harassment. To do so, an employer must show both that it took reasonable steps to prevent harassment *in general*, as discussed immediately below, and that it took reasonable steps to prevent and to correct the *specific* harassment raised by a particular complainant. Because the questions of whether the employer acted reasonably to prevent and to correct the specific harassment alleged by the complainant also arise when analyzing employer liability for non supervisor harassment, those issues are discussed in detail at section IV.C.3.a (addressing unreasonable failure to prevent harassment) and section IV.C.3.b (addressing unreasonable failure to correct harassment). The principles discussed in those sections also apply when determining whether the employer has shown under the first prong of the affirmative defense that it acted reasonably to prevent and correct the harassment alleged by the complainant.

Federal EEO law does not specify particular steps an employer must take to establish that it exercised reasonable care to prevent and correct harassment; instead, as discussed below, the employer will satisfy its obligations if, as a whole, its efforts are reasonable.[268] In assessing whether the employer has taken adequate steps, the inquiry typically begins by identifying the policies and practices an employer has instituted to prevent harassment and to respond to complaints of harassment. These steps usually consist of promulgating a policy against harassment, establishing a process for addressing harassment complaints, providing training to ensure employees understand their rights and responsibilities, and monitoring the workplace to ensure adherence to the employer's policy.[269]

For an anti harassment *policy* to be effective, it should generally have the following features:

- the policy defines what conduct is prohibited;
- the policy is widely disseminated;[270]
- the policy is comprehensible to workers,[271] including those who the employer has reason to believe might have barriers to comprehension, such as employees with limited literacy skills or limited proficiency in English;[272]
- the policy requires that supervisors report harassment when they are aware of it;[273]
- the policy offers multiple avenues for reporting harassment, thereby allowing employees to contact someone other than their harassers;[274]
- the policy clearly identifies accessible[275] points of contact to whom reports of harassment should be made and includes contact information;[276] and
- the policy explains the employer's complaint process, including the process's anti-retaliation and confidentiality protections.

For a complaint *process* to be effective, it should generally have the following features:

- the process provides for prompt and effective investigations and corrective action;[277]
- the process provides adequate confidentiality protections;[278] and
- the process provides adequate anti-retaliation protections.[279]

For *training* to be effective, it should generally have the following features:[280]

- it explains the employer's anti-harassment policy and complaint process, including any alternative dispute resolution process, and confidentiality and anti retaliation protections;
- it describes and provides examples of prohibited conduct under the policy;
- it provides information about employees' rights if they experience, observe, become aware of, or report conduct that they believe may be prohibited;
- it provides supervisors and managers with information about how to prevent, identify, stop, report, and correct harassment, such as actions that can be taken to minimize the risk of harassment, and with clear instructions for addressing and reporting harassment that they observe, that is reported to them, or that they otherwise become aware of;
- it is tailored to the workplace and workforce;
- it is provided on a regular basis to all employees; and
- it is provided in a clear, easy to understand style and format.[281]

However, even the best anti-harassment policy, complaint procedure, and training will not necessarily establish that the employer has exercised reasonable care to prevent harassment—the employer must also implement these elements effectively.[282] Thus, evidence that an employer has a comprehensive anti-harassment policy and complaint procedure will be insufficient standing alone to establish the first prong of the defense if the employer fails to implement these policies and procedures or to appropriately train employees.[283] Similarly, the first prong of the defense would not be established if evidence shows that the employer

adopted or administered the policy in bad faith or that the policy was otherwise defective or dysfunctional.[284] Considerations that may be relevant to determining whether an employer unreasonably failed to prevent harassment are discussed in detail at section IV.C.3.a, below.

Likewise, the existence of an adequate anti harassment policy, complaint procedure, and training is not dispositive of the issue of whether an employer exercised reasonable care to correct harassing behavior of which it knew or should have known.[285] For example, if a supervisor witnesses harassment by a subordinate, the supervisor's knowledge of the harassment is imputed to the employer, and the duty to take corrective action will be triggered.[286] If the employer fails to exercise reasonable care to correct the harassing behavior, it will be unable to satisfy prong one of the *Faragher Ellerth* defense, regardless of any policy, complaint procedure, or training. The duty to exercise reasonable care to correct harassment for which an employer had notice is discussed in detail at section IV.C.3.b, below.

> **Example 64: Employer Liable Because It Failed to Exercise Reasonable Care in Responding to Harassment—Employee Reported to a Supervisor.** Aisha, who works as a cashier in a fast-food restaurant, was sexually harassed by one of her supervisors, Pax, an assistant manager. Aisha initially responded to Pax's sexual advances and other sexual conduct by telling him that she was not interested and that his conduct made her uncomfortable. Pax's conduct persisted, however, so Aisha spoke to the restaurant's other assistant manager, Mallory. Like Pax, Mallory was designated as Aisha's direct supervisor. The employer has an anti-harassment policy, which it distributes to all employees. The policy states that all supervisors are required to report and address potentially harassing conduct when they become aware of such conduct. Mallory, however, did not report Pax's conduct or take

any action because she felt Aisha was being overly sensitive. Pax continued to sexually harass Aisha, and a few weeks after speaking with Mallory, Aisha contacted the Human Resources Director. The following day, the employer placed Pax on paid administrative leave, and a week later, after concluding its investigation of Aisha's allegations, the employer terminated Pax. The employer contends that it took reasonable corrective action by promptly responding to Aisha's complaint to Human Resources. However, because Mallory was one of Aisha's supervisors, and was therefore responsible for reporting and addressing potential harassment, the employer cannot establish the affirmative defense, having failed to act reasonably to address the harassment after Aisha spoke with Mallory.

Example 65: Employer Liable Because It Failed to Exercise Reasonable Care in Responding to Harassment—Supervisor Witnessed Harassment. Claudia works as an overnight stocker in the housewares department of a big box store. Her employer has an anti harassment policy. The policy is, on its face, effective: for example, it describes harassment; provides multiple avenues for reporting harassment, including a 1-800 number operated by a third party vendor; and contains an anti retaliation provision. The policy is distributed to all employees at the time of their hire and can be accessed any time via computer terminals that all employees can use. Further, the employer ensures that all employees receive annual anti-harassment training that reminds them of the policy, including their rights and obligations under it.

> Claudia is directly supervised by Dustin, the housewares department manager. On an almost nightly basis, Dustin likes to "play a game" in which he hides between store aisles and jumps out with his penis exposed to Claudia. Ravi, who manages the employer's produce section, has witnessed Dustin expose his penis to Claudia on a few occasions. Ravi once admonished Dustin for being a "child" and told him "acting like that will lead to you getting fired," but took no further action to address the harassment. Claudia was embarrassed by the harassment and was afraid that complaining would jeopardize her job, so she never reported the harassment, either to the employer or the 1-800 number.
>
> Under these facts, the employer cannot establish the affirmative defense. While the employer appears to have acted reasonably in its efforts to prevent harassment by adopting a comprehensive and effective anti harassment policy and providing training, it did not act reasonably to correct harassment that it knew about through Ravi's direct observation.

ii. Second Prong of the Affirmative Defense: Employee's Failure to Take Advantage of Preventive or Corrective Opportunities

The second prong of the *Faragher Ellerth* affirmative defense requires the employer to show that the complainant "unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise."[287] If an employer has exercised reasonable care, it will not be liable if the complainant could have avoided all harm from unlawful harassment but unreasonably failed to do so.[288] In addition, if the employee unreasonably delayed complaining and an earlier complaint could have avoided some but not all of the

Addendum Pursuant to 29 C.F.R. § 1695.6(c) on EEOC Responses to Major Comments Received on the Proposed Enforcement Guidance on Harassment in the Workplace

The Equal Employment Opportunity Commission (Commission or EEOC) published a Notice in the *Federal Register* on October 2, 2023, inviting the public to submit comments on its proposed Enforcement Guidance on Harassment in the Workplace and including a hyperlink to the federal website with the proposed guidance.**[387]** The comment period ended on November 2, 2023. During this period, the EEOC received over 37,000 comments from private individuals, organizations, and legislators. The majority of comments from private individuals were identical form (standardized) comments or slightly altered form comments. The comments from organizations addressed a range of issues and some requested that the Commission add additional hypothetical examples.

The Commission carefully considered all the comments it received in the process of revising the draft and preparing the final guidance. The major issues raised in the comments and the Commission's responses are listed, summarized, and addressed below.

EEOC Authority

EEOC Authority to Address Harassment Based on Gender Identity Related to Sex-Segregated Facilities and Pronouns

Comment: Some commenters contended that the Commission exceeded its statutory authority under Title VII of the Civil Rights Act of 1964 (Title VII) because, they asserted, the proposed guidance exceeded the scope of Title VII as interpreted by the Supreme Court in *Bostock v. Clayton County*, 590 U.S. 644 (2020). These commenters stated that the decision in *Bostock* was limited in scope and did not address, among other things, sex segregated bathrooms.

Response:

The proposed guidance did not attempt to—nor does the final guidance attempt to—impose new legal obligations on employers with respect to any aspect of workplace harassment law, including gender identity discrimination. Nor does the guidance exceed the scope of the Supreme Court's decision in *Bostock.*

Section 703(a)(1) of Title VII makes it unlawful "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex[.]" At least since 1986, the Supreme Court has been unequivocal that "[t]he phrase 'terms, conditions, or privileges of employment' evinces a congressional intent to strike at the entire spectrum of disparate treatment of men and women in employment," including discriminatory harassment. *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 64 (1986).

The Court in *Bostock* explained that "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex," and therefore held that discharging an employee because of sexual orientation or gender identity is unlawful sex discrimination that violates section 703(a)(1). *See Bostock v. Clayton Cnty.*, 590 U.S. 644, 660, 683 (2020). As a form of sex discrimination, discrimination on the basis of sexual orientation or gender identity therefore violates section 703(a)(1) on the same terms as any other form of sex discrimination, including failing or refusing to hire, or otherwise discriminating against an individual with respect to compensation, terms, conditions, or privileges of employment. Any other interpretation would be inconsistent with the statutory text and with *Bostock*, and would introduce an inconsistent and textually unsupported asymmetry under which an employee could not be terminated because of their sexual orientation or gender identity but could be harassed or otherwise discriminated against in the terms and conditions of employment based on those same characteristics.

For these reasons, as stated in the final guidance, federal courts interpreting *Bostock* have readily found that unlawful workplace harassment based on sexual orientation or gender identity that constructively changes the terms and conditions of employment under section 703(a)(1) constitutes sex discrimination. *See* the cases cited in footnote 37 of the final Enforcement Guidance on Harassment in the Workplace.

Bostock stated that it did not address "bathrooms, locker rooms, or anything else of the kind." 590 U.S. at 681. Nothing in the guidance suggests that *Bostock* addressed those issues. Because the EEOC is statutorily required to investigate all private sector Title VII charges of discrimination presented to it in the administrative process, and also to decide administrative appeals by federal employees raising Title VII claims, the EEOC must sometimes take a position on whether an alleged type of conduct violates Title VII even in the absence of binding Supreme Court precedent. In fulfilling its statutory duties, the EEOC considers applicable legal authority and arguments advanced by affected parties when determining whether a violation has occurred in the context of a particular charge or federal sector EEO appeal. As noted in the final guidance, by the time *Bostock* was decided the Commission had been presented with the federal sector administrative appeal in *Lusardi v. Department of the Army*, EEOC Appeal No. 0120133395, 2015 WL 1607756 (Apr. 1, 2015), involving a transgender employee. On the facts presented in that administrative appeal, the Commission decided that Title VII's prohibition on sex discrimination requires employers to provide transgender employees access to sex-segregated facilities consistent with their gender identity. *See also Doe v. Triangle Doughnuts, LLC*, 472 F. Supp. 3d 115, 135 (E.D. Pa. 2020) (listing allegations that plaintiff was prevented from using a bathroom that was consistent with her gender identity as among the allegations that supported her Title VII and ADA hostile work environment claims). The Commission also decided in *Lusardi* that the repeated and intentional use of pronouns inconsistent with an employee's gender identity could contribute to a hostile work environment. As described in footnote 42 of the guidance, even before *Bostock*, courts have considered evidence of intentional and repeated misgendering, viewed in light

of the totality of circumstances, as potentially supportive of a hostile work environment claim.

Substance of the Guidance

Adding More Hypothetical Examples to the Final Guidance that Address Harassment in More Contexts

Comment: Numerous commenters urged the Commission to add additional examples illustrating how the EEO laws apply to potential harassment in a variety of contexts.

Response: The final guidance has many examples involving a broad range of circumstances. The new examples provide more comprehensive guidance on the EEOC's views as to the application of federal EEO laws to potential harassment scenarios. They also highlight how harassment can affect various vulnerable populations and underserved communities, including teen workers and survivors of gender based violence. Discrimination against vulnerable populations and underserved communities is among the Commission's subject-matter priorities for fiscal years 2024-2028. *See* EEOC, Strategic Enforcement Plan Fiscal Years 2024 2028, **https://www.eeoc.gov/strategic-enforcement-plan-fiscal-years-2024-2028 (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/strategic-enforcement-plan-fiscal-years-2024-2028)** (last visited Apr. 12, 2024).

Ultimately, however, because of the fact-specific nature of these cases, the guidance necessarily cannot be exhaustive, and the guidance is not intended to illustrate every possible factual situation that might involve unlawful harassment. Rather, the guidance presents the overarching legal standards that are applied to particular circumstances in evaluating whether the EEO laws have been violated and the employer is liable. The examples are intended to be merely a small representative sample to illustrate how the legal principles apply in certain circumstances.

Totality-of-Circumstances Test

Comment: Multiple commenters requested that the Commission clarify its discussion of how to determine whether harassment is actionable based on the totality of circumstances. Some contended that the proposed guidance places too much emphasis on severity and pervasiveness and fails to properly incorporate those considerations into the broader examination of the totality of circumstances.

Response: The final guidance has been restructured, and the discussion of objective hostility in section III.B has been revised to more clearly illustrate how to evaluate whether harassment creates a hostile work environment based on the totality of circumstances. As the Supreme Court has explained, harassment based on a protected trait violates EEO law when it is sufficiently severe or pervasive to alter the conditions of employment by creating a hostile work environment. *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993). The Court has further explained that whether the work environment is hostile "can be determined only by looking at all the circumstances." *Id.* at 23. Consistent with this Supreme Court precedent, the Commission has retained separate discussions of severity and pervasiveness in the final guidance but further illustrated how they are evaluated, along with other considerations, in the context of the totality of the circumstances.

Interplay Between Statutory Harassment Prohibitions and Other Rights

Free Speech and Religion-Based Rights

Many of the individual comments addressed free speech and religion-based rights issues. Some addressed only free speech, and many addressed both free speech and religion based rights. However, because the constitutional analysis of free speech and religion based rights is different, the Commission addresses them separately.

Free Speech

Comment: Numerous commenters, including the majority of private individuals who submitted form comments, contended that the draft guidance unconstitutionally infringes on the free speech rights of employees or employers either by restricting their speech on certain issues, including abortion, or by requiring that they engage in certain speech, such as requiring the use of pronouns based on another individual's gender identity. Some commenters further requested clarification on the application of federal EEO laws to speech and expressive conduct that occurs outside the workplace, such as on personal social media accounts.

Response: The Commission fully recognizes the importance of protecting free speech and has added to the guidance specific language about the potential interaction between statutory harassment prohibitions and other legal doctrines, including the U.S. Constitution, at section I.A and footnote 363. The interplay between free speech protections and statutory harassment prohibitions in particular matters can be highly fact specific, and the Commission will carefully consider these issues as presented on a case-by-case basis. A detailed discussion of free speech principles, however, is beyond the scope of this final guidance.

Some commenters also expressed concern that, as they understood the guidance, *any* workplace discussion of religious perspectives on certain issues, such as abortion or gender identity, would be unlawful harassment. That interpretation is not correct and is not the Commission's intent. As discussed in the final guidance, whether conduct constitutes unlawful harassment depends on all the circumstances and is only unlawful under federal EEO law if it creates a hostile work environment. To help clarify that potentially offensive conduct based on a protected characteristic does not necessarily constitute unlawful harassment, the final guidance includes language in section I.B and at the beginning of section II to emphasize that conduct is not necessarily unlawful merely because it is based on a protected characteristic and that conduct also must alter a term, condition, or privilege of employment, typically by creating a hostile work environment.

Finally, the Commission revised the draft to respond to requests that it clarify its position with respect to conduct that occurs outside the workplace. Section III.C.2.c of the final guidance explains that conduct that occurs outside the workplace, including on social media accounts, and that does not target the employer or its employees and is not brought into the workplace generally will not have an impact on the workplace and therefore will not contribute to a hostile work environment.

Religion-Based Rights

Religious Accommodation Under Title VII

Comment: Many commenters urged the EEOC to address the interplay between an employer's Title VII obligation to provide a reasonable accommodation for an employee's sincerely held religious beliefs, practices, and observances and its obligation to prevent and correct unlawful harassment in the workplace. Most of these comments focused on religious expression with regard to pronouns and cited the decision in *Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2020), which held that a public university violated a professor's constitutional right to free speech by refusing to accommodate his request not to refer to a transgender student using pronouns consistent with the student's gender identity, a practice that conflicted with his religious beliefs.

Response: Section IV.C.3.b.ii(b)(7) of the guidance addresses the interaction between statutory harassment prohibitions and Title VII religious accommodation requirements with respect to expression in the workplace. The Commission revised this section of the guidance by providing more detail about the Title VII precedent as well as new examples. The Commission also added language about the Supreme Court's recent decision in *Groff v. DeJoy*, 600 U.S. 447 (2023), which clarified the undue hardship standard in Title VII religious accommodation cases.

The Commission acknowledges that in some cases, the application of the EEO statutes enforced by the EEOC may implicate other rights or requirements including those under the United States Constitution, other federal laws such

as the Religious Freedom Restoration Act (RFRA), or sections 702(a) and 703(e)(2) of Title VII. When the Commission is presented with individualized facts in an EEOC administrative harassment charge, the agency works with great care to analyze the interaction of Title VII harassment law and the rights to free speech and free exercise of religion. For further information, see the relevant sections of EEOC's Compliance Manual Section on Religious Discrimination. EEOC, *Compliance Manual Section 12: Religious Discrimination*, No. 915.063, at §§ 12-I.C, 12-III.D, and Addendum (2021), **https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination)** .

Similarly, the Commission fully recognizes the importance of the constitutional right to free speech, which was analyzed by the court in *Meriwether v. Hartop, supra*, a case cited by many commenters. While the plaintiff in that case did not plead a cause of action under Title VII, if a charge is filed with the EEOC raising similar issues, the EEOC will give the decision appropriate consideration. The Commission carefully considers the facts presented in EEOC charges alleging a failure to provide a reasonable accommodation for a religious belief, practice, or observance, and takes into consideration the employer, employment context, and other relevant facts.

Although cited in a few comments, the Commission did not cite or address in the final guidance the decision in *Kluge v. Brownsburg Community School Corp.*, 64 F.4th 861 (7th Cir. 2023). *Kluge* involves a Title VII religious accommodation claim related to pronoun and first-name use, but the Seventh Circuit vacated and remanded the case after the Supreme Court issued *Groff*. 2023 WL 4842324 (7th Cir. July 28, 2023). Once the courts have completed adjudication of *Kluge*, the Commission will give the final decision appropriate consideration when considering charges alleging these issues.

To assist employers with potential defenses, including religious defenses, in the context of individual charge investigations, the Commission is enhancing its

administrative procedures and webpages. Specifically, the Commission will revise materials accompanying the Notice of Charge of Discrimination letter and related webpages to identify how employers can raise defenses in response to a charge. This information will be public and viewable by any employer with questions or concerns about how to raise a defense, including a religious defense, in the event that one of its employees files a charge of discrimination. The Commission also will update the Respondent Portal to encourage an employer to raise in its position statement (or as soon as possible after a charge is filed) any factual or legal defenses it believes apply, including defenses based on religion.

As appropriate, the Commission will resolve a charge based on the information submitted in support of asserted defenses, including religious defenses, in order to minimize the burden on the employer and the charging party. Regardless of whether the Commission agrees with the employer's asserted defenses, those defenses are entitled to de novo review by a court in any subsequent litigation.

Interplay Between Statutory Harassment Prohibitions and the U.S. Constitution, Sections 702(a) and 703(e)(2) of Title VII, and RFRA

Comment: Numerous commenters expressed concern about the potential interaction of statutory prohibitions against discrimination, including unlawful harassment, with the religion-based rights of employees and employers, and they urged the Commission to clarify the interplay between statutory harassment prohibitions and religion-based rights protected under the U.S. Constitution, Title VII (the religious organization exceptions), and the Religious Freedom Restoration Act (RFRA).

Response: The Commission recognizes the importance of protecting religion-based rights. Because the interplay between religion based rights and statutory harassment prohibitions can be highly fact-specific, the Commission will consider these issues as presented on a case-by-case basis. The Commission added language at section I.A. and footnote 363, which highlight the potential interaction between statutory harassment prohibitions and other

legal doctrines, including the U.S. Constitution, RFRA, and sections 702(a) and 703(e)(2) of Title VII. The Commission also added more discussion, legal citations, and examples to section IV.C.3.b.ii(b)(7), which addresses balancing antiharassment and accommodation obligations with respect to religious expression. Readers seeking to learn more about the interplay between statutory harassment prohibitions and religion based rights should consult relevant portions of the EEOC's Compliance Manual Section on Religious Discrimination. *See* EEOC, *Compliance Manual Section 12: Religious Discrimination*, No. 915.063, at §§ 12 I.C, 12 III.D, and Addendum (2021), **https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination)** .

Finally, as noted above, to assist employers seeking to assert potential defenses, including religious defenses, in the context of individual charge investigations, the Commission is enhancing its administrative procedures and providing information to employers and respondents to charges.

National Labor Relations Act

Comment: Multiple commenters requested the Commission clarify the interplay between an employers' obligations to address workplace harassment under federal employment discrimination laws and to comply with the National Labor Relations Act.

Response: A discussion of the interaction of EEO laws with the National Labor Relations Act (NLRA), 29 U.S.C. § 157 et seq., is beyond the scope of this guidance, which is focused only on statutes enforced by the Commission. The National Labor Relations Board (NLRB) has the sole authority to enforce the NLRA. The EEOC consults with the NLRB's Office of General Counsel as needed to help ensure workable application of the statutory protections for both workers' civil rights and the NLRA.

[1] 477 U.S. 57 (1986).

[2] *See* EEOC, *Enforcement and Litigation Statistics*, **https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0 (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0)** (last visited Apr. 25, 2024).

[3] *See, e.g.*, *EEOC v. Sandia Transp., LLC*, No. 1:23 cv 00274 (D.N.M. consent decree entered Mar. 14, 2024) (settlement on behalf of four women subjected to sex harassment that included the owner repeatedly using various epithets and stating he hated "f*ckin' dealing with women"); *EEOC v. Schuff Steel Co.*, No. 2:22 cv 01653 (D. Ariz. consent decree entered Dec. 19, 2023) (settlement on behalf of a class of aggrieved Black and Latino employees alleging race- and national-origin-based harassment, including use of the N-word; calling Latino employees "beaners;" and ridiculing Latino employees who did not speak English well); *EEOC v. UFP Ranson, LLC*, No. 3:21-CV-00149 (N.D.W. Va. consent decree entered Sept. 28, 2023) (settlement of lawsuit alleging harassment based on race and religion on behalf of a Black Muslim worker who was repeatedly called race and religion based epithets; told that members of the Ku Klux Klan worked at the facility; had objects thrown at him while he was praying; was physically intimidated and shoulder-checked; and was required to perform tasks by means that were unnecessarily onerous); *EEOC v. Chipotle Servs., LLC*, No. 2:22 cv 00279 (W.D. Wash. consent decree entered Sept. 14, 2023) (settlement on behalf of three female employees, including a teenager, subjected to a sexually hostile work environment that included touching, unwelcome sexual comments, and requests for sex); *EEOC v. T.M.F Mooresville, LLC*, No. 5:21 cv 00128 (W.D.N.C. consent decree entered Aug. 24, 2022) (settlement on behalf of a class of White housekeeping employees allegedly subjected to harassment based on race, which included use of racially derogatory terms such as "white trash"); *EEOC v. CCC Grp.,* 1:20 cv 00610 (N.D.N.Y. consent decree entered Aug. 9, 2021) (settlement on behalf of seven Black employees at an industrial construction site allegedly subjected to repeated racist slurs, displays of nooses, and comments about lynchings by White supervisors and coworkers); *EEOC v. Nabors Corp. Servs., Inc.*, No. 5:16 cv 00758 (W.D. Tex. consent decree entered Nov. 12, 2019) (settlement on behalf of nine Black employees and one White employee

based on alleged racial harassment, which included employees being addressed as "n****r" and being referred to as the "colored crew," and retaliation, among other allegations).

[4] 42 U.S.C. § 2000e 5 (Title VII); 29 U.S.C. § 626 (Age Discrimination in Employment Act (ADEA)); 42 U.S.C. § 12117(a) (Americans with Disabilities Act (ADA)); 42 U.S.C. § 2000ff-6(a) (Genetic Information Nondiscrimination Act (GINA)). *This guidance addresses harassment claims under provisions of the federal EEO laws that prohibit discrimination by employers, including section 703(a)(1) of Title VII, 42 U.S.C. § 2000e 2(a)(1) (private sector and state and local government) and section 717 of Title VII, 42 U.S.C. § 2000e-16(a) (federal agencies). It does not address potential claims of unlawful harassment under provisions that prohibit discrimination by other entities covered under Title VII, such as employment agencies and labor organizations, including sections 703(b) and 703(c) of Title VII, 42 U.S.C. §§ 2000e-2(b) and 2000e-2(c). See, e.g.*, *Dixon v. Int'l Bhd. of Police Officers*, 504 F.3d 73, 84 85 (1st Cir. 2007) (upholding a jury verdict finding a union liable for sexual harassment that occurred during a union-sponsored bus trip).

The standards discussed here under EEOC enforced laws will not necessarily apply to claims alleging unlawful harassment under other federal laws or under state or local laws.

[5] We note, for instance, that a discussion of the interaction of EEO laws with the National Labor Relations Act (NLRA), 29 U.S.C. § 157 et seq., is beyond the scope of this guidance, which is focused only on statutes enforced by the Commission. The National Labor Relations Board (NLRB) has the sole authority to enforce the NLRA. The EEOC consults with the NLRB's Office of General Counsel as needed to help ensure workable application of the statutory protections for both workers' civil rights and the NLRA.

[6] *See* 29 C.F.R. § 1695.2(c)(7)(i).

[7] For further information, see the relevant sections of EEOC's Compliance Manual Section on Religious Discrimination. EEOC, *Compliance Manual Section 12: Religious Discrimination*, No. 915.063, §§ 12-I.C, 12-III.D, and Addendum (2021),

https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination) .

[8] *See* section VI, *infra* (providing links to EEOC harassment related resources).

[9] *See, e.g.*, *Laurent-Workman v. Wormuth*, 54 F.4th 201, 212 (4th Cir. 2022) (holding that the plaintiff established at least a plausible claim of race based harassment where a White coworker's statements that she "could not understand African Americans because they cannot speak properly communicated racial enmity by summoning an odious trope about African American speech patterns"); *Gates v. Bd. of Educ.*, 916 F.3d 631, 633 34, 640 41 (7th Cir. 2019) (concluding that a reasonable jury could find that the plaintiff was subjected to a racially hostile work environment based on three incidents with his supervisor, specifically that his supervisor made a joke in which he referred to the plaintiff as a "sh*t sniffing n****r," threatened to write up the plaintiff's "black ass," and stated he was "tired of you people" and again referred to the plaintiff as "n****r"); *Ellis v. Houston*, 742 F.3d 307, 314, 320 21 (8th Cir. 2014) (reversing a grant of summary judgment for the defendants on the plaintiffs' racial harassment claims under 42 U.S.C. §§ 1981 and 1983 where there was evidence of a widespread pattern of racial harassment that included racial stereotyping, such as referring to the African American plaintiffs as "the gang" or "the back of the bus" and addressing them with comments about the "hood" or fried chicken and watermelon); *Boone v. Old Colony Young Men's Christian Ass'n*, No. 13-13131, 2015 WL 7253676, at *3 (D. Mass. Nov. 17, 2015) (concluding that a reasonable jury could find that a reference to a pornographic movie with a title based on racial stereotypes constituted race based harassment); *Chambers v. Walmart Stores, Inc.*, No. 1:14CV996, 2015 WL 4479100, at *1, *3 (M.D.N.C. July 22, 2015) (recommending denial of a motion to dismiss a racial harassment claim alleging that a manager used racial slurs and negative racial stereotypes, such as referring to Black people as "Blackie" and using the term "ghetto" to describe the appearance of the store), *report and recommendation adopted*, 2015 WL 5147056 (Sept, 1, 2015).

lectures about her prospects for salvation during working hours, made highly personal inquiries into her private life (e.g., the legitimacy of her children, and whether a prior marriage had been terminated by divorce versus the doctrine of annulment sanctioned by the Catholic Church), and 'strongly suggested [she] talk with God'"); *see also EEOC v. Preferred Mgmt. Corp.*, 216 F. Supp. 2d 763, 837 (S.D. Ind. 2002) (discussing how employers' "expectations" regarding alleged voluntary participation in religious activities can amount to coercion).

[25] *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 65 (1986) (stating that sex based harassment includes "[u]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature" (alteration in original) (quoting 29 C.F.R. § 1604.11(a))); *see also, e.g.*, *Hatley v. Hilton Hotels Corp.*, 308 F.3d 473, 475 (5th Cir. 2002) (holding that the district court erred in granting judgment as a matter of law for the employer where sex-based harassment consisted of repeated touching, vulgar comments, propositions, and physical aggression).

[26] Harassment based on sex is often referred to interchangeably as sex-based harassment or sexual harassment, without regard to whether the harassment at issue involves what this document refers to as "sexual conduct."

[27] *See, e.g.*, *Waldo v. Consumers Energy Co.*, 726 F.3d 802, 815 (6th Cir. 2013) (explaining that non-sexual conduct can be based on sex and therefore contribute to a sex-based hostile work environment); *Rosario v. Dep't of the Army*, 607 F.3d 241, 248 (1st Cir. 2010) (stating that conduct that does not have sexual connotations can contribute to a sex based hostile work environment).

[28] *See infra* Example 35: Comparative Evidence Gives Rise to Inference that Harassment Is Based on a Protected Characteristic (providing an example of facially sex-neutral offensive conduct motivated by sex, such as bullying directed toward employees of one sex).

[29] This document does not analyze application of the Pregnant Workers Fairness Act to harassment based on an employee's request for, or receipt of, an accommodation.

[30] *See Walsh v. Nat'l Comput. Sys., Inc.*, 332 F.3d 1150, 1160 (8th Cir. 2003) (upholding jury verdict finding the plaintiff was subjected to a hostile work environment based on pregnancy where the plaintiff's supervisor made numerous derogatory comments about her pregnancy and required the plaintiff to provide advance notice and documentation of doctor's appointments, even though the plaintiff's coworkers were not required to provide such information for appointments); *Fugarino v. Milling, Benson, Woodward LLP*, No. 21 594, 2022 WL 6743191, at *3 (E.D. La. Oct. 11, 2022) (denying summary judgment to the employer on the plaintiff's claim of pregnancy based harassment alleging, among other things, that she was subjected to comments about the size of her breasts, the "shape and curves of her body" as an Italian pregnant woman, and how her "'milk' would come in" and make her breasts even larger); *Young v. AlaTrade Foods, LLC*, 2:18-CV-00455, 2019 WL 4245688, at *2 (N.D. Ala. Sept. 6, 2019) (denying summary judgment to the employer on the plaintiff's sexual harassment claim alleging that she was subjected to conduct that included comments from the plaintiff's supervisor who, upon learning she was pregnant, told her "he was upset because he did not want anyone else to have her," "made sexual hand gestures with his smock in front of her and told her that she had 'nice breasts' that were 'a nice size for sucking,'" said she had a "fine sexy ass," touched her, whispered in her ear, touched/grazed her buttocks, and showed her pictures of himself partially undressed).

[31] 42 U.S.C. § 2000e(k) ("The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions ....").

[32] *See Hicks v. City of Tuscaloosa*, 870 F.3d 1253, 1260 (11th Cir. 2017) (concluding that Title VII prohibits discrimination based on breastfeeding); *EEOC v. Hous. Funding II, Ltd.*, 717 F.3d 425, 430 (5th Cir. 2013) (holding that Title VII prohibits discharging an employee because she is lactating).

[33] *See* EEOC, *Enforcement Guidance on Pregnancy Discrimination and Related Issues* § I.A.3.d (2015), **https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues#IA3d (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/laws/gu**

idance/enforcement-guidance-pregnancy-discrimination-and-related-issues#IA3d) (stating that Title VII prohibits discrimination against a woman because she uses contraceptives and citing cases).

[34] *See id.* § I.A.4.c, **https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues#IA4c (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues#IA4c)** ; *see also, e.g.*, *Doe v. C.A.R.S. Prot. Plus, Inc.*, 527 F.3d 358, 364 (3d Cir. 2008) (holding that Title VII prohibits discrimination against a female employee because she has had an abortion); *Turic v. Holland Hosp., Inc.*, 85 F.3d 1211, 1214 (6th Cir. 1996) (same). Title VII would similarly prohibit adverse employment actions against an employee based on her decision not to have an abortion. *Velez v. Novartis Pharms. Corp*., 244 F.R.D. 243, 267 (S.D.N.Y. 2007) (concluding that a declaration by a female employee that she was encouraged by a manager to get an abortion was anecdotal evidence supporting a class claim of pregnancy discrimination).

[35] *See Zuckerman v. GW Acquisition LLC*, No. 20 CV 8742, 2021 WL 4267815, at *2 (S.D.N.Y. Sept. 20, 2021) (denying the defendant's motion for summary judgment where two owners made a series of offensive comments about the plaintiff's decision to breastfeed and to pump breastmilk at the office, including one owner asking "'if he could 'have some milk in [his] coffee' and whether [the plaintiff] could 'just squirt it in there,'" and another owner "frequently yell[ing] 'pump station' or 'pumper' when he would pass the designated pumping area in the office").

[36] *See Bostock v. Clayton Cnty.*, 590 U.S. 644 (2020); *Copeland v. Ga. Dep't of Corr.*, ___ F.4th ___, No. 22-13073, 2024 WL 1316677, at *5 (11th Cir. Mar. 28, 2024) (citing *Bostock* and stating that "discrimination against transgender individuals like [the plaintiff] is discrimination 'because of sex'"); *Sch. of the Ozarks, Inc. v. Biden*, 41 F.4th 992, 995 (8th Cir. 2022) ("*Bostock* held that the statute's prohibition on employment discrimination 'because of sex' encompasses discrimination on the basis of sexual orientation and gender identity."); *Olivarez v. T Mobile USA, Inc.*, 997 F.3d 595, 598 (5th Cir. 2021) ("Under *Bostock v. Clayton County*, discrimination on the basis of sexual orientation or gender identity is a form of sex discrimination under Title VII.").

In its decisions regarding federal employees' EEO claims, the Commission has concluded that discrimination on the basis of sexual orientation or gender identity violates Title VII. *See, e.g.*, *Lusardi v. Dep't of the Army*, EEOC Appeal No. 0120133395, 2015 WL 1607756, at *10-13 (Apr. 1, 2015) (finding that harassment violated section 717 of Title VII, which prohibits federal agencies from engaging in employment discrimination on the basis of sex, because the harassment was based on the plaintiff's gender identity); *Baldwin v. Dep't of Transp.*, EEOC Appeal No. 0120133080, 2015 WL 4397641, at *5, *10 (July 15, 2015) (concluding as a matter of law that sexual orientation is inherently "a 'sex based consideration,'" and that an allegation of discrimination based on sexual orientation is necessarily an allegation of sex discrimination under section 717 of Title VII).

[37] *Bostock* itself concerned allegations of discriminatory discharge, but the Supreme Court's reasoning in the decision about the nature of discrimination based on sex logically extends to claims of harassment that change the terms, conditions, or privileges of employment under section 703(a)(1) of Title VII. As a result, courts have readily found post-*Bostock* that claims of harassment based on one's sexual orientation or gender identity are cognizable under Title VII. *See, e.g.*, *Copeland*, 2024 WL 1316677, at *5 (citing *Bostock* and stating that "a transgender man who was harassed about his gender after coming out at work" was subjected to ""discrimination 'because of sex'"); *Roberts v. Glenn Indus. Grp., Inc.*, 998 F.3d 111, 121 (4th Cir. 2021) ("[T]he Supreme Court's holding in *Bostock* makes clear that a plaintiff may prove that same sex harassment is based on sex where the plaintiff was perceived as not conforming to traditional male stereotypes."); *Doe v. City of Det.*, 3 F.4th 294, 300 n.1 (6th Cir. 2021) (stating that harassment on the basis of transgender identity is sex discrimination under Title VII because "it is impossible to discriminate against a person for being . . . transgender without discriminating against that individual based on sex"); *Simmons v. Starved Rock Casework LLC*, No. 20 CV 1684, 2021 WL 5359017, at *2 (E.D. Wis. Nov. 17, 2021) (finding that the plaintiff had stated a claim for relief by alleging a hostile work environment based on his heterosexual status); *Boney v. Tex. A&M Univ.*, No. 4:19-CV-2594, 2021 WL 3640714, at *4 n.5 (S.D. Tex. July 19, 2021) ("The Fifth Circuit has construed the Supreme Court's recent decision in *Bostock* as holding that Title VII prohibits workplace discrimination based on homosexuality[; therefore] a plaintiff may

establish a Title VII violation by showing a hostile work environment based on sexual orientation discrimination." (citing *Newbury v. City of Windcrest*, 991 F.3d 672, 676 77 (5th Cir. 2021))); *EEOC v. R.G. &. G.R. Harris Funeral Homes, Inc*., 884 F.3d 560, 571 (6th Cir. 2018) (Title VII covers both failure to conform to sex stereotypes and transgender or transitioning status), *aff'd sub nom. Bostock v. Clayton Cnty.*, 590 U.S. 644 (2020); *Doe v. Triangle Doughnuts, LLC*, 472 F. Supp. 3d 115, 129 (E.D. Pa. 2020) ("It naturally follows [from *Bostock*] that discrimination based on gender stereotyping falls within Title VII's prohibitions."). In addition, in the context of federal sector cases, the Commission has concluded that sex based harassment includes harassment based on sexual orientation or gender identity. *See, e.g.*, *Lusardi*, 2015 WL 1607756, at *10-13 (finding that harassment based on the plaintiff's transgender status violates section 717); *Baldwin*, 2015 WL 4397641, at *7-8 (stating that discrimination, including harassment, that is based on sexual orientation violates section 717).

[38] *See, e.g.*, *Eller v. Prince George's Cnty. Pub. Sch.*, 580 F. Supp. 3d 154, 173 (D. Md. 2022) (concluding that a reasonable jury could find that the plaintiff was subjected to gender identity-based harassment that was objectively severe or pervasive, including derogatory terms referring to her transgender status); *Brooks v. Temple Univ. Health Sys., Inc.*, No. 21 1803, 2022 WL 1062981, at *12 (E.D. Pa. Apr. 8, 2022) (denying summary judgment to the employer on the plaintiff sex-based hostile work environment claim where the plaintiff alleged, among other things, that he was called a "f*ggot").

[39] *See, e.g.*, *Roberts*, 998 F. 3d at 121 (stating that alleged physical assaults may be part of a pattern of objectionable, sex based discriminatory behavior that supports a hostile environment claim); *Eller*, 580 F. Supp. 3d at 173 (holding that a reasonable jury could find that alleged harassment, which included "multiple physical assaults, including one incident when [a transgender teacher] was shoved out of a door, and two incidents . . . when students who had used slurs about her transgender status stepped and pressed down hard on her foot," was objectively severe or pervasive).

[40] *See, e.g.*, *Doe v. Arizona*, No. CV-18-00348, 2019 WL 2929953, at *3 (D. Ariz. July 8, 2019) (denying summary judgment to the employer on the plaintiff's sex-based

harassment claim where the plaintiff, a corrections officer, presented evidence including that "supervisors regularly disregarded his requests to conceal his status for the purpose of protecting his safety, and repeatedly engaged in behavior that may be considered harassment by a jury"); *Roberts v. Clark Cnty. Sch. Dist.*, 215 F. Supp. 3d 1001, 1017 (D. Nev. 2016) (denying summary judgment to the employer on a school police officer's sex based harassment claim where the employee was "blindsided" by emails that the school district sent to every police department employee disclosing sensitive information about the plaintiff's sexual identity and invited coworkers to ask questions about his transition).

[41] *See, e.g.*, *Brooks*, 2022 WL 1062981, at *12 (stating that comments that included "being picked on for his feminine presentation" may be "severe enough to alter the conditions of one's work environment").

[42] *See Copeland*, 2024 WL 1316677, at *5 9 (concluding that a reasonable jury could find that a male transgender corrections officer was subjected to a sex-based hostile work environment where, among other things, supervisors, coworkers, and inmates intentionally and repeatedly referred to him using feminine pronouns or called him "ma'am"). Courts even prior to the Supreme Court's *Bostock* decision have viewed evidence of intentional misgendering of transgender persons as supportive of a hostile work environment claim under Title VII. *See, e.g.*, *Houlb v. Saber Healthcare Grp.*, No. 1:16CV02130, 2018 WL 1151566, at *2 (N.D. Ohio Mar. 2, 2018) (holding that the alleged misgendering, together with the other alleged offensive conduct, was sufficiently severe or pervasive to constitute a violation of Title VII for purposes of summary judgment); *Tudor v. Se. Okla. State Univ.*, No. CIV 15 324 C, 2017 WL 4849118, at *1 (W.D. Okla. Oct. 26, 2017) (same); *Versace v. Starwood Hotels & Resorts Worldwide, Inc.*, No. 6:14-cv-1003-Orl-31KRS, 2015 WL 12820072, at *7 (M.D. Fla. Dec. 3, 2015) (considering alleged misgendering to support the plaintiff's hostile environment claim, but finding the alleged incidents to be insufficiently frequent or severe to constitute a violation); *see also Triangle Doughnuts, LLC*, 472 F. Supp. 3d at 129-30 (holding that the employee plausibly alleged sex-based harassment based in part on being regularly misgendered); *Parker v. Strawser Constr., Inc.*, 307 F. Supp. 3d 744, 758 (S.D. Ohio 2018) (same).

In federal sector EEO appeals, the Commission has concluded that misgendering and denial of access to a bathroom consistent with the individual's gender identity may constitute sex discrimination in violation of Title VII. *See, e.g.*, *Jameson v. U.S. Postal Serv.*, EEOC Appeal No. 0120130992, 2013 WL 2368729, at *2 (May 21, 2013) (stating that repeated, intentional misuse of the name or pronoun with which a transgender employee identifies may constitute sex based harassment); *Lusardi*, 2015 WL 1607756, at *10 13 (holding that a supervisor's repeated and intentional use of the incorrect name and pronouns for the complainant, in addition to the agency's refusal to allow the complainant to use the restroom consistent with her gender identity, were actions sufficiently severe or pervasive to subject the complainant to a hostile work environment based on her sex).

[43] *See, e.g.*, *Triangle Doughnuts*, 472 F. Supp. 3d at 129, 135 (listing allegations that plaintiff was prevented from using a bathroom that was consistent with her gender identity as among the allegations that supported her Title VII and ADA hostile work environment claims). In addition to being part of a harassment claim, denial of access to a bathroom consistent with one's gender identity may be a discriminatory action in its own right and should be evaluated accordingly. *See, e.g.*, *Lusardi*, 2015 WL 1607756, at *6 10 (finding that the agency subjected a transgender employee to disparate treatment when it restricted her access to the women's restroom on account of her gender identity).

[44] *See Heller v. Columbia Edgewater Country Club*, 195 F. Supp. 2d 1212, 1217 (D. Or. 2002) (denying summary judgment to the employer where the alleged harassment included "questions such as, 'Do you wear the dick in the relationship?' and, 'Are you the man?'").

[45] This example is adapted from the facts in *Cunningham v. Burlington Coat Factory Warehouse Corp.*, No. 1:18-cv-11266, 2024 WL 863236 (D.N.J. Feb. 29, 2024).

Additional cases involving harassment based on gender identity include *Copeland*, 2024 WL 1316677; *Eller v. Prince George's Cnty. Pub. Sch.*, 580 F. Supp. 3d 154 (D. Md. 2022); *Grimes v. Cnty. of Cook*, 19-cv-6091, 2022 WL 1641887 (N.D. Ill. May 24, 2022); *Triangle Doughnuts*, 472 F. Supp. 3d 115; *Doe v. Arizona*, 2019 WL 2929953; and *Drew*

v. U.S. Dep't of Veterans Affs., No. CV H-16-3523, 2023 WL 186881 (S.D. Tex. Jan. 12, 2023).

[46] 29 U.S.C. § 623(a)(1) ("It shall be unlawful for an employer to . . . otherwise discriminate against any individual with respect to . . . [the] terms, conditions, or privileges of employment, because of such individual's age.").

[47] The ADEA does not apply to discrimination or harassment based on workers being younger than others, such as harassment based on the belief that someone is too young for a certain position, even if the targeted individual is forty or over. *See Gen. Dynamics Land Sys., Inc. v. Cline*, 540 U.S. 581, 600 (2004) (holding that the ADEA does not prohibit favoring older workers over younger workers, even if the younger workers are within the protected class of individuals forty or older).

[48] *See, e.g.*, *Dediol v. Best Chevrolet, Inc.*, 655 F.3d 435, 442 43 (5th Cir. 2011) (holding that a fact finder could conclude that the plaintiff, a used car salesperson, was subjected to a hostile work environment based on his age where the plaintiff's supervisor had made profane, age based references to the plaintiff up to half a dozen times a day, the supervisor had engaged in physically threatening behavior toward the plaintiff, and the supervisor had "steered" sales away from the plaintiff and toward younger salespersons).

[49] *See, e.g.*, *Davis Garett v. Urb. Outfitters, Inc.*, 921 F.3d 30, 42 (2d Cir. 2019) (the plaintiff adduced sufficient evidence of age based hostile work environment where, in addition to age-based remarks, "from the start of her employment . . ., [she was] denied the training given to younger sales associates and relegated to work almost exclusively in the fitting room, and later [] assigned the most unpleasant and arduous duties"); *Guthrie v. J.C. Penney Co.*, 803 F.2d 202, 208 (5th Cir. 1986) (repeated inquiries into the plaintiff's retirement plans constituted evidence of "intentional harassment" sufficient to support claim of age based constructive discharge); *see also Written Testimony of Patrick Button, Assistant Professor, Department of Economics, Tulane University*, EEOC Meeting of June 14, 2017 - The ADEA @ 50 - More Relevant Than Ever, **https://www.eeoc.gov/meetings/meeting-june-14-2017-adea-50-more-relevant-ever/button (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/meeting**

not accurately describe the employee's actual country of origin); *Goings v. Lopinto*, No. 22 2549, 2023 WL 2709826, at *5 (E.D. La. Mar. 30, 2023) (stating that "[d]iscrimination on the basis of sexual orientation, including perceived sexual orientation, is prohibited under Title VII" and denying the employer's motion to dismiss where the plaintiff alleged he was called slurs and derogatory terms targeting homosexual individuals by his supervisor, who perceived the plaintiff as gay after seeing a photograph of the plaintiff shirtless and wrestling another male coworker); *Kallabat v. Mich. Bell Tel. Co.*, No. 12-CV-15470, 2015 WL 5358093, at *3-4 (E.D. Mich. June 18, 2015) (denying summary judgment to the employer on the plaintiff's claim that he was harassed based on the mistaken perception that he was Muslim); *Arsham v. Mayor & City Council of Balt.*, 85 F. Supp. 3d 841, 844, 849 (D. Md. 2015) (holding that an employee of Persian descent stated a valid claim of national origin discrimination and harassment even though her employer mistakenly believed her to be a member of the Parsee ethnic group, which the plaintiff researched and believed originated in India and was a lower caste). *But see, e.g.*, *Yousif v. Landers McClarty Olathe KS, LLC*, No. 12 2788, 2013 WL 5819703, at *3 4 (D. Kan. Oct. 29, 2013) (stating that "perceived" discrimination claims are not cognizable under Title VII); *El v. Max Daetwyler Corp.*, No. 3:09-CV-415, 2011 WL 1769805, at *5-6 (W.D.N.C. May 9, 2011) (rejecting the proposition that Title VII provides a claim for discrimination based on misperception), *aff'd*, 451 F. App'x 257 (4th Cir. 2011).

[67] *See, e.g.*, *Frith v. Whole Foods Mkt., Inc.*, 38 F.4th 263, 272 (1st Cir. 2022) (concluding that claims alleging discrimination based on interracial association "are fundamentally consistent with *Bostock v. Clayton County*, 590 U.S. 644 (2020)] and Title VII's plain language prohibiting action 'because of such individual[ ]' plaintiff's race"); *Barrett v. Whirlpool Corp.*, 556 F.3d 502, 512 (6th Cir. 2009) (observing that "Title VII protects individuals who . . . are 'victims of discriminatory animus toward [protected] third persons with whom the individuals associate'" and that a complainant may be discriminated against based on his own race because the difference between his race and the race of the individual with whom he associated was the cause of the discrimination (quoting *Tetro v. Elliott Popham Pontiac, Oldsmobile, Buick, & GMC Trucks, Inc.*, 173 F.3d 988, 994 (6th Cir. 1999))); *Holcomb v. Iona Coll.*, 521 F.3d 130, 138-39 (2d Cir. 2008) (holding that Title VII prohibits

discrimination based on interracial association and observing that multiple other circuits agree); *cf. Thompson v. N. Am. Stainless, LP*, 562 U.S. 170, 175 78 (2011) (holding that the plaintiff had standing to sue under Title VII where he alleged that his employer terminated him in order to retaliate against his fiancée for a sex discrimination charge she filed against their mutual employer; in authorizing a "person aggrieved" to file a charge or bring a lawsuit, Title VII provides a cause of action to those within the "zone of interests" "arguably [sought] to be protected by the statute"); *Kelleher v. Fred A. Cook, Inc.*, 939 F.3d 465, 467-70 (2d Cir. 2019) (ruling that the plaintiff had stated a claim of associational discrimination under the ADA where he alleged that he was qualified to perform his job but was discriminated against based on his employer's perception that he was unavailable or distracted due to his daughter's medical condition).

68 *See, e.g.*, *Zarda v. Altitude Express, Inc.*, 883 F.3d 100, 128 (2d Cir. 2018) (en banc) ("[W]e hold that sexual orientation discrimination, which is based on an employer's opposition to association between particular sexes and thereby discriminates against an employee based on their own sex, constitutes discrimination 'because of . . . sex.'"), *aff'd on other grounds sub nom. Bostock v. Clayton Cnty.*, 590 U.S. 644 (2020).

69 *Holcomb*, 521 F.3d at 131.

70 *Tetro*, 173 F.3d at 994 ("A white employee who is discharged because his child is biracial is discriminated against on the basis of his race, even though the root animus for the discrimination is a prejudice against the biracial child.").

71 *See, e.g.*, *Barrett*, 556 F.3d at 513 (concluding that the district court erred in rejecting two White employees' claim of associational discrimination on the grounds that they failed to show the "requisite degree of association" with Black coworkers and explaining that the degree of association is irrelevant in assessing whether a plaintiff has a valid claim of associational discrimination (citing *Drake v. 3M*, 134 F.3d 878, 884 (7th Cir. 1998)); *cf. Kengerski v. Harper,* 6 F.4th 531, 534-35, 539 (3d Cir. 2021) (noting that associational discrimination is not limited to close or substantial relationships and ruling that the complainant could pursue his

retaliation claim for making a complaint regarding harassment based on his association with his biracial grand niece).

[72] *See, e.g.*, *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 77-79 (1998) (involving male employees sexually harassing a male coworker); *Johnson v. Advocate Health & Hosps. Corp.*, 892 F.3d 887, 908 (7th Cir. 2018) (rejecting "entirely" the view that it "strains credulity" that African Americans might be subjected to unlawful race based harassment where many managers in the same workplace were also African American and explaining that there are many reasons why women and minorities might tolerate discrimination against members of their own class or might participate in the discrimination themselves).

[73] *See Dediol v. Best Chevrolet, Inc.*, 655 F.3d 435, 438 (5th Cir. 2011).

[74] This example is adapted from the facts in *Kang v. U. Lim Am., Inc.*, 296 F.3d 810 (9th Cir. 2002).

[75] *See, e.g.*, *Masud v. Rohr-Grove Motors, Inc.*, No. 13 C 6419, 2015 WL 5950712, at *3-5 (N.D. Ill. Oct. 13, 2015) (denying summary judgment for the employer on the plaintiff's harassment claim based on "evidence, viewed in the light most favorable to plaintiff, support[ing] a pervasive pattern of discriminatory harassment based on not one but various protected characteristics all at once"); *see also Lam v. Univ. of Haw.*, 40 F.3d 1551, 1562 (9th Cir. 1994) (recognizing a claim of intersectional discrimination against an Asian woman, despite favorable consideration of an Asian man and a White woman, noting that "when a plaintiff is claiming race *and* sex bias, it is necessary to determine whether the employer discriminates on the basis of that *combination* of factors, not just whether it discriminates against people of the same race or of the same sex" (emphasis in the original)); *Jefferies v. Harris Cnty. Cmty. Action Ass'n*, 615 F.2d 1025, 1032-34 (5th Cir. 1980) (recognizing that "discrimination against black females can exist even in the absence of discrimination against black men or white women").

[76] *See, e.g.*, *Frappied v. Affinity Gaming Black Hawk, LLC*, 966 F.3d 1038, 1048 (10th Cir. 2020) (recognizing Title VII claim alleging discrimination against older women).

[77] *E.g.*, *Ahmed v. Astoria Bank*, 690 F. App'x 49, 51 (2d Cir. 2017) (holding that a reasonable jury could find that the plaintiff was subjected to unlawful harassment based on race, national origin, and religion, based in part on a senior supervisor's comments that she should remove her hijab, which he called a "rag," and his comment on September 11, 2013, that the plaintiff and two other Muslim employees were "suspicious" and that he was thankful he was "in the other side of the building in case you guys do anything").

[78] *See, e.g.*, *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250 (1989) (plurality opinion) ("In the specific context of sex stereotyping, an employer who acts on the basis of a belief that a woman cannot be aggressive, or that she must not be, has acted on the basis of gender."); *Tang v. Citizens Bank*, 821 F.3d 206 (1st Cir. 2016) (reversing summary judgment for the employer where harassment of an Asian woman included a discussion of the purported obedience of Asian women); *EEOC v. Boh Bros. Constr. Co.*, 731 F.3d 444, 459 (5th Cir. 2013) (en banc) (upholding a jury verdict on the grounds that a claim that a male employee was harassed because of sex could be established by evidence showing that the male harasser targeted the employee for not conforming to the harasser's "manly-man" stereotype); *Waldo v. Consumers Energy Co.*, 726 F.3d 802 (6th Cir. 2013) (harassment of a female employee in a heavily male environment included telling her to "pee like a man" and ridiculing her for carrying a purse); *Rosario v. Dep't of Army*, 607 F.3d 241, 244 (1st Cir. 2010) (harassment included a supervisor constantly complaining about the plaintiff's work attire and bringing coworkers to look at her clothes); *Prowel v. Wise Bus. Forms, Inc*., 579 F.3d 285 (3d Cir. 2009) (denying summary judgment for employer where the plaintiff was harassed based on gender stereotypes of how a man should look, speak, and act because the plaintiff had a high voice; walked in a certain manner; did not curse; was very well groomed; crossed his legs; and discussed topics like art, music, and interior design); *Kang*, 296 F.3d 810 (hostile work environment claim based on supervisor's stereotypical notions that Korean workers were better than others and that the plaintiff failed to live up to his supervisor's expectations); *Nichols v. Azteca Rest. Enters*., 256 F.3d 864 (9th Cir. 2001) (systemic abuse of a male restaurant employee for failing to conform to male stereotypes); *Eller v. Prince George's Cnty. Pub. Sch.*, 580 F. Supp. 3d 154 (D. Md. 2022) (employer's response to harassment of transgender teacher included trying to hide

plaintiff's gender identity by restricting her clothes, footwear, make-up, and nail polish); *Membreno v. Atlanta*, 517 F. Supp. 3d 425 (D. Md. 2021) (harassment of transgender worker included questioning how a man could be attracted to her and ridiculing and demeaning her when she used the ladies' bathroom to the point that she would avoid relieving herself); *Doe v. Triangle Doughnuts, LLC*, 472 F. Supp. 3d 115, 129 (E.D. Pa. 2020) (harassment of transgender worker included being subjected to a stricter dress code than other female employees); *Parker v. Strawser Constr., Inc.*, 307 F. Supp. 3d 744 (S.D. Ohio 2018) (denying motion to dismiss transgender woman's hostile work environment claim, which included allegations that she was told to "just dress like a man," that she made an "ugly woman," and that after the worker complained of several years of harassment, she was told to "be like a man" and "act like a man"); *Salinas v. Kroger Tex., L.P.*, 163 F. Supp. 3d 419 (S.D. Tex. 2016) (harassment of male coworker was based on the harasser's perception that the plaintiff was effeminate and had "a body like a woman"); *Barrett v. Pa. Steel Co.*, No. 2:14-CV-01103, 2014 WL 3572888 (E.D. Pa. July 21, 2014) (male plaintiff who worked in "office" portion of facility stated claim of sex harassment where he alleged that he was "made fun of and sexually harassed because he did not participate in cursing or engage in crude banter as did his male co-workers from the 'shop' portion of the facility"); *Zhao v. State Univ. of New York.*, 472 F. Supp. 2d 289, 313 (E.D.N.Y 2007) (denying the employer's motion for summary judgment where evidence included "facially neutral incidents [that] could be consistent with an employer [] punishing an employee for not achieving a standard of performance that has been improperly inflated due to impermissible ethnic stereotyping" where supervisor allegedly made comments suggesting "Chinese employees should work longer and harder than anyone else"); *Rubin v. Kirkland Chrysler-Jeep, Inc.*, 98 Fair Empl. Prac. Cas. (BNA) 159, 2006 WL 1009338 (W.D. Wash. Apr. 13, 2006) (harassment included references to stereotypes of Jews as both cheap and unduly interested in money).

[79] *See Plaetzer v. Borton Auto., Inc.*, No. Civ. 02 3089, 2004 WL 2066770, at *6 (D. Minn. Aug. 13, 2004) (concluding that the plaintiff had presented sufficient evidence to send her harassment claim to a jury where she experienced repeated comments and other conduct implying or stating that she was unqualified and could be fired at any time because she was a woman and because she spent too much time caring

for her children); *see also Chadwick v. Wellpoint*, *Inc.*, 561 F.3d 38, 42, 47-48 (1st Cir. 2009) (holding that a reasonable jury could find that the plaintiff, the mother of an eleven year old and six year old triplets, was denied a promotion based on the "common stereotype about the job performance of women with children").

[80] *See Burns v. Johnson*, 829 F.3d 1, 13 14, 17 (1st Cir. 2016) (holding that a reasonable jury could conclude that a male supervisor's harassment of a female subordinate was based, in part, on the gender stereotype that women do not belong in positions of leadership).

[81] *See, e.g.*, *Price Waterhouse*, 490 U.S. at 250.

[82] *Aman v. Cort Furniture Rental Corp.*, 85 F.3d 1074, 1082 (3d Cir. 1996) (describing insults directed at Black employees based on negative stereotyping such as "don't touch anything" and "don't steal" as "inherently racist").

[83] The causation principles discussed in this enforcement guidance focus on hostile work environment claims. As discussed below in section III.A, however, unlawful harassment can also involve an explicit change to a term, condition, or privilege of employment, such as the denial of a promotion for rejecting sexual advances. For more guidance on how to evaluate an allegation involving an explicit change to employment, refer to EEOC guidance that discusses discriminatory employment decisions. *See, e.g.*, EEOC, *Enforcement Guidance on National Origin Discrimination* § III (2016), **https://www.eeoc.gov/laws/guidance/eeoc-enforcement-guidance-national-origin-discrimination#_Toc451518806 (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/laws/guidance/eeoc-enforcement-guidance-national-origin-discrimination# Toc451518806)** ; EEOC, *Compliance Manual Section 15: Race & Color Discrimination* § 15-V.A (2006), **https://www.eeoc.gov/laws/guidance/section-15-race-and-color-discrimination#VA (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/laws/guidance/section-15-race-and-color-discrimination#VA)** .

[84] *See, e.g.*, *Tademe v. Saint Cloud State Univ.*, 328 F.3d 982, 991 (8th Cir. 2003) (holding that the employer was entitled to summary judgment where evidence showed that harassment was based on inter departmental politics and personality conflicts).

[85] In this example, there was no evidence that the harassment was based on color, national origin, or any another legally protected characteristic. By contrast, harassment based on a legally protected characteristic is covered under EEO law even if it also is based on non protected reasons.

[86] This example is adapted from the facts in *Webb v. Merck & Co.*, 450 F. Supp. 2d 582 (E.D. Penn. 2006). "A reasonable jury could find that statements such as 'my animals' and 'zookeeper,' when used in referring solely to African-American employees, 'send a clear message and carry the distinct tone of racial motivations and implications. They could be seen as conveying the message that members of a particular race are disfavored and that members of that race are, therefore, not full and equal members of the workplace.'" *Id.* at 597 (quoting *Aman v. Cort Furniture Rental Corp.*, 85 F.3d 1074, 1083 (3d Cir. 1996)); *see also Galdamez v. Potter*, 415 F.3d 1015, 1024 n.6 (9th Cir. 2005) ("[T]here are no 'talismanic expressions' of racial animus necessary to sustain a harassment claim, and . . . racially charged 'code words' may provide evidence of discriminatory intent by 'sending a clear message and carrying the distinct tone of racial motivations and implications.'" (quoting *McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1117 (9th Cir. 2004))).

For a discussion of how the link between harassment and a protected basis can be established by context, see section II.B.4.

[87] *See, e.g.*, *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 69 (1986) (citing 29 C.F.R. § 1604.11(b) for the proposition that "the trier of fact must determine the existence of sexual harassment in light of 'the record as a whole' and 'the totality of the circumstances'").

[88] In this document, use of the term "discriminatory" to describe conduct means only that the conduct was based on a protected characteristic and does not indicate

that conduct necessarily satisfies other legal requirements to establish that the conduct violates federal EEO laws, such as creating a hostile work environment.

[89] *See, e.g.*, *Roy v. Correct Care Sols., LLC*, 914 F.3d 52, 63 (1st Cir. 2019) (stating that "the use of sexually degrading, gender specific epithets, such as . . . 'b*tch,' . . . constitute[s] harassment based upon sex" (omissions and second alteration in original) (quoting *Forrest v. Brinker Int'l Payroll Co.*, 511 F.3d 225, 229 (1st Cir. 2007))); *Arrieta Colon v. Wal Mart P.R., Inc.*, 434 F.3d 75, 80, 89 (1st Cir. 2006) (agreeing with the lower court that there was sufficient evidence to support the jury verdict on the plaintiff's ADA hostile work environment claim where the plaintiff had a medical condition relating to sexual dysfunction and was subjected to "constant mockery and harassment . . . by fellow coworkers and supervisors alike due to his condition," including comments about impotence, his "pump," and his sexual functioning); *Spriggs v. Diamond Auto Glass*, 242 F.3d 179, 185-86 (4th Cir. 2001) (holding that a workplace where a supervisor constantly referred to African Americans as "monkeys" and "n****rs" was a racially hostile work environment, noting that "the word 'n****r' is pure anathema to African-Americans" and that calling someone a "monkey" "goes far beyond the merely unflattering; it is degrading and humiliating in the extreme").

[90] *Gallagher v. C.H. Robinson Worldwide, Inc.*, 567 F.3d 263, 271 (6th Cir. 2009) (concluding that women were subjected to sex discrimination by conduct that was patently degrading to women, even though members of both sexes were exposed to the conduct, and concluding that such conduct discriminates against women, irrespective of the harasser's motive); *see also Roy*, 914 F.3d at 63 (noting that gender specific epithets can ground a harassment claim "[r]egardless of [the harasser's] particular and subjective motives"); *Winsor v. Hinckley Dodge, Inc.*, 79 F.3d 996, 1001 (10th Cir. 1996) (concluding that sex based epithets discriminated against the plaintiff based on her sex even if they were motivated by gender neutral reasons); *Walker v. Ford Motor Co.*, 684 F.2d 1355, 1359 (11th Cir. 1982) (concluding that use of the terms "n****r-rigged" and "black ass" supported a race-based hostile work environment claim even though, the employer asserted, they were not "intended to carry racial overtones"); *cf. Int'l Union, United Auto., Aerospace & Agric. Workers of Am. v. Johnson Controls, Inc.*, 499 U.S. 187, 199 (1991) ("[T]he absence of a

malevolent motive does not convert a facially discriminatory policy into a neutral policy with a discriminatory effect. Whether an employment practice involves disparate treatment through explicit facial discrimination does not depend on why the employer discriminates but rather on the explicit terms of the discrimination."); *Lounds v. Lincare, Inc.*, 812 F.3d 1208, 1228-31 (10th Cir. 2015) (concluding that the district court erred in discounting the environmental effect of offensive race based conduct when the court focused on the "ostensibly benign motivation or intent" of the alleged harassers).

91 *Sharp v. S&S Activewear, LLC*, 69 F.4th 974, 981 (9th Cir. 2023) (concluding that "sexually graphic, violently misogynistic" music can give rise to a sex-based hostile work environment claim and that even if the music was not directed toward a particular woman, "female employees allegedly experienced the content in a unique and especially offensive way"); *Gallagher*, 567 F.3d at 271 (concluding that women were subjected to sex discrimination by conduct that was patently degrading to women, even though members of both sexes were exposed to the conduct).

92 This example is adapted from the facts in *Mangel v. Graham Packaging Co.*, No. 14-CV-0147, 2016 WL 1266257 (W.D. Pa. Apr. 1, 2016).

93 *See, e.g.*, *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250 (1989) (plurality opinion) ("In the specific context of sex stereotyping, an employer who acts on the basis of a belief that a woman cannot be aggressive, or that she must not be, has acted on the basis of gender."); *Parker v. Reema Consulting Servs., Inc.*, 915 F.3d 297, 303 (4th Cir. 2019) (concluding that the plaintiff's allegation that male coworkers started a rumor that she had sex with her boss to obtain a promotion invoked the "deeply rooted perception one that unfortunately still persists that generally women, not men, use sex to achieve success"); *EEOC v. Boh Bros. Constr. Co.*, 731 F.3d 444, 459 (5th Cir. 2013) (en banc) (upholding a jury verdict on the grounds that a claim that a male employee was harassed because of sex could be established by evidence showing that the male harasser targeted the employee for not conforming to the harasser's "manly-man" stereotype).

[94] *See Plaetzer v. Borton Auto., Inc.*, No. Civ. 02-3089, 2004 WL 2066770, at *6 (D. Minn. Aug. 13, 2004) (concluding that the plaintiff had presented sufficient evidence to send her harassment claim to a jury where she experienced repeated comments and other conduct implying or stating that she was unqualified and could be fired at any time because she was a woman and because she spent too much time caring for her children); *see also Chadwick v. Wellpoint*, *Inc.*, 561 F.3d 38, 42, 47 48 (1st Cir. 2009) (holding that a reasonable jury could find that the plaintiff, the mother of an eleven-year-old and six-year-old triplets, was denied a promotion based on the "common stereotype about the job performance of women with children").

[95] *See Burns v. Johnson*, 829 F.3d 1, 13-14, 17 (1st Cir. 2016) (holding that a reasonable jury could conclude that a male supervisor's harassment of a female subordinate was based, in part, on the gender stereotype that women do not belong in positions of leadership).

[96] *See, e.g.*, *Price Waterhouse*, 490 U.S. at 250.

[97] *See King v. Aramark Servs., Inc.*, 96 F.4th 546, 564 (2d Cir. 2024) ("[A] reasonable jury could conclude that Thomas's singling out of King for weight-related remarks and conduct—remarks and conduct that he did not direct toward her male peers—reflected not only a bias against individuals with certain body types, but also a gender-based bias.").

[98] *See, e.g.*, *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011) (observing that a person is considered transgender "precisely because of the perception that his or her behavior transgresses gender stereotypes" (citing *Price Waterhouse*, 490 U.S. at 251)); *Smith v. City of Salem*, 378 F.3d 566, 575 (6th Cir. 2004) (stating that "discrimination against a plaintiff who is trans[gender] and therefore fails to act and/or identify with his or her gender—is no different from the discrimination directed against Ann Hopkins in *Price Waterhouse* who, in sex stereotypical terms, did not act like a woman"); *see also supra* note 78.

[99] *See McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1117 (9th Cir. 2004) (referring to a Black employee as a "drug dealer" "might certainly be deemed to be a [racial] code

word or phrase" (citing *Daniels v. Essex Grp., Inc.*, 937 F.2d 1264, 1273 (7th Cir. 1991))).

[100] *See Aman v. Cort Furniture Rental Corp.*, 85 F.3d 1074, 1082 (3d Cir. 1996) (describing insults directed at Black employees based on negative stereotyping such as "don't touch anything" and "don't steal" as "inherently racist").

[101] *See, e.g.*, *Kang v. U. Lim Am., Inc.*, 296 F.3d 810, 817 (9th Cir. 2002) (concluding that the plaintiff could establish that he was harassed based on his national origin, Korean, where his supervisor allegedly subjected Korean workers to abuse based, in part, on their failure to "live up" to the stereotype that Korean workers are "better than the rest").

[102] *See, e.g.*, *Tomassi v. Insignia Fin. Grp., Inc.*, 478 F.3d 111, 116 (2d Cir. 2007) (holding that "the relevance of discrimination related remarks does not depend on their offensiveness, but rather on their tendency to show that the decision-maker was motivated by assumptions or attitudes relating to the protected class," and observing that a supervisor's assertion that an employee, who was in her sixties, was well suited to work with seniors was not offensive but nevertheless had a strong tendency in the circumstances to show that the supervisor believed the employee, because of her age, was not well suited to deal with younger clientele), *abrogated on other grounds by Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167 (2009).

[103] *See, e.g.*, *Sheehan v. Donlen Corp.*, 173 F.3d 1039, 1044 45 (7th Cir. 1999) (upholding a jury verdict where a reasonable jury could conclude that "a supervisor's statement to a woman known to be pregnant that she was being fired so that she could 'spend more time at home with her children' reflected unlawful motivations because it invoked widely understood stereotypes the meaning of which is hard to mistake").

[104] This example is adapted from the facts in *EEOC v. Boh Bros. Construction Co.*, 731 F.3d 444, 449-50, 457-60 (5th Cir. 2013) (en banc) (applying *Oncale v. Sundowner Offshore Services,, Inc.*, 523 U.S. 75 (1998), which recognized that same sex sexual harassment can violate Title VII).

[105] *See, e.g.*, *Roy v. Correct Care Sols., LLC*, 914 F.3d 52, 63 (1st Cir. 2019) (noting that "a reasonable jury could infer that" a comment about the plaintiff's body "was made in part because of her sex, given the context" that included evidence that her coworkers regularly "sexualiz[ed]" her and "emphasiz[ed] aspects of her appearance, such as her blonde hair"); *Tang v. Citizens Bank, N.A.*, 821 F.3d 206, 216-17 (1st Cir. 2016) (considering the context, use of the word "ass" was based on sex); *McGullam v. Cedar Graphics, Inc.*, 609 F.3d 70, 85 (2d Cir. 2010) (Calabresi, J., concurring) (viewing comment by male coworker about the plaintiff's "big fat ass" to be based on sex).

[106] *Ash v. Tyson Foods, Inc.*, 546 U.S. 454, 456 (2006) (per curiam); *see also Paasewe v. Action Grp., Inc.*, 530 F. App'x 412, 416 (6th Cir. 2013) (per curiam) (holding that a reasonable jury could find that the plaintiff was subjected to race based harassment where the plaintiff's coworker called him "boy" and threatened his life).

[107] *See Aman v. Cort Furniture Rental Corp.*, 85 F.3d 1074, 1082-83 (3d Cir. 1996) (stating that racial harassment could be based on "code words," which referred to Black employees as "another one," "one of them," "that one in there," and "all of you"); *cf. Martin v. Brondum*, 535 F. App'x 242, 244 (4th Cir. 2013) (explaining in a case involving an alleged violation of the Fair Housing Act that "[r]acially charged code words may provide evidence of discriminatory intent by sending a clear message and carrying the distinct tone of racial motivations and implications" (alteration in original) (quoting *Guimaraes v. SuperValu, Inc.*, 674 F.3d 962, 974 (8th Cir. 2012))); *Gipson v. KAS Snacktime Co.*, 171 F.3d 574, 579 (8th Cir. 1999) (characterizing a supervisor's use of the phrase, "your kind" as "offensive and racially tinged").

[108] This example is adapted from the facts in *Jones v. UPS Ground Freight*, 683 F.3d 1283 (11th Cir. 2012).

[109] *See, e.g.*, *Rasmy v. Marriott Int'l, Inc.*, 952 F.3d 379, 388 (2d Cir. 2020) ("Our case law is clear that when the same individuals engage in some harassment that is explicitly discriminatory and some that is not, the entire course of conduct is relevant to a hostile work environment claim."); *Kaytor v. Elec. Boat Corp.*, 609 F.3d 537, 547 48 (2d Cir. 2010) (stating that circumstantial evidence that facially sex neutral acts were part of a pattern of sex discrimination may include evidence that

the same individual engaged in multiple acts of harassment, some facially sex-based and some not); *Chavez v. New Mexico*, 397 F.3d 826, 833 (10th Cir. 2005) (stating that conduct that appears sex neutral in isolation may appear sex based when viewed in the context of the broader work environment); *Shanoff v. Ill. Dep't of Hum. Servs.*, 258 F.3d 696, 705 (7th Cir. 2001) (stating that a reasonable person could conclude that comments that were not facially discriminatory were "sufficiently intertwined" with facially discriminatory remarks to establish that the former were motivated by hostility to the plaintiff's race and religion); *O'Rourke v. City of Providence*, 235 F.3d 713, 730 (1st Cir. 2001) (stating that "[c]ourts should avoid disaggregating a hostile work environment claim, dividing conduct into instances of sexually oriented conduct and instances of unequal treatment, then discounting the latter category").

110 *See, e.g.*, *Smith v. Fairview Ridges Hosp.*, 625 F.3d 1076, 1085 (8th Cir. 2010) (concluding that instances of facially neutral harassment were not connected to overtly racial conduct as they "lack[ed] any congruency of person or incident"), *abrogated on other grounds by Torgerson v. City of Rochester*, 643 F.3d 1031, 1043 (8th Cir. 2011) (en banc).

111 This example is adapted from the facts in *EEOC v. T-N-T Carports, Inc.*, No. 1:09-CV-27, 2011 WL 1769352 (M.D.N.C. May 9, 2011).

112 *See, e.g.*, *Flowers v. S. Reg'l Physician Servs., Inc.*, 247 F.3d 229, 236-37 (5th Cir. 2001) (upholding a jury verdict and concluding that the jury could have found that harassment, which began "almost immediately" after a supervisor learned that the plaintiff was HIV-positive, was based on disability).

113 *See EEOC v. Nat'l Educ. Ass'n, Alaska*, 422 F.3d 840, 842 (9th Cir. 2005) (holding that "offensive conduct that is not facially sex-specific nonetheless may violate Title VII if there is sufficient circumstantial evidence of qualitative and quantitative differences in the harassment suffered by female and male employees").

114 This example is adapted from the facts in *National Education Ass'n, Alaska*, 422 F.3d at 842 44.

[165] *See Boyer-Liberto,* 786 F.3d at 279-80 (explaining that, regardless of whether the harasser was the complainant's supervisor for purposes of employer vicarious liability, the determination of objective severity required the court to consider how the harasser portrayed the harasser's authority and what the complainant reasonably believed the harasser's actual power to be).

[166] *See, e.g.*, *Warf v. U.S. Dep't of Veterans Affs.*, 713 F.3d 874, 878 (6th Cir. 2013) ("Evidence of other sexual harassment claims may help support a hostile work environment claim, but evidence of harassment to others does not weigh as heavily as evidence directed against the plaintiff."); *Ziskie v. Mineta*, 547 F.3d 220, 224-25 (4th Cir. 2008) (stating that conduct personally experienced by the plaintiff may be more probative of a hostile work environment than conduct she did not witness, but all the evidence should be considered: "[h]ostile conduct directed toward a plaintiff that might of itself be interpreted as isolated or unrelated to gender might look different in light of evidence that a number of women experienced similar treatment"); *see also infra* notes 212 216 and accompanying text.

[167] *See, e.g.*, *Copeland*, 2024 WL 1316677, at *8 (stating that the intentional misgendering and other harassment that a male transgender correctional officer experienced was humiliating where it occurred over the prison radio system, which allowed the whole institution to hear); *Howley v. Town of Stratford*, 217 F.3d 141, 154 (2d Cir. 2000) (concluding that a fire lieutenant could establish a hostile work environment based on a single incident in which a coworker loudly made obscene and sexist comments at a meeting where the lieutenant was the only woman and many of the men were her subordinates); *Delozier v. Bradley Cnty. Bd. of Educ.*, 44 F. Supp. 3d 748, 759 (E.D. Tenn. 2014) (concluding that a male band leader's sexual comments about a female assistant band leader were sufficient to create a hostile work environment where they were made in front of the assistant band leader's students, thereby undermining her authority and stature in her students' eyes); *Hanna v. Boys & Girls Home & Fam. Servs., Inc.*, 212 F. Supp. 2d 1049, 1061 (N.D. Iowa 2002) (noting the significance of the fact that sexually harassing conduct was directed at the female complainant in the presence of male clients).

[168] *See, e.g.*, *Jenkins v. Univ. of Minn.*, 838 F.3d 938, 945-46 (8th Cir. 2016) ("Actions that might not rise to the level of severe or pervasive in an office setting take on a different character when the two people involved are stuck together for twenty four hours a day with no other people—or means of escape—for miles around.").

[169] *See* Chai R. Feldblum & Victoria A. Lipnic, EEOC, *Select Task Force on the Study of Harassment in the Workplace, Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic* 24 25 (2016), **https://www.eeoc.gov/sites/default/files/migrated files/eeoc/task force/harassment/report.pdf (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/sites/default/files/migrated files/eeoc/task force/harassment/report.pdf)** (discussing "superstar" harassers).

[170] *See, e.g.*, *Lapka v. Chertoff*, 517 F.3d 974, 982 84 (7th Cir. 2008) (concluding that, in the case of a complainant who alleged that her coworker raped her, the severity of the sexual assault alleged would be sufficient to establish an objectively hostile work environment).

[171] *See, e.g., Turner v. Saloon, Ltd.,* 595 F.3d 679, 686 (7th Cir. 2010) (concluding that the plaintiff's claim that his female supervisor grabbed his penis through his pockets was probably severe enough on its own to create a genuine issue of material fact as to the plaintiff's sexual harassment claim).

[172] *See, e.g.*, *Banks v. Gen. Motors, LLC*, 81 F.4th 242, 263-64 (2d Cir. 2023) (concluding that a reasonable jury could find that the plaintiff was subjected to unlawful harassment based on race and sex when a colleague "shook a rolled up document in her face and started yelling at her in a loud and aggressive manner," alarming other employees, and leading her to take disability leave); *Patterson v. Cnty. of Oneida*, 375 F.3d 206, 230 (2d Cir. 2004) (concluding that a hostile work environment based on race could be established by a single incident in which the plaintiff was allegedly punched in the ribs and temporarily blinded by having mace sprayed in his eyes because of his race); *Smith v. Sheahan*, 189 F.3d 529, 534 (7th Cir. 1999) (concluding that harassing a female employee based on her sex by damaging her wrist to the point that surgery was required "easily qualifies as a severe enough

isolated occurrence to alter the conditions of her employment"); *cf. Pryor v. United Air Lines, Inc.*, 791 F.3d 488, 496 97 (4th Cir. 2015) (concluding that a reasonable jury could find that two anonymous notes placed in the plaintiff's mailbox, although not pervasive, were sufficiently severe to create hostile work environment where the notes referred to lynching and were in the form of a mock hunting license for African Americans).

[173] *E.g.*, *Tademy v. Union Pac. Corp.*, 614 F.3d 1132, 1145 (10th Cir. 2008) (concluding that a "jury could easily find that the noose was an egregious act of discrimination calculated to intimidate African-Americans"); *Rosemond v. Stop & Shop Supermarket Co.*, 456 F. Supp. 2d 204, 213 (D. Mass. 2006) (holding that a reasonable jury could conclude that display of a noose in an African American employee's work area was sufficient to create a hostile work environment); *Williams v. N.Y.C. Hous. Auth.*, 154 F. Supp. 2d 820, 824 (S.D.N.Y. 2001) (stating that a "noose is among the most repugnant of all racist symbols, because it is itself an instrument of violence" and that the "effect of such violence on the psyche of African Americans cannot be exaggerated"); *Yudovich v. Stone*, 839 F. Supp. 382, 391 (E.D. Va. 1993) (finding that one of the plaintiffs' supervisors expressed hostility toward the plaintiffs' religion by, among other things, keeping a coffee mug displaying a swastika on his desk).

[174] *See, e.g.*, *Boyer-Liberto v. Fountainebleau Corp.,* 786 F.3d 264, 280 (4th Cir. 2015) (en banc) (stating that calling an African American employee "porch monkey" was "about as odious as the use of the word 'n****r'"); *Henry v. CorpCar Servs. Hous., Ltd.*, 625 F. App'x 607, 611, 613 (5th Cir. 2015) (concluding that although the alleged harassment was brief as it had occurred over only two days, a jury could find that it was sufficiently severe to create a hostile work environment where, among other things, African American employees were compared to gorillas); *see also Green v. Franklin Nat'l Bank of Minneapolis*, 459 F.3d 903, 911 (8th Cir. 2006) (agreeing with the plaintiff that using the term "monkey" to refer to African Americans was "roughly equivalent" to using the term "n****r"); *Spriggs v. Diamond Auto Glass*, 242 F.3d 179, 185 (4th Cir. 2001) (stating that use of "monkey" to describe African Americans was "degrading and humiliating in the extreme").

[175] In *Burlington Industries, Inc. v. Ellerth,* the Court explained that unfulfilled threats are actionable if they create a hostile work environment. *524 U.S. 742, 754 (1998)*. A sufficiently serious threat, even if unfulfilled, could meet the necessary level of severity. *See Schiano v. Quality Payroll Sys., Inc.*, 445 F.3d 597, 607 (2d Cir. 2006) ("Threats or insinuations that employment benefits will be denied based on sexual favors are, in most circumstances, quintessential grounds for sexual harassment claims, and their characterization as 'occasional' will not necessarily exempt them from the scope of Title VII."); *Jansen v. Packaging Corp. of Am.*, 123 F.3d 490, 500 (7th Cir. 1997) (en banc) (Flaum, J., concurring) (stating that a supervisor's unambiguous communication that an adverse job action will follow if sexual favors are denied may cause "real emotional strife," including "anxiety, distress, and loss of productivity regardless of whether the threat is carried out").

[176] *See Woods v. Cantrell*, 29 F.4th 284, 285 (5th Cir. 2022) ("The incident Woods has pleaded that his supervisor directly called him a 'Lazy Monkey A N ' in front of his fellow employees states an actionable claim of hostile work environment."); *Castleberry v. STI Grp.*, 863 F.3d 259, 264 (3d Cir. 2017); *Rodgers v. W.-S. Life Ins. Co.*, 12 F.3d 668, 675 (7th Cir. 1993) ("Perhaps no single act can more quickly 'alter the conditions of employment . . .' than the use of an unambiguously racial epithet such as 'n****r' by a supervisor in the presence of his subordinates." (citation omitted)); *see also Ayissi-Etoh v. Fannie Mae*, 712 F.3d 572, 580 (D.C. Cir. 2013) (Kavanaugh, J., concurring) ("[I]n my view, being called the n word by a supervisor . . . suffices by itself to establish a racially hostile work environment. That epithet has been labeled, variously, a term that 'sums up . . . all the bitter years of insult and struggle in America,' 'pure anathema to African-Americans,' and 'probably the most offensive word in English.'" (citations omitted)).

[177] *Burns v. McGregor Elec. Indus., Inc.*, 989 F.2d 959, 965 (8th Cir. 1993) (quoting *Katz v. Dole*, 709 F.2d 251, 254 (4th Cir. 1983)); *see also, e.g.*, *Johnson v. PRIDE Indus.*, 7 F.4th 392, 403-04 (5th Cir. 2021) (holding that the plaintiff could establish a hostile work environment based on harassment that included the use of "mayate," which the plaintiff knew was Spanish for the n word, by a fellow employee who outranked him); *Passananti v. Cook Cnty.*, 689 F.3d 655, 665 (7th Cir. 2012) ("A raft of case law . . . establishes that the use of sexually degrading, gender-specific epithets, such as

'sl*t,' 'c*nt,' 'wh*re,' and 'b*tch,' . . . has been consistently held to constitute harassment based upon sex." (quoting *Forrest v. Brinker Int'l Payroll Co.*, 511 F.3d 225, 229 30 (1st Cir. 2007))); *Hawkins v. City of Phila.*, 571 F. Supp. 3d 455, 464 (E.D. Pa. 2021) ("The term 'f***ot' is so replete with homophobic animus that, if used, instantly separates an individual who identifies as gay from everyone else in the workplace."); *Johnson v. Earth Angels*, 125 F. Supp. 3d 562, 569 (M.D.N.C. 2015) (stating that racial epithets used by supervisors went "far beyond the merely unflattering" and were "degrading and humiliating in the extreme" (quoting *Boyer-Liberto*, 786 F.3d at 280)).

178 *See, e.g.*, *Zetwick v. Cnty. of Yolo,* 850 F.3d 436, 439, 442-46 (9th Cir. 2017) (concluding that a reasonable jury could find that the plaintiff was subjected to a hostile work environment where her supervisor greeted her with "at least a hundred" "unwelcome hugs and at least one unwelcome kiss" over a twelve-year period); *Hall v. City of Chi.*, 713 F.3d 325, 332 (7th Cir. 2013) ("[I]ncidents, which viewed in isolation seem relatively minor, that consistently or systematically burden women throughout their employment are sufficiently pervasive to make out a [sex-based] hostile work environment claim."); *EEOC v. Prospect Airport Servs., Inc.*, 621 F.3d 991, 998 1001 (9th Cir. 2010) (determining that a genuine issue of material fact existed as to the abusiveness of the complainant's work environment where, after the complainant twice rejected his coworker's advances, this coworker and other coworkers subjected the complainant to six months of constant sexual pressure and humiliation); *Lauderdale v. Tex. Dep't of Crim. Just.*, 512 F.3d 157, 163 64 (5th Cir. 2007) (concluding that a reasonable jury could find that the supervisor engaged in "pervasive harassment" where, among other things, he called the plaintiff "ten to fifteen times a night for almost four months").

179 *See supra* note 150 and accompanying text.

180 *See, e.g.*, *Rodgers*, 12 F.3d at 674 (stating that liability is evaluated "on a case-by-case basis after considering the totality of the circumstances" (quoting *Nazaire v. Trans World Airlines, Inc.*, 807 F.2d 1372, 1380 81 (7th Cir. 1986))); *McGullam v. Cedar Graphics, Inc.*, 609 F.3d 70, 77 (2d Cir. 2010) (stating that "flexibility is useful in a

context as fact-specific and sensitive as employment discrimination and as amorphous as hostile work environment").

[181] *See, e.g.*, *El-Hakem v. BJY, Inc.*, 415 F.3d 1068, 1073-74 (9th Cir. 2005) (upholding jury verdict for the plaintiff, noting that the CEO's intentional and repeated use of a "Westernized" version of the plaintiff's name, despite his objections, may not have been severe but was frequent and pervasive).

[182] *See Gorzynski v. JetBlue Airways Corp.*, 596 F.3d 93, 103 (2d Cir. 2010) (concluding that, given the short time frame and number of incidents involved, the plaintiff established a genuine issue as to whether she was subjected to a hostile work environment).

[183] This example is adapted from the facts in *EEOC v. Prospect Airport Services, Inc.*, 621 F.3d 991 (9th Cir. 2010).

[184] This example is adapted from the facts in *Broderick v. Ruder*, 685 F. Supp. 1269, 1278 (D.D.C. 1988) (holding that the plaintiff stated a prima facie case of sexual harassment based on evidence that managers harassed female employees by bestowing preferential treatment on those who submitted to sexual advances).

[185] *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81 (1998).

[186] *Id.* at 81-82; *see also Reeves v. C.H. Robinson Worldwide*, *Inc.*, 594 F.3d 798, 811 (11th Cir. 2010) (en banc) (stating that the analysis requires proceeding with "'[c]ommon sense, and an appropriate sensitivity to social context,' to distinguish between general office vulgarity and the 'conduct which a reasonable person in the plaintiff's position would find severely hostile or abusive'" (quoting *Oncale*, 523 U.S. at 82)); *Hood v. Nat'l R.R. Passenger Corp.*, 72 F. Supp. 3d 888, 893 (N.D. Ill. 2014) (stating that the joking manner in which the challenged comments were made was a relevant consideration in evaluating the severity of Hispanic employees' use of "gringo" to refer to the White complainant).

[187] *Oncale,* 523 U.S. at 82.

[188] *See McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1116 (9th Cir. 2004) ("Racially motivated comments or actions may appear innocent or only mildly offensive to one who is not a member of the targeted group, but in reality be intolerably abusive or threatening when understood from the perspective of a plaintiff who is a member of the targeted group. . . . By considering both the existence and the severity of discrimination from the perspective of a reasonable person of the plaintiff's race, we recognize forms of discrimination that are real and hurtful, and yet may be overlooked if considered solely from the perspective of an adjudicator belonging to a different group than the plaintiff."); *see also Caver v. City of Trenton*, 420 F.3d 243, 262 (3d Cir. 2005) (stating that a hostile work environment requires evidence establishing that the harassment would have adversely affected a reasonable person of the same protected class in the plaintiff's position), *abrogated on other grounds by Jensen v. Potter*, 435 F.3d 444, 449 n.3 (3d Cir. 2006); *Brennan v. Metro. Opera Ass'n, Inc.*, 192 F.3d 310, 321 (2d Cir. 1999) (Newman, J., concurring in part and dissenting in part) (noting that the failure to adopt the perspective of the complainant's protected class might result in applying the stereotypical views that Title VII was designed to outlaw); *Torres v. Pisano*, 116 F.3d 625, 632 (2d Cir. 1997) (evaluating the sexual harassment claim of a female plaintiff from the viewpoint of a "reasonable woman"); *cf. Baugham v. Battered Women, Inc.*, 211 F. App'x 432, 438 (6th Cir. 2006) (stating that the severity of harassment is evaluated from the "perspective of a reasonable person in the employee's shoes, considering the totality of the circumstances" (citing *Oncale*, 523 U.S. at 81)).

[189] *See McGullam v. Cedar Graphics, Inc.*, 609 F.3d 70, 85 (2d Cir. 2010) (Calabresi, J., concurring) (stating that the female complainant could base her hostile work environment claim on sexually derogatory conduct that was the product of locker room culture that some other women participated in); *Gallagher v. C.H. Robinson Worldwide, Inc.*, 567 F.3d 263, 272 n.2 (6th Cir. 2009) (concluding that the plaintiff established that she experienced sex based harassment, even though some women participated in the conduct); *Jenson v. Eveleth Taconite Co*., 824 F. Supp. 847, 886 (D. Minn. 1993) (concluding that expert testimony and testimony of female mine workers established that the work environment affected the psychological well-being of a reasonable woman working there, and this conclusion was not affected by the fact that some women did not find the work environment objectionable);

Robinson v. Jacksonville Shipyards, Inc., 760 F. Supp. 1486, 1525 (M.D. Fla. 1991) (stating that the fact that some women did not find the conduct offensive did not mean that the conduct was not objectively hostile).

190 *Jenkins v. Univ. of Minn.*, 838 F.3d 938, 946 (8th Cir. 2016) (doctoral candidate's physical well being in a remote location and academic future was dependent on a leading expert in the candidate's field of study who harassed her on a research trip).

191 *See EEOC v. Mgmt. Hosp. of Racine, Inc.,* 666 F.3d 422, 429, 433 (7th Cir. 2012) (stating that the ten-year age disparity between the teenage complainant and the older harasser, coupled with his authority over her, could have led a rational jury to conclude that the harassment resulted in a hostile work environment).

192 *Cf. Rivera v. NIBCO, Inc., 364 F.3d 1057, 1064 65 (9th Cir. 2004) (*"While documented workers face the possibility of retaliatory discharge for an assertion of their labor and civil rights, undocumented workers confront the harsher reality that, in addition to possible discharge, their employer will likely report them to [immigration authorities] and they will be subjected to deportation proceedings or criminal prosecution. . . . As a result, most undocumented workers are reluctant to report abusive or discriminatory employment practices.").

193 *Prettyman v. LTF Club Opers. Co.*, No. 1:18-cv-122, 2018 WL 5980512, at *6 (E.D. Va. Nov. 13, 2018) ("Much of this historical antipathy toward Jews was grounded in economic antisemitism, which makes comments about 'Jewish money' all the more objectionable and offensive. These words and phrases about Jews, like the n-word, are so serious and severe that they instantly signal to an employee that he or she is unwelcome in the work place because of his or her religion.").

194 *See EEOC v. Glob. Horizons, Inc.*, 7 F. Supp. 3d 1053, 1061 (D. Haw. 2014) (threats of deportation contributed to a hostile work environment); *Chellen v. John Pickle Co., Inc.*, 446 F. Supp. 2d 1247, 1265 (N.D. Okla. 2006) ("The threat of deportation was especially significant in defendants' creation of a hostile working environment. The Chellen plaintiffs feared . . . the harm he could inflict on [them] or their families if they were made to return to India.").

[195] This example is adapted from the facts in *Doe v. Triangle Doughnuts, LLC*, 472 F. Supp. 3d 115 (E.D. Pa. 2020).

[196] *See, e.g.*, *Copeland v. Ga. Dep't of Corr.*, ___ F.4th ___, No. 22-13073, 2024 WL 1316677, at *8 (11th Cir. Mar. 28, 2024) (concluding that working as a corrections officer, which is a "dangerous and sometimes" violent context, made the intentional misgendering and other harassment that a transgender male correctional officer experienced more severe than it would have been in other contexts); *Jenkins v. Univ. of Minn.*, 838 F.3d 938, 946 (8th Cir. 2016) (concluding that the alleged harassment was sufficient to establish a hostile work environment where, among other things, the plaintiff and the alleged harasser worked in a remote region where they had been dropped by plane).

[197] *See EEOC v. Sunbelt Rentals, Inc.*, 521 F.3d 306, 318 (4th Cir. 2008) (rejecting the district court's suggestion that harassment might be discounted in an environment that was "inherently coarse"; "Title VII contains no such 'crude environment' exception, and to read one into it might vitiate statutory safeguards for those who need them most"); *see also Reeves v. C.H. Robinson Worldwide*, 594 F.3d 798, 810 (11th Cir. 2010) (en banc) (stating that a "member of a protected group cannot be forced to endure pervasive, derogatory conduct and references that are gender-specific in the workplace, just because the workplace may be otherwise rife with generally indiscriminate vulgar conduct"); *Jackson v. Quanex Corp.*, 191 F.3d 647, 662 (6th Cir. 1999) ("[W]e squarely denounce the notion that the increasing regularity of racial slurs and graffiti renders such conduct acceptable, normal, or part of 'conventional conditions on the factory floor.'"); *Vollmar v. SPS Techs., LLC*, No. 15 2087, 2016 WL 7034696, at *6 (E.D. Pa. Dec. 2, 2016) (concluding that even in a work environment in which foul language and joking are commonplace, the employer can be liable for fostering a hostile work environment for female employees).

[198] *Smith v. Sheahan,* 189 F.3d 529, 535 (7th Cir. 1999); *see also Reeves*, 594 F.3d at 803, 812 13 (holding that the plaintiff, the only woman working on the sales floor, could establish a sexually hostile work environment based on vulgar, sex-based conduct, even though the conduct had begun before she entered the workplace);

threat as a factor in determining whether the plaintiff was subjected to a hostile work environment).

[262] *See Holly D. v. Cal. Inst. of Tech.*, 339 F.3d 1158, 1169 (9th Cir. 2003) (concluding that "determining not to fire an employee who has been threatened with discharge constitutes a 'tangible employment action,' at least where the reason for the change in the employment decision is that the employee has submitted to coercive sexual demands"); *Jin v. Metro. Life Ins. Co., 310 F.3d 84, 98 (2d Cir. 2002) (finding prejudicial error where the lower court failed to instruct the jury to consider the supervisor's conditioning of the plaintiff's continued employment on her submission to his sexual demands as a possible tangible employment action*). *But see Santiero v. Denny's Rest. Store*, 786 F. Supp. 2d 1228, 1235 (S.D. Tex. 2011) (concluding that the employee was not subjected to a tangible employment action where she acceded to sexual demands and thereby *avoided* a tangible employment action); *Speaks v. City of Lakeland*, 315 F. Supp. 2d 1217, 1224 26 (M.D. Fla. 2004) (rejecting the *Jin* analysis as inconsistent with Supreme Court and Eleventh Circuit precedent).

[263] *Faragher*, 524 U.S. at 807; *Ellerth*, 524 U.S. at 765.

[264] *Ellerth*, 524 U.S. at 764.

[265] *Id*. at 765 (emphasis added); *Faragher*, 524 U.S. at 807 (emphasis added); *see also, e.g.*, *Frederick v. Sprint/United Mgmt. Co.*, 246 F.3d 1305, 1313 (11th Cir. 2001) ("Both elements must be satisfied for the defendant employer to avoid liability, and the defendant bears the burden of proof on both elements.").

[266] *Ellerth*, 524 U.S. at 765.

[267] If the employer had been aware of previous harassment by the same supervisor, then the employer would not be able to establish the affirmative defense if it had failed to take appropriate corrective action in the past to address harassment by that supervisor. *See Minarsky v. Susquehanna Cnty.*, 895 F.3d 303, 312 13 (3d Cir. 2018) (holding that a jury could find that the employer did not act reasonably to prevent harassment by the plaintiff's supervisor where county officials were aware that the supervisor's conduct "formed a pattern of conduct, as opposed to mere

stray incidents, yet they seemingly turned a blind eye toward [the supervisor's] harassment").

[268] *See Faragher*, 524 U.S. at 809 ("While proof that an employer had promulgated an antiharassment policy with complaint procedure is not necessary in every instance as a matter of law, the need for a stated policy suitable to the employment circumstances may appropriately be addressed in any case when litigating the first element of the defense."); *Holly D. v. Cal. Inst. of Tech.*, 339 F.3d 1158, 1177 (9th Cir. 2003) ("The legal standard for evaluating an employer's efforts to prevent and correct harassment, however, is not whether any additional steps or measures would have been reasonable if employed, but whether the employer's actions as a whole established a reasonable mechanism for prevention and correction."); *see also* EEOC, *Promising Practices for Preventing Harassment* (2017), **https://www.eeoc.gov/laws/guidance/promising-practices-preventing-harassment (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/laws/guidance/promising-practices-preventing-harassment)** ; EEOC, *Promising Practices for Preventing Harassment in the Federal Sector*, **https://www.eeoc.gov/federal-sector/reports/promising-practices-preventing-harassment-federal-sector (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/federal-sector/reports/promising-practices-preventing-harassment-federal-sector)** (last visited Apr. 12, 2024).

[269] For further guidance on what constitutes reasonable care to prevent harassment, refer to sectionIV.C.3.a, *infra*. An employer also may reduce the likelihood of unlawful harassment by conducting climate surveys of employees to determine whether employees believe that harassment exists in the workplace and is tolerated, and by repeating the surveys to ensure that changes to address potential harassment have been implemented. Chai R. Feldblum & Victoria A. Lipnic, EEOC, *Select Task Force on the Study of Harassment in the Workplace, Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic* (2016), **https://www.eeoc.gov/sites/default/files/migrated_files/eeoc/task_force/harassment/report.pdf (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/sites/de**

fault/files/migrated_files/eeoc/task_force/harassment/report.pdf) (discussing steps an organization may take to convey a sense of urgency about preventing harassment).

[270] *See, e.g.*, *Agusty Reyes v. Dep't of Educ.*, 601 F.3d 45, 55 (1st Cir. 2010) (holding that a reasonable jury could conclude that the failure to disseminate the harassment policy and complaint procedure precluded the employer from establishing the first prong of the defense); *Ortiz v. Sch. Bd.*, 780 F. App'x 780, 786 (11th Cir. 2019) (per curiam) (denying summary judgment to the employer on the *Faragher-Ellerth* affirmative defense where there was evidence that the employer had failed to take reasonable steps to disseminate its anti-harassment policy).

[271] *See EEOC v. V & J Foods, Inc.*, 507 F.3d 575, 578 (7th Cir. 2007) (explaining that, although an employer need not tailor its complaint procedure to the competence of each employee, "the known vulnerability of a protected class has legal significance"). In *V & J Foods*, the victims of harassment were teenage girls working part-time, and often as their first job, in a small retail outlet. *Id.* The court criticized the defendant's complaint procedures as "likely to confuse even adult employees," and stated, "[k]nowing that it has many teenage employees, the company was obligated to suit its procedures to the understanding of the average teenager." *Id.*

[272] *EEOC v. Spud Seller, Inc.*, 899 F. Supp. 2d 1081, 1095 (D. Colo. 2012) (determining a trial was required on the issue of whether the employer, which employed some individuals who spoke only Spanish, could satisfy the *Faragher Ellerth* affirmative defense where the employer's handbook contained an anti harassment policy in English, but there was no evidence that its provisions were translated into Spanish or that written translations were supplied to Spanish-speaking employees).

[273] *See Clark v. United Parcel Serv., Inc.*, 400 F.3d 341, 349 (6th Cir. 2005) ("While there is no exact formula for what constitutes a 'reasonable' sexual harassment policy, an effective policy should at least . . . require supervisors to report incidents of sexual harassment."); *Ocheltree v. Scollon Prods., Inc.*, 335 F.3d 325, 334 (4th Cir. 2003) (criticizing employer's putative sexual harassment policy where the policy, *inter alia*, failed to place any duty on supervisors to report incidents of sexual harassment to their superiors); *Wilson v. Tulsa Junior Coll.*, 164 F.3d 534, 541 (10th Cir. 1998)

(criticizing employer policy for failing to "provide instruction on the responsibilities, if any, of a supervisor who learns of an incident of harassment through informal means"); *Varner v. Nat'l Super Mkts.*, 94 F.3d 1209, 1214 (8th Cir. 1996) (holding employer liable where the company's policy "in effect required [the plaintiff's] supervisor to remain silent notwithstanding his knowledge of the incidents"); *cf. Ridley v. Costco Wholesale Corp.*, 217 F. App'x 130, 138 (3d Cir. 2007) (declining to impose punitive damages where defendant provided new supervisors with detailed materials regarding supervisors' obligation to address discrimination issues).

274 *See, e.g.*, *Faragher v. City of Boca Raton*, 524 U.S. 775, 808 (1998) (holding as a matter of law that the city did not exercise reasonable care to prevent the supervisors' harassment where, among other defects, the city's policy "did not include any assurance that the harassing supervisors could be bypassed in registering complaints"); *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 73 (1986) (stating that it was "not altogether surprising" that the complainant did not follow a grievance procedure that apparently required her to complain first to her supervisor, who was the alleged harasser); *Sanford v. Main St. Baptist Church Manor, Inc.*, 327 F. App'x 587, 596 (6th Cir. 2009) (reversing grant of summary judgment on a hostile work environment claim where the employer's policy failed to provide a mechanism for bypassing a harassing supervisor when making a complaint, *inter alia*); *Clark*, 400 F.3d at 349-50 (stating that a reasonable sexual harassment procedure should provide a mechanism for bypassing a harassing supervisor when making a complaint); *Stewart v. Trans Acc, Inc.*, No. 1:09 cv 607, 2011 WL 1560623, at *11 (S.D. Ohio Apr. 25, 2011) (noting the employer's policy "[c]rucially . . . does not contain a reporting procedure, much less a mechanism for bypassing a harassing supervisor"); *see also* Chai R. Feldblum & Victoria A. Lipnic, EEOC, *Select Task Force on the Study of Harassment in the Workplace, Report of Co Chairs Chai R. Feldblum & Victoria A. Lipnic* (2016), **https://www.eeoc.gov/sites/default/files/migrated files/eeoc/task force/harassment/report.pdf (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/sites/default/files/migrated_files/eeoc/task_force/harassment/report.pdf)** ("Employers should offer reporting procedures that are multi faceted, offering a range of

methods, multiple points-of-contact, and geographic and organizational diversity where possible, for an employee to report harassment.").

[275] *See Wilson*, 164 F.3d at 541 (noting deficiencies with the employer's policy, including a supervisor bypass option that "is located in a separate facility and is not accessible during the evening or weekend hours when many employees and students are on the various campuses"); *Lamarr–Arruz v. CVS Pharm., Inc.*, 271 F. Supp. 3d 646, 661 (S.D.N.Y. 2017) (the employee's testimony that complaints to the ethics hotline were ignored raises questions regarding the reasonableness of the employer's purported available corrective measures); *Spud Seller*, 899 F. Supp. 2d at 1095 (questioning whether the employer's anti-harassment policy was sufficient where employees who spoke only Spanish could not bring complaints directly to the individuals identified in the policy because the points of contact did not speak Spanish); *Wilborn v. S. Union State Cmty. Coll.*, 720 F. Supp. 2d 1274, 1300 (M.D. Ala. 2010) (criticizing the employer's complaint reporting procedure where employees were directed to file complaints with one person at an address located in a different city, the point of contact never visited the location where the harassed employee worked, and the harassed employee was not provided with any other contact information for the point of contact); *Escalante v. IBP, Inc.*, 199 F. Supp. 2d 1093, 1103 (D. Kan. 2002) (determining the employer failed to show it exercised reasonable care by promulgating and implementing an anti-harassment policy where it "has a confusing number of contradicting policies, each stating a different reporting mechanism, the specific policy dealing with discrimination claims only provides the employee one person to report such claims to[, and] [t]his person is located in another state, is only accessible by telephone, and the policy does not state the hours or days in which this person may be reached"); *Dinkins v. Charoen Pokphand USA, Inc.*, 133 F. Supp. 2d 1254, 1269 n.22 (M.D. Ala. 2001) (noting "mid level supervisors may have blocked Plaintiffs' attempts to contact higher-ranking supervisors" thereby rendering the complaint process inaccessible and deficient); *cf. Ocheltree*, 335 F.3d at 334 (finding the employer's "open door" reporting policy deficient where the two points of contact were either always unavailable or refused to speak with the employee when the employee attempted to complain); *Madray v. Publix Supermarkets, Inc.*, 208 F.3d 1290, 1298 (11th Cir. 2000) (noting the employer's policy designated several additional company representatives to whom an

employee could complain regarding harassment and that these individuals were accessible to employees). Accessibility of points of contact can also be relevant when addressing the second prong of the *Faragher Ellerth* affirmative defense, which considers whether the complainant unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm. *See infra* sectionIV.C.2.b.ii and note 297.

276 *See EEOC v. Mgmt. Hospitality of Racine, Inc.*, 666 F.3d 422, 436 (7th Cir. 2012) (stating "an employer's complaint mechanism must provide a clear path for reporting harassment" and criticizing the defendant for, *inter alia*, failing to provide any point of contact or contact information for employees to make harassment complaints); *cf. Helm v. Kansas*, 656 F.3d 1277, 1288 (10th Cir. 2011) (finding the employer's policy, which included "a complaint procedure and list of personnel to whom harassment may be reported" reasonable).

277 *See Cerros v. Steel Techs., Inc.*, 398 F.3d 944, 954 (7th Cir. 2005) (describing a prompt investigation as a "hallmark of reasonable corrective action").

278 *See Thomas v. BET Soundstage Rest.*, 104 F. Supp. 2d 558, 565-66 (D. Md. 2000) (stating that the failure to provide confidentiality or protection from retaliation where there is evidence of prevalent hostility can support a finding that the policy was defective and dysfunctional); *cf. AutoZone, Inc. v. EEOC*, 421 F. App'x 740, 741-42 (9th Cir. 2011) ("The EEOC introduced evidence that despite AutoZone policy requiring managers to 'thoroughly investigate each reported allegation as confidentially as possible,' Anderson interviewed Wing about her complaint in a semi-public part of her own store."). An employer should make clear to employees that it will protect the confidentiality of harassment allegations to the extent possible. An employer cannot guarantee complete confidentiality since it cannot conduct an effective investigation without revealing certain information to the alleged harasser and potential witnesses. However, information about the allegation of harassment should be shared only with those who need to know about it. *See* Chai R. Feldblum & Victoria A. Lipnic, EEOC, *Select Task Force on the Study of Harassment in the Workplace, Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic* (2016),

https://www.eeoc.gov/sites/default/files/migrated_files/eeoc/task_force/harassment/report.pdf (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/sites/default/files/migrated_files/eeoc/task_force/harassment/report.pdf) . Records relating to harassment complaints should be kept confidential on the same basis.

[279] *See Brenneman v. Famous Dave's of Am., Inc.*, 507 F.3d 1139, 1145 (8th Cir. 2007) (holding that the employer demonstrated that it exercised reasonable care to prevent sexual harassment where the employer had and effectively deployed a facially valid anti-harassment policy, which included a non-retaliation provision and a flexible reporting procedure that listed four individuals who may be contacted in the case of harassment); *Ferraro v. Kellwood Co.*, 440 F.3d 96, 102 03 (2d Cir. 2006) (concluding that the employer satisfied the first element of the affirmative defense to disability-based harassment where, among other things, it had an anti-harassment policy that prohibited harassment on account of disability, promised that complaints would be handled promptly and confidentially, and contained an anti-retaliation provision); *Miller v. Woodharbor Molding & Millworks, Inc.*, 80 F. Supp. 2d 1026, 1029 (N.D. Iowa 2000) (stating the gravamen of an effective anti-harassment policy includes three provisions: (1) training for supervisors, (2) an express anti retaliation provision, and (3) multiple complaint channels for reporting the harassing conduct) (collecting cases supporting inclusion of each provision), *aff'd*, 248 F.3d 1165 (8th Cir. 2001); *see also Jaros v. LodgeNet Entm't Corp.*, 294 F.3d 960, 966 (8th Cir. 2002) (upholding a sexual harassment jury verdict for the plaintiff where she resigned instead of cooperating with her employer's investigation because, among other things, the Human Resources Director did nothing to assure her that she would not be subjected to retaliation).

[280] This is a non exhaustive list. *See, e.g.*, Chai R. Feldblum & Victoria A. Lipnic, EEOC, *Select Task Force on the Study of Harassment in the Workplace, Report of Co Chairs Chai R. Feldblum & Victoria A. Lipnic* 44-60 (2016), **https://www.eeoc.gov/sites/default/files/migrated_files/eeoc/task_force/harassment/report.pdf (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/sites/default/files/migrated_files/eeoc/task_force/harassment/report.pdf)** ; EEOC,

Promising Practices for Preventing Harassment (2017), **https://www.eeoc.gov/laws/guidance/promising-practices-preventing-harassment (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/laws/guidance/promising-practices-preventing-harassment)** .

[281] For a detailed discussion of promising practices for anti-harassment training, see EEOC, *Promising Practices for Preventing Harassment* (2017), **https://www.eeoc.gov/laws/guidance/promising-practices-preventing-harassment (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/laws/guidance/promising-practices-preventing-harassment)** , and EEOC, *Promising Practices for Preventing Harassment in the Federal Sector*, **https://www.eeoc.gov/federal-sector/reports/promising-practices-preventing-harassment-federal-sector (https://web.archive.org/web/20250116114856/https://www.eeoc.gov/federal-sector/reports/promising-practices-preventing-harassment-federal-sector)** (last visited Apr. 12, 2024).

[282] *See Ferraro v. Kellwood Co.*, 440 F.3d 96, 102 (2d Cir. 2006) ("An employer may demonstrate the exercise of reasonable care, required by the first element, by showing the existence of an antiharassment policy during the period of the plaintiff's employment, although that fact alone is not always dispositive.").

[283] *See, e.g.*, *Wallace v. Performance Contractors, Inc.*, 57 F.4th 209, 223 (5th Cir. 2023) (determining the "evidence indicates that [the defendant] had a policy in theory but not one in practice" where both the plaintiff and her husband tried to contact the human resources office several times to no avail and harassment occurred in front of other employees and was never reported, despite the defendant's policy requiring any person witnessing harassment to report it); *Clark v. United Parcel Serv., Inc.*, 400 F.3d 341, 349 50 (6th Cir. 2005) ("While there is no exact formula for what constitutes a 'reasonable' sexual harassment policy, an effective policy should at least . . . provide for training regarding the policy.").

[284] *See Brown v. Perry*, 184 F.3d 388, 396 (4th Cir. 1999) ("But where, as here, there is no evidence that an employer adopted or administered an anti harassment policy in bad faith or that the policy was otherwise defective or dysfunctional, the existence of such a policy militates strongly in favor of a conclusion that the employer 'exercised reasonable care to prevent' and promptly correct sexual harassment."); *see also Madray v. Publix Supermarkets, Inc.*, 208 F.3d 1290, 1299 (11th Cir. 2000) ("[B]ecause we find no inherent defect in the complaint procedures established by Publix's sexual harassment policy, nor any evidence that the policy was administered in bad faith, we conclude that Publix exercised reasonable care to prevent sexual harassment.").

[285] *MacCluskey v. Univ. of Conn. Health Ctr.*, 707 F. App'x 44, 47 48 (2d Cir. 2017) ("Even where an employer provides a reasonable avenue for complaint, it may be liable if it knew or should have known about the harassment and failed to take appropriate action." (citing *Duch v. Jakubek*, 588 F.3d 757, 762 (2d Cir. 2009))).

[286] *Duch*, 588 F.3d at 764-66 (imputing the supervisor's actual or constructive knowledge of the harassment to the employer).

[287] *Faragher v. City of Boca Raton*, 524 U.S. 775, 807 (1998); *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 765 (1998).

[288] *See Faragher*, 524 U.S. at 807 ("If the victim could have avoided harm, no liability should be found against the employer who had taken reasonable care, and if damages could reasonably have been mitigated no award against a liable employer should reward a plaintiff for what her own efforts could have avoided.").

[289] *Cf. Savino v. C.P. Hall Co.*, 199 F.3d 925, 935 (7th Cir. 1999) (stating that the employee's "unreasonable foot dragging will result in at least a partial reduction of damages, and may completely foreclose liability").

[290] *Faragher*, 524 U.S. at 807 08; *Ellerth*, 524 U.S. at 765; *see also Roby v. CWI, Inc.*, 579 F.3d 779, 786 (7th Cir. 2009) (second prong of affirmative defense satisfied where the plaintiff was aware that the anti-harassment policy required immediate reporting of sexual harassment, yet she failed to say anything for at least five

particularized experiences of individual claimants but on the landscape of the total work environment).

[383] *EEOC v. Int'l Profit Assocs., Inc.*, No. 01 C 4427, 2007 WL 3120069, at *17 (N.D. Ill. Oct. 23, 2007) (holding that the EEOC was required to establish that sexual harassment that occurred at the worksite during the relevant time period, taken as a whole, was sufficiently severe or pervasive that a reasonable woman would have found the work environment hostile or abusive).

[384] *EEOC v. Glob. Horizons, Inc.*, 7 F. Supp. 3d 1053, 1058-63 (D. Haw. 2014).

[385] *See generally Mitsubishi*, 990 F. Supp. at 1075.

After an employer's responsibility to take overarching action has been established, employees' entitlement to individual relief is determined on a case-by-case basis. *Id.* at 1077.

[386] This example is adapted from the facts in *EEOC v. Dial Corp.*, 156 F. Supp. 2d 926 (N.D. Ill. 2001).

[387] Proposed Enforcement Guidance on Harassment in the Workplace, 88 Fed. Reg. 67,750 (Oct. 2, 2023), **https://www.federalregister.gov/d/2023-21644 (https://web.archive.org/web/20250116114856/https://www.federalregister.gov/d/2023-21644)** . The proposed guidance also was posted prominently on the EEOC's website at www.eeoc.gov.

EXHIBIT 5

EEOC Sex-Based Discrimination

(archived Jan. 13, 2025)

Sex-Based Discrimination

Sex discrimination involves treating someone (an applicant or employee) unfavorably because of that person's sex, including the person's sexual orientation, gender identity, or pregnancy.

Discrimination against an individual because of gender identity, including transgender status, or because of sexual orientation is discrimination because of sex in violation of Title VII. For more information about LGBTQ+ related sex discrimination claims see **Sexual Orientation and Gender Identity Discrimination (https://www.eeoc.gov/web/20250113200613/https://www.eeoc.gov/node/133873)** .

Sex Discrimination & Work Situations

The law forbids discrimination when it comes to any aspect of employment including hiring firing pay job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

Sex Discrimination Harassment

It is unlawful to harass a person because of that person's sex including the person's sexual orientation gender identity, or pregnancy. Harassment can include "sexual harassment" such as unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Harassment does not have to be of a sexual nature however and can include offensive remarks about a person's sex including the person's sexual orientation, gender identity, or pregnancy. For example, it is illegal to harass a woman by making offensive comments about women in general.

Both the victim and the harasser may be any sex, and the victim and harasser may be the same sex or a different sex.

Although the law doesn't prohibit minor teasing, offhand comments, or isolated incidents that are not frequent or serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor a supervisor in another area a co worker a subordinate or someone who is not an employee of the employer, such as a client or customer.

Sex Discrimination & Employment Policies/Practices

An employment policy or practice that applies to everyone regardless of sex can be illegal if it has a negative impact on the employment of people of a certain sex and is not job-related or necessary to the operation of the business.

Employer Coverage

15 or more employees

Time Limits

180 days to **file a charge (https://web.archive.org/web/20250113200613/https://www.eeoc.gov/employees/charge.cfm)**
(may be extended by state laws)

Federal employees have 45 days to **contact an EEO Counselor (https://web.archive.org/web/20250113200613/https://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm)**

For more information, see:

- Title VII of the Civil Rights Act of 1964 (https://web.archive.org/web/20250113200613/https://www.eeoc.gov/laws/statutes/titlevii.cfm)
- Regulations: 29 C.F.R. Part 1604 (https://web.archive.org/web/20250113200613/http://www.gpo.gov/fdsys/pkg/CFR-2016-title29-vol4/xml/CFR-2016-title29-vol4-part1604.xml)
- Policy & Guidance (https://web.archive.org/web/20250113200613/https://www.eeoc.gov/laws/types/sex_guidance.cfm)
- Statistics (https://web.archive.org/web/20250113200613/https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0)

See also:

- Equal Pay and Compensation Discrimination (https://web.archive.org/web/20250113200613/https://www.eeoc.gov/laws/types/equalcompensation.cfm)
- Pregnancy Discrimination (https://web.archive.org/web/20250113200613/https://www.eeoc.gov/laws/types/pregnancy.cfm)
- Sexual Harassment (https://web.archive.org/web/20250113200613/https://www.eeoc.gov/laws/types/sexual_harassment.cfm)
- Employer Best Practices for Workers with Caregiving Responsibilities (https://web.archive.org/web/20250113200613/https://www.eeoc.gov/policy/docs/caregiver-best-practices.html)
- Break Time for Nursing Mothers under the FLSA (https://web.archive.org/web/20250113200613/http://www.dol.gov/whd/regs/compliance/whdfs73.htm) (U.S. Dept of Labor, Wage and Hour Division)
- Questions and Answers: The Application of Title VII and the ADA to Applicants or Employees Who Experience Domestic or Dating Violence, Sexual Assault, or Stalking (https://web.archive.org/web/20250113200613/https://www.eeoc.gov/laws/guidance/questions-and-answers-application-title-vii-and-ada-applicants-or-employees-who)
- Older Women at Work: The Intersection of Age and Sex Discrimination (https://web.archive.org/web/20250113200613/https://www.eeoc.gov/older_women_work_intersection_age_and_sex_discrimination)

EXHIBIT 6

EEOC Prohibited Employment Policies/Practices

(archived Jan. 13, 2025)

Prohibited Employment Policies/Practices

Under the laws enforced by EEOC, it is illegal to discriminate against someone (applicant or employee) because of that person's race, color, religion, sex (including gender identity, sexual orientation, and pregnancy) national origin age (40 or older) disability or genetic information It is also illegal to retaliate against a person because he or she complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

The law forbids discrimination in every aspect of employment.

The laws enforced by EEOC prohibit an **employer or other covered entity (https://www.eeoc.gov/web/20250113200622/https://www.eeoc.gov/employers/coverage-0)** from using neutral employment policies and practices that have a disproportionately negative effect on applicants or employees of a particular race color religion sex (including gender identity sexual orientation and pregnancy), or national origin, or on an individual with a disability or class of individuals with disabilities, if the polices or practices at issue are not job-related and necessary to the operation of the business. The laws enforced by EEOC also prohibit an employer from using neutral employment policies and practices that have a disproportionately negative impact on applicants or employees age 40 or older, if the policies or practices at issue are not based on a reasonable factor other than age.

Job Advertisements

It is illegal for an employer to publish a job advertisement that shows a preference for or discourages someone from applying for a job because of his or her race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information.

For example, a help-wanted ad that seeks "females" or "recent college graduates" may discourage men and people over 40 from applying and may violate the law

Recruitment

It is also illegal for an employer to recruit new employees in a way that discriminates against them because of their race color religion sex (including gender identity sexual orientation and pregnancy) national origin age (40 or older), disability or genetic information.

For example an employer's reliance on word of mouth recruitment by its mostly Hispanic work force may violate the law if the result is that almost all new hires are Hispanic.

Application & Hiring

It is illegal for an employer to discriminate against a job applicant because of his or her race color religion sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information. For example, an employer may not refuse to give employment applications to people of a certain race

An employer may not base hiring decisions on stereotypes and assumptions about a person's race, color, religion sex (including gender identity sexual orientation and pregnancy) national origin age (40 or older) disability or genetic information.

If an employer requires job applicants to take a test the test must be necessary and related to the job and the employer may not exclude people of a particular race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, or individuals with disabilities. In addition, the employer may not use a test that excludes applicants age 40 or older if the test is not based on a reasonable factor other than age.

If a job applicant with a disability needs an accommodation (such as a sign language interpreter) to apply for a job, the employer is required to provide the accommodation, so long as the accommodation does not cause the employer significant difficulty or expense.

Background Checks

*See "**Pre-Employment Inquiries**" below.*

Job Referrals

It is illegal for an employer, employment agency or union to take into account a person's race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information when making decisions about job referrals

Job Assignments & Promotions

It is illegal for an employer to make decisions about job assignments and promotions based on an employee's race color religion sex (including gender identity sexual orientation and pregnancy) national origin age (40 or older), disability or genetic information. For example, an employer may not give preference to employees of a certain race when making shift assignments and may not segregate employees of a particular national origin from other employees or from customers

An employer may not base assignment and promotion decisions on stereotypes and assumptions about a person's race color religion sex (including gender identity sexual orientation and pregnancy) national origin, age (40 or older), disability or genetic information.

If an employer requires employees to take a test before making decisions about assignments or promotions the test may not exclude people of a particular race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), or national origin, or individuals with disabilities, unless the employer can show that the test is necessary and related to the job In addition the employer may not use a test that excludes employees age 40 or older if the test is not based on a reasonable factor other than age.

Pay And Benefits

It is illegal for an employer to discriminate against an employee in the payment of wages or employee benefits on the bases of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information. Employee benefits include sick and vacation leave insurance access to overtime as well as overtime pay and retirement programs For example an employer many not pay Hispanic workers less than African-American workers because of their national origin, and men and women in the same workplace must be given equal pay for equal work.

In some situations, an employer may be allowed to reduce some employee benefits for older workers, but only if the cost of providing the reduced benefits is the same as the cost of providing benefits to younger workers

Discipline & Discharge

An employer may not take into account a person's race, color, religion, sex (including gender identity, sexual orientation and pregnancy) national origin age (40 or older) disability or genetic information when making decisions about discipline or discharge. For example, if two employees commit a similar offense, an employer many not discipline them differently because of their race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information.

When deciding which employees will be laid off, an employer may not choose the oldest workers because of their age

Employers also may not discriminate when deciding which workers to recall after a layoff.

Employment References

It is illegal for an employer to give a negative or false employment reference (or refuse to give a reference) because of a person's race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin age (40 or older) disability or genetic information

Reasonable Accommodation & Disability

The law requires that an employer provide reasonable accommodation to an employee or job applicant with a disability unless doing so would cause significant difficulty or expense for the employer

A reasonable accommodation is any change in the workplace (or in the ways things are usually done) to help a person with a disability apply for a job perform the duties of a job or enjoy the benefits and privileges of employment.

Reasonable accommodation might include, for example, providing a ramp for a wheelchair user or providing a reader or interpreter for a blind or deaf employee or applicant.

Reasonable Accommodation & Pregnancy, Childbirth, or Related Medical Conditions

The law requires that an employer provide reasonable accommodation to a qualified employee or job applicant with a known limitation related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions unless doing so would cause significant difficulty or expense for the employer

A reasonable accommodation is any change in the workplace (or in the ways things are usually done) to help a person with a known limitation apply for a job perform a job or enjoy the benefits and privileges of employment.

Reasonable accommodation might include, for example, allowing additional break times for the worker to rest, drink, eat, or use the restroom, allowing a worker who usually stands to perform their job to sit, telework, or leave for medical appointments or to recover from childbirth.

Reasonable Accommodation & Religion

The law requires an employer to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause difficulty or expense for the employer. This means an employer may have to make reasonable adjustments at work that will allow the employee to practice his or her religion such as allowing an employee to voluntarily swap shifts with a co- worker so that he or she can attend religious services.

Training & Apprenticeship Programs

It is illegal for a training or apprenticeship program to discriminate on the bases of race color religion sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information. For example, an employer may not deny training opportunities to African-American employees because of their race

In some situations, an employer may be allowed to set age limits for participation in an apprenticeship program

Harassment

It is illegal to harass an employee because of race, color, religion, sex (including gender identity, sexual orientation and pregnancy) national origin age (40 or older) disability or genetic information

It is also illegal to harass someone because they have complained about discrimination, filed a charge of discrimination or participated in an employment discrimination investigation or lawsuit

Harassment can take the form of slurs, graffiti, offensive or derogatory comments, or other verbal or physical conduct. Sexual harassment (including unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature) is also unlawful. Although the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal if it is so frequent or severe that it creates a hostile or offensive work environment or if it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Harassment outside of the workplace may also be illegal if there is a link with the workplace. For example, if a supervisor harasses an employee while driving the employee to a meeting.

Read more about ***harassment*** **(https://www.eeoc.gov/web/20250113200622/https://www.eeoc.gov/harassment)**

Terms & Conditions Of Employment

The law makes it illegal for an employer to make any employment decision because of a person's race color religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information. That means an employer may not discriminate when it comes to such things as hiring firing promotions and pay It also means an employer may not discriminate for example when granting breaks, approving leave, assigning work stations, or setting any other term or condition of employment - however small.

Pre-Employment Inquiries (General)

As a general rule, the information obtained and requested through the pre-employment process should be limited to those essential for determining if a person is qualified for the job; whereas, information regarding race, sex, national origin, age, and religion are irrelevant in such determinations.

Employers are explicitly prohibited from making pre-offer inquiries about disability.

Although state and federal equal opportunity laws do not clearly forbid employers from making pre-employment inquiries that relate to, or disproportionately screen out members based on race, color, sex, national origin religion or age such inquiries may be used as evidence of an employer's intent to discriminate unless the questions asked can be justified by some business purpose.

Therefore inquiries about organizations clubs societies and lodges of which an applicant may be a member or any other questions, which may indicate the applicant's race, sex, national origin, disability status, age, religion, color or ancestry if answered, should generally be avoided.

Similarly, employers should not ask for a photograph of an applicant. If needed for identification purposes, a photograph may be obtained after an offer of employment is made and accepted.

Pre-Employment Inquiries and:

- **Race (https://www.eeoc.gov/web/20250113200622/https://www.eeoc.gov/pre-employment inquiries and race)**
- **Height & Weight (https://www.eeoc.gov/web/20250113200622/https://www.eeoc.gov/pre employment-inquiries-and-height-weight)**
- **Financial Information (https://www.eeoc.gov/web/20250113200622/https://www.eeoc.gov/pre-employment-inquiries-and-financial-information)**
- **Unemployed Status (https://www.eeoc.gov/web/20250113200622/https://www.eeoc.gov/pre-employment-inquiries-and-unemployed-status)**
- **Background Checks (https://www.eeoc.gov/web/20250113200622/https://www.eeoc.gov/background checks)**
- **Religious Affiliation Or Beliefs (https://www.eeoc.gov/web/20250113200622/https://www.eeoc.gov/pre employment-inquiries-and-religious-affiliation-or-beliefs)**
- **Citizenship (https://www.eeoc.gov/web/20250113200622/https://www.eeoc.gov/pre-employment-inquiries-and-citizenship)**
- **Marital Status, Number Of Children (https://www.eeoc.gov/web/20250113200622/https://www.eeoc.gov/pre-employment-inquiries-and-marital-status-or-number-children)**
- **Gender (https://www.eeoc.gov/web/20250113200622/https://www.eeoc.gov/pre-employment inquiries and gender)**

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- **Disability (https://www.eeoc.gov/web/20250113200622/https://www.eeoc.gov/pre-employment-inquiries-and-disability)**
- **Medical Questions & Examinations (https://www.eeoc.gov/web/20250113200622/https://www.eeoc.gov/pre-employment inquiries and medical questions examinations)**

Dress Code

In general, an employer may establish a dress code which applies to all employees or employees within certain job categories However there are a few possible exceptions

While an employer may require all workers to follow a uniform dress code even if the dress code conflicts with some workers' ethnic beliefs or practices a dress code must not treat some employees less favorably because of their national origin. For example, a dress code that prohibits certain kinds of ethnic dress, such as traditional African or East Indian attire, but otherwise permits casual dress would treat some employees less favorably because of their national origin

Moreover, if the dress code conflicts with an employee's religious practices and the employee requests an accommodation the employer must modify the dress code or permit an exception to the dress code unless doing so would result in undue hardship.

Similarly if an employee requests an accommodation to the dress code because of his disability the employer must modify the dress code or permit an exception to the dress code, unless doing so would result in undue hardship.

Constructive Discharge/Forced To Resign

Discriminatory practices under the laws EEOC enforces also include constructive discharge or forcing an employee to resign by making the work environment so intolerable a reasonable person would not be able to stay

On This Page

For information on working at the EEOC, visit our **EEOC Careers page (https://web.archive.org/web/20250113200622/https://www.eeoc.gov/careers)** .

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About the Agency - English (https://web.archive.org/web/20250113200622/https://youtu.be/VUfmv-1hrKU)
Sobre la Agencia - Español (https://web.archive.org/web/20250113200622/https://youtu.be/Jwj_t6Co758)
About the Agency_ ASL (https://web.archive.org/web/20250113200622/https://www.youtube.com/watch?v_xB6lSD1GfiI)

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EXHIBIT 7

EEOC Sexual Orientation and Gender Identity (SOGI) Discrimination

(archived Jan. 13, 2025)

Sexual Orientation and Gender Identity (SOGI) Discrimination

In *Bostock v Clayton County, Georgia,* No 17 1618 (S Ct June 15 2020) **[1]** the Supreme Court held that firing individuals because of their sexual orientation or transgender status violates Title VII's prohibition on discrimination because of sex. The Court reached its holding by focusing on the plain text of Title VII. As the Court explained "discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second." For example, if an employer fires an employee because she is a woman who is married to a woman, but would not do the same to a man married to a woman, the employer is taking an action because of the employee's sex because the action would not have taken place but for the employee being a woman. Similarly, if an employer fires an employee because that person was identified as male at birth but uses feminine pronouns and identifies as a female, the employer is taking action against the individual because of sex since the action would not have been taken but for the fact the employee was originally identified as male.

The Court also noted that its decision did not address various religious liberty issues, such as the First Amendment, Religious Freedom Restoration Act, and exemptions Title VII provides for religious employers

SOGI Discrimination & Work Situations

The law forbids sexual orientation and gender identity discrimination when it comes to any aspect of employment including hiring firing pay job assignments promotions layoff training fringe benefits and any other term or condition of employment.

SOGI Discrimination & Harassment

It is unlawful to subject an employee to workplace harassment that creates a hostile work environment based on sexual orientation or gender identity. Harassment can include, for example, offensive or derogatory remarks about sexual orientation (e.g., being gay or straight). Harassment can also include, for example, offensive or derogatory remarks about a person's transgender status or gender transition

Although accidental misuse of a transgender employee's name and pronouns does not violate Title VII, intentionally and repeatedly using the wrong name and pronouns to refer to a transgender employee could contribute to an unlawful hostile work environment.

While the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious, harassment is unlawful when it is so frequent or severe that it creates a hostile work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a clientor customer.

SOGI Discrimination & Employment Policies/Practices

As a general matter, an employer covered by Title VII is not allowed to fire, refuse to hire, or take assignments away from someone (or discriminate in any other way) because customers or clients would prefer to work with people who have a different sexual orientation or gender identity Employers also are not allowed to segregate employees based on actual or perceived customer preferences. (For example, it would be discriminatory to keep LGBTQ+ employees out of public-facing positions, or to direct these employees toward certain stores or geographic areas)

Prohibiting a transgender person from dressing or presenting consistent with that person's gender identity would constitute sex discrimination

Courts have long recognized that employers may have separate bathrooms, locker rooms, and showers for men and women, or may choose to have unisex or single-use bathrooms, locker rooms, and showers. The

Commission has taken the position (https://web.archive.org/web/20250113200649/https://www.eeoc.gov/sites/default/files/migrated_files/decisions/0120133395.txt) that employers may not deny an employee equal access to a bathroom, locker room or shower that corresponds to the employee s gender identity In other words if an employer has separate bathrooms, locker rooms, or showers for men and women, all men (including transgender men) should be allowed to use the men's facilities and all women (including transgender women) should be allowed to use the women's facilities.

SOGI Discrimination & Retaliation

It is illegal for an employer to retaliate against, harass, or otherwise punish any employee for:

- opposing employment discrimination that the employee reasonably believed was unlawful;
- filing an EEOC charge or complaint;
- or participating in any investigation, hearing, or other proceeding connected to Title VII enforcement.

Retaliation is anything that would be reasonably likely to discourage workers from protesting discrimination.

Laws the Commission Enforces

- 42 U.S.C. § 2000e-2 (Section 703)

  This is the section of the law that was at issue in *Bostock* and applies to the private sector, state and local governments, employment agencies, and labor organizations. *Bostock* made clear that section 703's prohibition of discrimination based on sex includes sexual orientation and transgender status.

- 42 U S C § 2000e 16 (Section 717)

  Section 717 covers employees of the federal government. The Commission has applied *Bostock* in federal sector decisions under section 717. (See **https://www.eeoc.gov/federal-sector/reports/federal-sector-cases-involving-transgender-individuals (https://web.archive.org/web/20250113200649/https://www.eeoc.gov/federal-sector/reports/federal-sector-cases-involving-transgender-individuals)**)

What to Do if You Think You Have Been Discriminated Against

If you believe you have been discriminated against, you may take action to protect your rights under Title VII by filing a complaint

- **Private sector and state/local government employees** may file a charge of discrimination by contacting the EEOC at 1 800 669 4000 or going to **https://www.eeoc.gov/how-file-charge-employment-discrimination (https://web.archive.org/web/20250113200649/https://www.eeoc.gov/how_file_charge_employment_discrimination)**
- **Federal government employees** may initiate the complaint process by contacting an EEO counselor at your agency; more information is available at **https://www.eeoc.gov/federal-sector/overview-federal-sector-eeo-complaint-process (https://web.archive.org/web/20250113200649/https://www.eeoc.gov/federal-sector/overview-federal-sector-eeo-complaint-process)** .

Other Laws

Other laws that also may apply

- Federal contractors and sub-contractors are covered by a separate, explicit prohibition on transgender or sexual orientation discrimination in employment pursuant to Executive Order (E.O.) 13672 enforced by the U.S. Department of

Labor s **Office of Federal Contract Compliance Programs (https://web.archive.org/web/20250113200649/https://www.dol.gov/agencies/ofccp)** .

- State or local fair employment laws also may prohibit discrimination based on sexual orientation or transgender status. Contact information for state and local fair employment agencies can be found on the page for EEOC s **field office (https://web.archive.org/web/20250113200649/https://www.eeoc.gov/field-office)** covering that state or locality.

[1] This also served as the decision for *Altitude Express, Inc., et al. v. Zarda et al*. (No. 17–1623) and *R. G. & G. R. Harris Funeral Homes, Inc. v. EEOC et al.* (No. 18–107).

(https://web.archive.org/web/20250113200649/https://www.eeoc.gov/sites/default/files/2022_06/LGBTQI%20Civil%20Rights%20Infographic.pdf)
Download the Infographic (PDF)
(https://web.archive.org/web/20250113200649/https://www.eeoc.gov/sites/default/files/2022_06/LGBTQI%20Civil%20Rights%20Infographic.pdf)

From the EEOC Newsroom

A Message from EEOC Chair Charlotte A. Burrows for 2024 Pride Month (https://web.archive.org/web/20250113200649/https://www.eeoc.gov/wysk/message-eeoc-chair-charlotte-burrows-2024-pride-month)

EEOC Sues Two Employers for Sex Discrimination (https://web.archive.org/web/20250113200649/https://www.eeoc.gov/newsroom/eeoc_sues_two_employers_sex_discrimination_0) (10/24)

EEOC Sues Advance Auto Parts for Maintaining Hostile Work Environments for Gay and Black Workers (https://web.archive.org/web/20250113200649/https://www.eeoc.gov/newsroom/eeoc-sues-advance-auto-parts-maintaining-hostile-work-environments-gay-and-black-workers)

EEOC Sues Boxwood and Related Hotel Franchises for Discriminating Against Transgender Employee (https://web.archive.org/web/20250113200649/https://www.eeoc.gov/newsroom/eeoc-sues-boxwood-and-related-hotel-franchises_discriminating_against_transgender_employee)

EEOC Sues Reggio's Pizza for Retaliation (https://web.archive.org/web/20250113200649/https://www.eeoc.gov/newsroom/eeoc-sues-reggios-pizza-retaliation)

Fremont Contractor to Settle EEOC Harassment Charge (https://web.archive.org/web/20250113200649/https://www.eeoc.gov/newsroom/fremont-contractor-settle-eeoc-harassment-charge)

EEOC Sues Two Employers for Sex Discrimination (https://web.archive.org/web/20250113200649/https://www.eeoc.gov/newsroom/eeoc_sues_two_employers_sex_discrimination) (6/24)

Honolulu Restaurant and HR Company to Pay $115,000 in EEOC Sexual Harassment Lawsuit (https://web.archive.org/web/20250113200649/https://www.eeoc.gov/newsroom/honolulu-restaurant-and-hr-company-pay-115000-eeoc-sexual-harassment-lawsuit)

Columbia River Healthcare to Settle EEOC Harassment Charge (https://web.archive.org/web/20250113200649/https://www.eeoc.gov/newsroom/columbia-river-healthcare-settle-eeoc-harassment-charge)

Amerigo Italian Restaurant Owner Companies Pay $60,000 in EEOC Discrimination Suit (https://www.eeoc.gov/web/20250113200649/https://www.eeoc.gov/newsroom/amerigo-italian-restaurant-owner-companies-pay_60000_eeoc_discrimination_suit)

TA Dedicated to Pay $460,000 in EEOC Sexual Orientation and Retaliation Suit (https://www.eeoc.gov/web/20250113200649/https://www.eeoc.gov/newsroom/ta_dedicated_pay_460000_eeoc_sexual_orientation-and-retaliation-suit)

Employer Coverage

15 or more employees

Time Limits

180 days to **file a charge (https://web.archive.org/web/20250113200649/https://www.eeoc.gov/employees/charge.cfm)**
(may be extended by state laws)

Federal employees have 45 days to **contact an EEO Counselor (https://web.archive.org/web/20250113200649/https://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm)**

For more information, see:

- Supreme Court Decision in ***Bostock v Clayton County*** **(https://web.archive.org/web/20250113200649/https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf)**
- **Title VII of the Civil Rights Act of 1964 (https://www.eeoc.gov/web/20250113200649/https://www.eeoc.gov/laws/statutes/titlevii.cfm)**
- **FAQs on Sex Discrimination (including Sexual Orientation and Gender Identity discrimination) (https://www.eeoc.gov/web/20250113200649/https://www.eeoc.gov/laws/guidance/sex-discrimination)**
- **Fact Sheet: Facility/Bathroom Access and Gender Identity (https://www.eeoc.gov/web/20250113200649/https://www.eeoc.gov/laws/guidance/fact-sheet-facilitybathroom-access-and-gender-identity)**
- **Youth@Work: FAQs on Sex Discrimination (including Sexual Orientation and Gender Identity discrimination) (https://www.eeoc.gov/web/20250113200649/https://www.eeoc.gov/youth/sex-discrimination-faqs)**

EEOC Enforcement & Litigation

- **Statistics (https://web.archive.org/web/20250113200649/https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0)**
- **Fact Sheet: Notable EEOC Litigation Regarding Title VII & Discrimination Based on Sexual Orientation and Gender Identity (https://www.eeoc.gov/web/20250113200649/https://www.eeoc.gov/fact-sheet-notable-eeoc-litigation-regarding-title-vii-discrimination-based-sexual-orientation-and)**

Resources for Federal Employees

- **EEOC, MSPB, OPM, & OSC -- Addressing Sexual Orientation and Gender Identity Discrimination in Federal Civilian Employment (https://web.archive.org/web/20250113200649/https://op.bna.com/gr.nsf/id/llbe-9x5qcw/$File/OPM%20EEOC%20MSPB%20OSC%20Guide.pdf)**
- **EEOC -- Processing EEO Discrimination Complaints Involving SOGI Discrimination Filed By Federal Employees (https://www.eeoc.gov/web/20250113200649/https://www.eeoc.gov/federal_sector/management_directive/processing_complaints-discrimination-lesbian-gay-bisexual-and)**
- **EEOC -- Federal-Sector EEO Cases Involving Sexual Orientation or Gender Identity (SOGI) Discrimination (https://www.eeoc.gov/web/20250113200649/https://www.eeoc.gov/federal-sector/federal-sector-eeo-cases-involving-sexual-orientation-or-gender-identity-sogi)**
- **EEOC Discrimination in Federal Government Based on Marital Status, Political Affiliation, Status as a Parent, Sexual Orientation, and Gender Identity (https://www.eeoc.gov/web/20250113200649/https://www.eeoc.gov/federal-sector/facts-about-discrimination-federal-government-employment-based-marital-status)**
- Executive Orders **13087 (https://www.eeoc.gov/web/20250113200649/https://www.eeoc.gov/executive-order-13087)** & **13672 (https://web.archive.org/web/20250113200649/https://www.govinfo.gov/content/pkg/CFR-2015-title3-vol1/pdf/CFR-2015-title3_vol1_eo13672.pdf)**

EXHIBIT 8

EEOC Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity

(archived Jan. 13, 2025)

Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity

This technical assistance document was issued upon approval of the Chair of the U.S. Equal Employment Opportunity Commission.

OLC Control Number:	NVTA 2021 1
Concise Display Name:	Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity
Issue Date:	06 15 2021
General Topics:	Sex Discrimination, Sexual Orientation, Gender Identity, Sex Harassment, Retaliation
Summary:	This document briefly explains the Supreme Court's decision in Bostock v. Clayton County and the EEOC's established legal positions on sexual orientation and gender identity related workplace discrimination issues

Citation:	Title VII
Document Applicant:	Applicants for employment, employees, employers covered by Title VII; related representatives and practitioners
Previous Revision:	No.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

On June 15, 2020, the Supreme Court of the United States issued its landmark decision in the case *Bostock v. Clayton County*,**[1]** **(https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/protections-against-employment-discrimination-based-sexual-orientation-or-gender-identity#_edn1)** which held that the prohibition against sex discrimination in Title VII of the Civil Rights Act of 1964 (Title VII) includes employment discrimination against an individual on the basis of sexual orientation or transgender status.

This fact sheet briefly explains what the *Bostock* decision means for LGBTQ+ workers (and all covered workers) and for employers across the country. It also explains the Equal Employment Opportunity Commission's (EEOC or Commission) established legal positions on LGBTQ+ related matters, as voted by the Commission.
Before *Bostock*, the Commission decided an array of matters involving employment discrimination based on sexual orientation and gender identity. For example, the EEOC has authority under Title VII to decide employment discrimination appeals by employees of the federal government and, in 2012, decided that discrimination against an applicant for federal employment based on gender identity is discrimination based on sex.**[2]** **(https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/protections-against-employment-discrimination-based-sexual-orientation-or-gender-**

identity#_edn2) In 2015, in a federal sector matter involving a decision not to permanently hire an individual, the Commission decided that sexual orientation discrimination states a claim of sex discrimination under Title VII.**[3]** **(https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/protections-against-employment-discrimination-based-sexual-orientation-or-gender-identity#_edn3)** More recently, the Commission also applied the *Bostock* decision in the federal sector.**[4]** **(https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/protections-against-employment-discrimination-based-sexual-orientation-or-gender-identity#_edn4)**

This information is not new policy. This publication in itself does not have the force and effect of law and is not meant to bind the public in any way. It is intended only to provide clarity to the public regarding existing requirements under the law.

1. What happened in the *Bostock* case?

The *Bostock* case involved a trio of cases alleging discrimination against LGBTQ+ workers, which the Supreme Court decided together in a single opinion. Gerald Bostock, a child welfare services coordinator, was fired after his employer learned he had joined a gay softball league. Donald Zarda, a skydiving instructor, was fired after his employer learned he was gay. In a case filed by the EEOC, funeral director Aimee Stephens was fired after her employer learned that she was going to transition from male to female. In deciding these cases, the Supreme Court held that employment discrimination based on sexual orientation (Bostock and Zarda) or transgender status (Aimee Stephens) is discrimination "because of sex," and is therefore unlawful under Title VII.

The Supreme Court in *Bostock* recognized that to discriminate against a person based on sexual orientation or transgender status is to discriminate against that individual based on sex. Therefore, the Supreme Court held that Title VII makes it unlawful for a covered employer to take an employee's sexual orientation or transgender status into account in making employment-related decisions. The Court explicitly reserved some issues for future cases.

2. Does Title VII protect all workers?

Title VII protects job applicants, current employees (including full-time, part-time, seasonal, and temporary employees), and former employees, if their employer has 15 or more employees. Employers with fewer than 15 total employees are not covered by Title VII.

Title VII protects employees regardless of citizenship or immigration status, in every state, the District of Columbia, and the United States territories.

Title VII generally does not apply to individuals who are found to be independent contractors. Figuring out whether someone is an employee or an independent contractor is a fact-specific inquiry. To find out more, see the EEOC's guidance on ***Threshold Issues*** **(https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/laws/guidance/section-2-threshold-issues)** .

3. Does Title VII apply to all employers?

Title VII applies to private sector employers with 15 or more employees, to state and local government employers with 15 or more employees, and to the federal government as an employer. Title VII also applies to unions and employment agencies.

Title VII does not apply to Tribal nations. However, private employers with 15 or more employees are covered by the statute, even if they operate on a Tribal reservation.

Title VII allows "religious organizations" and "religious educational institutions" (those organizations whose purpose and character are primarily religious) to hire and employ people who share their own religion (in other words, it is not unlawful religious discrimination for a qualifying employer to limit hiring in this way). Courts also apply a "ministerial exception" that bars certain employment discrimination claims by the employees of religious institutions because those employees perform vital religious duties at the core of the mission of the religious institution. Courts and the EEOC consider and apply, on a case by case basis, any religious defenses to

discrimination claims, under Title VII and other applicable laws. For more information on those defenses and other issues related to religious organizations and discrimination based on religion, see **EEOC Compliance Manual, Section 12: Religious Discrimination (https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination)** .

Other defenses might also be available to employers depending on the facts of a particular case.

4. Does Title VII protect employees who work in places where state or local law does not prohibit employment discrimination based on sexual orientation or gender identity?

Yes. As a federal law, Title VII applies nationwide and protects employees from discrimination based on sexual orientation or gender identity regardless of state or local laws.

5. What kind of discriminatory employment actions does Title VII prohibit?

Title VII includes a broad range of protections. Among other things, under Title VII employers cannot discriminate against individuals based on sexual orientation or gender identity with respect to:

- hiring
- firing, furloughs, or reductions in force
- promotions
- demotions
- discipline
- training
- work assignments
- pay, overtime, or other compensation

- fringe benefits
- other terms, conditions, and privileges of employment.

Discrimination also includes severe or pervasive harassment. It is unlawful for an employer to create or tolerate such harassment based on sexual orientation or gender identity. Further, if an employee reports such harassment by a customer or client, the employer must take steps to stop the harassment and prevent it from happening again. For more information, visit the EEOC's harassment page at **https://www.eeoc.gov/harassment (https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/harassment)** .

6. Are non-LGBTQ+ job applicants and employees also protected against sexual orientation and gender identity discrimination?

Yes employers are not allowed to discriminate against job applicants or employees because the applicants or employees are, for example, straight or cisgender (someone whose gender identity corresponds with the sex assigned at birth). Title VII prohibits harassment and other forms of discrimination based on sexual orientation or gender identity.

7. Could an employer's discriminatory action be justified by customer or client preferences?

No. As a general matter, an employer covered by Title VII is not allowed to fire, refuse to hire, or take assignments away from someone (or discriminate in any other way) because customers or clients would prefer to work with people who have a different sexual orientation or gender identity. Employers also are not allowed to segregate employees based on actual or perceived customer preferences. (For example, it would be discriminatory to keep LGBTQ+ employees out of public-facing positions, or to direct these employees toward certain stores or geographic areas.)

8. Is an employer allowed to discriminate against an employee because the employer believes the employee acts or appears in ways that do not conform to stereotypes about the way men or women are expected to behave?

No. Whether or not an employer knows an employee's sexual orientation or gender identity, employers are not allowed to discriminate against an employee because that employee does not conform to a sex based stereotype about feminine or masculine behavior. For example, employers are not allowed to discriminate against men whom they perceive to act or appear in stereotypically feminine ways, or against women whom they perceive to act or appear in stereotypically masculine ways.

9. May a covered employer require a transgender employee to dress in accordance with the employee's sex assigned at birth?

No. Prohibiting a transgender person from dressing or presenting consistent with that person's gender identity would constitute sex discrimination.**[5]** **(https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/protections-against-employment-discrimination-based-sexual-orientation-or-gender-identity#_edn5)**

10. Does an employer have the right to have separate, sex-segregated bathrooms, locker rooms, or showers for men and women?

Yes. Courts have long recognized that employers may have separate bathrooms, locker rooms, and showers for men and women, or may choose to have unisex or single use bathrooms, locker rooms, and showers. The Commission has taken the position that employers may not deny an employee equal access to a bathroom, locker room, or shower that corresponds to the employee's gender identity.**[6]** **(https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/protections-against-employment-discrimination-based-sexual-orientation-or-gender-identity#_edn6)** In other words, if an employer has separate bathrooms, locker rooms, or showers for men and women, all men (including transgender men) should be allowed to use the men's facilities and all women (including transgender women) should be allowed to use the women's facilities.

11. Could use of pronouns or names that are inconsistent with an individual's gender identity be considered harassment?

Yes, in certain circumstances. Unlawful harassment includes unwelcome conduct that is based on gender identity. To be unlawful, the conduct must be severe or pervasive when considered together with all other unwelcome conduct based on the individual's sex including gender identity, thereby creating a work environment that a reasonable person would consider intimidating, hostile, or offensive. In its decision in *Lusardi v. Dep't of the Army*,**[7] (https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/protections-against-employment-discrimination-based-sexual-orientation-or-gender-identity#_edn7)** the Commission explained that although accidental misuse of a transgender employee's preferred name and pronouns does not violate Title VII, intentionally and repeatedly using the wrong name and pronouns to refer to a transgender employee could contribute to an unlawful hostile work environment.

12. If a job applicant's or an employee's Title VII rights have been violated, what can the applicant or employee do?

For applicants and employees of private sector employers and state and local government employers, the individual can contact the EEOC for help in deciding what to do next. If the individual decides to file a charge of discrimination with the EEOC, the agency will conduct an investigation to determine if applicable Equal Employment Opportunity (EEO) laws have been violated. Because an individual must file an EEOC charge within 180 days of the alleged violation in order to take further legal action (or 300 days if the employer is also covered by a state or local employment discrimination law), it is best to begin the process early.

For more information about filing a charge, visit **https://www.eeoc.gov/how-file-charge-employment-discrimination (https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/how-file-charge-employment-discrimination)** . To begin the process of filing a charge of discrimination against a private company or a state or local government employer, go to the EEOC Online Public Portal at **https://publicportal.eeoc.gov (https://web.archive.org/web/20250113220318/https://publicportal.eeoc.gov/)** or visit your local EEOC office (see **https://www.eeoc.gov/field-office (https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/field-**

office) for contact information). For general information, visit the EEOC website at **https://www.eeoc.gov (https://web.archive.org/web/20250113220318/https://www.eeoc.gov/)** , or call 1-800-669-4000 (voice), 1-800-669-6820 (TTY), or 1-844-234-5122 (ASL Video Phone).

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) enforces regulations that prohibit certain federal contractors from engaging in employment discrimination based on sexual orientation and gender identity, under Executive Order 11246, as amended. Executive Order 11246 applies to businesses with federal contracts and federally assisted construction contracts totaling more than $10,000. For more information, see **https://www.dol.gov/agencies/ofccp/faqs/lgbt (https://web.archive.org/web/20250113220318/https://www.dol.gov/agencies/ofccp/faqs/lgbt)** and **https://www.dol.gov/agencies/ofccp/jurisdictional-thresholds#Q2 (https://web.archive.org/web/20250113220318/https://www.dol.gov/agencies/ofccp/jurisdictional-thresholds#Q2)** .

For applicants and employees of the federal government, the process for seeking legal redress for Title VII violations is different than the process that individuals in the private sector and state and local governments must use. Federal applicants and employees must first contact the EEO Office at the specific federal agency that they believe committed the unlawful employment discrimination. In general, federal applicants and employees must start this federal sector EEO process by contacting the relevant federal agency's EEO office to request EEO counseling. *Most federal agencies list contact information for their internal EEO offices on their external agency website.*

A federal applicant or employee generally must request EEO counseling from the appropriate agency **within 45 calendar days of the date of the incident(s) the employee or applicant believes to be discriminatory. Failure to adhere to this time limitation could result in an individual forfeiting legal rights and remedies that otherwise would be available. Nevertheless, if a federal applicant or employee alleges that they were subjected to a hostile work environment, and**

at least one incident occurred within 45 calendar days of contacting an EEO counselor, then incidents occurring outside of the 45-calendar day window may still be considered for investigation.

Federal applicants and employees can also find out more information on the federal sector process for alleging employment discrimination on the EEOC's website **here (https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/federal-sector/federal-employees-job-applicants)** .

Other processes may be available for federal applicants and employees seeking relief for sexual orientation or gender identity discrimination, including filing grievances under applicable collective bargaining agreements and/or filing a prohibited personnel practice complaint under the Civil Service Reform Act of 1978 with the **U.S. Office of Special Counsel (https://web.archive.org/web/20250113220318/http://www.osc.gov/)** .

13. If I contact the EEOC or file a charge or complaint of discrimination, could I be fired?

It is unlawful for an employer to retaliate against, harass, or otherwise punish any employee for:

- opposing employment discrimination that the employee reasonably believed was unlawful;
- filing an EEOC charge or complaint;
- or participating in any investigation, hearing, or other proceeding connected to Title VII enforcement.

Retaliation is anything that would be reasonably likely to discourage workers from making or supporting a charge of discrimination. To learn more about retaliation, see **https://www.eeoc.gov/laws/guidance/enforcement-guidance-retaliation-and-related-issues (https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/laws/guidance/enforcement-guidance-retaliation-and-related-issues)** .

[1] **(https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/protections-against-employment-discrimination-based-sexual-orientation-or-gender-identity#_ednref1)** 590 U.S. , 140 S. Ct. 1731 (2020).

[2] **(https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/protections-against-employment-discrimination-based-sexual-orientation-or-gender-identity#_ednref2)** In *Macy v. Dep't of Justice*, EEOC Appeal No. 0120120821 (Apr. 20, 2012), a Commission voted decision involving an applicant for federal employment, the EEOC determined that transgender discrimination, including discrimination because an employee does not conform to gender norms or stereotypes, is sex discrimination in violation of Title VII based on a plain interpretation of the statutory language prohibiting discrimination because of sex. Specifically, the Commission explained that discrimination based on an employee's gender identity is sex discrimination "regardless of whether an employer discriminates against an employee [for expressing the employee's] gender in a non stereotypical fashion, because the employer is uncomfortable with the fact that the person has transitioned or is in the process of transitioning from one gender to another, or because the employer simply does not like that the person is identifying as a transgender person."

[3] **(https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/protections-against-employment-discrimination-based-sexual-orientation-or-gender-identity#_ednref3)** In *Baldwin v. Dep't of Transp.*, EEOC Appeal No. 0120133080 (July 15, 2015), a Commission voted decision involving a failure to permanently hire an individual as an air traffic controller, the Commission concluded that a claim alleging discrimination on the basis of sexual orientation necessarily states a claim of discrimination on the basis of sex under Title VII.

[4] **(https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/protections-against-employment-discrimination-based-sexual-orientation-or-gender-identity#_ednref4)** *See Bart M. v. Dep't of the Interior*, EEOC Appeal No. 0120160543 (Jan. 14, 2021).

[5] **(https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/protections-against-employment-discrimination-based-sexual-orientation-or-gender-identity#_ednref5)** *See Macy v. Dep't of Justice*, EEOC Appeal No. 0120120821 (Apr. 20, 2012).

[6] **(https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/protections-against-employment-discrimination-based-sexual-orientation-or-gender-identity#_ednref6)** *See Lusardi v. Dep't of the Army*, EEOC Appeal No. 0120133395 (Apr. 1, 2015) (concluding in an EEOC decision involving a federal employee that Title VII is violated where an employer denies an employee equal access to a common restroom corresponding to the employee's gender identity).

[7] **(https://www.eeoc.gov/web/20250113220318/https://www.eeoc.gov/protections-against-employment-discrimination-based-sexual-orientation-or-gender-identity#_ednref7)** *Id.*

EXHIBIT 9

The State of the EEOC: Frequently Asked Questions

The State of the EEOC: Frequently Asked Questions

On January 20, 21, and 29, 2025, President Trump issued a series of executive orders restoring even-handed civil rights enforcement and directing the federal government, including the EEOC, to combat serious patterns of discrimination and harassment that have gone unchecked for too long: Executive Order 14148: Initial Rescissions of Harmful Executive Orders and Actions; Executive Order 14151: Ending Radical and Wasteful Government DEI Programs and Preferencing; Executive Order 14168: Defending Women From Gender Ideology Extremism And Restoring Biological Truth To The Federal Government; Executive Order 14173: Ending Illegal Discrimination And Restoring Merit-Based Opportunity; and Executive Order 14188: Additional Measures To Combat Anti-Semitism.

As of January 28, 2025, the EEOC no longer has a quorum of its bipartisan leadership panel of Commissioners, following the departures of two Commissioners. The Commission panel currently is comprised of Republican Acting Chair Andrea Lucas (designated as Acting Chair by President Trump on

January 20, 2025) and Democrat Commissioner Kalpana Kotagal.

Under the leadership of Acting Chair Andrea Lucas, the EEOC remains open for business and fully committed to protecting the civil rights of all Americans, advancing individual equal opportunity for all, and relentlessly combatting private sector and public sector discrimination.

“I am confident that the work of our agency remains critically important, as illustrated by multiple Executive Orders protecting civil rights and expanding individual, merit-based opportunity issued by the President in his first few days in office,” said Lucas. “Given our jurisdiction and mission, the EEOC necessarily will play a critical role. The EEOC is the sole federal agency that enforces federal employment antidiscrimination laws against businesses and other private employers. And, among other things, we also play a critical role by investigating charges against state and local government employers (including public universities) before referring those charges to DOJ’s Civil Rights division.” Lucas emphasized, “The President is committed to enforcing long-standing federal statutes (like Title VII of the Civil Rights Act) and faithfully advancing the promise of colorblind equality before the law—and so am I.”

We have prepared answers to recent frequent questions to help guide the public and the media.

1. **Did Executive Order 14173 (Ending Illegal Discrimination and Restoring Merit-Based Opportunity) shut down the EEOC?**

   No, far from it. The Equal Employment Opportunity Commission was created by Title VII of the Civil Rights Act of 1964 and is charged by Congress to prevent and remedy unlawful discrimination in the workplace. In addition, Executive Order 14173 and other civil rights executive

orders recently issued by President Trump specifically charge the EEOC, along with other enforcement agencies addressing various spheres of society, with robustly enforcing civil rights.

Executive Order 14173 directed that a separate federal agency, the Office of Federal Contract Compliance (OFCCP), cease operations previously required by now-rescinded Executive Orders 11246, 12898, 13583, and 13672. The OFCCP is a federal agency within the Department of Labor. Unlike the EEOC (which was created by statute), the OFCCP was created by an executive order. The EEOC is an executive agency that is separate from any department, including the Department of Labor as well as the Department of Justice.

2. **To be covered by Title VII and other laws EEOC enforces, does an employer have to contract with the federal government? Or receive federal funds?**

   No. The EEOC has authority over almost all employers, provided the employer has at least 15 employees (20 employees in age discrimination cases). To be covered by the EEOC's jurisdiction, there is no need for an employer to contract with the federal government, or for the employer to receive federal funds.
   EEOC also has authority over employment agencies, labor unions, and training programs.

3. **What is a "quorum" as it relates to the EEOC?**

   Title VII provides that the EEOC's Commission leadership panel is comprised of five Commissioners, one of whom is designated by the President as Chair or Acting Chair. Title VII also states that three Commissioners constitute a quorum at the agency. As of January 28, 2025, the Commission has two Commissioners and thus no longer has a quorum.

4. **What happens during the loss of a quorum at the EEOC?**

   In the absence of a quorum of Commissioners, the EEOC remains open for business. The agency continues to enforce federal antidiscrimination laws. Title VII provides that the Chair or Acting Chair controls the administrative operations of the agency. The lack of a quorum of Commissioners does not impact the intake, processing, investigation, or resolution of charges of discrimination, nor does it impact the issuance of notices of right to sue.

   In December 2024, the Commission voted to approve a limited delegation of authority in the event of a loss of quorum, allowing certain matters that otherwise would require a majority vote of the Commission to be temporarily handled by other Commission decisionmakers. This delegation provides authority for continued contracting approval, decisions on petitions to revoke or modify enforcement subpoenas, and ministerial changes to regulations compelled by statute.

5. **Can I still file a charge of discrimination to the EEOC via the online Public Portal, in person or on the phone?**

   Yes. As statutorily required, the EEOC is, has been, and will continue to accept all charges. For more information on how to file a charge, visit: https://www.eeoc.gov/how-file-charge-employment-discrimination.

6. **I filed a charge. Can I still request a Notice of Right to Sue?**

   Yes. As required by statute, the agency continues to issue notices of right to sue.

7. **Will the EEOC continue to accept and process charges in the interim between now and when a quorum of Commissioners is appointed at the agency?**

Yes.

8. **I'm a federal employee, what happens to my hearing or appeal during the loss of a quorum?**

   Hearings for federal complainants before an EEOC administrative judge are not affected by loss of quorum.

   Processing of the vast majority of appeals to EEOC on final agency actions are delegated to the EEOC's director of the Office of Federal Operations. A small subset still require a vote of the Commission.

9. **For employers currently engaged in the EEOC process (investigation, conciliation, litigation, settlement), will the lack of a quorum affect their cases?**

   No.

10. **Can EEOC file lawsuits without a quorum?**

    Yes. The existing 2021 resolution covering litigation remains in effect, and in the case of a loss of quorum, it provides limited authority for the filing of lawsuits by the EEOC General Counsel, after providing five days' notice to Commissioners before filing suit.

11. **Can the EEOC issue subpoenas without a quorum?**

    Yes. The EEOC's field offices have authority to issue subpoenas; the authority to issue a determination following a subpoena challenge was delegated to the director of Office of Field Programs in December 2024.

12. **Does the EEOC need a quorum to vote on rulemaking, issue new policies, or rescind guidance documents?**

    Yes.

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EXHIBIT 10

EEOC Press Release

Removing Gender Ideology & Restoring the EEOC's Role of Protecting Women in the Workplace

(Jan. 28, 2025)

Press Release

01-28-2025

Removing Gender Ideology and Restoring the EEOC's Role of Protecting Women in the Workplace

WASHINGTON -- Today, U.S. Equal Employment Opportunity Commission (EEOC) Acting Chair Andrea Lucas announced that the agency is returning to its mission of protecting women from sexual harassment and sex-based discrimination in the workplace by rolling back the Biden administration's gender identity agenda.

One of President Trump's first executive orders was Executive Order 14168, "Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government." Among other things, the executive order

directed federal agencies to enforce laws governing sex-based rights, protections, opportunities, and accommodations to protect men and women as biologically distinct sexes, and to remove all statements, policies, regulations, forms, communications, or other internal and external messages promoting gender ideology.

Pursuant to Executive Order 14168, Acting Chair Lucas has taken the following actions to date:

- Announced that one of her priorities—for compliance, investigations, and litigation—is to defend the biological and binary reality of sex and related rights, including women's rights to single-sex spaces at work.
- Removed the agency's "pronoun app," a feature in employees' Microsoft 365 profiles, which allowed an employee to opt to identify pronouns, content which then appeared alongside the employee's display name across all Microsoft 365 platforms, including Outlook and Teams. This content was displayed both to internal and external parties with whom EEOC employees communicated.
- Ended the use of the "X" gender marker during the intake process for filing a charge of discrimination.
- Directed the modification of the charge of discrimination and related forms to remove "Mx." from the list of prefix options.
- Commenced review of the content of EEOC's "Know Your Rights" poster, which all covered employers are required by law to post in their workplaces.
- Removed materials promoting gender ideology on the Commission's internal and external websites and documents, including webpages, statements, social media platforms, forms, trainings, and others. The agency's review and removal of such materials remains ongoing. Where a publicly accessible item cannot be immediately

removed or revised, a banner has been added to explain why the item has not yet been brought into compliance.

When issuing certain documents, the Commission acts by majority vote. Based on her existing authority, the Acting Chair cannot unilaterally remove or modify certain "gender identity"-related documents subject to the President's directives in the executive order. Those documents include the Commission's Enforcement Guidance on Harassment in the Workplace (issued by a 3-2 vote in 2024); the EEOC Strategic Plan 2022-2026 (issued by a 3-2 vote in 2023); and the EEOC Strategic Enforcement Plan Fiscal Years 2024-2028 (issued by a 3-2 vote in 2023).

Acting Chair Lucas voted against each of these documents. In particular, Acting Chair Lucas has been vocal in her opposition to portions of EEOC's harassment guidance that took the enforcement position that harassing conduct under Title VII includes "denial of access to a bathroom or other sex-segregated facility consistent with [an] individual's gender identity;" and that harassing conduct includes "repeated and intentional use of a name or pronoun inconsistent with [an] individual's known gender identity."

Although Acting Chair Lucas currently cannot rescind portions of the agency's harassment guidance that are inconsistent with Executive Order 14168, Acting Chair Lucas remains opposed to those portions of the guidance.

"Biology is not bigotry. Biological sex is real, and it matters," Lucas said. "Sex is binary (male and female) and immutable. It is not harassment to acknowledge these truths—or to use language like pronouns that flow from these realities, even repeatedly."

Lucas emphasized, "Because of biological realities, each sex has its own, unique privacy interests, and women have additional safety interests, that warrant certain single-sex

facilities at work and other spaces outside the home. It is neither harassment nor discrimination for a business to draw distinctions between the sexes in providing single-sex bathrooms or other similar facilities which implicate these significant privacy and safety interests. And the Supreme Court's decision in *Bostock v. Clayton County* does not demand otherwise: the Court explicitly stated that it did 'not purport to address bathrooms, locker rooms, or anything else of the kind.'"

Lucas contended that the EEOC betrayed its mission by issuing the "gender identity" portions of the Enforcement Guidance on Harassment in the Workplace: "The same agency that in the 1960s and 70s fought to ensure women had the right to their own restrooms, locker rooms, sleeping quarters, and other sex-specific workplace facilities—and established that it would be sex discrimination *not* to provide such women-only facilities—betrayed women by attacking their sex-based rights in the workplace. That must end."

"The Commission's harassment guidance was fundamentally flawed," said Lucas. "It ignored biological reality, effectively eliminated single-sex workplace facilities, and impinged on all employees' rights to freedom of speech and belief. In unlawfully expanding past *Bostock's* dictates, the EEOC exceeded its authority. The EEOC must rescind the guidance and protect the sex-based privacy and safety needs of women."

The EEOC is the sole federal agency authorized to investigate and litigate against businesses and other private employers for violations of federal laws prohibiting employment discrimination, including sexual harassment. For public employers, the EEOC shares jurisdiction with the Department of Justice's Civil Rights Division; the EEOC is responsible for investigating charges against state and local government employers before referring them to DOJ for potential litigation. The EEOC also is responsible for coordinating the

federal government's employment antidiscrimination effort. More information about the EEOC is available at www.eeoc.gov. Stay connected with the latest EEOC news by subscribing to our email updates.

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EXHIBIT 11

EEOC Press Release

Federal Court Vacates Portions of EEOC Harassment Guidance

(May 20, 2025)

Press Release
05-20-2025

Federal Court Vacates Portions of EEOC Harassment Guidance

EEOC Updates Website to Reflect Vacatur

WASHINGTON -- On May 15, 2025, a Texas federal court held the Biden-EEOC's expansion of the definition of "sex" in its Enforcement Guidance on Harassment in the Workplace was contrary to law (Texas, et al. v. EEOC, 2:24-CV-173 (N.D. Tex. May 15, 2025)). As a result, the court vacated portions of the guidance nationwide.

The EEOC previously issued the Enforcement Guidance on Harassment in the Workplace by a 3-2 vote in 2024. EEOC Acting Chair Andrea Lucas voted against the guidance and issued a dissent after it was approved by the EEOC majority. In particular, Lucas has been vocal in her opposition to portions of EEOC's harassment guidance that took the enforcement position that harassing conduct under Title VII includes "denial of access to a bathroom or other sex-segregated

Recent Press Releases on the Subject of Race, Harassment

Insurance Auto Auctions to Pay $175,000 in EEOC Racial Harassment Lawsuit

Landry's Seafood House to Pay $90,000 in EEOC National Origin Harassment Lawsuit

facility consistent with [an] individual's gender identity;" and that harassing conduct includes "repeated and intentional use of a name or pronoun inconsistent with [an] individual's known gender identity."

On January 20, 2025, in Executive Order 14168: "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government," President Trump directed the EEOC to rescind portions of the guidance that conflicted with the executive order. However, any modification or recission must be approved by a majority vote of the Commission, and as of January 27, 2025, the EEOC lacks a quorum. Acting Chair Lucas has made clear that she remains opposed to those portions of the guidance.

Because the EEOC cannot rescind or modify the Enforcement Guidance on Harassment in the Workplace at this time, to assist the public following the federal court decision, the EEOC has labeled and shaded the vacated portions of the guidance on the agency's website. The EEOC continues to review its documents to ensure full compliance with the court order.

The EEOC is the sole federal agency authorized to investigate and litigate against private companies and other private employers for violations of federal laws prohibiting employment discrimination. For public employers, the EEOC shares jurisdiction with the Department of Justice's Civil Rights Division; the EEOC is responsible for investigating public sector charges before referring them to DOJ for potential litigation. The EEOC also is responsible for coordinating the federal government's employment antidiscrimination effort. More information is available at www.eeoc.gov. Stay connected with the latest EEOC news by subscribing to our email updates.

Trebor USA, Colt Truck Care and Wholesale Building Products to Pay Over $215,000 in EEOC Race and National Origin Harassment Lawsuit

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EXHIBIT 12

Commissioner Andrea R. Lucas's Statement on EEOC Enforcement Guidance on Harassment in the Workplace

Commissioner Andrea R. Lucas's Statement On EEOC Enforcement Guidance On Harassment In The Workplace

Women's sex-based rights in the workplace are under attack—and from the EEOC, the very federal agency charged with ***protecting women*** from sexual harassment and sex-based discrimination at work. In its new harassment guidance, the Commission formally takes the position that for both private companies and federal employers, harassing conduct under Title VII includes "denial of access to a bathroom or other sex-segregated facility consistent with [an] individual's gender identity." Relatedly, the Commission declares that harassing conduct includes "repeated and intentional use of a name or pronoun inconsistent with [an] individual's known gender identity."[1] The Commission's guidance effectively eliminates single-sex workplace facilities and impinges on women's (and indeed, all employees') rights to freedom of speech and belief. In issuing this guidance, the EEOC ignores biological reality; dismisses the sex-based privacy and safety needs of women; disregards decades of safeguarding principles for women and girls; and fundamentally betrays its mission.

Biological sex is real, and it matters. Sex is binary (male and female) and is immutable. In the words of Justice Ginsburg for the Supreme Court in *United States v. Virginia*, "[p]hysical differences between men and women . . . are enduring: The two sexes are not fungible."[2] It is not harassment to acknowledge these truths—or to use language like pronouns that flow

from these realities, even repeatedly. Relatedly, each sex has its own, unique privacy interests, and women have additional safety interests, that warrant certain single-sex facilities at work and other spaces outside the home. It is neither harassment nor discrimination for a business to draw distinctions between the sexes in providing single-sex bathrooms or other similar facilities which implicate these significant privacy and safety interests. And the Supreme Court's decision in *Bostock v. Clayton County* does not demand otherwise: the Court explicitly stated that it did "not purport to address bathrooms, locker rooms, or anything else of the kind."[3]

The Commission's guidance turns anti-harassment principles completely upside down. Under the Commission's pronouncement, a company denying biological males access to its women's workplace bathroom, shower, locker or dressing room, or sleeping facilities no longer is exercising reasonable care to *prevent* harassment of female workers. To the contrary, taking this reasonable and necessary step to protect women now is deemed evidence of *harassment* against any biological male who self-identifies as having a female "gender identity."

Women in the workplace will pay the price for the Commission's egregious error. Every female worker has privacy and safety rights that necessitate access to single-sex workplace bathrooms limited to biological women. But it is important not to lose sight of the fact that this is not just about white-collar female workers' daytime access to bathrooms in the large, clean, modern facilities of major corporate employers, companies which can afford to create costly multiple single-stall all-gender bathrooms in an attempt to balance women's safety and privacy interests with the Commission's new edict. Thousands of women across the country work in jobs—often blue-collar, agricultural, or low-wage service positions—that require them to change clothes in locker rooms or shower at work. Some women even must sleep in work-provided lodging, including thousands of female migrant agricultural workers, many of whom are non-English speakers who are especially vulnerable to sexual assault and likely to have little recourse if the worst happens. Numerous women work the night shift at factories and plants, in hospitals, or in janitorial and cleaning roles in businesses across the country. Many young teenage girls work in the evening and at night at fast-food and quick-service restaurants. Moreover, many women and girls who themselves are not employees (but rather are customers, clients, or students) also use single-sex facilities at locations in which employees perform duties, like a store dressing room or a gym, spa, or school locker room or showers. A woman or girl's risk of sexual harassment or assault from a biological male is exponentially higher when undressing, showering, or sleeping, or when working after dark or in isolated or remote locations. Many of these groups of women already are at increased risk of sexual harassment, assault, or rape—indeed, each year, the Commission admirably files

many lawsuits on behalf of hundreds of such female workers who have suffered sexual harassment and assault at work. But the Commission's new harassment guidance will elevate "gender identity" over these and other women's interests.

Congress did not grant the Commission authority to issue substantive regulations under Title VII.[4] The Commission states in the harassment guidance that the "contents of this document do not have the force and effect of law, [and] are not meant to bind the public in any way." That disclaimer is worth little. A rule called by any other name is still a rule. The Commission separately describes the guidance as a "resource for employers, employees, and practitioners; for EEOC staff and staff of other agencies that investigate, adjudicate, or litigate harassment claims or conduct outreach on the topic of workplace harassment; and for courts deciding harassment issues." As the guidance makes clear at its very start, it "communicates the Commission's position on important legal issues," that is, the agency's enforcement positions. Many employers will conform their workplaces accordingly to avoid investigation and litigation by the EEOC, including by effectively eliminating single-sex facilities in favor of ones separated by "gender identity" and by policing speech and belief expressing biological reality. Women will suffer the consequences.

[1] The EEOC's Chair previously attempted to unilaterally declare these positions via a "technical assistance" document (a category of sub-regulatory document not voted on by the full Commission panel). This attempt was soundly rejected and vacated in *Texas v. EEOC et al.*, 2:21-CV-194-Z, 633 F.Supp.3d 824 (N.D. Tex. 2022).

[2] 518 U.S. 515, 533 (1996) (cleaned up).

[3] *Bostock v. Clayton County,* 590 U.S. 644, 681 (2020); *see also id.* at 655-56 (assuming that "sex" refers "only to biological distinctions between male and female.").

[4] *See* 42 U.S.C. § 2000e-12(a) (granting Commission authority only to issue "suitable procedural regulations" to carry out Title VII); *see, e.g.*, *General Elec. Co. v. Gilbert*, 429 U.S. 125, 141 (1976); *Texas*, 633 F. Supp. 3d at 841-42.

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EXHIBIT 13

Declaration of Jeff Powell

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

Rapides Parish School Board, *Plaintiff*, v. **United States Department of Health and Human Services**, et al., *Defendants*.	**Case No.** 1:25-cv-00070-DDD-JPM **Judge Dee D. Drell** **Magistrate Judge Joseph H.L. Perez-Montes**

DECLARATION OF JEFF POWELL

I, Jeff Powell, Superintendent, Rapides Parish School Board, declare:

1. I am above the age of 21, and fully competent to make this declaration.

2. These facts are within my personal knowledge and are true and correct. If called to testify, I could and would testify competently to these facts.

3. The Rapides Parish School Board participates in several federal programs. These federal programs help kids from birth to age 4 in the Head Start program, kids of many ages in the National School Lunch Program, and kids who need medical services in classrooms through Medicaid.

4. But federal gender-identity mandates seek to force the school board to jeopardize all students' health, privacy, and safety—or else deprive kids of meals, health care, and preschool.

I. Background on Rapides Parish School Board

A. The school board's operations

5. The school board is located at 619 Sixth Street, Alexandria, Louisiana 71306.

6. The school board operates 42 schools for students from pre-K through 12th grade. For the 2023–2024 school year, the pre-K through 12th grade student body numbered about 21,000. The school board has about 3,200 employees.

B. My role as superintendent

7. As Superintendent, I have general responsibility for school operations. My job is to implement the school board's policies.

8. I have served as Superintendent of Schools since 2019. I began my teaching career in Grant Parish, and then I moved into various administrative roles in Rapides Parish before becoming the Director of Middle and Magnet Programs in the district. I then served as Chief Academic Officer in Iberville Parish before returning home to serve as the Superintendent of Rapides Parish in 2019.

9. I graduated from Northwood High School and have been a resident of Rapides Parish for over 27 years. I served in the Louisiana Army National Guard for six years and obtained a bachelor's degree in Business Administration from Louisiana State University in Baton Rouge. I earned my certification and master's degree in Educational Leadership from Northwestern State University in Natchitoches. I am active in the operations of the Louisiana Association of School Superintendents. I serve on several boards that serve our community. I am a two-time winner of Regional Superintendent of the Year.

10. I am familiar with the school board's students, employees, funding, facilities, policies, and other operations through my role as superintendent. Attached as Exhibit 13-A is a true and correct copy of excerpts from the school board's Policies Handbook and Student Code of Conduct for the 2024–2025 school year. Attached as Exhibit 13-B is a true and correct copy of the school board's Field Trips and Excursions policy. Attached as Exhibit 13-C is a true and correct copy of the school board's Employee Conduct policy.

II. Federal Funding Streams

11. The school board received about $30 million in funding for the 2024–2025 school year from several federal agencies. The school board received about this amount in recent school years, and it expects to receive a similar amount again for the 2025–2026 school year and beyond from the same sources.

12. It would cause the school board and its underserved students significant financial harm to lose eligibility for any of these federal programs.

13. If the school board lost any federal funding, it would have to cancel the funded program unless it could secure new funding, which might not be possible.

14. Even if new funding could be obtained, the school board would likely need to pause services and programs for some time while obtaining new funding.

A. Head Start Funds

15. The school board receives about $9.3 million annually in Head Start funds from the U.S. Department of Health and Human Services (HHS).

16. The school board has seven Head Start locations.[1] This program serves children from infant (under 1) to pre-kindergarten (ages 3–4).[2] The school board has a website that allows parents to apply for Head Start or Early Head Start. [3]

17. If the federal government takes away Head Start funding, many small children will lose preschool and other early educational opportunities.

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[1] Rapides Early Childhood Network, Head Start/Early Head Start, https://www.rapidesearlychildhoodnetwork.com/headstart-early-headstart (last visited Mar. 18, 2025).

[2] *See, e.g.*, Rapides Early Childhood Network, McKeithen, https://www.rapidesearly childhoodnetwork.com/head-start-mckeithen (last visited Mar. 18, 2025).

[3] Rapides Early Childhood Network, Rapides Early Childhood Network Enrollment Application, https://www.rapidesearlychildhoodnetwork.com/headstart-application (last visited Mar. 18, 2025).

B. Medicaid Funds

18. The school board receives about $1.2 million annually (regular and reimbursement) from HHS in Medicaid funds through the Louisiana School-based Medicaid Program (SBMP).

19. SBMP covers nursing and medical services; therapy services (occupational therapy, physical therapy, speech language audiology services); behavioral health services including applied behavioral analysis services; personal care services (1:1 child specific aides that are required for students to participate in the activities of daily living); and transportation (i.e., transporting students on specially adapted vehicles to and from school).[4] All students who are enrolled in Medicaid are eligible for SBMP services.[5] SBMP reimburses school boards for the cost of providing these health services in schools including salaries, benefits, and indirect costs associated with the health services.[6]

20. The school board is an approved Medicaid provider, and it signed the usual Medicaid provider agreements. The school board bills Medicaid for its medical services to students.[7]

21. If the federal government takes away Medicaid funding, many underserved children with disabilities and other health needs will lose these essential school-based healthcare services—impeding their educations.

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[4] La. Dep't of Educ., *Louisiana School Based Medicaid Program 101* at 2,4 (May 1, 2024), https://doe.louisiana.gov/docs/default-source/public-school/sbmp-medicaid-101.pdf.

[5] *Id.* at 2.

[6] *Id.* at 3.

[7] *See* La. Dep't of Educ., *SBMP–LEA Registration as a Medicaid Provider* at 1, https://doe.louisiana.gov/docs/default-source/public-school/sbmp---lea-registration-as-a-medicaid-provider.pdf.

C. USDA School-Lunch Funds

22. The school board receives about $13.2 million annually from the U.S. Department of Agriculture (USDA) for school-meal programs.

23. The school board participates in USDA's National School Lunch Program (NSLP), School Breakfast Program, Child and Adult Care Food Program, Summer Food Service Program, Fresh Fruit and Vegetable Program, Afterschool Snack Program, and USDA Foods Program, among others.

24. For the 2024-2025 school year, and going back to 2019, all students in the district receive free breakfast and lunch because of low-income levels in the community.[8] This eligibility provision ensures that no student is turned away from the lunch line for lack of funds.

25. The Food & Nutrition Services Department has eight dedicated staff members, including a registered dietitian, along with each school's cafeteria staff.[9] The program has about 215 total employees. These employees staff 42 schools and four Head Starts—serving around 9,000 students breakfast and around 16,000 students lunch, for about 25,000 meals per day.[10] They also offer free breakfast and lunch in the summer.[11]

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[8] *See, e.g.*, Mary Helen Downey, *All RPSB Students to Receive Free Breakfast & Lunch for 2024-2025 School Year*, KALB5 (June 17, 2024, 4:28 PM PDT), https://www.kalb.com/2024/06/17/all-rpsb-students-receive-free-breakfast-lunch-2024-2025-school-year/.

[9] Rapides Parish School Board, *Food & Nutrition Services*, https://new.rpsb.us/departments/food-nutrition-services (last visited Mar. 18, 2025).

[10] Rapides Parish School Board, *#NSCLW: Food & Nutrition Services Spotlight*, Facebook (Oct. 17, 2024), https://www.facebook.com/rapidesschools/videos/nsclw-food-nutrition-services-spotlight/496128690084094/ (featuring Jennifer Coburn, Supervisor of Food and Nutrition Services).

[11] *See, e.g.*, Brendan Walls, *RPSB Summer Feeding Sites and Summer Bus Routes*, KALB5 (June 5, 2023, 1:48 PM PDT) https://www.kalb.com/2023/06/05/rpsb-summer-feeding-sites-summer-bus-routes/.

26. The Food & Nutrition Services Department helps ensure that students have adequate access to nutritious foods. As the school board's website explains, "Meeting this basic need is essential to their establishment of a healthy eating pattern and development of a strong foundation for academic achievement."[12]

27. The school board publishes menus on its website for families and students. For example, on a typical day, Thursday, January 30, 2025, the planned breakfast is waffle/sausage/syrup with fruit and milk, and the planned lunch is chicken or turkey & sausage gumbo with candied yams, cornbread or crackers, a fruit cup, and milk.[13]

28. The school board seeks to treat every student with dignity and respect. The school would never turn away a hungry child.

29. The school's website lists its current USDA nondiscrimination policy:

> **Non-discrimination Statement:** This explains what to do if you believe you have been treated unfairly. "In accordance with Federal Law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age or disability. To file a complaint of discrimination, write USDA Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call toll free (866) 632-9992 (VOICE). Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish). USDA is an equal opportunity provider and employer".[14]

30. If USDA takes away funding for these nutrition programs, it will take food away from thousands of underserved children, risking them going hungry.

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[12] Rapides Parish School Board, *Food & Nutrition Services*, *supra* at n.9.

[13] *Id.*

[14] *Id.*

D. U.S. Department of Education Funds

31. In addition, the school board receives separate funding from the U.S. Department of Education (ED) that is not at issue in this case.

32. The school board receives ED funds under Title I of the Elementary and Secondary Education Act (ESA) (improving education for economically disadvantaged children); Title I Part C of the ESA (improving education for migratory children); Title III of the ESA (improving education for English language learners), Title IV of the ESA (providing students with access to a well-rounded education, improving school conditions for student learning, and improving the use of technology); the McKinney-Vento Act (services for students experiencing homelessness), and Part B of the Individuals with Disabilities Education Act (IDEA) (special education for students ages 3–21).

33. When ED sought to attach a gender-identity mandate to these funds, 89 Fed. Reg. 33,474 (April 29, 2024), the school board received preliminary relief against ED's gender-identity rule. *Louisiana v. U.S. Dep't of Educ.*, 727 F. Supp. 3d 377 (W.D. La. 2024), *appeal dismissed per joint motion*, No. 24-30399 (5th Cir. March 14, 2025).

34. If, however, the school board were deemed to be violating Defendants' gender identity mandates raised in this case, and as a result the federal government moved to suspend or debar the school board from receiving any federal funds, the school's ED funding would also be at risk.

III. Sex-specific school board policies

35. The school board has adopted policies and practices—and it has built facilities—relying on its understanding that Title IX's prohibition on discrimination based on sex means biological sex. The school board welcomes all kids, including students who identify contrary to their sex, but the school board recognizes the biological reality that humans are male or female.

A. Sex-specific athletics and P.E. classes

36. The school board offers sex-specific sports teams and P.E. classes.

37. Rapides Parish schools offer extracurricular activities, including interscholastic athletics. Many school sports teams are sex-specific. For example, Rapides Parish high schools field separate boys' and girls' teams for basketball, cross country, powerlifting, soccer, swimming, and track.

38. Seventh through twelfth grade physical education (P.E.) classes at Rapides Parish school campuses are sex-specific classes that regularly include contact sports, such as basketball and soccer.

39. The school board complies with Louisiana law, including the Fairness in Women's Sports Act. *See* La. Stat. Ann. §§ 4:441–46 (2022).

40. The school board's practice is that all students, including those who profess a gender identity that differs from their sex, participate in school activities based on sex. For example, the school board would not enroll a male student in a girls' P.E. class, even if the male student self-identified as a girl. Our students often travel with teachers and other employees to schools in other parishes or states for academic, extracurricular, and athletic activities. Often we do not have much notice for these regular trips, like when teams in tournaments advance to a new level of competition against competitors who just advanced to that level, too. Students have played and must play on sex-specific teams by sex at these events, even if the event is located on other schools' campus or outside of Louisiana. Even if the other school's law or policy is in conflict, our employees and staff must follow our policy. (Students and employees must continue to use the related sex-specific facilities, including sex-specific safe overnight accommodation policies, and follow other sex-specific school board policies, like pronoun practices at all other off-campus events hosted by other schools or organizations). If the federal government were to force other schools or organizations to require us to violate our policies, it would harm us by imposing further unlawful pressure

on us to change our policies and by making our employees and students ineligible for many events, often unexpectedly. This is a real concern, as the federal mandates seem to apply to virtually every school and organization.

B. Sex-specific private facilities

41. Rapides Parish schools separate private spaces by sex—meaning biological sex. Males may not access the girls' locker rooms, restrooms, or showers. Females may not access the boys' locker rooms, restrooms, or showers.

42. Our high school campuses have separate girls' and boys' gymnasia.

43. School campuses have communal restrooms and locker rooms rather than single-occupant facilities. No school campus has enough single-occupant restrooms or changing spaces for use by the entire student body.

44. The school board's practice is that all individuals—including students and employees—use sex-designated private facilities (such as restrooms, locker rooms, or changing rooms) based on biological sex. Facilities designated for "men" or "boys" may be used by biological males only. Facilities designated for "women" or "girls" may be used by biological females only.

45. The school board does not have and does not intend to adopt a policy mandating that employees or students ensure employee or student access to single-sex private spaces (like restrooms and locker rooms) based on gender identity.

C. Other sex-specific policies

46. Many other policies reflect the differences between male and female. For example, any search of a student's person must be done by a teacher or administrator "of the same sex as the student to be searched," and sometimes in the presence of "[a] witness of the same sex." Ex. 13-A at 110–11.

47. The employee conduct policy states: "Classroom instruction by school personnel or third parties on sexual orientation or gender identity may not occur in pre-

kindergarten through grade 12 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards." Ex. 13-C at 1.

48. The school board does not have and does not intend to adopt a policy mandating that employees or students use pronouns that reflect employees' or students' gender identity when doing so conflicts with sex. Our practice is to use correct biological pronouns, not self-selected pronouns based on gender identity.

49. The school board shares a close relationship with its employees and students and can effectively advocate for their rights. Employees and students face obstacles that bar them from effectively advocating for their First Amendment rights. Among other things, asserting their First Amendment rights on the hotly charged issue of gender identity subjects them to harassment and ostracization.

IV. Harm from federal gender-identity mandates

50. I understand that HHS and USDA imposed gender-identity mandates on all of the school board's operations as a funding condition, and the U.S. Equal Employment Opportunity Commission (EEOC) imposed a gender-identity mandate on our employment practices as an unfunded mandate.

51. These gender-identity mandates seek to make the school board adopt policies that will harm students and that require substantial costs. The existence of these mandates puts the school board in an impossible situation, demanding that our schools either take meals, health care, preschool, and funds from needy kids—or risk these kids' privacy, safety, dignity, and equality.

52. If the school board were to comply with a federal gender-identity mandate, the school board would have to change almost all school operations, including athletics, restrooms, overnight accommodations, dress codes, employment, curricula, and daily conversations. In particular, when a male identifies as female or non-binary, the school

board would have to start to permit males to access female private spaces or programs, such as sex-specific physical education classes, athletics, locker rooms, showers, restrooms, and overnight accommodations. All of this will harm our students, families, and employees.

A. Harm to girls' sports

53. The HHS and USDA gender-identity mandates harm the school board's athletic programs and female athletes by forcing schools to allow students to participate on sex-specific sports teams and in girls' P.E. classes according to gender identity—undermining the privacy and safety of girls. Females must compete against males who identify as girls for spots on their school's teams and then compete against males on opposing schools' female athletic teams.

54. These gender-identity mandates require the school board to violate state athletics law as a condition of receiving any federal funds. The school board must choose between, on the one hand, following each agency mandate on sports in violation of Louisiana law and, on the other hand, ignoring what each agency says to comply with Louisiana law. Either way, the school board is harmed.

55. Were the school board to comply with the federal gender-identity mandates, the school board will have to spend time and resources changing its existing policy and practice of complying with all Louisiana laws, including Louisiana's Fairness Act. *See* La. Stat. Ann. §§ 4:441–46.

56. The school board is aware of at least five current students at its high schools, six students at its middle schools, and two students at its elementary schools who have professed a gender identity that differs from their sex. One of these identifies as "nonbinary." Were the school board to comply with the federal gender-identity mandates, the school board could have to allow each of these students to play on the

sports teams of the opposite sex and to participate in the P.E. classes of the opposite sex.

B. Harm to girls' private facilities

57. The federal gender-identity mandates force the school board to allow access by adults or students to sex-specific private spaces like locker rooms by gender identity—which eliminates sex separation in those spaces.

58. Under current practice, the school board does not allow males to enter the girls' locker rooms, restrooms, or showers; likewise, females may not enter the boys' locker rooms, restrooms, or showers.

59. But the federal government would require the school to allow students and adults, such as parent volunteers, chaperones, teachers, and coaches, to access private spaces consistent with their gender identities.

60. That mandate harms students and adults by forcing them to share private spaces with persons of the opposite sex. The presence of opposite-sex students or employees in these spaces deprives children and adults of privacy and threatens their personal sense of safety and security, as well as access to equal educational opportunity.

61. To comply, the school board will have to spend time and resources changing its existing practice that separates restroom, locker room, and shower facilities by sex. This could involve costly renovations and new construction of single-occupancy restrooms and changing spaces, or it could involve changing the male or female signs on existing space.

62. In addition, to comply, the school board will have to spend time and resources changing its existing field trip policy, which says that "any field trips consisting of boys and girls and requiring them to stay overnight must be chaperoned by faculty, staff, or parents of both sexes." Ex. 13-B at 1. The school board does not allow a

biological male who identifies as a female to house with female students on such a trip, or vice versa. To comply with a federal gender-identity mandate, the school board will have to change its policy and practice of housing males and females separately on such trips. The field trip policy would need to account for students or chaperones who identify as a gender identity different from their sex, such as a student's father who identifies as a woman. The federal government seemingly would require the school to place this chaperone in a room of girls. That situation would not be tolerable and could expose the school board to liability.

63. The school board is aware of at least thirteen students who have identified as a gender identity that differs from their sex. At a minimum, the mandates will require that these students be allowed to use opposite-sex locker rooms, restrooms, sleeping arrangements, and other sex-designated spaces.

C. The costs of changes to other sex-specific policies

64. The federal gender-identity mandates will also require the school board to change many other policies that recognize the biological reality of sex.

65. The school board will have to spend time and resources changing its policy that any search of a student's person must be done by a teacher or administrator "of the same sex as the student to be searched," Ex. 13-A at 110, and at times in the presence of "[a] witness of the same sex," Ex. 13-A at 111. Otherwise, a girl who identifies as a boy would have her person searched by an adult male and the search witnessed by another adult male. Such situations would be intolerable to the school board and could also expose the board to liability. But if the board adopted a search policy for students who identify as transgender different from the one that applies to other students, the board risks federal liability for sex discrimination.

66. The school board will have to spend time and resources changing its existing dress-code policy that is different for "girls" than for "boys." Ex. 13-A at 96–98.

The board would need to amend this policy to clarify how it applies to students who identify as a gender contrary to their sex or as non-binary. The federal government arguably would require the board to permit students who identify as non-binary to choose which dress code applies to them even though other students lack that option.

67. The school board will have to spend time and resources changing its policies that use the term "gender" as a synonym for "sex," reflecting the board's understanding that both terms refer to the same concept: biological sex.

68. The school board will have to spend time and resources changing its policies that reflect Title IX's use of the term "sex" to mean the biological binary between males and females. For example, one policy states that "[m]ale and female students must be eligible for benefits, services, and financial aid without discrimination on the basis of sex."

69. The school board will have to spend time and resources adopting policies or practices that compel employees and students to use opposite-sex pronouns or names, affirm employees' "gender transitions," and treat an employee as the opposite sex based on gender identity.

70. The school board will have to spend time and resources changing its employee conduct policy that states: "classroom instruction … on sexual orientation or gender identity may not occur in pre-kindergarten through grade 12 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards." Ex. 13-C at 1.

71. If the school board cannot treat pregnancy and childbirth as something exclusively experienced by women, this would change not only how speech occurs around employees and students generally, but how the school teaches health classes and what the books in the school's libraries say about biological reality.

72. The school board is aware of at least thirteen students who have identified as a gender identity that differs from their sex. At a minimum, the mandates will require

that these students be allowed to dress and to be referred to with pronouns consistent with their gender identity.

73. The school board's policies are all on its website.[15] To comply with the gender-identity mandates, it would have to remove and replace these policies.

V. Financial compliance costs

74. The school board has already had to devote time to familiarize itself on a basic level with these mandates and their potential effects, diverting the time of the school board and its counsel.

75. If the school board were forced to comply with any or each of the federal government's gender-identity mandates, the school board would incur financial costs—on top of the incalculable harms to its students, its educational mission, and its reputation.

76. The school board does not have policies, processes, training, or monitoring programs in place that: (a) ensure student or employee access to single-sex programs or facilities (like sports teams, P.E. classes, restrooms, and locker rooms) based on gender identity, (b) recognize students or employees' gender identity instead of sex, (c) require use of a student or an employee's self-selected pronouns, or (d) limit speech opposing gender-transition efforts.

77. The school board would need to devote significant time and resources to creating or updating policies, customs, and training programs were it to comply with these mandates. Reviewing and revising existing policies would take at least 50 hours of the Title IX coordinator's time per mandate, along with several hours of my time, imposing costs well above $1,000 of lost employee time per mandate.

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[15] Rapides Parish School Board, *Policies & Procedures*, https://www.rpsb.us/families/policies-procedures (last visited Mar. 18, 2025).

78. The school board would also have to obtain legal advice about compliance with each mandate, which would incur legal fees. All policy changes would then have to be considered and voted on by the school board, which would take more time that would otherwise be spent conducting board business.

79. It would also cost the school board time and money to submit assurances or certifications of compliance, to hand out new nondiscrimination notices, and post new nondiscrimination posters.

80. The school board would have to spend even more time and money to train its employees on the new gender-identity changes to school board policies and practices. Even assuming this gender-identity training could be conducted in one hour, the school board has about 3,200 employees, including classroom teachers, paraprofessionals, counselors, administrators, and support staff. A one-hour gender-identity training would cost the school board tens of thousands of dollars in the form of 3,200 hours of employee time.

81. The school board would lose even more employee time to monitor our programs for compliance, to document the gender-identity training, to maintain gender-identity training documentation for several years, to document gender-identity complaints the school board receives, and to dedicate a Section 1557 coordinator on staff to handle gender-identity complaints.

82. All of these costs are on top of the regular costs of participation in these federal programs. We would not incur these costs but for the new mandates.

83. The school board objects to changing its policies and practices, adopting new policies and practices, or altering its speech in response to the gender-identity mandates challenged in this case.

84. The school board does not post, and it objects to posting, posters stating that the school board complies with federal gender-identity mandates.

I declare under 28 U.S.C. § 1746 and under penalty of perjury that this declaration is true and correct based on my personal knowledge.

Executed this 26th day of May, 2025, at Alexandria, Louisiana.

Jeff Powell

Superintendent
Rapides Parish School Board

EXHIBIT 13-A

Excerpts from the
2024–2025 Rapides Parish School Board Policies Handbook and Student Code of Conduct

Rapides Parish School Board Policies Handbook and Student Code of Conduct

2024 2025

Rapides Parish School Board
619 Sixth Street
Alexandria, Louisiana 71301

Attendance
Bullying
Discipline
R.A.A.A.V.L.
R.A.P.P.S.
RTI
School Calendar
Student Rights and Responsibilities
Substance Abuse
Transfers

Section XII
The Right to Express and Dress

FREEDOM OF SPEECH

A. RIGHT

Students have the right to express their opinions verbally or in writing and under reasonable restraints, to distribute written material on school grounds or in buildings as long as this expression in no way interferes with the orderly process of the school. Prior approval of the principal is required for the distribution of written materials.

B. RESPONSIBILITY

Students should take care to express their opinions and ideas in a respectful manner so as not to offend or slander others. Freedom of expression does not extend to profane, vulgar, pornographic or racist material or communications advocating violence or criminal acts.

DRESS AND APPEARANCE FOR ALL STUDENTS

A. RIGHT

Students have a right to dress in comfortable fashions.

B. RESPONSIBILITY

Students should take care to express their opinions and ideas in a respectful manner so as not to offend or slander others. Freedom of expression does not extend to profane, vulgar, pornographic or racist material or communications advocating violence or criminal acts.

C. RAPIDES PARISH SCHOOL BOARD DRESS CODE

The school has the power to regulate student dress for school-sponsored extra-curricular activities, as well as that on the school campus.

Members of the dance line, boosters, and cheerleaders will be allowed to wear their uniforms on a game day at the discretion of the Principal.

Obscene, profane language or provocative pictures on clothing, backpacks, jewelry and accessories are prohibited.

Satanic, cult, or gang-related symbolism in any form is prohibited on school campuses.

Drug-related symbols in any form including advertisements or promotions of alcohol or tobacco are prohibited on school campuses.

Tattoos that are vulgar, obscene, gang-related or otherwise disruptive to the school environment are not permitted.

Student's hair must be groomed in such a manner that it will not draw undue attention. All natural, protective, cultural hairstyles shall be allowed to include but not limited to: afros, dreadlocks, twists, locs, braids, cornrow braids, Bantu knots, curls, and hair styled to protect hair texture or cultural significance.

The activity of hair braiding shall not be allowed during the school day.

No picks or combs are to be worn in the hair during school hours.

Extreme Mohawk hairstyles and hair carving/art are unacceptable. Feathers are not allowed to be worn in hair except for cultural purpose with approval from the principal.

Sunglasses are not to be worn in the school building. Shoes are to be worn at all times.

Except finger rings, no rings, studs, or pins are to be worn on the body. Earrings, however, for girls are permitted and studs for boys.

The waistline of pants, jeans and shorts are not to be worn below the top of the hipline.

Faces must be kept neat, both in the case of boys with facial hair or girls with excessive make-up. Facial hair must be kept neat and well groomed.

Students are prohibited from the following:

- Wearing tennis shoes with skates to school.
- Bringing electronic scooters to school.

Out of dress day attire will be at the discretion of the principal.

STUDENT DRESS CODE

SCHOOL UNIFORM POLICY

Students in Pre-K thru 12th Grade

BOYS:

Navy or khaki pants or shorts (no cargo pants/no cargo shorts or sweatpants).

Solid white and solid black, knit shirts with collar or cotton/cotton blend button front shirts with long or short sleeves - school logo(s) are optional.

GIRLS:

Navy or khaki pants, Capri pants, shorts, skirts, skorts or jumpers (no cargo pants/no cargo shorts or sweatpants). Leggings may be worn only under approved bottoms.

Solid white and solid black, knit shirts with collar or cotton/cotton blend button front shirts with long or short sleeves - school logo(s) are optional.

In each school, a committee shall choose no more than two (2) colored knit shirts with collars and spirit shirts. These shirts may have a school logo.

Shirts must be long enough to tuck in and remain tucked in at all times.

Only solid white, black, or grey undershirts or camisoles shall be worn under the school uniform shirt.

Jeans may be worn in any color only on approved jean days. Jeans are not part of the uniform.

Belts may be worn and must be buckled at all times. If worn, no part of the belt may be left hanging at any time and must be threaded through the loops.

Students may wear any jacket when weather dictates except for trench coats, dusters, knee length.

Sweatshirts/Pullovers

- Shall be solid white, solid black or a designated school color. These sweatshirts/pullovers may have school logo.
- Hoods are prohibited in the building.
- Sweatshirts/pullovers of any kind may not be worn in any way that creates a distraction.

Hats and hoods are prohibited in the building.

Uniform length: skirts, skorts, jumpers and shorts (boys and girls) must be no shorter than four inches above the knee as measured from the back crease of the knee. The knee-length requirement has been waived for all students in grades Pre-K – 3.

Shoes must be worn at all times. No rubber or foam swim footwear, flip-flops, beach or pool sandals, house shoes (slippers) or crocs will be allowed.

There will be no mutilation including tearing, ripping or cutting of hems, cuffs, sleeves or body of the coordinates. NO OVER SIZING! The uniform must be in the correct size to avoid any sagging.

The principal will have the authority to designate out of uniform days with or without pay.

Revised: February, 2001
Revised: January, 2002
Revised: July: 2006
Revised: June, 2007

Ref: Scott v. Board of Education, 304 N.Y.S. 2d 601 (1969); Darr v. Schmidt, 460 F.2d 609 (1972); La Rev. Stat. Ann. §17:416.7; Board minutes, 6-29-98, 11-23-98, 8-30-99, 12-3-99, 2-28-00, 3-27-00, 6-12-01, 8-7-01, 7-6-06, 6-5-07.

PROCEDURES APPLICABLE TO VIOLATIONS OF DRESS AND APPEARANCE REGULATIONS

1) Upon being advised of a student not being in compliance with the dress or appearance policy, the school principal or designee should confer with the student in an office setting and advise the student of the nature of the dress or appearance infraction and obtain the student's response. A written record should be made of the conference and the student should be encouraged to remedy the violation voluntarily to eliminate the necessity of any disciplinary action. An attempt should be made to contact by telephone, the parent(s) or guardian(s) of students under age 18 in an attempt made to remedy the violation without the necessity of formal discipline.

2) From the time of the initial conference with the school administrator, the student should be removed from class or the student population until either the end of the school day or the correction of the dress or appearance violation on that day.

3) Should the student return to school the next school day in violation of the dress or appearance regulations, the school principal or designee should confer with the student to determine whether the violation is willful, persistent or deliberate. A written record of the conference and the determination of whether the violation is willful, deliberate or persistent should be made. A second attempt to contact the student's parent(s) or guardian(s) and advise the parent(s) or guardian(s) of the situation should be made and the administration should make a brief note of the response of the parent(s) or guardian(s). The student should again be removed from the classroom setting but remain in school until the end of the school day or a remediation of the violation, whichever occurs first.

4) If the principal or designee, upon conferring with the student or parent, determines that the violation is deliberate or persistent and is unlikely to be resolved without the imposition of formal discipline, the school administrator shall initiate and follow the formal due process provisions for suspension and/or, in an extreme case, expulsion of the student presently found in *Section IV* of the *Rapides Parish School Board Policies Handbook and Student Code of Conduct*. A student enrolled in grades pre-kindergarten through 5 shall not be given an out-of-school suspension or expulsion or suspended from riding the bus for a uniform or appearance violation unless a determination is first made by the principal that the uniform violation is tied to a willful disregard to school policies by the student. (This last sentence should be included only if SB54 of 2015 passes and becomes law.)

STUDENT TRANSFERS FROM OUT OF THE PARISH

Students who move into Rapides parish from another parish or state will have five school days to be in compliance with the dress code.

DISCRIMINATION

There shall be no discrimination in regard to race, sex, religion, handicap, or natural origin in the Rapides Parish School System.

FILE: GAEAA
Cf: GAAA, GAE
Cf: JM,JGCE

SEXUAL HARASSMENT

The Rapides Parish School Board recognizes that sexual harassment can be a violation of state and federal law. The Board, therefore, shall not tolerate sexual harassment on the part of any employee towards another employee or a student within the workplace. Conduct in violation of this prohibition shall result in disciplinary measures, up to and including dismissal.

DEFINITION

Harassment on the basis of sex is defined as any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly as a term or condition of any individual's employment/education.
2. Submission to or rejection of such conduct by an individual is used as a basis for employment/education decisions affecting the individual.
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work/education or creating an intimidating, hostile, or offensive working/educational environment. Incidents of sexual harassment may include verbal harassment such as derogatory comments, jokes, or slurs, or remarks or questions of a sexual nature; physical harassment such as unnecessary or offensive touching; and visual harassment such as derogatory or offensive posters, cards, cartoons, graffiti, drawings, looks, or gestures. Harassment does not only depend upon the perpetrator's intention, but also upon how the person who is the target perceives the behavior or is affected by it. Individuals who experience sexual harassment from coworkers or others should make it clear that such behavior is offensive to them.
4. Additionally R.S. 17:81Q prohibits electronic communication by school employees with students except under limited circumstances as defined by board policies. Such prohibited communications constitute harassment or intimidation and may subject the employee to discipline, dismissal or criminal prosecution as determined by applicable policies and statutes.

REPORTING PROCEDURES

In the event that an individual believes such instances require a remedy or that there is a basis for a complaint, the individual shall first discuss the issue with the individual's principal or immediate supervisor. Should no resolution occur to the satisfaction of the individual after five (5) days, a formal complaint may be filed. If the victim of the alleged sexual harassment is a minor student and if the alleged harassment falls within the definition of "abuse" as defined by the Board's policy on child abuse (Policy JGCE), then all school employees with knowledge are mandatory reporters and the allegations must be reported to child protection or law enforcement as provided by state law and the Board policy on child abuse. Such reporting must be made in addition to any procedures under this sexual harassment policy. If the victim of the sexual harassment is a student and the accused perpetrator is another student or is an individual not employed by the School Board, the victim shall report the incident(s) to the school guidance counselor, assistant principal, or principal as soon as practicable. If, after investigation, the allegations are determined to be well founded, the offending student shall be subject to suspension or expulsion under the Board's normal student disciplinary policies. Additionally, Board employees who become aware of such allegations should report them to child protection or to law enforcement agencies in accordance with the Board's mandatory reporting policies and state law if the offending conduct rises to the level of child abuse or neglect as therein defined. Failure of the victim to promptly report acts of sexual harassment shall not standing alone constitute a defense to discipline or dismissal and shall only be one factor in evaluating the validity of the allegations under this policy.

STEP 1 EMPLOYEE

If any employee has concerns or a complaint about the nature of any conduct or physical contact by another employee of the school district, the individual should file a formal written complaint with the Personnel Department or with the Superintendent. The receiving office will be charged with investigating the complaint and attempt to remedy it to the mutual satisfaction of all parties involved within five (5) working days of the date of receipt of the complaint. The investigating office shall indicate its disposition of the complaint in writing and shall furnish copies to all concerned parties.

STEP 1 STUDENT

If a student has concerns or a complaint about the nature of any conduct or physical contact by an employee of the Rapides Parish School Board, the student should contact either the school administrator or the school counselor. The school administrator will report the alleged incident to the Superintendent or his/her designee. The school administrator and the Superintendent or his/her designee will be charged with investigating the complaint and attempt to remedy it informally to the mutual satisfaction of all parties involved within five (5) working days of the date of receipt of the complaint. The investigating office shall indicate its disposition of the complaint in writing and shall furnish copies to all concerned parties. If the complaint constitutes a moral offense against a student as defined by Board policy, the procedures of that policy shall be invoked in lieu of any procedures under this sexual harassment policy.

STEP 2 - (EMPLOYEE AND/OR STUDENT)

In the event any of the concerned parties are not satisfied with the disposition of the complaint at Step One (1) or if no disposition has been made, then the concerned party may appeal to the Sexual Harassment Panel. The Sexual Harassment Panel shall include a chairperson, three males and three females selected by the Superintendent.
The Sexual Harassment Panel has seven (7) working days to schedule a hearing. If harassment is found, the panel may exercise one of the following options:

1. The panel may require an appropriate remedy which seeks to redress the wrong. Noncompliance with the remedy will result in disciplinary action.
2. The panel may recommend to the Superintendent that documentation be placed in one's evaluation folder, short or long term suspension with or without pay, or dismissal. The Sexual Harassment Panel shall give written disposition of the complaint within five (5) days of such hearing and shall furnish copies to the appropriate parties and to the Superintendent.

STEP 3 - (EMPLOYEE AND/OR STUDENT) Revised 10/2007

In the event the parties concerned are not satisfied with the disposition of Step Two (2) or if no disposition has been made within five (5) days of such meeting, the parties concerned may appeal to the Superintendent. The appeal shall be in writing and set forth the same information as in Step Two (2). The Superintendent within thirty (30) days shall meet with the appropriate parties. Disposition shall be made no later than five (5) days after the meeting. A copy of such disposition shall be furnished to the appropriate parties.

STEP 4 - (EMPLOYEE AND/OR STUDENT)

In the event the parties concerned are not satisfied with the disposition of the appeal at Step Three (3), or if no disposition has been made in Step Three (3), the concerned parties may appeal to the Rapides Parish School Board. The appeal shall be in writing and shall request that the Superintendent place the concern on the agenda of the next regularly scheduled Board meeting. Such written request must include copies of all decisions previously rendered in connection with the complaint.

Any employee who becomes aware of any allegation of possible harassment shall report such allegations to the Superintendent or designee. All reports received shall be properly and adequately investigated. Appropriate disciplinary action shall be taken when violations of this policy have been determined. The Board shall prohibit retaliation against an employee or student for a complaint made or for participating in an investigation of alleged harassment, unless, after investigation, it is found that the accuser has made a willfully false accusation in which case the accusing employee or student shall be subject to discipline or dismissal under the Board's standard due process provisions.

Nothing contained in this policy and/or procedure shall restrict or diminish the authority of the Superintendent to suspend or terminate any employee in accordance with the policies of the Rapides Parish School Board, state law and applicable statutes.

Failure to meet any procedural deadline imposed herein shall not be cause for dismissal of proceedings absent the demonstration of material prejudice by the affected person.

STUDENT HARASSMENT OR INTIMIDATION

It is the policy of the Rapides Parish School District to provide and maintain a learning environment that is free from harassment and/or intimidation because of a student's gender, race, color, national origin, ethnicity, or disability.

To this end, the school district prohibits any and all forms of harassment and for intimidation because of a student's gender, race, color, national origin, ethnicity, or disability.

It shall be a violation of the school district's Student Harassment or Intimidation policy for any teacher, administrator, or other school personnel of this school district to tolerate racial harassment or intimidation or harassment or intimidation based on a student's gender, color, national origin, ethnicity, or disability, by any student, teacher, administrator, or other school personnel, or by any third person or parties who are participating in, observing, or otherwise engaged in activities, including sporting events and other extra-curricular activities, under the auspices of the school district or any of its schools.

For the purposes of this policy, other school personnel means non-instructional support staff employees or other persons subject to the control and/or supervision of the school district.

The school district shall act promptly to investigate all complaints, either formal or informal, verbal or written, of harassment and/or intimidation because of a student's gender, race, color, national origin, ethnicity, or disability; to promptly take appropriate action to protect students from further harassment and/or intimidation; and, if it determines that prohibited harassment or intimidation has occurred, to promptly and appropriately discipline any student, teacher, administrator, or other school personnel who is found to have violated this policy and/or to take other appropriate action reasonably calculated to end the harassment and/or intimidation.

This policy shall be reproduced in the school district's employees' handbook and in its student's handbook.

DEFINITIONS

A. Harassment and/or Intimidation based on a student's race or color for purposes of this policy racial harassment and/or intimidation of a student based on race or color shall consist of verbal or physical conduct, or actions displays or depictions, relating to an student's race or color, by a student, teacher administrator or other school personnel when

1. the harassing conduct is sufficiently severe persistent or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity or creates an Intimidating, threatening or abusive educational environment;
2. the harassing or intimidating conduct otherwise adversely affects or hinders or restrains a student's participation in a student activity or an extra-curricular activity; or
3. the harassing or intimidating conduct adversely affects a student's learning opportunities.

Examples of conduct which may constitute harassment and/or intimidation of a student because of race or color (regardless of whether the individual is white, black, Hispanic, Asian, Native American or other racial grouping) include, but are not limited to, the following:

- graffiti containing racially offensive language,
- racially offensive name calling jokes and humor,
- racially offensive notes, drawings and cartoons,
- threatening or intimidating conduct directed at another because of the other's race or color,
- racial slurs, racially negative and/or offensive stereotypes, and hostile acts which are based upon another's race or color,
- written or graphic material containing racial comments or stereotypes which is posted or circulated and which are aimed at degrading students on account of race or color,
- threats and physical acts of aggression or assault upon another because of, or in a manner reasonably related to, race or color,
- other kinds of aggressive conduct such as theft or damage to property which is motivated by race or color considerations,
- possession and display or showing of racial hate materials and publications of groups or organizations which espouse racial intolerance or hatred, or which espouse the inferiority of a race or color where not used and approved by a teacher in connection with an authorized class, and/or

- display of Confederate flags or banners, display of black power symbols, or the display of any flag, banner or symbol of a group or organization which espouses racial intolerance or hatred, or which espouses the inferiority of a race or color where not used and approved by a teacher in connection with an authorized class.

B. Harassment and/or Intimidation based on a student's national origin or ethnicity

For purposes of this policy, ethnic or national origin harassment and/or intimidation of a student consists of verbal or physical conduct relating to a student's ethnicity or country of origin or the country of origin of the student's parents, family members or ancestors, by a student, teacher, administrator, or other school personnel when:

1. The harassing conduct is so severe, persistent or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening or abusive educational environment;
2. The harassing or intimidating conduct has the purpose or effect of substantially or unreasonably interfering with a student's work or academic performance, or hinders or restrains a student's participation in a student activity or extra-curricular activity; or
3. The harassing or intimidating conduct otherwise adversely affects a student's learning opportunities.

Examples of conduct which may constitute harassment and/or intimidation of a student because of national origin or ethnicity include, but are not limited to, the following:

- graffiti containing offensive language which is derogatory to others because of their national ongoing or ethnicity,
- threatening or intimidating conduct directed at another because of the other's national origin or ethnicity,
- ethnic jokes, name calling, or rumors based upon a student's national origin or ethnicity, or that of members of his/her family or ancestors,
- ethnic slurs, negative stereotypes, and hostile acts which are based upon another's national origin or ethnicity,
- written or graphic material containing ethnic comments or stereotypes which is posted or circulated and which are aimed at degrading students, members or descendants of a foreign nation of origin, or ethnicity,
- threats or physical acts of aggression or assault upon another because of, or in a manner reasonably related to ethnicity or national origin,
- other kinds of aggressive conduct such as theft or damage to property which is motivated by national origin or ethnicity, and/or
- possession and display or showing of ethnic hate materials and publications of groups or organizations which espouse ethnic intolerance or hatred, or which espouse the inferiority of an ethnic group where not used and approved by a teacher in connection with an authorized class.

C. Harassment and/or Intimidation based on a student's disability for purposes of this policy, physical or mental disability harassment and/or intimidation of a student consists of verbal or physical conduct relating to a student's physical or mental impairment by a student, teacher, administrator, or other school personnel when

1. the harassing conduct is so severe, persistent or pervasive that it affects a student's ability to participate in or benefit from an educational program, activity or extra-curricular activity or creates an intimidating, threatening or abusive educational environment;
2. the harassing or intimidating conduct has the purpose or effect of substantially or unreasonably interfering with a student's work or academic performance; or
3. the harassing or intimidating conduct which otherwise adversely affects a student's learning opportunities.

Examples of conduct which may constitute harassment and/or intimidation because of a physical or mental disability include, but are not limited to, the following:

- graffiti containing offensive language which is derogatory to others because of their physical or mental disability,
- threatening or intimidating conduct directed at another because of the other's physical or mental disability,
- jokes, rumors or name calling based upon an individual's physical or mental disability,
- slurs, negative stereotypes, and hostile acts which are based upon another's physical or mental disability,

- graphic material containing comments or stereotypes which is posted or circulated and which is aimed at degrading individuals with a physical or mental disability,
- physical acts of aggression or assault upon another because of or in a manner reasonably related to, an individual's physical or mental disability, or
- other kinds of aggressive conduct such as theft or damage to properly which is motivated by an individual's physical or mental disability.

DUTIES OF PRINCIPALS TO DISSEMINATE REVIEW AND EXPLAIN THIS POLICY

A. The principal of each school within the school system shall review and explain this policy to each teacher, administrator, and other school personnel assigned to, or otherwise authorized to be upon the campus of the school and shall have each such parson sign a form stating that the policy has been reviewed and explained to him or her and that he or she will abide by the policy. The form shall be provided by the school district coordinator for complaints of harassment and/or intimidation, and may be a form attached to the employee handbook. The original, fully executed form shall be retained by the principal and a copy of the form shall be sent to the school district coordinator for complaints of harassment and/or intimidation.

B. The principal of each school shall assure that this policy is reviewed and explained to all students enrolled in the school In a manner designed to adequately communicate to the students, based upon their age and general levels of understanding, the contents of this policy and reporting procedures for complaints of harassment and/or intimidation based on gender, race, color, national origin, ethnicity, or physical or mental disability. The principal shall also assure, in such a manner as not to deter meritorious complaints by students, the seriousness of this policy and the need to avoid the making unfounded complaints.

The principal may design a program or plan and designate teachers, guidance counselors and/or other administrators to review and explain this policy to students. At the elementary level, each parson designated to review and explain this policy shall execute a statement attesting they have reviewed and explained this policy to each student, and that all questions raised by students were handled and adequately answered. At the middle and high school grade levels, including the sixth grade, each student shall be required to sign a form attesting that this policy has been reviewed with, and explained to, them and that they understand this policy and will abide by it.

At the elementary level, the principal, to the extent practicable, also shall review and explain this policy to the parents/tutors/guardians of students enrolled in the school. This may be done at parent/teacher organization meeting or other appropriate assemblies of parents/tutors/guardians conducted on school property.

Each principal of each school, regardless of the grade levels served by the school, shall also assure that a copy of this policy is forwarded to each student's parents/tutors/guardians with a communication advising them that should they have questions regarding this policy, the same should be communicated to him or her for answer. This may be done by sending home with each student a copy of the *Rapides Parish School Board Policies Handbook and Student Code of Conduct* to each student's parents/tutors/guardians where the parent/tutor/guardian executes and returns to the school the *Receipt and Statements of Compliance Form* attached to each such handbook.

A copy of this policy shall be at all times conspicuously posted in each school in a location accessible to students, faculty, administrators and other school personnel. The posted copy of this policy shall contain a) the name, mailing address (Which may be that of the school) and work and home telephone numbers of the parson designated as the school's school-based coordinator for complaints of harassment and/or intimidation, b) the name, mailing address and work and home telephone number of the school district coordinator for complaints of harassment and/or intimidation, and. c) with respect to complaints of harassment and/or intimidation based on race or color. the name of the school district's monitor and the attorney employed by the United States Department of Justice with monitoring responsibility for the implementation of the Consent Judgment of December 7, 2000.

REPORTING PROCEDURES FOR COMPLAINTS OF HARASSMENT AND/OR INTIMIDATION

Any student who believes he or she has been the victim of harassment and/or intimidation because of his or her gender, race, color, national origin, ethnicity, or physical or mental disability by a student, teacher, administrator, or other school personnel, or by any other person who is participating in, observing, or otherwise engaged in activities, including sporting events and other extra-curricular activities, under the auspices of the school district or an Individual school, is encouraged to immediately report the alleged conduct or act to the person at his or her school designated as the school-based coordinator for complaints of harassment and/or intimidation, or to the principal, a guidance counselor, a teacher or other employee of the school system, including the school district coordinator for complaints of harassment and/or intimidation, and/or the Superintendent or other central office official. The school district

encourages the reporting party or complainant to use the report form available from the principal of each school or from the school district's central office, but oral reports shall be considered as complaints as well. Use of formal reporting forms is not mandated. Nothing in this policy shall prevent any person from reporting harassment directly to the Superintendent.

A. In each school, the principal, an assistant principal or a guidance counselor shall be designated by the principal as the school-based coordinator for complaints of harassment and/or intimidation.

B. Any teacher, administrator, or other school personnel who has knowledge or a belief, a reason to know, or receives notice that a student has or may have been the victim of harassment and/or intimidation, because of gender, race, color, national origin, ethnicity, or physical or mental disability shall immediately inform the school-based and school district coordinators for complaints of harassment and/or intimidation. Failure to immediately inform the school-based and school district coordinators for complaints of harassment and/or intimidation shall result in disciplinary action against the teacher, administrator, or other school personnel.

C. Any parent, tutor, guardian or other person who has knowledge or a belief, a reason to know, or receives notice that a student has or may have been the victim of harassment and/or intimidation because of gender, race, color, national origin, ethnicity, or physical or mental disability is encouraged to inform the school-based and school district coordinators for complaints of such harassment and/or intimidation, or the Superintendent or other school district or school-based official.

D. Upon receipt of a written report of harassment and/or intimidation, the school-based coordinator for complaints of harassment and/or intimidation shall immediately inform the school district coordinator for complaints of harassment and/or intimidation without prior screening or investigation of the report. A written statement of the alleged facts must be forwarded to the school district's coordinator for complaints of harassment and/or intimidation as soon thereafter as possible. Where an oral complaint or report is received by the school-based coordinator for complaints of harassment and/or intimidation, it shall be reduced to writing on a report form and the school district's coordinator for complaints of harassment and/or intimidation shall be immediately informed of the complaint prior to screening or investigation of the oral complaint. A written statement of the alleged facts must be forwarded to the school district coordinator for complaints of harassment and/or intimidation as soon thereafter as possible. Failure by a school-based coordinator for complaints of harassment and/or intimidation to forward a report or an oral complaint and the required written statement in timely fashion shall result in disciplinary action against the school-based coordinator for complaints of harassment and/or intimidation.

E. The school district has designated the Title IX Coordinator as its school district coordinator for complaints of harassment and/or intimidation.

1. He/she shall receive complaints or reports and written statements of harassment and/or intimidation because of gender, race, color, national origin, ethnicity, or physical or mental disability.

2. He/she shall oversee the investigative process.

3. He/she shall be responsible for assessing the training needs of the school district's staff and students in connection with the dissemination, comprehension, and compliance with this policy.

4. He/she shall arrange for the training required in Paragraph 34 of the Consent Judgment of December 7, 2000.

5. He/she shall ensure that any investigation into an alleged act or conduct involving harassment and/or intimidation because of a student’s gender, race, color, national origin, ethnicity, or physical or mental disability is conducted by an impartial investigator who has been trained in the requirements of equal educational opportunity, including harassment, and who is able to apply procedural and substantive standards which are necessary and applicable to identify harassment prohibited by this policy and any unlawful harassment or conduct, recommend appropriate discipline when harassment is found, and take other appropriate action to rectify the damaging effects of any prohibited act or conduct, including recommendations for interim measures which may be deemed necessary for the protection of the victim during the course of the investigation.

   In each instance in which harassment is found to have occurred because of an act or conduct of a student, the school district coordinator for complaints of harassment and/or intimidation schedule and conduct, or direct the school-based coordinator for complaints of harassment and/or intimidation and principal to schedule and conduct a conference with the parent(s), Mores) or guardian(s) of the child found to have committed an act or engaged in conduct prohibited by this policy.

In each instance in which harassment is found to have occurred because of an act or conduct of a teacher, administrator, or other school personnel of the school district, appropriate disciplinary actions shall be taken. In each instance in which harassment is found to have occurred because of an act or conduct of a third party, such person shall be banned from school activities under the auspices of the school district or any school within the school system.

In each instance in which the harassment alleged may, if found to have actually occurred, constitute a crime under either the laws of this state or of the United States, the school district coordinator for complaints of harassment and/or intimidation shall notify in writing the district attorney or the United States Attorney having jurisdiction over the matter. (This requirement may be satisfied by the school district coordinator for complaints of harassment and/or intimidation by consulting with the member of the district attorney's office designated to provide general counsel services to the school district or by consulting with the school district's general counsel should one be appointed to deliver general legal services for the school district. Compliance with the legal advice received through such consultation shall serve to discharge the responsibility imposed herein on the school district coordinator for complaints of harassment and/or intimidation.) In the event the district attorney or the United States Attorney elects to investigate the report or oral complaint of harassment and/or intimidation, a school district investigation into the matter shell, nevertheless proceed, unless enjoined by a court of proper jurisdiction.

6. The school district shall respect the privacy of the complainant, the individuals against whom the report or oral complaint is made against, and all witnesses as much as possible, consistent with the school district's obligations to investigate, to take appropriate action, and to conform with any discovery or disclosure obligations.

INVESTIGATIONS

A. Upon receipt of a written statement from a school-based coordinator for complaints of harassment and/or intimidation or upon receipt of a report or oral complaint from a third person, as the case may be, the school district coordinator for complaints of harassment and/or intimidation shall undertake or authorize an investigation. The investigation may be conducted by a school district official or a person designated to conduct such investigations. The investigator must be impartial and have received such training as provided for hereinabove.

B. The investigation shall consist of a personal interview with the complainant, and may include interviews with the complainant parent(s), tutor(s) or guardian(s), the individual(s) against whom the complaint is made and his/her parent(s), tutor(s) or guardian(s) where the alleged perpetrator is a student and others who have knowledge of the alleged act or conduct or circumstances giving rise to the complaint the investigation may also consist of an evaluation of any other information or documents which may shed light on the alleged act or conduct.

C. In determining whether a violation of this policy has occurred, the investigator shall consider

1. The nature and severity of the act or conduct,
2. How often the act or conduct occurred,
3. Whether the act or conduct was part of a continuing pattern of behavior, or whether past incidents of similar behavior have been found to have occurred,
4. The relationship between the parties,
5. The gender, race, color, national origin, physical and mental capacity, and age of the victim and perpetrator,
6. Whether the perpetrator was in a position of power, or whether because of his/her status the student had reason to believe the perpetrator, was in a position of power over the student subjected to the harassment and/or intimidation,
7. The number of alleged persons involved in the harassment and/or intimidation,
8. Where the harassment occurred,
9. Whether there have been other incidents of the same or similar behavior at the school involving the same or other students,
10. Whether the act or conduct adversely affected the student’s education, educational environment, or participation in extra-curricular activities, and
11. The context in which the alleged act or conduct occurred.

D. Upon completion of an investigation, the investigator shall make a written report to the school district coordinator of complaints of harassment and/or intimidation, where the investigation is conducted by another person, and the Superintendent. The investigation shall be completed in as expeditious an amount of time as practicable under the

circumstances, but in no event shall an investigation take longer to complete than one month from the date of its commencement, except where enjoined by a court of proper jurisdiction. The written report of the investigator shall contain a recommendation with respect to disciplinary action and shall be filed with the School Board, and a copy thereof shall be furnished to the school district monitor and, in cases involving harassment based on race or color, the attorney employed by the United States Department of Justice with monitoring responsibility for the implementation of the Consent Judgment of December 7, 2000.

STUDENT DISCIPLINE FOR VIOLATIONS OF THIS POLICY

A. The Superintendent shall be responsible for seeing to it that the disciplinary action recommended by the investigator is carried out, unless he/she provides written reasons as to why the recommended disciplinary action is overly severe or insufficient, based upon the investigative findings, in the written report. A copy of any such written reasons shall be filed with the School Board and a copy thereof shall be furnished the school district's monitor and, in cases involving harassment based on race or color, the attorney employed by the United States Department of Justice with monitoring responsibility for the Implementation of the Consent Judgment of December 7, 2000.

B. The discipline administered a student may include any discipline provided for in the discipline policies of the Rapides Parish School Board. In addition to the actions provided for in the said School district's discipline policies, a mandatory student/parent/tutor/guardian conference shall be conducted by the school district coordinator for complaints of harassment and/or Intimidation or the School-based coordinator for complaints of harassment and/or intimidation and the principal of the school.

With the exception of disciplinary action consisting of a suspension or expulsion which must be considered by the School Board, the investigators procedures contained in this policy shall supersede and take precedence over those contained in the discipline policies of the Rapides Parish School Board and the recommended discipline contained in the investigative report, as accepted or modified by the Superintendent, shall serve in lieu of any recommendation of a teacher or action by a principal.

In cases involving possible suspension or expulsion, the recommended discipline contained in the investigative report, as accepted or modified by the Superintendent, shall serve in lieu of any recommendation of a principal.

DISCIPLINE OF TEACHERS ADMINISTRATORS AND OTHER SCHOOL PERSONNEL

Teachers, administrators and other School personnel shall be disciplined by the School Board in accordance with applicable law and/or School Board policy.

Where the safety or welfare of a child may be at issue, the Superintendent is authorized to suspend a teacher, administrator or other school personnel with pay and benefits pending completion of an investigation and/or School Board disciplinary action.

REPRISAL

A. Submission of a good faith report or compliant of harassment and/or intimidation based on gender, race, color, national origin, ethnicity, or physical or mental disability shall not affect the complainant or reporter's future employment, grades, learning or working environment, participation in extra-curricular activities, or work assignments.

B. Any student teacher, administrator, or other school employee who retaliates against any person who complains or reports an act or conduct constituting or which may constitute harassment and/or intimidation because of gender, race, color, national origin, ethnicity, or physical or mental disability shall be disciplined by the school district. Retaliation includes, but is not limited to any form of intimidation, reprisal or harassment.

Ref: 29 U.S.C. 791 at. seq.; 42 U.S.C. 2000d; 42 U.S.C. 12131-12134; Consent Judgment, Virgie Lee valley et. al, y. Rapides Parish School Board, 12-7-00; La Rev. Stat. Ann. §§14:41 et seq., 17:81. Board minutes 2-06-02, 3-06-07.

EMPLOYEE TOBACCO USE

Board members and Board employees are prohibited from smoking, carrying a lighted cigar or cigarette, pipe or any other form of smoking object or device, or possessing any lighted tobacco product or any other lighted combustible plant material in any elementary or secondary school building, on the campus of any elementary or secondary school, in any building on the campus, on any school bus, or in the building or on the grounds of any other facility on property owned by or leased to the Board, including but not limited to the media center, the central office, the maintenance buildings or the grounds of those buildings.

Board members and Board employees are prohibited from chewing or otherwise consuming any tobacco or tobacco product on or in any buildings, grounds or buses mentioned in the foregoing paragraph.

Additionally, during the loading, unloading or transport of students, or during any school sponsored activity where students are present, no cigarettes, cigars, smoking paraphernalia or other tobacco products, whether chewing tobacco, snuff or otherwise, shall be displayed or placed so that those products are observable by any student during the participation by students in school or school related activities or transportation for those purposes.

The prohibitions mentioned above shall not apply to forested lands owned by the Board where no buildings or improvements are constructed such as 16"" Section swamp lands open to the public for recreational use unless students are present on a school sponsored or school related activity, in which case the prohibitions shall apply.

Revised: September, 2006
Revised: February, 2007

Ref: 20 USC 7183 (No Child Left Behind Act of 2001); La. Rev. Stat. Ann. §§17:240, 40:1300.251, 40:1300.252, 40:1300.253, 40:1300.255, 40:1300.261; Board minutes, 3-D7-Q6, 3-Q6-Q7.

STUDENT HARASSMENT OR INTIMIDATION NOT CAUSED BY A STUDENT'S RACE, COLOR, NATIONAL ORIGIN, ETHNICITY, SEX, SEXUAL ORIENTATION OR DISABILITY

It is the policy of the Rapides Parish School Board that harassment, intimidation, cyberbullying, and bullying of a student by another student is prohibited. Any student participating in such activities is subject to discipline including suspension or expulsion as provided by the general discipline procedures in the Student Code of Conduct.

For purposes of this Subsection the terms "harassment," "intimidation," and bullying shall mean any intentional gesture or written, verbal, or physical act that:

1. A reasonable person under the circumstances should know what will have the effect of harming a student mental or physical or damaging his property or placing a student in reasonable fear of harm to his life or person or damage to his property;
2. Is so severe, persistent, or pervasive that it creates an intimidating threatening or abusive educational environment for a student: and
3. Any student, school employee, or school volunteer who in good faith reports an incident of harassment, intimidation, cyberbullying or bullying to the appropriate school official in accordance with the procedures established by local board policy shall be immune from a right of action for damages arising from any failure to remedy the reported incident.

ACT 755

This act requires the board to review the student handbook and code of conduct and amend it to "assure that the policy prohibiting harassment, intimidation and bullying of a student by another student specifically addresses the nature, extent, causes and consequences of cyberbullying. The act requires the review and amendment not later than January 1, 2011, and requires that the board, within ten days of school enrollment by each student, inform each student of the prohibition against harassment, etc.

Section XIII
Searches

SEARCHES

INTRODUCTION

Students have a right to be free from unreasonable searches of their persons. However, Act No. 658, Section 416.3 of Title XVII of the Louisiana Revised Statutes of 1950 makes the following provisions relative to the search of students' persons, desks, lockers, and other school areas when searching for contraband, illegal drugs or weapons.

A. (1) The parish and city school systems of the state are the exclusive owners of all public school buildings and all desks and lockers within the building assigned to any student and any other area of any public school building or grounds set aside specifically for the personal use of the students. Any teacher, principal, school security guard, or administrator in any parish or city school system of the state may search any building, desk, locker, area, or grounds for evidence that the law, a school rule, or parish or city school board policy has been violated.

(2) The teacher, principal, school security guard, or administrator may search the person of a student of his personal effects when, based on the attendant circumstances at the time of the search, there are reasonable grounds to suspect that the search will reveal evidence that the student has violated the law, a school rule, or a school board policy. Such a search shall be conducted in a manner that is reasonable related to the purpose of the search and not excessively intrusive in light of the age or sex of the student and the nature of the suspected offense.

B. If any teacher, principal, school security guard, or administrator in the public school system is sued for damages by any student, the parent of any student, or other person qualified to bring suit on behalf of the student, based upon a search of that student's person, desk, locker, or any other area of a school building or grounds set aside specifically for that student's personal use, when the teacher, principal, school security guard, or administrator reasonably believed that the student had weapons, illegal drugs, alcohol, stolen goods, or other materials or objects the possession of which is a violation of the parish or city school board policy on his person, or had reasonable belief that such desk, locker, or other area contained such items, or based upon a search using a metal detector, it shall be the responsibility of the school board employing such teacher, principal, school security guard, or administrator to provide the defendant with legal defense, including reasonable attorney's fees, investigatory costs, and other related expenses.

C. Lockers shall be opened in the student's presence when administratively feasible.

D. A student not present shall be informed of the search.

E. Items which are specifically prohibited by law, Board policy or school regulation shall be impounded. The principal or designee shall report the discovery or confiscation of the following items or materials to the law enforcement officials:

1. Any firearms, explosives, bombs, knives or other implements which can be used as weapons or the careless use of which might inflict harm or injury.

2. Any controlled dangerous substance as defined in R.S.40:961 (7).

Any implement or material required to be reported to law enforcement officials as provided above shall be retained and secured by the administrator in such a manner as to prevent the destruction, alteration or disappearance of the item or material until such time as the law enforcement authority either takes custody of the implement or material, or provides notice to the school principal or administrator that it need no longer be retained. If law enforcement advises that the material or implement need not be retained, the administrator shall forward the material to the office of the superintendent, and the superintendent or designee may confiscate the item or material and have it destroyed or donated to appropriate law enforcement agencies, or may return it to the parent or guardian of the student as the superintendent in his or her discretion may deem appropriate.

F. The student shall be given a receipt for any items impounded by school administrators and parent or guardians shall be notified of any items impounded.

G. A written record shall be made, thereof, by the person conducting the search and shall include the name of the person involved, the circumstances leading to the search and results of the search.

H. Any search of a student's person shall be done privately by a teacher or an administrator of the same sex as the student to be searched.

I. When a search of a student's person is conducted, at least one witness, who is an administrator or teacher also of the same sex as the student, shall be present throughout the search.

J. Violation of this policy by a teacher, administrator or other school board employee shall be referred to the superintendent for appropriate disciplinary action as provided by board policies and applicable state law.

SEARCH OF NON-STUDENTS ENTERING PUBLIC SCHOOL BUILDINGS OR GROUNDS

Any school principal, administrator or school security guard may search the person, handbag, briefcase, backpack, purse or other objects in possession of any person who is not a student enrolled at the school or a school employee while said person is in any school building or on the school grounds, either by conducting a random search with a metal detector or by a reasonable physical search of the person's clothing or other possessions, when there is a reasonable suspicion that such person has any weapons, illegal drugs, alcohol, stolen goods or other materials or objects, the possession of which is a violation of the school board's policy or state law. Said search shall be conducted in a manner that is reasonable related to the purpose of the search and, if a search of the clothing or person of the party is conducted, it shall be conducted by a school employee or administrator of the same sex as the person to be searched. Except, when circumstances make it impracticable, the search of a non-student's person or clothing which is worn on the body should be conducted in a room or other private area and should be witnessed by an additional school employee of the same sex as the person to be searched. Any contraband or other illegal items, the possession of which violates state law or school board policy, which are found as a result of the search shall be impounded by the school board employee or administrator and the appropriate law enforcement agency notified.

METAL DETECTORS

Random searches with a metal detector of students of their personal effects may be conducted at any time, provided they are conducted without deliberate touching of the student.

GUIDELINES FOR USE OF METAL DETECTORS RAPIDES PARISH SCHOOLS PURSUANT TO R.S. 17:81 (L)

POLICY:

The Rapides Parish School Board, to help ensure the safety of its students and employees, has approved the use of metal detectors in schools. Strict guidelines will be followed to ensure that searches conducted with a metal detector are lawful, unbiased, and respectful of the right of privacy.

PURPOSE:

School systems in Louisiana are faced with ever-increasing violence and the use of weapons on or adjacent to school campuses and at after-school social functions. In this connection, it is generally believed that a so-called wand metal detector could prove useful as a deterrent when utilized in a publicized random search program. The purpose of these guidelines is to deter students from bringing weapons onto school property, thus reducing the potential for violent incidents.

NOTIFICATION:

(1) Signs shall be posted outside the entrances to School Board facilities in order to provide notice to all persons that they are subject to search as a condition of entry.

(2) The parents or guardians are hereby notified that random searches will be conducted.

RANDOM SEARCHES

(1). Search students at random as they enter school, enter the cafeteria and leave school; search all of every third, fourth, or fifth student.

(2). Select at random an entire class to search upon entering, and/or upon leaving the classroom.

DETECTOR SEARCH PROCEDURE

When conducting a detector search of a student or individual, the administrator shall request that all metal objects be removed from pockets and placed on a tray, along with any bags or parcels being carried. If the detector activates on the individual, the administrator conducting the search shall request that any remaining metal objects be removed. If the detector activates again, the individual should be taken to a private area and personally searched by a search team member of the same sex. A witness of the same sex should be present during this portion of the procedure. Strip searches are prohibited. Once the object causing the metal detector to activate has been removed, the individual shall be searched again with the metal detector, and the search will continue only if the detector activates again. A physical exam will be made of all bags and parcels belonging to the individual.

DISCOVERY OF CONTRABAND

Should an individual be found in possession of contraband (such as weapons, illegal drugs, or other prohibited objects), the search team member shall notify the appropriate school official and/or law enforcement officer. The law enforcement officer shall take custody of all weapons and illegal drugs. The administrator should attempt to notify parents of a student when a discovery of contraband has been made.

In the event concealed contraband is detected or suspected and the student refuses to produce the object the law enforcement officials shall be called to conduct a search.

RETURN OF PROPERTY

All property removed from an individual that is not prohibited by law or School Board policy and is appropriately possessed shall be returned to the individual.

SCHOOL GROUNDS

Following completion of a search of students, the search team should conduct a perimeter search of the school grounds for weapons or other contraband.

STUDENT ACCESS TO AUTOMOBILES

During the school day, students shall not enter automobiles on or near campus without permission from the teacher or principal. This will reduce student access to weapons or contraband.

EXHIBIT 13-B

Rapides Parish School Board
Field Trips and Excursions Policy

FILE: IFCB
Cf: EDAE

FIELD TRIPS AND EXCURSIONS

The Rapides Parish School Board recognizes that educational field trips and trips to various types of contests for instructional purposes help provide desirable learning experiences. The Superintendent shall have responsibility for development of administrative criteria governing field trips and excursions. Only those field trips that grow out of the instructional program or are otherwise related to the program, may be permitted on school time. Other trips such as those involving band and athletic activities should be confined to non-school time, except where the school is engaged in an activity, competition or contest that requires use of school time.

Teachers planning on conducting field trips or out-of-class learning experiences shall submit an application in writing to the principal for approval. Before any trip or excursion is taken, *written parental permission* forms shall be secured for every student planning to take the trip. Students who have not submitted signed parental permission forms shall not be allowed to take the trip.

Before approval of any field trip is given, it shall be determined whether the trip is covered by the School Board's liability insurance. No travel shall be authorized where coverage cannot be secured prior to the trip commencing. In addition, private vehicles shall not be used for transporting students on field trips or interscholastic activities unless evidence of adequate liability insurance coverage on the private vehicle is presented to the principal and such vehicle is driven by properly licensed adult. Liability insurance with the minimum limits of at least $25,000 each person/$50,000 each occurrence bodily injury and $25,000 property damage shall be required by the School Board. Individuals who use their own vehicles to transport students on field trips shall be required to sign acknowledgement forms regarding insurance requirements.

Only buses belonging to or contracted to the School Board and driven by certified drivers shall be permitted.

Additionally, any field trips consisting of boys and girls and requiring them to stay overnight must be chaperoned by faculty, staff, or parents of both sexes. Parents should be encouraged to serve as chaperones when possible.

The use of alcohol or any other illegal drug shall be strictly prohibited. All students shall be subject to the Rapides Parish School Board alcohol and drug policy. All luggage, as well as ice chests, shall be inspected by the chaperones to make sure that no alcohol or other illegal drugs are present before or during field trips. Behavior rules and regulations are the same as those while the students are attending school. These facts should be emphasized on the written parental permission forms.

Students shall be reminded that they are representing their school and all disorderly conduct shall reflect on their school. Also, any student violating any of these rules should be sent home immediately after their parents have been notified.

Ref: La. Rev. Stat. Ann. §§17:81, 17:176.1
Board minutes, 6-4-96, 2-5-97, 6-17-02

Rapides Parish School Board

EXHIBIT 13-C

Rapides Parish School Board
Employee Conduct Policy

FILE: GBRA
Cf: GBN, JG

EMPLOYEE CONDUCT

The Rapides Parish School Board believes the teaching profession occupies a position of public trust involving not only the individual teacher's personal conduct, but also the interaction of the school and the community. Education is most effective when these many relationships operate in a friendly, cooperative, and constructive manner. A teacher's conduct, as well as the conduct of all employees throughout the school district, should meet acceptable standards of the community and show respect for the law and the rights of others.

All employees, volunteers, student teachers, interns, and any other person affiliated with the Rapides Parish School Board have the responsibility to be familiar with and abide by the laws of the state, the policies and decisions of the School Board, and the administrative regulations and procedures designed to implement School Board policies. Employees and others shall also comply with the standards of conduct set out in this policy and with any other policies, regulations, procedures, or guidelines that impose duties, requirements, or standards of conduct attendant to their status as School Board employees. The Rapides Parish School Board acknowledges the First Amendment rights of its employees to speak publicly on matters of public concern.

Employees and all others shall be expected to observe at least the following standards of conduct:

- Be courteous to students, one another, and the public and conduct themselves in a professional and ethical manner.
- Recognize and respect the rights and property of students, other employees, and the public.
- Maintain confidentiality of all matters relating to students and other employees.
- Demonstrate dependable attendance and punctuality with regard to assigned activities and work schedules.
- Observe and adhere to all terms of an employee's contract or job description.
- Strive to keep current and knowledgeable about the employee's area of responsibility.
- Refrain from promoting personal attitudes and opinions for matters other than general discussion.
- Classroom instruction by school personnel or third parties on sexual orientation or gender identity may not occur in pre-kindergarten through grade 12 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards.
- Refrain from using undue influence to gain, or attempt to gain, promotion, leave, favorable assignments, or other individual benefit or advantage.
- Advocate positive personal behavior on or off campus and attempt to avoid improprieties or the appearance of improprieties.

While the operation of the School Board and its schools is governed by the provisions of this and all other School Board policies, regulations, and procedures, as well as procedures of the individual schools, no policy manual can list each and every instance of misconduct that is precluded. Accordingly, employees are cautioned that the appropriateness of certain action or behavior must necessarily be dictated by the nature of the position held by the employee and standards of common sense. By virtue of one's education and experience, an employee knows and understands that certain actions or conducts are unacceptable even in the absence of formal School Board policy. For instance, without the need of a specific prohibition or warning, a classroom teacher should be aware of the impropriety of certain practices such as leaving students unattended, using profanity or sexually suggestive language, or bringing a firearm onto campus. Such conduct constitutes both incompetence and willful neglect of duty. Such conduct, as well as violation of any state or federal law or School Board policies, regulations, or procedures, or school regulations or procedures, shall result in the imposition of discipline up to and including termination.

PROHIBITED SEXUAL CONDUCT

Regardless of the age of the employee or the age of the student, employees are prohibited from engaging in any form of sexual conduct with students. Students are persons defined in the glossary of the *Policy Handbook* and the *Student Code of Conduct*. Additionally, it is a violation of criminal statutes for board employees to engage in sexual or any other types of inappropriate behavior with children or students under the age of seventeen (17), and further a criminal violation for any educator as defined in La. Rev. Stat. Ann. §14:81.4 to engage in sexual conduct with a student who is seventeen (17) years of age or older, but less than twenty-one (21) years of age, where there is an age difference of greater than four (4) years between the two persons.

Notwithstanding any claim of privileged communication, any educator, having cause to believe that prohibited sexual conduct has occurred between another educator and a student, shall be required by state law to immediately report such conduct to a local or state law enforcement agency.

NOTIFICATION BY EMPLOYEES

A teacher or any other School Board employee shall report any final conviction or plea of guilty or *nolo contendere* to any criminal offense, excluding traffic offenses, to the School Board within forty-eight (48) hours of conviction or plea.

Arrests for Certain Sexual Offenses

Effective January 1, 2012, any public school employee shall be required to report his/her arrest for a violation of La. Rev. Stat. Ann. §§14:42-14:43.5, 14:80-14:81.5, any other sexual offense affecting minors, any of the crimes listed in La. Rev. Stat. Ann. §15:587.1, or any justified complaint of child abuse or neglect on file with the Louisiana Department of Children and Family Services.

The report shall be submitted to the Superintendent or his/her designee within twenty-four (24) hours of the arrest. However, if the employee is arrested on a Saturday, Sunday, or a legally declared school holiday such report shall be made prior to the employee next returning for his/her work assignment at a school. Such report shall be made by the employee or an agent of the employee regardless of whether he/she was performing an official duty or responsibility as an employee at the time of the offense. In addition, the employee shall report the disposition of any legal proceedings related to any such arrest, which shall also be made a part of any related files or records.

Any employee who fails to comply with these provisions shall be suspended with or without pay by the School Board if such employee is serving a probationary term of employment or if the provisions of law relative to probation and tenure are not applicable to the employee.

Any employee employed by the School Board who is a tenured employee of the School Board shall be subject to removal under applicable state laws for failure to comply with these provisions. Written and signed charges alleging such failure shall be brought against the employee.

Unless criminal charges are instituted pursuant to an arrest which is required to be reported as provided above, all information, records, hearing materials, and final recommendations of the school pertaining to such reported arrest shall remain confidential and shall not be subject to a public records request.

School employee, as used in this policy, shall mean any employee of the School Board, including teachers, substitute teachers, bus operators, substitute bus operators, or janitor, and shall include all temporary, part-time, and permanent school employees.

New Policy: September, 2006
Revised: November, 2007
Approved: March 4, 2008
Revised: September, 2008
Revised: September, 2009
Revised: November, 2011
Revised: June 7, 2016
Revised: July 5, 2022

Ref: 41 USC 8103 (*Drug-Free Workplace Requirements for Federal Grant Recipients*)
La. Rev. Stat. Ann. §§14:42, 14:42.1, 14:43, 14:43.1, 14:43.2, 14:43.3, 14:43.5, 14:80, 14:80.1, 14:81, 14:81.1, 14:81.1.1, 14:81.2, 14:81.3, 14:81.4, 14:81.5, 17:15, 17:16, 17:81
Sylvester v. Cancienne, 95-0789 (La. App. 1st Cir. 11/9/95), 664 So.2d 1259
Howard v. West Baton Rouge Parish School Board, 2000-3234 (La. 6/29/01), 793 So.2d 153
Spurlock v. East Feliciana Parish School Board, 03-1879 (La. App. 1st Cir. 6/25/04), 885 So.2d 1225
Board minutes, 3-4-08, 10-6-09, 1-3-12, 6-7-16, 7-5-22

Rapides Parish School Board

EXHIBIT 14

Declaration of James M. Cantor, Ph.D.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

Rapides Parish School Board, *Plaintiff*, v. **United States Department of Health and Human Services**, et al., *Defendants*.	**Case No.** 1:25-cv-00070-DDD-JPM **Judge Dee D. Drell** **Magistrate Judge Joseph H.L. Perez-Montes**

DECLARATION OF JAMES M. CANTOR, PH.D.

I, James M. Cantor, Ph.D., pursuant to 28 U.S.C. § 1746, declare under penalty of perjury of the laws of the United States of America that the following is true and correct based on my personal knowledge. I am above the age of 21, and fully competent to make this declaration. If called to testify, I could and would testify competently to these facts.

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PART 1:

BACKGROUND

I. Credentials and Qualifications.

1. I am over the age of eighteen and submit this expert declaration based on my personal knowledge and experience.

2. I have been retained by Plaintiffs in the above-captioned lawsuit to provide an expert opinion on: the status and reliability of the current science of gender dysphoria and its development; the risks, benefits, and unknowns of the medical and non-medical alternatives available for managing the needs and environments of people expressing gender dysphoria; the standards and procedures that constitute Evidence-Based Medicine (EBM) and Evidence-Based Practice in health care and mental health care policy development; the status of transition of gender in minors as medically necessary; and the consensus on these issues of community of experts studying them.

3. My opinions contained in this report are based on my education and training in the conduct and assessment of research methodology and design, human sexuality and its development, both in clinical and in forensic applications; statistical analysis in the behavioural sciences; my international history of assessing my peer scientists work, from research proposals and grant applications to evaluations of results as peer reviewer and Editor-in-Chief of a peer reviewed journal studying human sexuality.

A. Executive Summary.

4. Policy decisions for protecting the public, including school policies, ideally follow from reliable evidence comparing the outcomes of the available alternatives; however, there does not exist a body of research testing the effects of alternatives specific to the assignment or access to sex-segregated privacy spaces for minors who express gender dysphoria or who assert transgender identities without a diagnosis of gender dysphoria. Rather, the very limited research

science available pertains to their *social transition* overall, of which using self-reported gender to access sex-segregated privacy spaces is a single component. The existing research on social transitioning of minors is limited and low quality, providing only unreliable and uncertain results which may be substantially different from its actual effects.

5. Relevant to the present case are four well-established research findings about prepubescent children who express gender dysphoria: (1) The majority who are not permitted to undergo social transition cease to feel gender dysphoric in the course of puberty, and no method has been developed for reliably predicting which cases of gender dysphoria are likely to persist. (2) Those youth who are permitted to transition socially are very likely to continue experiencing gender dysphoria and to undergo medical transition. (3) Social transition does not improve the mental health or resolve the distress expressed by gender dysphoric youth. (4) The scientific evidence does not support the notion that the benefits of medicalized transition (if any) for youth with gender dysphoria outweigh the substantial risks associated with those interventions.

6. The ethical decisions require the integration of four components and cannot be made when ignoring any one of them: *risk* of harm, potential *benefit*, available *alternatives,* and remaining *unknowns* and uncertainties. It is a false equivalence to compare situations if they do not match on any of these features: e.g., decisions made when we have no choice are unlike decisions made when there are alternatives available; decisions made when a diagnosis is objectively verifiable, such as by blood test, are unlike decisions made when a diagnosis is a uncertain or unverifiable; etc.

7. In situations such as the present one, with substantial medical harms being risked and many unknowns remaining, the burden of proof is not neutral: Although it may not be unreasonable to explore potential benefits of social transition in minors, actively engaging in

such procedures—or demanding that others participate in and facilitate them—bears the burden of proof to demonstrate its effectiveness being greater than the risks of the medical harms it invokes. (See Section IX.B. on *Acceptability of Risk-to-Benefit Ratios.*)

8. Very many sources of bias—ideological, financial, and political—influence public and professional opinion regarding gender transition. Statements of support for facilitating transition are based on subjective and unreliable methodologies that are the most susceptible to bias, while policies that deprioritize or caution against transition are those that follow from objective application of standard and widely accepted criteria. Especially in the current, highly politicized environment, the relative value of statements from seeming authorities and associations depends on the rigour of the processes used in formulating those statements, not by their perceived prestige or history. Very many assertions being circulated regarding these issues have failed to employ the methods those authorities used with prior issues.

9. In the present situation, the clinical science indicates that participating in the social transition of youth is potentially *iatrogenic:* that is, that social transition increases the probability that the child's gender dysphoria will continue instead of resolve and will lead to medical interventions which in their turn impose otherwise avoidable risks. The primary treatment alternative to alleviate the distress and other mental health symptoms expressed by these youth is psychotherapy.

B. Education and professional background.

10. I am a sexual behaviour scientist, with an internationally recognized record studying the development of human sexualities, and an expert in research methodology of sexuality. My curriculum vitae is attached as Appendix 1 to this report. My publication record includes both biological and non-biological influences on sexuality, ranging from pre-natal brain development,

through adulthood, to senescence. The primary, but not exclusive, focus of my own research studies has been the development of atypical sexualities. In addition to the studies I myself have conducted, I am regularly consulted to evaluate the research methods, analyses, and proposals from sexual behaviour scientists throughout the world. The methodologies I am qualified to assess span the neurochemical and neuroanatomic level, individual behavioural level, and social and interpersonal levels.

11. I am trained as a clinical psychologist and neuroscientist, and I am the author of over 50 peer-reviewed articles in my field, spanning the development of sexual orientation, gender identity, hypersexuality, and atypical sexualities collectively referred to as paraphilias. Although I have studied many atypical sexualities, the most impactful of my work has been MRI and other biological studies of the origins of pedophilia. That work has revolutionized several aspects of the sex offender field, both with regard to the treatment of offenders and to the prevention of sexual abuse of children. In 2022, I received the Distinguished Contribution Award from the Association for the Treatment and Prevention of Sexual Abuse in recognition of my research and its integration into public policy. My efforts in this regard have been the subject of several documentary films.

12. Over my academic career, my posts have included Senior Scientist and Psychologist at the Centre for Addiction and Mental Health (CAMH), and Head of Research for CAMH's Sexual Behaviours Clinic. I was on the Faculty of Medicine of the University of Toronto for 15 years and have served as Editor-in-Chief of the peer reviewed journal, *Sexual Abuse.* That journal is one of the top-impact, peer-reviewed journals in sexual behaviour science and is the official journal of the *Association for the Treatment and Prevention of Sexual Abuse.* In that appointment, I was charged to be the final arbiter for impartially deciding which contributions

from other scientists in my field merited publication. I believe that appointment indicates not only my extensive experience evaluating scientific claims and methods, but also the faith put in me by the other scientists in my field. I have also served on the Editorial Boards of *The Journal of Sex Research*, the *Archives of Sexual Behavior,* and *Journal of Sexual Aggression.* Thus, I regularly interact with and am routinely exposed to the views and opinions of most of the scientists active in our field today, within the United States and throughout the world.

13. For my education and training, I received my Bachelor of Science degree from Rensselaer Polytechnic Institute, where I studied mathematics, physics, and computer science. I received my Master of Arts degree in psychology from Boston University, where I studied neuropsychology. I earned my doctoral degree in psychology from McGill University, which included successfully defending my doctoral dissertation studying the effects of psychiatric medication and neurochemical changes on sexual behaviour, and included a clinical internship assessing and treating people with a wide range of sexual and gender identity issues.

14. I have a decades-long, international, and award-winning history of advocacy for destigmatizing people with atypical sexualities. While still a trainee in psychology, I founded the American Psychological Association's (APA) Committee for Lesbian, Gay, and Bisexual Graduate Students. Subsequently, I have served as the Chair for the Committee on Science Issues for APA's Division for the Psychology of Sexual Orientation and Gender Diversity and was appointed to its Task Force on Transgender Issues. Throughout my career, my writings and public statements have consistently supported rights for transgender populations and the application of science to help policy-makers best meet their diverse needs. Because my professional background also includes neurobiological research on the development of other

atypical sexualities, I have become recognized as an international leader also in the destigmatizing of the broader range of human sexuality patterns.

15. I am highly experienced in the application of sex research to forensic proceedings: I have served as the Head of Research for the Law and Mental Health Program of the University of Toronto's psychiatric teaching hospital, the Centre for Addiction and Mental Health, where I was appointed to the Faculty of Medicine.

16. As listed on my curriculum vitae, I have served as an expert witness in 47 court cases and associated hearing in Canada and throughout the U.S., including Alabama, Arizona, Florida, Illinois, Indiana, Kansas, Kentucky, Massachusetts, New York, Texas, Utah, and West Virginia. These cases included criminal, civil, and custody proceedings, preliminary injunction and Frye hearings, as well as trials. In these cases my written submissions and oral testimony pertained to the nature and origins of atypical sexualities, including gender dysphoria in children and adults.

17. For my work in this case, I am being compensated at a rate of $400 per hour. My compensation does not change based on the conclusions and opinions that I provide here or later in this case or on the outcome of this lawsuit.

C. Clinical expertise vs. scientific expertise.

18. In clinical science, there are two kinds of expertise: Clinicians' expertise regards applying general principles to the care of an individual patient and the unique features of that case. A scientist's expertise is the reverse, accumulating information about many individual cases and identifying the generalizable principles that may be applied to all cases. Thus, different types of decisions may require different kinds of experts, such that questions about whether a specific patient represents an exception to the general rule might be better posed to a physician's

expertise, whereas questions about establishing the general rules themselves might be better posed to a scientist's.

19. In legal matters, the most familiar situation pertains to whether a given clinician correctly employed relevant clinical standards. Often, it is other clinicians who practice in that field who will be best equipped to speak to that question. When it is clinical standards or public policies that are themselves in question, however, it is the experts in the assessment of scientific studies who are the appropriate and best-equipped experts.

D. The professional standard to assess treatment models is to use objective assessors, not the treatment-providers in conflict of interest with the result.

20. I describe in a later section the well-recognized procedures for conducting reviews of literature in medical and scientific fields to evaluate the strength of evidence for particular procedures or treatments. Importantly, the standard procedure is for such evaluations to be conducted by objective assessors with expertise in the science of assessment, and not by those with an investment in the procedure being assessed. Because the people engaged in providing clinical services are necessarily in a conflict of interest when evaluating the safety and efficacy of those services, formal evaluations of evidence are routinely conducted by those without direct professional involvement and thus without financial or other personal interest in whether services are deemed to be safe or effective. This routine practice standard is exemplified by each of the only three systematic reviews that have been conducted of the safety and efficacy of puberty blockers and cross-sex hormones as treatments for gender dysphoria in children.

21. In 2020, England's National Health Service (NHS) commissioned a major review of the use of puberty blockers and cross-sex hormones in children and young people and appointed prominent pediatrician Dr. Hilary Cass to lead that review, explicating that "Given the

increasingly evident polarization among clinical professionals, Dr. Cass was asked to chair the group as a senior clinician *with no prior involvement or fixed views in this area."* (Cass 2022 at 35, italics added.) Cass's committee in turn commissioned a series of formal systematic reviews of evidence. The first set were commissioned from the England National Institute for Health & Care Excellence (NICE), a government entity of England's Department of Health and Social Care, established to provide guidance to health care policy, such as by conducting systematic reviews of clinical research, doing so without direct involvement in providing treatment to affected individuals, in this case, gender dysphoric individuals. (https://www.nice.org.uk/) The second, and more extensive, set of systematic reviews to be commissioned were conducted by the *Centre for Reviews and Dissemination of University of York,* again independent of any direct involvement in the provision of clinical care for gender dysphoria. (Cass 2024a). The process of The Cass Report received input from a team of advisors, called the "Assurance Group" who were experts in the conduct of such reviews. The review's documentation noted of the Assurance Group that:

> Members are independent of NHS England and NHS Improvement and of providers of gender dysphoria services, and of any organisation or association that could reasonably be regarded as having a significant interest in the outcome of the Review. (https://cass.independent-review.uk/about-the-review/assurance-group/)

This second set of systematic reviews were much more extensive, yet came to the same conclusion as the first: The existing research is of poor quality, inadequate for justifying the transition of minors with gender dysphoria.

22. Similarly, the Finnish health care council commissioned its systematic review to an external firm, *Summaryx Oy.* (Finland PALKO/COHERE 2020.) Summaryx Oy is a "social enterprise" (a Finnish organization analogous to a non-profit think-tank) that conducts systematic research reviews and other analyses for supporting that nation's medical and social systems. Its

reviews are conducted by assessment professionals, not by clinicians providing services. (www.summaryx.eu/en/.) The systematic review published by Sweden's *National Board of Health and Welfare* (NBHW) included six experts. (Ludvigsson 2023.) These contributors conduct research and provide clinical services in fields adjacent to—but apart from—children with gender dysphoria. Such fields included gender dysphoria in adults (Dr. Mikael Landén) and disorders of sexual development (DSDs; Dr. Berit Kriström).

23. My own most-cited peer-reviewed paper relating to gender dysphoria in minors illustrates the expertise in the evaluation of scientific evidence that I have and for which I am widely recognized. That is, that paper provided not clinical advice or a clinical study, but rather a review and interpretation of the available evidence concerning desistance in children who suffer from gender dysphoria, as well as of evidence (and lack of evidence) concerning the safety and effectiveness of medical transition to treat gender dysphoria in minors. (Cantor 2019.)

24. My extensive background in the assessment of sexuality research and in the development of human sexuality places me in exactly the position of objectivity and freedom from conflict-of-interest required by the universal standards of medical research science.

25. I do not offer opinions about the best public policy. Multiple jurisdictions have attempted multiple different means of implementing that science into various public policies. Although I accept as an axiom that good public policy must be consistent with the scientific evidence, science cannot objectively assess societal values and priorities. Therefore, my opinions summarize and assess the science on which public policy is based, but I can offer no opinion regarding which public policy mechanisms would be best in light of that science.

E. Basis of My Opinions.

26. My opinions provided in this report follow from the research findings as reported in the peer-reviewed literature and the standard criteria for assessing research quality and reliability. Public debates regarding these issues have become highly polarized, with both sides claiming to be supported by the science, and their conclusions, to be evidence-based. The court and other decision-makers are in the position of evaluating which of these conflicting narratives accurately portrays the state of the science. The standard, internationally accepted procedures for identifying the best evidence and for translating it into policy guidelines are what is known as *Evidence-Based Medicine* (EBM) or *Evidence-Based Practice* (to be inclusive of mental health and other non-medical policy decisions). The standard manuals for applying evidence-based practice in developing guidelines come from three sources, the *World Health Organization,* the U.S. *Institutes of Medicine* (IoM, now named the *National Academy of Medicine),* and *The Cochrane Collaboration* (producers of the *Cochrane Reviews*):

Agency for Healthcare Research and Quality (AHRQ). (2021, May). *Clinical guidelines and recommendations.* Rockville, MD. Retrieved from https://www.ahrq.gov/prevention/guidelines/index.html

Carande-Kulis, V., Elder, R. W., & Koffman, D. M. (2022). Standards required for the development of CDC evidence-based guidelines. *Morbidity and Mortality Weekly Report, 71* (suppl. 1), 1–6. Retrieved from http://dx.doi.org/10.15585/mmwr.su7101a1

Guyatt, G., Rennie, D., Meade, M., & Cook, D. (Eds.) (2015). *Users' guide to the medical literature: Essentials of evidence-based clinical practice (3rd ed.).* JAMAevidence: American Medical Association.

Higgins, J. P. T., Thomas, J., Chandler, J., Cumpston, M., Li, T., Page, M. J., & Welch, V. A. (Eds.). (2024). *Cochrane handbook for systematic reviews of interventions* (version 6.5, updated August 2024). Available from www.training.cochrane.org/handbook

Institute of Medicine, National Academy of Sciences. (2009). *Conflict of interest in medical research, education, and practice.* Washington, DC: The National Academies Press. Available from https://doi.org/10.17226/12598

Institute of Medicine, National Academy of Sciences. (2011). *Clinical practice guidelines we can trust.* Washington, DC: The National Academies Press. https://www.ncbi.nlm.nih.gov/books/NBK209539/

Institute of Medicine, National Academy of Sciences. (2011). *Finding what works in health care: Standards for systematic reviews.* Washington, DC: The National Academies Press. Available from https://doi.org/10.17226/13059

World Health Organization. (2014). *WHO handbook for guideline development (2nd ed.).* World Health Organization: Geneva. https://www.who.int/publications/i/item/9789241548960

27. Both the principles of evidence-based practice and these manuals are widely accepted. The principles have been adopted and these manuals adopted for use by U.S. government agencies including U.S. Centers for Disease Control and Prevention (CDC; Carande-Kulis 2022) and the Agency for Healthcare Research and Quality (AHRC; 2021) of the U.S. Department of Health and Human Services (HHS). The lack of controversy over these standards is also reflected by their acceptance, not only by organizations and institutions advocating restrictions on the transition of minors, but also by those advocating removal of barriers to gender transition: Such organizations claim to be following evidence-based practice, describe their policies as evidence-based, and cite one or more of these same manuals. Thus, this declaration uses these manuals as central sources, and many of my opinions represent assessing where associations' statements and policies conflict or are consistent with the procedures explicated in these manuals. The basic principles of all three largely overlap, differing in their emphasis on different aspects of evidence-based practice, as relevant to the contexts in which each was meant to be applied. The procedures themselves are summarized herein.

28. My opinions have also included my consideration of the recommendations about the care and needs of youth expressing gender dysphoria. The most widely cited sets of recommendations about treating minors expressing gender dysphoria come from three organizations: the *World Professional Association for Transgender Health* (WPATH), the

American Academy of Pediatrics (AAP), and the *Endocrine Society.* Over time, these organizations have introduced substantial changes, replacing their policies with new versions. Because of these differences, one cannot meaningfully refer to "the standards" or research based on "the standards," without indicating which one. That is, one cannot justify contents of the current (lower) standards on the basis of research that had tested prior (higher) standards. For reference, the most recent and relevant documents are used as the basis of my opinions are:

- *WPATH Standards of Care, version 6* (Meyer 2001/2002)
- *WPATH Standards of Care, version 7* (Coleman 2011/2012)
- *WPATH Standards of Care, version 8* (Coleman 2022)
- *Endocrine Society Clinical Practice Guideline* (Hembree 2009)
- *Endocrine Society Clinical Practice Guideline* (Hembree 2017)
- *American Academy of Pediatrics Policy Statement* (Rafferty 2018; reaffirmed without changes in 2023)

All three of these associations cited the aforementioned evidence-based medicine manuals and have explicitly declared their adoption of evidence-based practice as the basis of their policies: American Academy of Pediatrics (Alvarez 2019), Endocrine Society (McCartney 2022; Endocrine Society, undated), and WPATH (Coleman 2022).

29. Despite the above, these organizations and their policies have not, in fact, followed the procedures or principles of evidence-based medicine: None conducted a systematic review of the risks and benefits in minors in order to be able evaluate the ratio between them. None of the organizations conducted—and, thus, none of these documents is based on—such a review of social transition or medical transition.

30. As part of applying the international standards for the objective assessment of research, my opinions also integrated consideration of the systematic reviews of the research on the effects on gender dysphoric minors of social and medical interventions. Such reviews have

been conducted by the national health care systems of several countries and by independent researchers. These include:

Christensen, J. A., Oh, J., Linder, K., Imhof, R. L., Croarkin, P. E., Bostwick, J. M., & McKean, J. S. (2023). Systematic review of interventions to reduce suicide risk in transgender and gender diverse youth. *Child Psychiatry & Human Development.* doi: 10.1007/s10578-023-01541-w

Finland PALKO/COHERE (2020). *Recommendation by the board for selection of choices for health care in Finland: Medical treatment methods for dysphoria related to gender variance in minors.* [Certified translation of Palveluvalikoimaneuvoston suositus Alaikäisten sukupuoli-identiteetin variaatioihin liittyvän dysforian lääketieteelliset hoitomenetelmät.]

Hall, R., Taylor, J., Hewitt, C. E., Heathcote, C., Jarvis, S. W., Langton, T., & Fraser, L. (2024). Impact of social transition in relation to gender for children and adolescents: A systematic review. *Archives of Disease in Childhood.* doi: 10.1136/archdischild-2023-326112

Ludvigsson, J. F., Adolfsson, J., Höistad, M., Rydelius, P.-A., Kriström, B., & Landén, M. (2023). A systematic review of hormone treatment for children with gender dysphoria and recommendations for research. *Acta Paediatrica.* doi: 10.1111/apa.16791

Sweden National Board of Health and Welfare (NBHW). (2022). Care of children and adolescents with gender dysphoria: National knowledge support with recommendations for professionals and decision-makers. (Report 2022-12-8302) [Certified translation of Vård av barn och ungdomar med könsdysfori : Nationellt kunskapsstöd med rekommendationer tillprofession och beslutsfattare. Available from https://www.socialstyrelsen.se/globalassets/sharepointdokument/artikelkatalog/kunskapsstod/2022-12-8302.pdf]

Taylor, J., Mitchell, A., Hall, R., Langton, T., Lorna Fraser, & Hewitt, C. E. (2024b). Masculinising and feminising hormone interventions for adolescents experiencing gender dysphoria or incongruence: A systematic review. *Archives of Disease in Childhood.* doi: 10.1136/archdischild-2023-326670

Taylor, J., Mitchell, A., Hall, R., Heathcote, C., Langton, T., Fraser, L., & Hewitt, C. E. (2024a). Interventions to suppress puberty in adolescents experiencing gender dysphoria or incongruence: A systematic review. *Archives of Disease in Childhood.* doi: 10.1136/archdischild-2023-326669

Thompson, L., Sarovic, D., Wilson, P., Irwin, L., Visnitchi, D., Sämfjord, A., & Gillberg, C. (2023) A PRISMA systematic review of adolescent gender dysphoria literature: 3) treatment. *PLOS Global Public Health, 3,* e0001478.

In addition to treatment outcomes research, systematic reviews of other relevant research have also been conducted, including studies characterizing the psychological profiles and

demographic features of these groups. Those systematic reviews are cited in their corresponding sections of the present document.

31. Systematic reviews, such as the above, provide the best means for assessing bodies of research addressing an issue. Many scientific questions have been addressed only by individual research studies which have not been subject to systematic review. Such studies are evaluated by the individual strengths and weaknesses of their research designs. The reliability of these research designs is described by their positioning what is called the *Pyramid of Evidence* and the identification of methods used within those studies to ameliorate potential biases that would reduce the reliability of their findings and any conclusions based on them.

32. It merits emphasis that in assessing a body of scientific evidence with seemingly contradictory studies, it is the *quality* of research studies and not the *quantity* of studies that determines the weight as scientific evidence. Studies representing higher levels of evidence on the *Pyramid of Evidence* outrank studies from lower levels. Even large numbers of lower-level studies cannot overcome a study representing a higher level of evidence. Indeed, because high-quality studies take more time, effort, and often money, it is typical for high-quality studies to be outnumbered by low-quality studies.

PART 2:

CENTRAL TERMINOLOGY

AND CONCEPTS

II. Definitions of *sex* and *gender identity.*

A. What determines the correct definition of a term differs in each of science, law, professional policy, and lay language.

33. In science, the correct definition of a term is determined by its *construct validity:* by its ability to account for existing observations and predict the results of experiments. That is, the correct or valid definition is discovered. Valid definitions are non-arbitrary: One cannot simply decide to change the definition. Such changes occur only as required by new evidence. Although the laws of science (and the definitions of the terms/constructs in those laws) are universal, there can often be debate in the face of unknowns, and different definitions can be pragmatic/applicable in different contexts.

34. In law, the definitions of terms are determined by society's legislation and any subsequent judicial procedures which established and interpreted them. They are arbitrary in the sense that they can be changed at society's will, through those same institutions. Legal definitions of terms are not universal, as they can apply in one jurisdiction and not another, or apply in one context but not another context within that same jurisdiction.

35. Professional associations define terms according to their individual internal procedures and policy-making procedures which, especially within large clinical associations, can resemble those of government legislative bodies. The definitions that professional associations express are arbitrary in the same sense of being modifiable by the will of that association's decision-making body. Procedures varying by professional association, and the definitions used in their policy statements can work to integrate research evidence, but they are also subject to the political, financial, and ideological interests of that profession and its members.

36. In common lay usage, definitions are subject to "what it means to me" inconsistency among users, including differing implicit and subjective meanings. The meanings of terms vary on their own and are socially influenced, independent of any evidence. Influences on them include fashion and implicitly perceived political statements, both of stigma and of virtue signalling.

B. *Sex* and *sex-assigned-at-birth* represent objective features.

37. Sex is an *objective* feature: It can be ascertained regardless of any declaration by a person, such as by chromosomal analysis or visual inspection. Gender identity, however, is *subjective:* There exists no means of either falsifying or verifying people's declarations of their gender identities. In science, it is the objective factors—and only the objective factors—that matter to a valid definition. Objectively, sex can be ascertained, not only in humans or only in the modern age, but throughout the animal kingdom and throughout its long history in natural evolution.

38. I use the term "sex" in this report with this objective meaning, which is consistent with definitions articulated by multiple medical organizations:

> Endocrine Society (Bhargava 2021 at 220):
>
> > Sex is dichotomous, with sex determination in the fertilized zygote stemming from unequal expression of sex chromosomal genes.
>
> American Academy of Pediatrics (Rafferty 2018 at 2, Table 1):
>
> > An assignment that is made at birth, usually male or female, typically on the basis of external genital anatomy but sometimes on the basis of internal gonads, chromosomes, or hormone levels.
>
> American Psychiatric Association (American Psychiatric Association Guide):
>
> > Sex is often described as a biological construct defined on an anatomical, hormonal, or genetic basis. In the U.S., individuals are assigned a sex at birth based on external genitalia.

American Psychological Association (APA Answers 2014):

> Sex is assigned at birth, refers to one's biological status as either male or female, and is associated primarily with physical attributes such as chromosomes, hormone prevalence, and external and internal anatomy.

American Psychological Association (APA Resolution 2021 at 1):

> While gender refers to the trait characteristics and behaviors culturally associated with one's sex assigned at birth, in some cases, gender may be distinct from the physical markers of biological sex (e.g., genitals, chromosomes).

39. The phrases 'assigned male at birth' and 'assigned female at birth' are increasingly popular, but they lack any scientific merit. Science is the systematic study of natural phenomena, and nothing objective changes upon humans' labelling or re-labelling it. That is, the objective sex of a newborn was the same on the day before as the day after the birth. Indeed, the sex of a fetus is typically known by sonogram or amniocentesis many months before birth. The use of the term *assign* insinuates that the "assignment" was an arbitrary human decision and that assignment of a different label could have been equally objective and verifiable, which is untrue. Infants were born male or female before humans invented language at all. Indeed, it is exactly because an expected child's sex is known before birth that there can exist the 'gender reveal' events. Biologically, the sex of an individual (for humans and almost all animal species) as male or female is irrevocably determined at the moment it is conceived. Terms such as 'assign' obfuscate rather than clarify the objective evidence.

C. *Gender identity* refers to subjective feelings that cannot be objectively defined, measured, or verified by science.

40. Many debates, both public and professional, attempt to apply arguments by definition: asserting a definition of a term and then asserting that other claims must be true by virtue of that definition. Gender identity and related terms, however, do not have any such universal meanings and reflect popular usage rather than any evidence-based criteria. The diagnostic manual of the American Psychiatric Association, the *DSM-5-TR,* noted this explicitly:

> The area of sex and gender is highly controversial and has led to a proliferation of terms who meanings vary over time and within and between disciplines. (American Psychiatric Association 2022 at 511.)

41. It is increasingly popular to define gender identity as a person's 'inner sense', however, neither 'inner sense' nor any similar phrase is scientifically meaningful. In science, a valid construct must be both objectively measurable and falsifiable with objective measures. The concept of an inner sense fits none of these requirements. Other such definitions based on vague metaphors, such as "a person's core" and "an essential part of one's being" do not possess the fundamental features required of the scientific method.

42. Gender identity is unlike emotions, which are associated with objectively measurable physiological changes, such as respiration and brain activity. (E.g., Davidson 2003; Seeley 2015.) Gender identity is unlike sexual orientation, which can be objectively measured by genital and other physiological responses to sexual stimuli. (E.g., Freund 1967; Hess 1965; Rieger 2005.) Gender identity is unlike disorders of sexual development (DSD's, also called *intersex conditions)*, which are biological disorders with physical evidence that can be objectively detected with genetic testing and other physical measures. (Vilain 2006.) Indeed, existing medical tests can detect the presence of intersex conditions with extreme accuracy, allowing medical decisions to be made with high levels of confidence (Audi 2018; Witchel 2018). No such objective verification exists with regard to gender dysphoria, however. The diagnosis relies entirely upon subjective reports and whether the clinician believes the self-report of the patient. In contrast with being treated when confirmed by physical evidence, treatment of gender dysphoria proceeds *in spite of* all objective, physical evidence.

III. Gender Dysphoria is a *mental health* diagnosis: It does not meet the criteria of a *medical* diagnosis.

A. Mental health diagnoses are categorically distinct from medical diagnoses, lacking physical or objective features for validation or falsification.

43. The use of the word 'medical' and related terms, including 'medically appropriate', 'medically verifiable', 'serious medical condition', as well as 'medically necessary' are merely rhetorical. Their application in this context is not merely misleading, but factually incorrect, representing a profound misunderstanding of the fundamentals of psychiatric practice. Although psychiatry is a subfield of medicine, psychiatric diagnoses are *not* medical diagnoses. Medical diagnoses identify the *causes* of a patient's symptoms. Psychiatric diagnoses, however, label the *symptoms themselves,* regardless of the causes, which remain unknown. These points about the fundamental nature of diagnosis in psychiatry versus medicine have been vociferously expressed by many of the most established figures in the field of psychiatry, especially during the writing of the DSM diagnostic criteria in use today. As the leaders of that field emphasize, psychiatric diagnoses lack any measurable, physical features that can distinguish them objectively from a healthy state.

44. The director of the *National Institute of Mental Health* (NIMH) from 2002 to 2015 was Dr. Thomas Insel, a noted psychiatrist and neuroscientist. He explicitly named the non-medical basis of psychiatric categories as the reason for NIMH moving away from DSM diagnoses in mental health research:

> While DSM has been described as a 'Bible' for the field, it is, at best, a dictionary….The weakness is its lack of validity. Unlike our definitions of ischemic heart disease, lymphoma, or AIDS, the DSM diagnoses are based on a consensus about clusters of clinical symptoms, not any objective laboratory measure….That is why NIMH will be re-orienting its research away from DSM categories. (Insel 2013.)

Dr. Allen Frances of Duke University headed the development of the prior version of the DSM (the DSM-IV) and famously opposed "diagnostic inflation," the broadening of psychiatric diagnoses to apply to more and more people in the absence of empirical justification:

> 'Mental illness' is terribly misleading because the 'mental disorders' we diagnose are no more than descriptions of what clinicians observe people do or say, not at all well-established diseases. (Frances 2015.)
>
> Psychiatric diagnosis must therefore still rely exclusively on fallible subjective judgments, not on objective biological tests. […] Biological findings, however exciting, have never been robust enough to become test-worthy. (Frances 2013.)

Dr. David Kupfer chaired the task force that established the DSM-5 criteria and similarly emphasized the lack of biological evidence that might establish mental health diagnoses as medical conditions.

> In the future, we hope to be able to identify disorders using biological and genetic markers that provide precise diagnoses that can be delivered with complete reliability and validity. Yet this promise, which we have anticipated since the 1970s, remains disappointingly distant. We've been telling patients for several decades that we are waiting for biomarkers. We're still waiting. (Kupfer 2013.)

B. *Gender Dysphoria* is a mental health diagnosis.

45. Gender Dysphoria is a mental health condition identified by criteria listed in the current version of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5-TR). (American Psychiatric Association 2022.) While the criteria contain multiple components and vary modestly for children, adolescents, and adults, all cases are characterized by a strong and lasting desire to be the opposite sex and by "clinically significant" distress of sufficient severity to impair the individuals' ability to function in their daily life setting. Gender dysphoria is nowhere defined as a medical (as opposed to mental health) diagnosis, and it is not characterized by any disability or impairment or ill health affecting any part of the physical body.

IV. Adult-, adolescent-, and childhood-onset gender dysphoria represent distinct phenomena with objectively distinct features, with no justification for generalizing observations based on one type to other types.

A. The demographic and clinical epidemiology profiles differ across adult-, adolescent-, and childhood-onset gender dysphoria.

46. One of the most widespread public misunderstandings about people expressing gender dysphoria is that all such cases represent the same phenomenon; however, the clinical science has long and consistently demonstrated that prepubescent children expressing gender dysphoria represent a phenomenon distinct from that of adults starting to experience it. That is, gender dysphoric children are not simply younger versions of gender dysphoric adults. They differ in virtually every objective variable recorded, including in their response to treatments. A third phenomenon has recently become increasingly observed among people presenting to gender clinics: These cases appear to have an onset in adolescence—after the onset of puberty but before adulthood—and occur in the absence of any childhood history of gender dysphoria. Such cases have been called *adolescent-onset* (or *"rapid-onset"* gender dysphoria; ROGD). Despite having only recently been observed, they have quickly grown to outnumber greatly the better characterized types. Moreover, large numbers of adolescents are today self-identifying in surveys as "gender fluid" and "non-binary." These are not recognized mental health diagnoses, and do not relate in any known way to gender dysphoric groups that have been the subject of previous treatment outcome studies. Because each of these phenomena differ in multiple objective features, it is scientifically invalid to extrapolate findings between them.

B. Outcomes associated with one demographic or diagnostic group cannot be generalized to other groups.

47. Each of the systematic reviews from Sweden, Finland, and England emphasized that the recently observed, greatly increased numbers of youth coming to clinical attention are a population different in important respects from the participants in often-cited research studies. Conclusions from studies of adult-onset gender dysphoria and from childhood-onset gender dysphoria cannot be assumed to apply to the current patient populations of adolescent-onset gender dysphoria. The final review of the Cass Report correctly identified this issue, noting "This is a different cohort from that looked at by earlier studies." (Cass 2024a at 26.) Specifically:

> Today's population is different from that for which clinical practice was developed with a higher proportion of birth-registered females presenting in adolescence. They are a heterogenous group with wide-ranging co-occurring conditions, often including complex needs. (Cass 2024a at 97.)

Similarly, the experiences reported by adults cannot be generalized to minors: "There are different issues involved in considering gender care for children and young people than for adults." (Cass 2024a at 26.) Moreover:

> This is a heterogenous group, with broad ranging presentations often including complex needs that extend beyond gender-related distress…Too often this cohort are considered a homogenous group for whom there is a single driving cause and an optimum treatment approach, but this is an over-simplification." (Cass 2024a at 27.)

The final report of The Cass Review refuted that the use of puberty-blockers to treat precocious puberty justifies its use with gender dysphoric children. The report noted that puberty-blockers "have undergone extensive testing for use in precocious puberty" (Cass 2024a at 173), but that:

> The situation for the use of puberty blockers in gender dysphoria is different. Although some endocrinologists have suggested that it is possible to extrapolate or generalise safety information from the use of puberty blockers in young children with precocious puberty to use in gender dysphoria, there are problems in this

> argument. In the former case, puberty blockers are blocking hormones that are abnormally high for, say, a 7-year-old, whereas in the latter they are blocking the normal rise in hormones that should be occurring into teenage years, and which is essential for psychosexual and other developmental processes. (Cass 2024a at 174.)

48. In other words, treatment of gender dysphoria in children and adolescents presents novel use-cases very dissimilar to the contexts in which puberty blockers and cross-sex hormones have previously been studied. Whereas use of puberty blockers to treat precocious puberty *avoids* the medical risks caused by undergoing puberty growth before the body is ready (thus outweighing other risks), use of blockers to treat gender dysphoria in patients already at the verge or early stages of their natural puberty pushes them *away* from the mean age of the healthy population. Instead of avoiding an objective problem, one is created: Among other things, patients become subject to the issues and risks associated with being late-bloomers, *very* late-bloomers. This transforms the risk-to-benefit ratio, where the offsetting benefit is primarily (however validly) cosmetic. Similarly, administering testosterone to an adult male to treat testosterone deficiency addresses both a different condition and a different population than administration of that same drug to an adolescent female to treat gender dysphoria; the benefits and harms observed in the first case cannot be extrapolated to the second. The DHHS also noted this important distinction in its 2025 review. (DHHS 2025 at 108–110.)

49. Finland's review repeated the observation of greatly increased numbers (by a factor of 20), an entirely different demographic of cases, and increased proportions of psychiatric co-morbidities. (Finland PALKO/COHERE 2020 at 4–6.) The Swedish review highlighted "the uncertainty resulting from the lack of clarity about the causes to the continued increase in the number of people diagnosed with gender dysphoria, particularly between the ages of 13 and 17 and especially among people whose registered gender at birth was female." (Sweden National Board of Health and Welfare 2022 at 16.)

50. It is well established that males and females differ dramatically in the incidence of many mental health conditions and in their responses to treatments for those mental health conditions. This further emphasizes that research from male-to-female transitioners (the predominant population until recent years) cannot be extrapolated to female-to-male transitioners (the predominant population presenting at clinics today). Outcomes from people who clearly experienced childhood-onset gender dysphoria (prepubertal) cannot be extrapolated to people who first manifest diagnosable gender dysphoria well into puberty and adolescence. Outcomes from clinics employing rigorous and transparent gate-keeping procedures cannot be extrapolated to clinics or clinicians employing only minimal or perfunctory assessments without external review. Developmental trajectories and outcomes preceding the social media era cannot be assumed to apply to those of today (or the future). Research from youth with formal diagnoses and attending clinics cannot be extrapolated to self-identifying youth or to those responding to surveys advertised on social media sites or activist mailing lists.

C. *Adult-Onset* Gender Dysphoria occurs nearly exclusively in biological males who experience specific sexual interest pattern (a paraphilia called *autogynephilia).*

51. Whereas *Childhood-Onset Gender Dysphoria* occurs both in biological males and females and is strongly associated with later homosexuality (Section IV.D.), *Adult-Onset Gender Dysphoria* consists primarily of biological males and only those sexually attracted to females. (Lawrence 2010.) Unlike the childhood-onset type, the adult-onset type rarely showed gender atypical (effeminate) behaviour or interests in childhood (or adulthood). Some individuals express being sexually attracted to both men and women, and some profess asexuality, but very few indicate having a primary sexual interest only in men. (Blanchard 1989a.) Cases of adult-onset gender dysphoria are typically associated with a sexual interest pattern involving

fantasizing about themselves in female form (a paraphilia called *autogynephilia).* (Blanchard 1989a, 1989b, 1991.)

52. Systematic review of all studies examining mental health issues in transgender adults identified 38 such studies. (Dhejne 2016.) The review indicated that many studies were methodologically weak, but nonetheless consistently found (1) that the average rate of mental health issues among adults is highly elevated both before *and after* transition, (2) but that the average was less elevated among adults who completed transition. It could not be concluded that transition improves mental health, however: Because very many patients were also receiving psychotherapy at the same time, it cannot be determined whether the change was caused by the transition or the psychotherapy (i.e., the evidence is *confounded*). Further, several studies showed more than 40% of patients to become "lost to follow-up" (i.e., showed high rates of *attrition*). It remains unknowable to what extent the information from the remaining participants meaningfully applies to the whole population.

D. *Childhood-Onset* Gender Dysphoria (prepubertal-onset) is a rare and majority male phenomenon.

53. For many decades, small numbers of prepubescent children have been brought to mental health professionals for help with their unhappiness with their sex and expressing the belief they would be happier living as the other sex. The large majority of cases of childhood-onset gender dysphoria occurs in biological males, with clinics reporting 2–6 biological male children to each female. (Cohen-Kettenis 2003; Steensma 2018; Wood 2013.)

54. Elevated rates of multiple mental health issues among gender dysphoric children are reported throughout the research literature. A formal analysis of children (ages 4–11) undergoing assessment at the Dutch child gender clinic showed that 52% fulfilled criteria for a formal DSM diagnosis of a clinical mental health condition other than Gender Dysphoria. (Wallien 2007 at

1307.) A comparison of the children attending the Canadian versus Dutch child gender dysphoria clinics showed only few differences between them, and a large proportion of both groups were diagnosable with clinically significant mental health issues. On a standard assessment instrument (Child Behavior Check List, or CBCL) used with 6–11-year-olds, showed 61.7% of the Canadian and 62.1% of the Dutch sample to meet diagnostic criteria for one or more mental health conditions other than gender dysphoria. (Cohen-Kettenis 2003 at 46-47.)

55. A systematic review of all studies of *Autism Spectrum Disorders* (ASDs) and *Attention-Deficit Hyperactivity Disorder* (ADHD) among children diagnosed with gender dysphoria was recently conducted. (Thrower 2020.) It identified a total of 22 studies examining the prevalence of ASD or ADHD youth with gender dysphoria. Studies reviewing medical records of children and adolescents referred to gender clinics showed 6–26% to have been diagnosed with ASD. (Thrower 2020 at 695.) Moreover, those authors gave specific caution on the "considerable overlap between symptoms of ASD and symptoms of gender variance, exemplified by the subthreshold group which may display symptoms which could be interpreted as either ASD or gender variance. Overlap between symptoms of ASD and symptoms of GD may well confound results." (Thrower 2020 at 703.) The rate of ADHD among children with GD was 8.3–11%. Conversely, data from children (ages 6–18) with ASDs show they are more than seven times more likely to have parent-reported "gender variance." (Janssen 2016 at 63.)

56. The outcomes studies have shown there to be little reliable evidence of transition improving the mental well-being of children. (Summarized in Sections XIII and XIV.) As shown repeatedly by clinical guidelines from multiple professional associations, mental health issues are expected or required to be resolved *before* undergoing transition. The need for such guidelines is that children may be expressing gender dysphoria, not because they are experiencing what

gender dysphoric adults report, but because the children mistake what their experiences mean and to what they might lead. For example, a child experiencing depression from social isolation might develop the hope—or unrealistic expectation—that transition will help them fit in better as a member of the other sex.

57. In cases where gender dysphoria is secondary to a different issue, efforts at transition are aiming at the wrong target, leaving the actual issue(s) unaddressed. The highly reliable, consistently replicated evidence that childhood-onset gender dysphoria resolves with puberty for the large majority of children indicates that blocking a child's puberty blocks the very process of maturation that would naturally resolve the dysphoria.

E. *Adolescent-Onset* Gender Dysphoria is a largely unstudied and majority female phenomenon that appeared and has become the predominant type since the advent of social media.

58. Simultaneously with the advent of social media, a third profile of gender dysphoria appeared, both clinically and socially, which is characteristically distinct from the two previously identified profiles. (Kaltiala-Heino 2015; Littman 2018.) As described by Chen "[Y]outh who first recognize their gender incongruence in adolescence may represent a distinct subgroup of transgender and nonbinary youth who have more psychosocial complexities than youth recognizing gender incongruence in childhood." (Chen 2023 at 245.)

59. Despite lacking any history before the social media age, this profile has now numerically overwhelmed the previously observed and better characterized types, both in clinics and on Internet surveys. Unlike adult-onset or childhood-onset gender dysphoria, this group is predominately biologically female. This group typically presents in adolescence and lacks the history of cross-gender behaviour that childhood-onset cases have. (It is that feature which

suggested the alternative term, *Rapid Onset Gender Dysphoria;* ROGD). (Littman 2018.)[1] Cases commonly appear to occur within clusters of peers in association with increased social media use (Littman 2018) and among people with Autism Spectrums Disorders (ASDs) or other mental health issues. (Kaltiala-Heino 2015; Littman 2018; Warrier 2020.) The patterns reported by Littman have recently been independently replicated by another study which also found it to be a predominantly female phenomenon, associated with very high rates of social media use, among youth with other mental health issues, and in association with peers expressing gender dysphoria issues. (Diaz & Bailey 2023.)[2] Due to the multiple differences across the epidemiological and other objective variables, there is no justification for extrapolating findings from adult-onset or childhood-onset gender dysphoria to this new presentation.

60. There do not yet exist any outcomes studies of people with adolescent-onset gender dysphoria undergoing medical transition. Current research is limited to surveys primarily of members of activist and support groups on the Internet.

61. Moreover, no study has yet been organized in such a way as to allow for a distinct analysis of the adolescent-onset group, as distinct from childhood-onset or adult-onset cases. Many published studies fail to distinguish between people who exhibited childhood-onset gender dysphoria and have aged *into* adolescence versus people who never expressed gender dysphoria *until* adolescence. (Analogously, there are reports failing to distinguish people who had adolescent-onset gender dysphoria and aged into adulthood from people with adult-onset gender

[1] After initial criticism, the publishing journal conducted a reassessment of the article. The article was expanded with additional detail and republished. The relevant results were unchanged. Littman's paper as revised has been widely cited.

[2] This peer-reviewed article was originally published in the *Archives of Sexual Behavior* became a subject of protest, including by WPATH President, Dr. Marci Bowers, demanding the retraction of the article and the dismissal the journal's Editor, Dr. Kenneth Zucker. No action was taken against Zucker and the article was re-published in the *Journal of Open Inquiry in the Behavioral Sciences.* The latter version is cited in the reference list of the present report.

dysphoria.) Studies selecting groups according to their *current* age instead of their *onset* age produces only confounded results, mixing both types, yielding mixed results that do not accurately reflect either.

62. The literature varies in the range of gender dysphoric adolescents with co-occurring disorders. In addition to self-reported rates of suicidality (See Section XVI on *Suicide and Suicidality*), clinical assessments reveal elevated rates not only of depression (Holt 2016; Skagerberg 2013; Wallien 2007), but also of anxiety disorders, disruptive behaviour difficulties, *Attention Deficit/Hyperactivity Disorder* (ADHD), *Autism Spectrum Disorder* (ASD), and personality disorders, especially *Borderline Personality Disorder* (BPD). (Anzani 2020; de Vries 2010; Jacobs 20 14; Janssen 2016; May 2016; Strang 2014, 2016.)

63. Of particular concern in the context of adolescent-onset gender dysphoria is *Borderline Personality Disorder* (BPD; diagnostic criteria in Table below). Symptoms of BPD overlap in important respects with symptoms commonly interpreted as signs of gender dysphoria, and it is increasingly hypothesized that very many cases appearing to be adolescent-onset gender dysphoria actually represent cases of BPD. (E.g. Anzani 2020; Zucker 2019.) That is, some people may be misinterpreting their experiencing the "identity disturbance" symptom (Criterion 3, below) to represent a *gender* identity disturbance specifically. Like adolescent-onset gender dysphoria, BPD begins to manifest in adolescence, is three times more common in biological females than males, and occurs in 2–3% of the population, rather than 1-in-5,000 people. (Thus, if even only a portion of people with BPD experienced an identity disturbance, and focused that disturbance on gender identity resulting in transgender identification, they could easily overwhelm the number of genuine cases of gender dysphoria.) Thus, the objective evidence offered of these epidemiological and demographic features show adolescent-onset

gender dysphoria to have a strong objective resemblance to BPD but little if any objective resemblance to either childhood- or adult-onset gender dysphoria.

> **DSM-5-TR Diagnostic Criteria for Borderline Personality Disorder.**
>
> A pervasive pattern of instability of interpersonal relationships, self-image, and affects, and marked impulsivity beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) of the following:
>
> 1. Frantic efforts to avoid real or imagined abandonment. (Note: Do not include suicidal or self-mutilating behaviour covered in Criterion 5.)
> 2. A pattern of unstable and intense interpersonal relationship characterized by alternating between extremes of idealization and devaluation.
> 3. *Identity disturbance: markedly and persistently unstable self-image or sense of self.*
> 4. Impulsivity in at least two areas that are potentially self-damaging (e.g., spending, sex, substance abuse, reckless driving, binge eating). (Note: Do not include suicidal or self-mutilating behavior covered in Criterion 5.)
> 5. *Recurrent suicidal behaviour, gestures, or threats, or self-mutilating behavior.*
> 6. Affective instability due to a marked reactivity of mood (e.g., intense episodic dysphoria, irritability, or anxiety usually lasting a few hours and only rarely more than a few days).
> 7. Chronic feelings of emptiness.
> 8. Inappropriate, intense anger or difficulty controlling anger (e.g., frequent displays of temper, constant anger, recurrent physical fights).
> 9. Transient, stress-related paranoid ideation or severe dissociative symptoms.
>
> (American Psychiatric Association 2022 at 752−753, italics added.)

64. Mistaking cases of BPD for cases of Gender Dysphoria may prevent such youth from receiving the correct mental health services for their condition. A primary cause for concern is symptom Criterion 5: *Recurrent suicidal behaviour.* (See Section XVI on *Suicide and suicidality.*) Regarding the provision of mental health care, the distinction between these conditions is crucial: A person with BPD going undiagnosed will not receive the appropriate treatments (the currently most effective of which is *Dialectical Behavior Therapy).* The problem was not about gender identity, but about having an *unstable* identity (Criterion 3).

65. Regarding research, there have now been several attempts to document rates of suicidality among gender dysphoric adolescents. The scientific concern presented by BPD is that it potentially poses a very substantial confound: samples of gender dysphoric adolescents could appear to have elevated rates of suicidality, not because of the gender dysphoria (or transphobia in society), but because of the number of people with BPD in the sample.

V. The features of adolescent-onset gender dysphoria are much better explained by social-contagion and social-media than by sex differences in the brain or sexual-minority-stress.

A. Social influence on the social development of adolescent females in the social media age.

66. Adolescents use social media for social comparison and feedback, and social media use is associated with decreased mental health (Nesi & Prinstein, 2015). Social media exposure to ideals of beauty and appearance reduces body image, especially in adolescent females (Kleemans, 2018). Adolescent females are the demographic most vulnerable to social comparison and use social media as the basis of their self-image (Fioravanti 2022), especially so for those with co-morbid mental illnesses that interfere with social functioning, who are disproportionately influenced negatively by social media (Maheux 2022). The mental illness profiles associated with adolescent-onset gender dysphoria/incongruence are unlike those shown by the better- and longer-established types of gender dysphoria/incongruence including in their overrepresentation of issues such as Autism Spectrum Disorder, which reflects problems in social functioning. The mental illness profile associated with sexual minority stress, in contrast, consists of anxiety and depression. Sexual minority stress does not cause Autism Spectrum Disorder, but it can increase vulnerability to social identity development. Although these data are still only correlational, they strongly suggest that to support is to reinforce the belief of these youth that they are not ‘real women’ or ‘real men’ because they do fit the exaggerated and perfected social images of femaleness and maleness now flooding their virtual social environments.

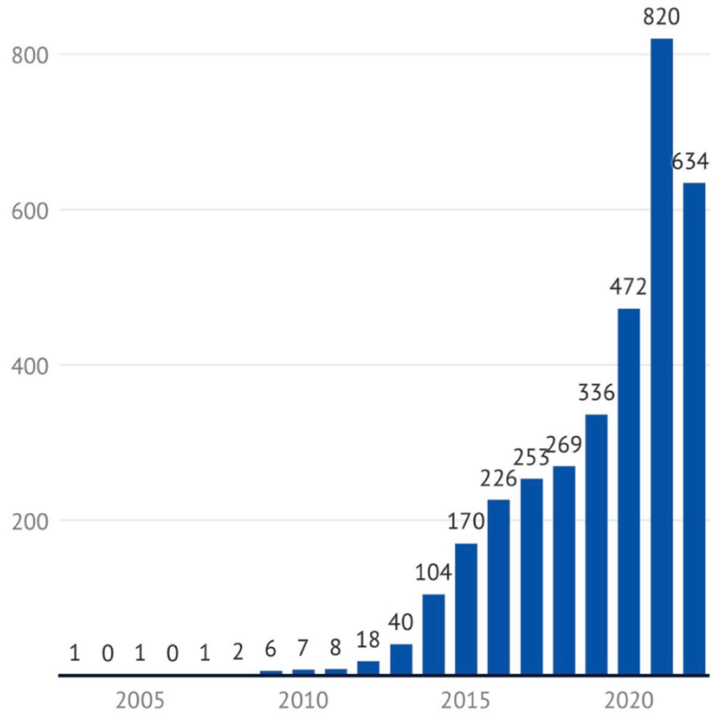
67. Some advocates reject the social contagion explanation of the sudden epidemiological changes, citing political, social, and therapeutic implications they claim follow from that explanation. No other interpretation has been offered that is capable of explaining the evidence,

however, and multiple, highly reliable sources (including national surveys), confirm the patterns predicted by the social contagion explanation. Large quantities of mental health data have been produced recently due to the interest in investigating the impact of COVID on public mental health. What this research has repeatedly revealed is that, although there have been some decreases in mental health indicators during the COVID era, the precipitous decline began nearly a decade before the COVID era (Villas-Boas 2023): It instead corresponds with the ubiquity of smartphones and social media among adolescents.

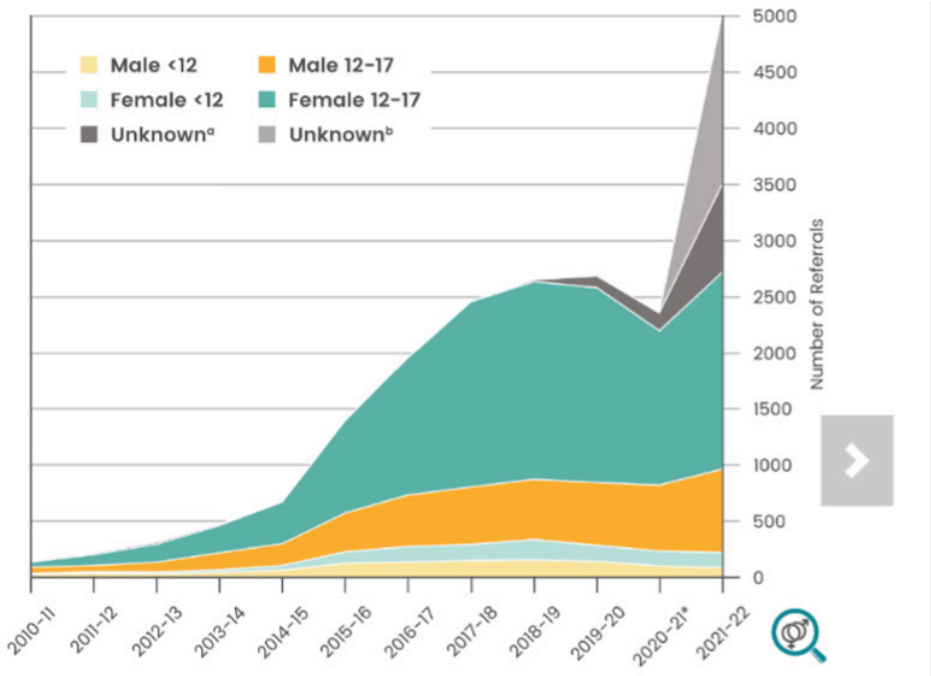
68. As demonstrated by the following evidence, each of these explosive changes occurred simultaneously and primarily within the same demographic group: adolescent, biological females with psychosocial vulnerabilities and greater susceptibility to social influences. Neither the claims of sexual minority stress nor any other hypothesis predicts or provides any explanation for the multiple concurrent and ubiquitous changes as does the impact of smartphones and social media.

B. The explosive increase in occurrence of gender dysphoria throughout the industrialized world coincided exactly with social media culture.

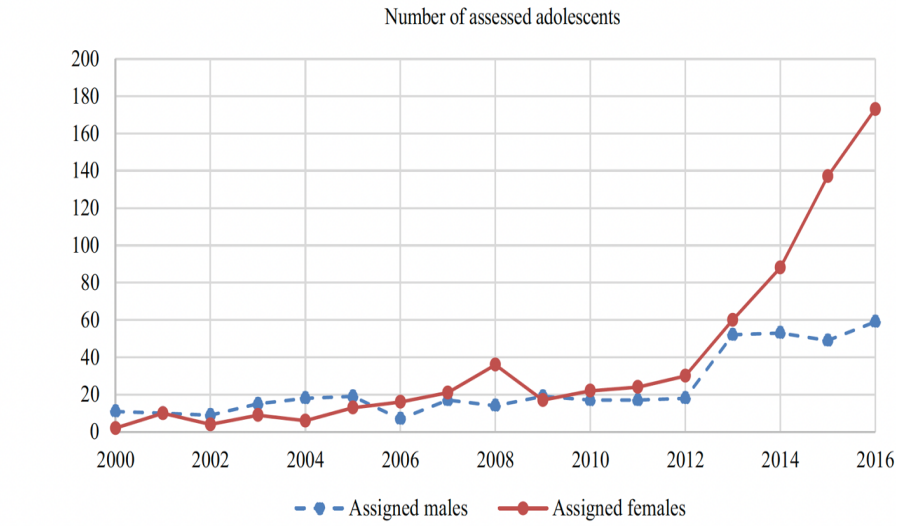
69. **Australia**: The Royal Children's Hospital gender service reports the following data on referrals to its gender service, with an exponential rise beginning in 2011–2012. (Bachelard 2023.)



70. **United Kingdom:** The Cass Report provides the following data on referrals of minors for gender dysphoria in the U.K., following almost exactly the same timing and curve. (Cass 2024a at 85.)

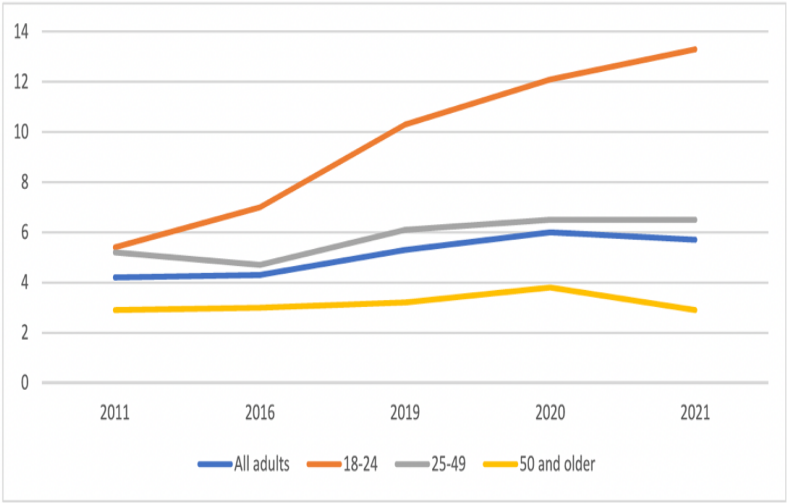


71. **The Netherlands:** Data from the Netherlands shows the same pattern and timing and breaks out the fact that the phenomenon is primarily affecting biological females. (Arnoldussen 2020.)

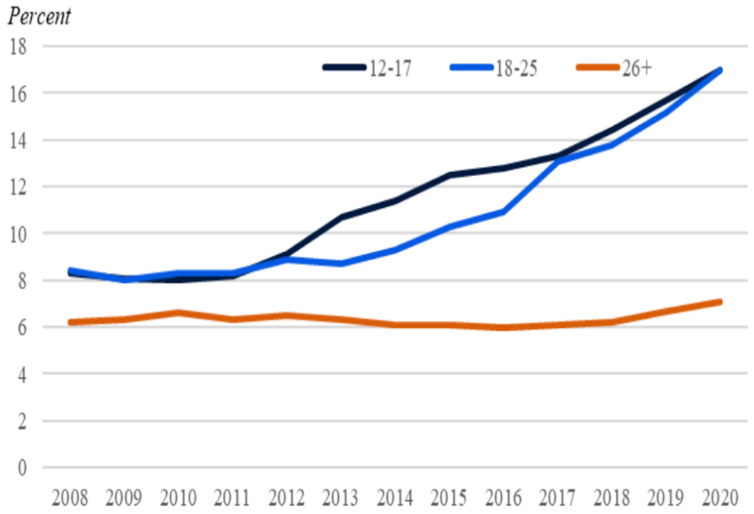


C. Data also show a sharp decrease in mental health among teens since the wide uptake of social media.

72. Brunette (2023) plotted data from *U.S. National Survey on Drug Use and Health* demonstrating that increases in depression began at the same time and occurred among younger rather than older adults:



73. Data from the *U.S. Substance Abuse and Mental Health Services Administration* (SAMHSA) (2022) likewise show the rapid rise in depressive episodes, more than doubling, accompanying the social media age, and mostly affecting youth under 25:



D. The post-2011 crisis in mental health, like the explosion of gender dysphoria referrals, has been a largely female phenomenon.

74. The sudden and dramatic increases in depression primarily occurred among biologically *female* adolescents. The *U.S. Centers for Disease Control and Prevention* (CDC) released the results of its biannual *Youth Risk Behavior Survey* (CDC 2023). The report confirmed that mental health and suicidal thoughts and behaviours worsened significantly between 2011 and 2021. It also found these problems primarily affecting biological females, noting:

> Across almost all measures of substance use, experiences of violence, mental health, and suicidal thoughts and behaviors, female students are faring more poorly than male students. These differences, and the rates at which female students are reporting such negative experiences, are stark. […] In 2021, almost 60% of female students experienced persistent feelings of sadness or hopelessness during the past year and nearly 25% made a suicide plan. (Centers for Disease Control 2023 at 2.)

75. Twenge (2022) showed an explosive increase in major depression rates among U.S. adolescents (ages 12–17) beginning in 2011, as reported by the *U.S. National Study of Drug Use and Health,* illustrating again this to be primarily among females:

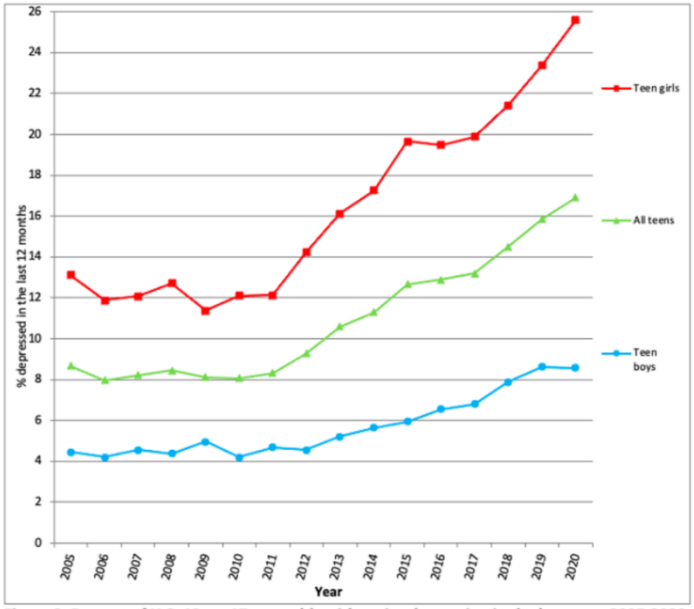


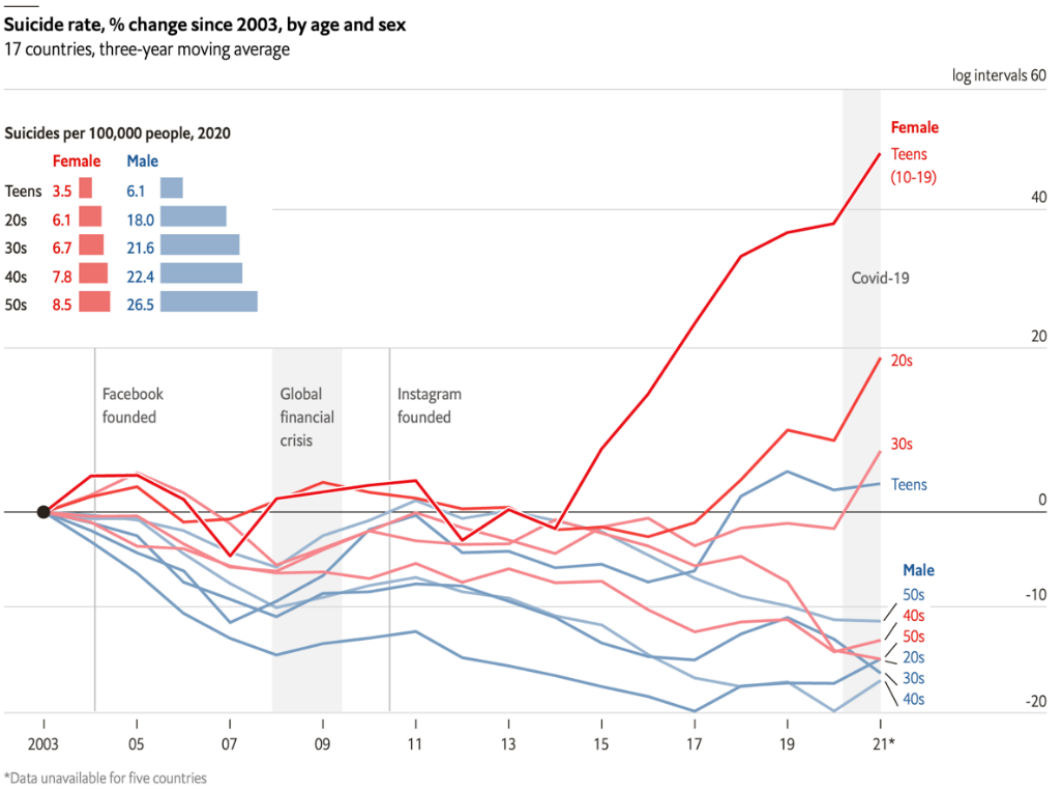
Figure 2: Percent of U.S. 12- to 17-year-olds with major depression in the last year, 2005-2020
Source: National Study of Drug Use and Health. NOTE: Depression assessed using DSM criteria.

(Twenge 2022 at 3.)

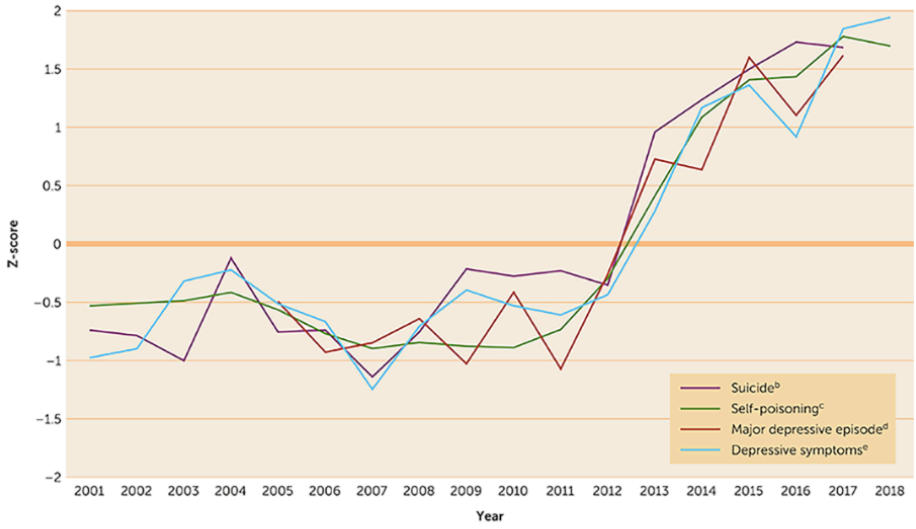
76. Tragically, the same pattern extends beyond depression and mental health to actual completed suicide. While suicide rates for most groups have fallen or remained constant since 2011, completed suicide rates for adolescent girls instead have skyrocketed:

> Suicide rates have been falling overall, but girls—who kill themselves less often than other groups—are an exception. Among girls aged 10–19, suicide rates rose from an average of 3.0 per 100,000 people in 2003 to 3.5 per 100,000 in 2020. The rate among boys, although higher at 6.1 per 100,000 population, has barely changed. (Economist 2023.)

Changes in suicide rates, by biological sex and age group. (Economist 2023.)



77. Twenge (2020) compared multiple indicators of poor mental health among U.S. girls and young women across 2001–2018, again illustrating the dramatic worsening beginning in 2011. "In most cases, the increases in indicators of poor mental health have been larger among girls and young women than among boys and young men." (Twenge 2020 at 19.) These findings confirm the patterns identified herein.



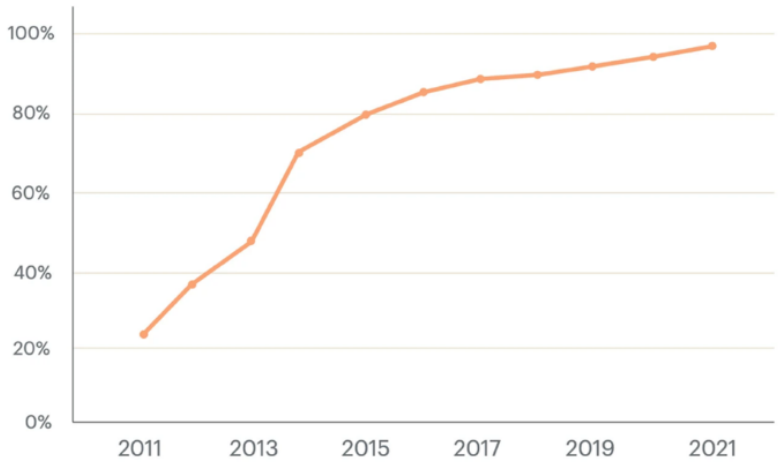
E. The post-2011 decrease in mental health and increase in gender dysphoria is recognized as co-occurring with adolescents' uptake of smartphones.

78. New reports increasingly recognize social media and smartphone usage as the common link behind the proliferation of mental health disorders among adolescents (Brunette 2023; Haltigan 2023), including the recent health advisory by the *American Psychological Association* (APA) on social media use among adolescents. The advisory concluded:

> Research suggests that using social media for social comparisons related to physical appearance, as well as excessive attention to and behaviors related to one's own photos and feedback on those photos, are related to poorer body image, disordered eating, and depressive symptoms, *particularly among girls.* (American Psychological Association 2023 at 8, emphasis added.)

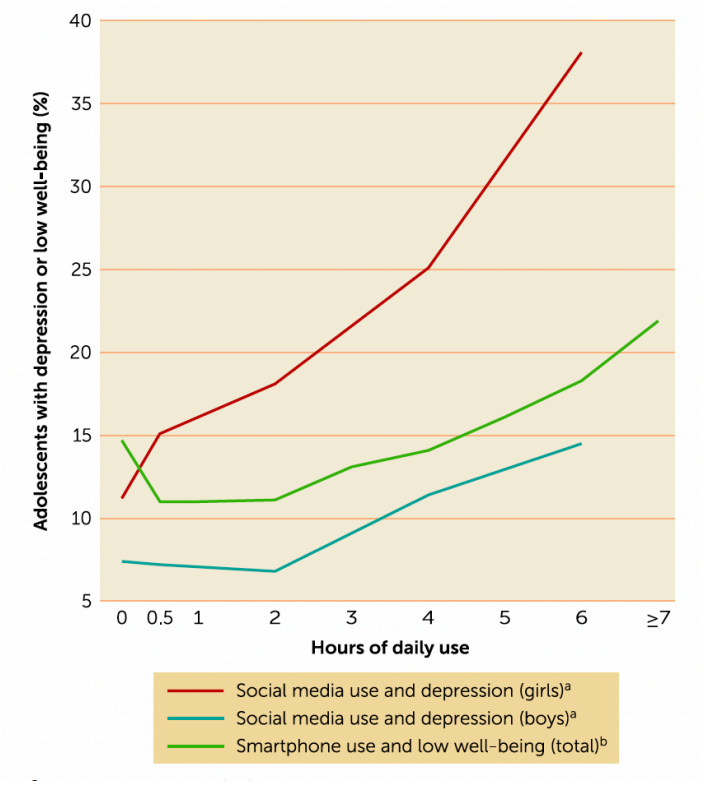
These conclusions further confirm the conclusions of systematic review associating smartphone usage and poorer mental health (Sohn 2019).

79. The timing of the increase in gender dysphoria referrals exactly corresponds with the penetration of smartphones and social media into adolescent lives: Data published by *Pew Research* illustrates that the rates of smartphone usage among teenagers also began its dramatic rise in 2011−2012:



(Lebrow 2022.)

80. Twenge (2020) documents that it is precisely the heavy users of social media who are most likely to report being depressed, feeling unhappy, or exhibiting suicidality. Again, the association is, by far, most striking for adolescent girls:



(Twenge 2020 at 22.)

81. In their peer-reviewed, nation-wide analysis of Finland's centralized gender identity services (GIS), Kaltiala et al. observed:

> The increase in all the younger people contacting GIS and in psychiatric needs among them have taken place simultaneously with the emergence of the widely recognized crisis in mental health among adolescents and young adults throughout the Western world [44, 45], largely associated with the increasing use of social media [44–46]. Social influences that reduce stigma and barriers to care for people suffering from incongruence between their sexed body and lived gender experience likely improve mental health in this group and social media may offer invaluable support and belongingness that buffers against minority stress. However, social media influences may also result in adolescent and emerging adult females – who present particularly frequently with identity confusion [47] – seeking for a solution to their distress through GR [11] and overshadow the need for psychiatric treatment. (Kaltiala 2023 at 6.)

The sources cited by Kaltiala in this paragraph are:

11: Marchiano, L. (2017). Outbreak: On transgender teens and psychic epidemics. *Psychological Perspectives, 60,* 345–366.

44: Twenge, J. M. (2020). Increases in depression, self-harm, and suicide among U.S. adolescents after 2012 and links to technology use: Possible mechanisms. *Psychiatric Research and Clinical Practice, 2,* 19–25.

45: Krokstad, S., Weiss, D. A., Krokstad, M. A., Rangul, V., Kvaløy, K., Ingul, J. M., Bjerkeset, O., Twenge, J., & Sund, E. R. (2022). Divergent decennial trends in mental health according to age reveal poorer mental health for young people: Repeated cross-sectional population-based surveys from the HUNT Study, Norway. *BMJ Open, 12,* e057654.

46: Abbasi, J. (2023). Surgeon General sounds the alarm on social media use and youth mental health crisis. *JAMA, 330,* 11–12.

47: Bogaerts, A., Claes, L., Buelens, T., Verschueren, M., Palmeroni, N., Bastiaens T., & Luyckx, K. (2021). Identity synthesis and confusion in early to late adolescents: Age trends, gender differences, and associations with depressive symptoms. *Journal of Adolescence, 87,* 106–116.

F. Multiple detransition studies confirm features consistent with the hypothesis that adolescent-onset gender dysphoria is largely a social contagion phenomenon.

82. Respected national health care systems of several countries have warned of the risk that medical transition of minors can lead to detransition and severe regret due to irreversible physical harms. (See Section XV on *Medical Harms.*) Because detransition: (1) can occur

several years after transition, (2) is not typically reported to the clinic that provided transition (Littman 2021), (3) thus cannot be distinguished by the clinic from dropping out of a clinical study for other reasons, and (4) is not systematically tracked by any centralized database in the U.S., reliable knowledge about the features and frequencies of detransition cannot develop at the same rate as other aspects of study. The scientific study of detransition has only just begun, with even WPATH's most recent Standards of Care (SoC-8; Coleman 2022) noting that basic information about detransition remains unknown (at S77.). In this situation, it is unjustified and misleading to claim that the paucity of evidence suggests that rates of detransition are low, rather than absent and merely reflecting the difficulties collecting reliable data and there having been insufficient time (and effort) for conducting such research.

83. Nevertheless, scientific interest in this issue is extremely high, with the evidence is only now beginning to accumulate. Multiple new studies of detransition are now beginning to appear in the peer-reviewed literature:

Littman, L., O'Malley, S., Kerschner, H., & Bailey, J. M. (2023). Detransition and desistance among previously trans-identified young adults. *Archives of Sexual Behavior*. doi: 10.1007/s10508-023-02716-1

MacKinnon, K. R., Gould, W. A., Enxuga, G., Kia, H., Abramovich, A., Lam, J. S. H., & Ross, L. E. (2023). Exploring the gender care experiences and perspectives of individuals who discontinued their transition or detransitioned in Canada. *PlosONE.* doi: 10.1371/journal.pone.0293868

MacKinnon, K. R., Kia, H., Gould, W. A., Ross, L. E., Abramovich, A., Enxuga, G., & Lam, J. S. H. (in press). A typology of pathways to detransition: Considerations for care practice with transgender and gender diverse people who stop or reverse their gender transition. *Psychology of Sexual Orientation and Gender Diversity.* doi: 10.1037/sgd0000678

Sanders, T., du Plessis, C., Mullens, A. B., & Brömdal, A. (2023). Navigating detransition borders: An exploration of social media narratives. *Archives of Sexual Behavior, 52,* 1061–1072.

Sansfaçon, A. P., Gelly, M. A., Gravel, R., Medico, D., Baril, A., Susset, F., & Paradis, A. (2023). A nuanced look into youth journeys of gender transition and detransition. *Infant and Child Development, 32,* e2402.

Sansfaçon, A. P., Gravel, É., Gelly, M., Planchat, T., Paradis, A., & Medico, D. (in press) A retrospective analysis of the gender trajectories of youth who have discontinued a transition. *International Journal of Transgender Health.* doi: 10.1080/26895269.2023.2279272

These empirical studies have employed a range of techniques to examine detransitioners' characteristics, including semi-structured interviews, thematic analysis of social media sites, and quantitative surveys using independently validated instruments.

84. The most scientifically rigorous of these studies is Littman (2023). To recruit detransitioners to participate in this quantitative, peer-reviewed study, the researchers noted that "Efforts were made to reach communities with differing perspectives about gender dysphoria, desistance, transition, and detransition." (at 60.) The study's sample consisted of individuals 91% of whom were biologically female, 81% white, and ranging in age from 18 to 33 years (mean of 24.9 years). The majority of these individuals described themselves as politically liberal (68%), non-religious (82%), and supportive both of gay marriage rights (86%) and of transgender rights (91%).

85. This study of detransitioners confirmed the conclusions of the qualitative studies interviewing detransitioners and prior survey studies: The majority (53%) reported that the term "rapid-onset gender dysphoria" (the alternative term for adolescent-onset gender dysphoria) correctly described their experience (with 24% reporting it did not, and 23% reporting they did not know). Co-morbid psychiatric diagnoses were acknowledged by the majority, also consistent with prior studies. Self-harm was extremely prevalent in the sample, both before (71%) and during (64%) their time identifying as transgender. Interestingly (and indicating the urgent need for further research), after detransitioning and returning to identifying as their biological sex, the sample reported their rates of self-harm to drop radically—down to 23%.

86. The study's results also supported the social contagion hypothesis of adolescent-onset gender dysphoria:

> Participants in the current study were asked if, at the time of transgender identification, they belonged to a friendship group where one or more members of the group became transgender-identified around the same time. The majority (60.3%) answered in the affirmative (with 24.4% referring to offline friendship groups, 14.1% referring to online friendship groups, and 21.8% referring to both). More than a third of participants responded that the majority of their offline and online friends became transgender-identified (34.6% and 38.5%, respectively) and participants acknowledged that their offline and online friendship groups engaged in mocking people who were not transgender-identified (42.3% and 41.0%, respectively). (Littman 2023 at 68.)

Meriting emphasis is the finding that more than a third of these (overwhelmingly female) respondents reported that *"the majority"* of their friends were at some point transgender-identified. In my opinion, this finding is entirely inconsistent with claims that transgender identity is innate and immutable, analogous to sexual orientation, and instead is consistent with reflecting social and psychological influences.

87. Importantly, study participants were asked about the informed consent procedures they received from the clinicians providing the medical transition services. The majority (61.5%) reported receiving hormonal treatments from clinicians using only the informed consent, rather than a gate-keeping model, and, although they received some information, the results indicated that:

> 66.7% felt they were inadequately informed about risks and 31.3% felt this about benefits. Only one participant (2.1%) reported that a clinician provided information about treatment alternatives to cross-sex hormones . . . 75.0% of participants reported that they received inadequate information about these alternatives, [and fewer than] one-tenth (8.3%) of participants indicated that they were informed by their clinician about the lack of long-term studies about natal females with late-onset gender dysphoria. Similarly, only 12.5% were informed that the risks, benefits, and outcomes for medical transition of late-onset gender dysphoric youth have not been well studied. (Littman 2023 at 70–71.)

G. Suicidality in adolescents has skyrocketed since social media.

88. The sudden and profound increases in youth suicidality pertains to adolescents broadly, not only those expressing gender dysphoria. The *U.S. Centers for Disease Control* (CDC) conducted its Youth Risk Behavior Survey in 2019 and found that 24.1% of female and 13.3% of male high school students reported "seriously considering attempting suicide." (Ivey-Stephenson 2020 at 48.) The CDC survey reported not only that these already alarming rates of suicide attempt were still increasing (by 8.1%–11.0% per year), but also that this increase was occurring only among female students—No such trend was observed among male students. That is, the demographic increasingly reporting suicidality is the same demographic increasingly reporting gender dysphoria. (Ivey-Stephenson 2020 at 51.)

89. SAMHSA produces a series of evidence-based resource guides which includes their document *Treatment for Suicidal Ideation, Self-Harm, and Suicide Attempts Among Youth.* It notes (italics added):

> [F]rom 1999 through 2018, the suicide death rate doubled for females aged 15 to 19 and 20 to 24. For youth aged 10 to 14, the suicide death rate more than tripled from 2001 to 2018. Explanations for the increase in suicide may include bullying, social isolation, increase in technology and *social media*, increase in *mental illnesses*, and economic recession. (SAMHSA 2020 at 5, italics added.)

The danger potentially posed by social media follows from suicidality spreading as a social contagion: Suicidality increases after media reports, occurs in clusters of social groups, and among adolescents after the death of a peer. (Gould & Lake 2013.)

90. Social media voices today loudly advocate 'hormones-on-demand' while issuing hyperbolic warnings that teens will commit suicide unless this is not granted. Adolescents and their parents are both exposed to the widely circulated slogan that "I'd rather have a living son than a dead daughter," and such baseless threats or fears are treated as justification for referring

to affirming gender transitions as *'life-saving'* or *'medically necessary'*. Such claims grossly misrepresent the research literature, however. Indeed, they are dangerous and unethical: Suicide prevention research and public health campaigns repeatedly warn against circulating such messages, as they can be taken to publicize, or even glorify, suicide and to encourage copy-cat behaviour. (Gould & Lake 2013.)

91. A systematic review of 44 studies of suicidality in LGBTQ youth found only a small association between suicidality and indicators of sexual minority stress. (Hatchel 2021.) The quantitative summary of the studies (an especially powerful type of systematic review called *meta-analysis*) found no statistically significant association between suicidality and any of having an unsupportive school climate, stigma and discrimination, or outness/openness. Rather, there were significant associations between suicidality and indicators of social functioning problems, including violence from intimate partners, sexual risk-taking, and victimization from non-LGBT peers *as well as from LGBT peers.* That is, the pattern suggests issues with social functioning generally, not social interactions hampered by sexual minority status.

H. Neuroimaging studies have associated brain features with sex and sexual orientation, but not gender identity.

92. Claims that transgender identity is an innate property resulting from brain structure remain unproven. Neuroimaging and other studies of brain anatomy repeatedly identify patterns distinguishing male from female brains, but when analyses search for those patterns among transgender individuals, "gender identity and gender incongruence could not be reliably identified." (Baldinger-Melich 2020 at 1345.) Although much smaller than male/female differences, statistically significant neurological differences are associated with sexual orientation (termed "homosexual" vs "nonhomosexual" in the research literature). Importantly, despite the powerful associations between transsexuality and homosexuality, as explicated by

Blanchard, many studies analyzing gender identity failed to control for sexual orientation, representing a problematic and centrally important confound. I myself pointed this out in the research literature, noting that neuroanatomical differences attributed to gender dysphoria should instead be attributed to sexual orientation. (Cantor 2011, Cantor 2012.) A more recent review of the science, by Guillamon (2016) agreed:

> Following this line of thought, Cantor (2011, 2012, but also see Italiano, 2012) has recently suggested that Blanchard's predictions have been fulfilled in two independent structural neuroimaging studies. Specifically, Savic and Arver (2011) using VBM on the cortex of untreated nonhomosexual MtFs and another study using DTI in homosexual MtFs (Rametti et al., 2011b) illustrate the predictions. *Cantor seems to be right*". (Guillamon 2016 at 1634, italics added; see also Italiano 2012.)

In addition, because cross-sectional studies can provide only correlational data, it is not possible for these studies to distinguish whether brain differences caused gender identity or, inversely, whether gender atypical behaviour modifies the brain over time, through neuroplasticity. As noted by one team of neuroscientists:

> [I]t remains unclear if the differences in brain phenotype of transgender people may be the result of a sex-atypical neural development or of a lifelong experience of gender non-conformity. (Fisher 2020 at 1731.)

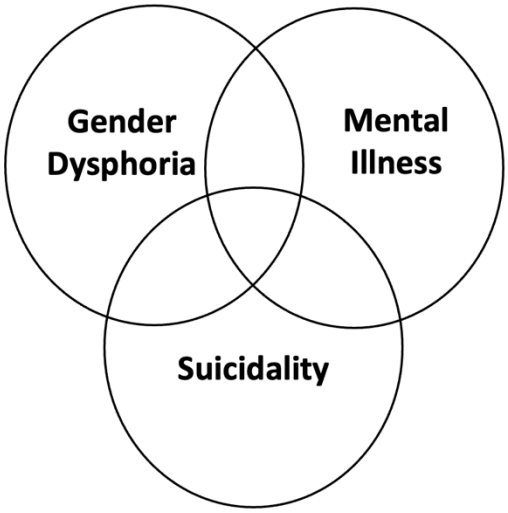
In sum, assertions that transgender identity is the result of brain anatomy, or a 'male brain in a female body' etc., represent faith, not science.

I. The sexual minority stress hypothesis fails to explain many of the features of adolescent-onset gender dysphoria.

93. There is opposition to the idea that adolescent-onset gender dysphoria is a result of social contagion: The social contagion explanation suggests the identities being expressed by those in this group reflect mental health issues they are experiencing rather a genuine transgender identity. Advocates who reject the social contagion model instead posit *Sexual Minority Stress* (SMS) as the cause of the mental health struggles in this group. In this perspective, transphobia

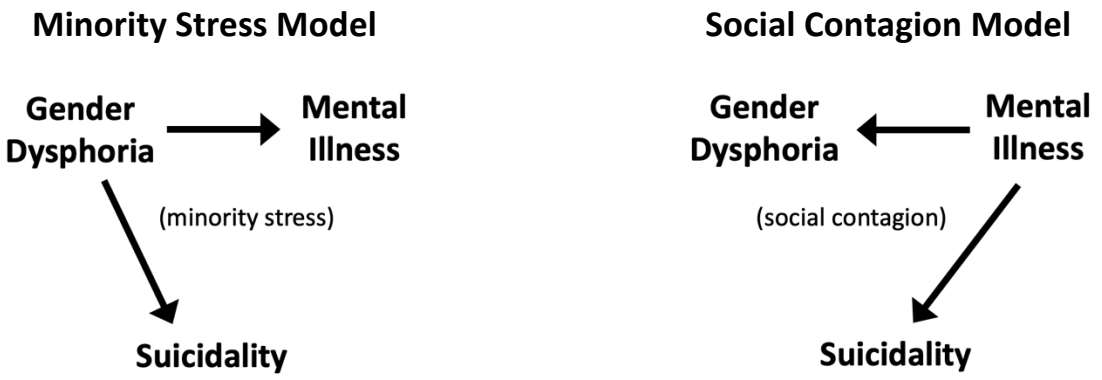
in society, lack of gender affirmation, and obstacles to transitioning cause depression, anxiety, suicidality, and other issues.

94. As evidence, advocates often cite correlations between gender dysphoria and mental health issues, inferring the causal conclusion that the mental health issues are caused by transphobia and failures to support transition. The figure below represents the correlations among these features, depicting them as the overlap between them.



Correlations reflect overlap between variables, including coincidence.

As noted already in the present report, correlations do not imply causation. Correlations are ambiguous: They can be caused in multiple difference ways. As depicted in the figure below, the correlations between gender dysphoria and suicidality in this group could be caused by sexual minority stress, or mental health issues in this group are causing both the suicidality and discontent with the sex of their bodies.



Causality reflects which variables exert influence on which others.

95. Although the minority stress hypothesis merits consideration among the theoretical possibilities, it provides no explanation for multiple, widely reported phenomena that are readily explained by the social-media/social-contagion model. The minority stress model:

- provides no explanation for the sudden and simultaneous arrival of these phenomena in society;
- does not explain why there was no evidence of these mental health issues among purportedly gender dysphoric individuals before the possibility of medicalized transition became as widespread as it is now;
- is inconsistent with the great majority of new cases being among biological females while it is biological males who receive much more ridicule much more often for gender atypical mannerisms and preferences; and
- does not explain why the mental health profiles of the new demographic of transgender youth include high proportions of ADHD an autism spectrum disorders, which lack strong association with victimization.

96. Also left out by the assumption that these correlations imply causality is the evidence that sexual minority stress is associated with a specific *pattern* of issues and the evidence that minors reporting gender dysphoria/incongruence are not fitting that *pattern*: Analysis of the U.S. Transgender Population Health Survey confirmed that transgender-identified youth show elevated rates of non-suicidal self-injury. (Jackman 2025.) The study also found, however, that such self-injury was reported *less* commonly among those who were reported being *more* gender non-conforming, which the study described as "contrary to expectations." (Jackman 2025 at 6.).

Sexual minority stress theory predicts that the kids who were more non-conforming would have more stress and self-injury. In addition, the study also found that *greater* connectedness to the transgender community was associated with greater self-harm rather than less. These patterns are not consistent with what minority stress theory would predict, but they are readily explained as youth with poor socialization development employing unhealthy means of attention-seeking and help-seeking from the social environment.

97. A systematic review analyzed the correlations among sexual minority stress, depression, and suicidality among people identifying as transgender or gender diverse. (Pellicane & Ciesle 2022). Consistent with the sexual minority stress theory, both *distal* and *proximal* factors were examined (also called *external* and *internal* stresses). Distal stress refers events occurring in the person's environment, whereas proximal factors are the mental or cognitive events. In the review of 85 individual studies of minority stress of transgender and gender diverse individuals, Pellicane and Ciesle found the effects to be predominantly associated with the *proximal* factors rather than the distal factors. That is, the associations of sexual minority stress with depression and suicidality were specifically associated with the *expectation* of rejection rather than actual rejection, and associated with *internalized* transphobia rather than transphobia expressed by other people in the environment:

> It is not the experience of rejection itself, but rather, the appraisal of rejection experiences that determines an individual's affective response to in stances of rejection. For those that identify as TGD, this would suggest that expectations of rejection are more strongly associated with depression and suicide than experiencing status-based rejection itself, and this conclusion is supported by the findings of the current meta analysis. (Pellicane & Ciesle 2022 at 6.)

PART 3:

THE SCIENTIFIC METHOD AND

ASSESSMENT CRITERIA

VI. The standard for developing of *Clinical Practice Guidelines* is *Evidence-Based Medicine* based on formal *Systematic Review* of the evidence.

A. Evidence-Based Medicine applies the scientific method to clinical decisions to manage and minimize cognitive biases.

98. Since its establishment in the 1990s, *Evidence-Based Medicine* (EBM) has emerged as the dominant paradigm for medical decision-making. As described by its manual produced by the U.S. National Academy of Medicine,[3] *Clinical Practice Guidelines We Can Trust:*

> Before the end of the 20th century, clinical decisions were based largely on experience and skill (the "art" of medicine); medical teaching and practice were dominated by knowledge delivered by medical leaders.…Although some form of evidence has long contributed to clinical practice, there was no generally accepted, formal way of ensuring a scientific, critical approach to clinical decision making. (Institute of Medicine 2011a at 30.)

Thus, "[c]linical epidemiology and evidence-based medicine emerged as solutions to failings of the traditional approach to medical decision making" (at 32), defining evidenced-based medicine as "the application of scientific method in determining the optimal management of the individual patient" (at 33). The distinction between evidence-based medicine and the prior, traditional approach was described when it was first introduced by the *Evidence-Based Medicine Working Group,* led by Dr. Gordon Guyatt of McMaster University in Canada:

> Evidence-based medicine de-emphasizes intuition, unsystematic clinical experience, and pathophysiologic rationale as sufficient grounds for clinical decision making and stresses the examination of evidence from clinical research. (Evidence-Based Medicine Working Group 1992 at 2421.)

The evidence-based approach that replaced that view is described this way (Institute of Medicine 2011 at 33):

> The term "evidence-based medicine," coined in 1990, is defined by Daly as "the application of scientific method in determining the optimal management of the individual patient" (Daly 2005 at 89).

[3] Formerly, the Institute of Medicine.

Similarly:

> In 1992 the EBM Working Group described the emergent paradigm of Evidence-Based Clinical Decision Making:
>
> - While clinical experience and skill are important, systematic attempts to record observations in a reproducible and unbiased fashion markedly increase the confidence one can have in knowledge about patient prognosis, the value of diagnostic tests, and the efficacy of treatment.
> - In the absence of systematic observation, one must be cautious in the interpretation of information derived from clinical experience and intuition, for it may at times be misleading.
> - The study and understanding of basic mechanisms of disease are necessary but insufficient guides for clinical practice.
> - Understanding certain rules of evidence is necessary to correctly interpret literature on causation, prognosis, diagnostic tests, and treatment strategy.
>
> (Evidence-Based Medicine Working Group 1992 at 2421.)

99. Today, *evidence-based medicine* is a term of art indicating the standard and rigorous procedures of the approach and the conclusions it reaches. It is an error to describe or insinuate that a clinical intervention qualifies as evidence-based medicine (or evidence-based practice) simply because it appears in a peer reviewed publication.

100. The most widely used method for assessing the quality of a body of clinical research evidence and for producing clinical recommendations from it is known as the GRADE system, *Grading of Recommendations Assessment, Development and Evaluation.* GRADE has been adopted by the World Health Organization (WHO) which outlines the procedure in the *WHO Handbook for Guideline Development:*

> According to the GRADE framework, the best estimates of the effects of an intervention come from systematic reviews of randomized controlled trials (RCTs) in which the intervention is tested against alternative management approaches. The certainty or level of confidence in an effect estimate depends on several factors, namely risk of bias, imprecision, indirectness, inconsistency and publication bias *(3).* GRADE rates certainty as high, moderate, low and very low based on a combination of these factors.

> GRADE also provides guidance on how to formulate recommendations based on systematic reviews of the evidence *(4)*. Recommendations can be strong or conditional, depending in part on the level of confidence (certainty) in the effects of a given intervention. When guideline development groups are confident that the desirable consequences (benefits) of an intervention outweigh its undesirable consequences (risks or harms), they will likely issue a strong recommendation in favour of the intervention; when they are confident that the opposite is true, they issue a strong recommendation against the intervention. In cases in which the balance between desirable and undesirable consequences is less certain, the guideline development group will issue a conditional recommendation. (WHO 2014 at 169.)

References (3) and (4) in that passage refer to:

> (3) Balshem, H., Helfand, M., Schünemann, H. J., Oxman, A. D., Kunz, R., Brozek J., et al. (2011). GRADE guidelines: 3. Rating the quality of evidence. *Journal of Clinical Epidemiology, 64,* 401−406.
>
> (4) Andrews, J. C., Schünemann, H. J., Oxman, A. D., Pottie, K., Meerpohl, J. J., Coello, P. A., et al. (2013). GRADE guidelines: 15. Going from evidence to recommendation-determinants of a recommendation's direction and strength. *Journal of Clinical Epidemiology, 66*, 726−735.

101. The *WHO Handbook for Guideline Development* also describes the other standard considerations that contribute to making recommendations:

> In addition to the certainty surrounding effect estimates, several other factors influence the strength of a recommendation under the GRADE approach. These factors include the magnitude of the potential *benefits* and *harms* of *alternative* courses of action; value judgements on the trade-off between these harms and benefits; the level of *uncertainty* surrounding the value judgements and preferences of the individuals affected by the recommendation; the extent to which these value judgements and preferences are estimated to vary across population groups; and considerations pertaining to the use of resources. (WHO 2014 at 170, italics added.)

These components again reflect the four aspects of clinical decisions described in their own section of the present report. (Section IX on *Risks, Benefits, Alternatives, and Uncertainties.)*

B. The systematic review process prevents the cherry-picking of studies that favor a particular result.

102. As described by Dr. Gordon Guyatt, the internationally recognized pioneer in evidence-based medicine, "A fundamental principle to the hierarchy of evidence [is] that optimal

clinical decision making requires systematic summaries of the best available evidence." (Guyatt 2015 at xxvi.) Systematic reviews are required as the starting point for developing clinical practice guidelines because, by design, that process prevents bias introduced by researchers including only the studies with results they favor. (Moher 2009.) The steps of a systematic review include:

- Define the scope of the review: Population/Patient, Intervention, Comparison/Control, and Outcome(s);
- Select and disclose the keywords used to search the research database(s);
- Select and disclose the criteria used to select "hits" from the search;
- Review abstracts to select the final set of studies, with 2+ two independent reviewers;
- Code and disclose each study's results impacting the research question(s);
- Evaluate the reliability [risk of bias] of each study's results with uniform criteria.

103. As detailed in its own section of the present report, multiple systematic reviews have been conducted of the outcomes of transition of gender in minors. Their conclusions are highly consistent with each other. The contrary views circulating, by contrast, remain unsupported by evidence above the least reliable and most easily biased methods at the very bottom level of pyramid of evidence (e.g., "expert opinion") or beneath the pyramid entirely (e.g., non-representative surveys of whatever people wanted to fill out the survey) while ignoring the thorough, high-quality evidence of the systematic reviews. Doing so is in direct conflict with very principles of evidence-based medicine. Indeed, the harms resulting from the clinical fads produced by overconfidence in those methods is the very error evidence-based medicine was developed to prevent.

104. When multiple systematic reviews of a topic become available, those reviews can themselves be systematically assessed and summarized. This 'systematic review of systematic reviews' is called an *umbrella review.* In May 2025, the U.S. Department of Health and Human

Services (DHHS) published an umbrella review of the research on the treatment of gender dysphoria in minors. The treatment methods spanned social transition, puberty blocking medication, cross-sex hormone treatment, surgery, and psychotherapy. (DHHS 2025.) The DHHS umbrella review largely echoed the findings of the Cass Report from England and highlighted all the systematic reviews to be highly consistent with each other in their conclusions.

C. Systematic review ensures all studies are uniformly assessed with the same criteria.

105. It is common for researchers to read studies and develop their own perceptions of studies' strengths and weaknesses. Although common, doing so allows for the other major source of bias in assessing research evidence: In the absence of explicit criteria and a systematic method of applying them and disclosing their results, assessors can (intentionally or not) exaggerate features of some studies while minimizing or overlooking them in others. Systematic review minimizes the opportunities for such influences by explicating the assessment criteria being applied and disclosing, typically in table form, the features or scores associated with each study. The reliability of the process is demonstrated by the great consistency of its results: The same conclusions were reached by each of multiple institutions and individual researchers applying them. Contradictory claims about the state of the science were limited to those applying only their own, idiosyncratic criteria.

106. Different types of research study have different features requiring assessment, with key distinctions including whether there is one or more different groups of participants, whether data is collected only once or repeatedly over time, and whether participants are assigned to groups in an experiment or select themselves while the researcher observes. Thus, different systems have been developed for assessing what is called the *risk of bias* of these different types.

The remainder of the present section describes the most widely used systems for assessing risk of bias. None of these systems is controversial, as demonstrated by both sides of the present debate citing materials based on them. The conclusions of those works themselves are summarized in their own sections of the present report.

107. One of the best established assessment methods, especially for randomized clinical trials (RCTs), is called GRADE. GRADE incorporates the greater level of evidence provided by RCTs by prioritizing them above observational studies. (Guyatt 2011b.) None of the outcomes studies of transition used an RCT design however, and GRADE's risk of bias system has not been used by the systematic reviews summarizing the evidence. (The other procedures within the GRADE system, for assessing the overall quality of the overall body evidence, however, was used by most such systematic reviews and is described below.)

108. The standard tool for assessing the risk of bias of *non*-randomized studies is the *Newcastle-Ottawa Scale* (NOS; Wells 2011), developed by a collaboration of British and Canadian researchers and in wide international use. The NOS was used by the Endocrine Society for its systematic reviews of cross-sex hormone effects in adults on cardiovascular health (Maraka 2017) and on bone health (Singh-Ospina 2017) and by England's Cass Report for its systematic reviews.

109. The third major quality assessment instruments are those developed by Cochrane: for randomized studies, the *Risk of Bias-2* system (RoB2; Stern 2019; Higgins 2016); and for non-randomized studies, the *Risk Of BIas for Nonrandomized Studies* system (ROBINS-I; Sterne 2016; Jeyaraman 2020). The ROBINS-I and RoB2 were used in the systematic review by Sweden's health care authorities (Ludviggson 2023) and in WPATH's systematic review of

mental health effects (Baker 2021). (WPATH did not, however, perform any systematic review of the medical risks of transition.)

110. Other systematic assessment tools have been similarly developed for evaluating other types of materials, the most relevant of such materials being clinical practice guidelines (CPGs). Among the most widely used criteria-based systems for the assessment of CPGs is the *Appraisal of Guidelines for Research & Evaluation-II* (AGREE-II; Brouwers 2010.). AGREE II was applied by the Cass Report's two systematic reviews of CPGs for gender transition (Taylor 2024c, 2024d) and by the prior systematic review of CPGs. (Dahlen 2021).

D. Each treatment outcome study is assessed for its *risk of bias* and combined with other features to rate the *quality of evidence* (aka *confidence of evidence)* for the treatment overall.

111. The other criteria considered in addition to studies' risk of bias in the GRADE approach are:

- inconsistency,
- indirectness of evidence,
- imprecision, and
- publication bias (when studies with negative findings remain unpublished).

GRADE assessments yield a rating on a four-point scale representing the certainty that a reported treatment effect is true (Balshem 2011). These certainty scores and their meanings are:

Certainty	Meaning
High	We are very confident that the true effect lies close to that of the estimate of the effect.
Moderate	We are moderately confident in the effect estimate: The true effect is likely to be close to the estimate of the effect, but there is a possibility that it is substantially different.
Low	Our confidence in the effect estimate is limited: The true effect may be substantially different from the estimate of the effect.
Very Low	We have very little confidence in the effect estimate: The true effect is likely to be substantially different from the estimate of effect.

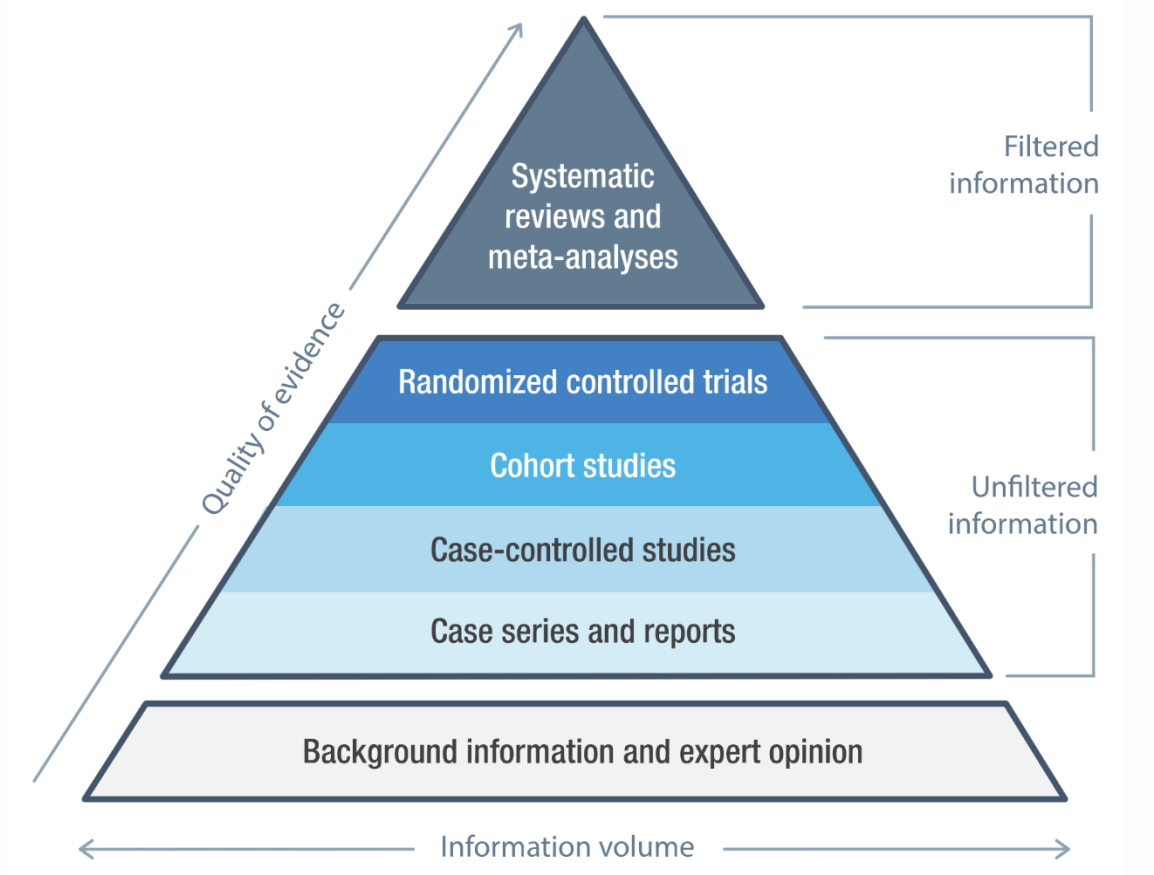
(Balshem 2011 at 404.)

VII. The quality of the types of clinical outcomes studies follows a hierarchy represented as the *Pyramid of Evidence.*

A. The highest level of evidence is the most resistant to bias, providing findings with the greatest certainty.

112. The accepted hierarchy of reliability for assessing clinical outcomes research is routinely represented as a *Pyramid of Evidence* (figure below). Because lower-level studies are generally faster and less expensive to conduct, it is typical for them to outnumber higher level studies. This is the property meant to be reflected by the pyramid's shape, which is larger at the base and smaller at the apex.

Figure: Pyramid of Levels of Evidence



OpenMD. (2022, Nov. 1). *Levels of evidence (or hierarchy of evidence).* Retrieved from https://openmd.com/guide/levels-of-evidence.

113. The greater certainty of results from studies using higher level research designs follows from those designs incorporating features that rule out the influence of factors that can mimic treatment effectiveness:

Results are more certain when they track the same people over time (*longitudinal*):

- Otherwise, it is possible that the treated and untreated look different at the end because they were already different at the beginning.

Results are more certain from studies that include a *control group* for comparison.

- Otherwise, it is possible that everyone improves over time (*maturation*), and the treatment made no difference.

Results are more certain when they account for known potential *confounds,* such as receiving more than one treatment at the same time.

- Otherwise, improvement might have come from the confounds instead of the treatment.

Results are more certain when studies use *objective* instead of subjective measurement.

- Otherwise, changes many not reflect objective differences that would apply to other people, and instead reflect only unreliable differences in self-perception that continue to differ between people.

Results are more certain when people are *randomized* into treatment groups.

- Otherwise, improvement might be due to differences in unknown confounds that accumulated on one side instead of cancelling each other out.

RCTs provide the most certain results because they include the most of these features. Surveys provide the least certain results because they include the fewest.

Among RCTs, results are more certain when treatment group is "*masked*":

- Otherwise, improvements might have come from the placebo effect.

Among surveys, results are more certain when they come from *representative* samples of people chosen to match the features of the whole population, instead of *convenience* samples of people who chose themselves.

- Otherwise, proportions may reflect how the study was advertised and the motivations of the people who decided to participate in the study, instead of the population it was meant to reflect.

B. *Randomized Controlled Trials* (RCT) are the most reliable test of a treatment's effects, with lesser designs showing correlation instead of causality.

114. *Randomized Controlled Trials* (RCTs) are the gold standard method of assessing the effects caused by an experimental treatment. The great scientific weight of RCTs follows from the randomization: People do not pick which research group they are in—a treatment group or a control group. Without random group assignment, it is not possible to identify which, if any, changes are due to the treatment itself or to the factors that led to who did and did not receive treatment.

115. Levels of evidence lower than RCTs are unable to distinguish when changes are caused by the experimental treatment versus caused by other factors that can mimic treatment effects, such as the placebo effect and 'regression to the mean'.

116. In the absence of evidence that 'X causes Y', it is a scientific error to use language indicating there is causal relationship. In the absence of evidence of causality, it is scientifically unsupportable to describe a correlation with terms such as: increases, improves, benefits, elevates, leads to, alters, influences, results in, is effective for, causes, changes, contributes to, yields, impacts, decreases, harms, and depresses. Scientifically valid terms for correlations include: relates to, is associated with, predicts, and varies with.

C. *Cohort studies* are the highest level of evidence about medicalized transition currently available.

117. The highest-level study of medical transition of minors thus far conducted are cohort studies: In cohort studies, a sample of individuals is tracked over time. The researcher observes the variables of interest but does not assign whether or which treatment is received. Cohort studies are able to answer some questions that lower-level studies cannot, such as whether a high-functioning group improved over time versus having been composed of people who were

already high-functioning. Cohort studies are, however, below RCTs and are unable to demonstrate causality and unable to identify how much of any change was due to placebo effects, unknown confounding factors, etc.

D. *Surveys* are not capable of demonstrating treatment safety or treatment effectiveness.

118. Surveys represent observational research, not experimental research. (In science, experiments are studies involving a manipulation, not mere observation, by the researcher.) Surveys and cross-sectional studies can provide only correlational data and cannot demonstrate causality. (See Section VIII.B*., Correlation does not imply causation.*) It is not possible for a survey to yield evidence that a treatment is effective. No number of surveys can test a treatment, advancing it from 'experimental' to 'established' status.

119. Survey studies of 'convenience samples' (samples non-representative of the whole population) do not even appear on the *pyramid of evidence.* In accordance with the routine standards, systematic reviews of treatment studies typically exclude such surveys.

E. *Expert opinion* is the least reliable source, being susceptible to the structural biases above plus personal biases of the individual expert, for which evidence-based medicine was designed to compensate.

120. As Figure 1 illustrates, in evidence-based medicine, opinion based on an individual practitioner's clinical experience is identified as the *least* reliable source of medical knowledge. Among other reasons, this is because non-systematic recollections of unstructured clinical experiences with self-selected clientele in an uncontrolled setting is the most subject to bias. Indeed, mere "clinical experience" was long the basis of most medical and mental health clinical decisions, and it was precisely the scientific and clinical inadequacy of conclusions based on this that led to the development and widespread acceptance of evidence-based medicine. As Dr. Guyatt wrote, "EBM places the unsystematic observations of individual clinicians lowest on the

hierarchy," both because EBM "requires awareness of the best available evidence," and because "clinicians fall prey to muddled clinical reasoning and to neglect or misunderstanding of research findings." (Guyatt 2015 at 10, 15.)

VIII. Methodological defects limit or negate the evidentiary value of many studies of treatments for gender dysphoria in minors.

A. In science, to be valid, a claim must be objective, testable, and falsifiable.

121. In behavioral science, people's self-reports do not represent objective evidence. It is when emotional and other pressures are the strongest that the distinction between, and the need for, objective over subjective evidence is greatest. Surveys do not represent objective evidence. This is especially true of non-random surveys and polls, recruited through online social networks of the like-minded.

B. Correlation does not imply causation.

122. Studies representing lower levels of evidence are often used because they are faster and less expensive than studies representing higher levels. A disadvantage, however, is that they are often limited to identifying which features are *associated* with which other features, but they cannot show which ones are *causing* which. It is a standard property of statistical science that when a study reports a correlation, there are necessarily three possible explanations. Assuming the correlation actually exists (rather than representing a statistical fluke, for example), it is possible that X causes Y, that Y causes X, or that there is some other variable, Z, that causes both X and Y. (More than one of these can be true at the same time.) To be complete, a research analysis of a correlation must explore all of these possibilities.

123. For example, assuming there does exist a correlation between treatment of gender dysphoria in minors and mental health: (1) It is *possible* that treatment causes improvement in mental health. (2) Yet, it is *also possible* that having good mental health is (part of) what enabled transition to occur in the first place. That is, because of gate-keeping procedures in the clinical studies, those with the poorest mental health are typically not permitted to transition, causing the higher mental health scores to be sorted into the transitioned group. (See Section VIII.G. on

Selection Bias.) (3) It is also possible that a third factor, such as wealth or socioeconomic status, causes *both* the higher likelihood of transitioning (by being better able to afford it) *and* the likelihood of mental health (such as by avoiding the stresses of poverty or affording psychotherapy).

124. This principle of scientific evidence is why surveys do not (cannot) represent evidence of treatment effectiveness: Surveys are limited to correlations.

C. Confounding: When gender transition is accompanied by psychotherapy, it cannot be known which one caused the changes observed.

125. Confounding is a well-known issue in science, and accounting for potential confounds, both known and unknown, is central to all research design. The failure to account for confounding factors is a serious methodological defect that can invalidate a study's conclusions; however, as detailed in the present report, that very failure pervades treatment studies of gender dysphoria: Patients who undergo medical transition procedures in research clinics routinely undergo mental health treatment (psychotherapy) at the same time. Without explicit procedures to distinguish them, it cannot be known which treatment produced which outcome (or in what proportions). Indeed, to the extent that improvements to mental health are observed at all, it is a more parsimonious (and, therefore, scientifically superior) to posit that those improvements resulted from the standard and better established mental health treatments, than to suppose that they resulted from social or medicalized treatments that have not been independently demonstrated to be effective.

D. Cohort study findings are vulnerable to multiple factors that mimic treatment effectiveness (maturation, attrition, and regression to the mean).

126. *'Regression to the mean'* arises when researching issues, such as mood, depression, or levels of emotional distress that typically fluctuate over time. People are more likely to seek

out treatment during low points rather than high points in their emotional lives. Thus, when tracking emotional states over time, the average of a group of people in a treatment group may often show an increase; however, without an untreated control group to which to compare them, researchers cannot know whether the group average would have increased anyway, with only the passage of time.

127. Blinding or masking participants in an RCT from which group they are in has been described as a preferred strategy since the 1950s, in order to exclude the possibility that a person's expectations of change caused any changes observed (the placebo effect). In practice, however, such masking makes little or no meaningful difference. Particularly very high quality review (a meta-analysis of meta-analysis research), revealed no statistical difference in the sizes of the effects detected by blinded/placebo-controlled studies from non-blinded/non-placebo-controlled studies of depression. (Moustgaard 2019.) That is, the pre-/post- treatment differences found in placebo groups are not as attributable to participants' expectations of improvement as they are to expectable regression to the mean. (Hengartner 2020.)

128. *Attrition* refers to people dropping out of treatment and research studies of treatment. Attrition rates can produce the statistical illusion of a treatment being effective because people experiencing no improvement are more likely to drop out of a study. Because it is normal for human feelings to fluctuate over time, it is always expectable in mental health research, for some people to report better at the end point; some, worse; and some, the same. Because people perceiving poorer moods are more likely to drop out of treatment and treatment studies, the average scores of the remaining people will be higher, despite the treatment having no effect of its own.

129. *Maturation* refers to situations when some psychological issues resolve on their own, without treatment. When a study lacks a control group for comparison against the treatment group, it cannot identify whether the treatment caused the improvement observe, or if people would have improved anyway, even in the absence of the treatment, simply because they matured. It is already shown that gender dysphoria desists for the large majority of cases of childhood-onset gender dysphoria (See Section IV.D. on *Childhood-Onset Gender Dysphoria*), and the desistance rate among adolescent-onset cases remains unknown.

E. Studies lacking control groups cannot show treatment effectiveness.

130. Among the deficiencies common to research on transition outcomes is that when comparing a sample's mental health before versus after transition, differences are not necessarily attributable to the transition itself. Especially during childhood and adolescence, very many changes occur in addition to the transition. Studies including one group that receives an intervention and a matched *control group* (which does not receive the intervention) can often find the levels of mental health change in *both* groups: When both the study participants who did and those who did not receive the intervention, changes are due some other factor (such as maturation). Studies that do not include any control group at all (that is, *pre-/post- studies* in which all participants transitioned) are unable to ascertain when participants would have improved anyway, even without transition. Such an issue is particularly problematic in studies for which the outcome measure are subjective, as in the present situation. The lack of control groups against which to compare the transitioning groups is one of the short-comings specifically identified by England's systematic review of outcomes of social transition:

> There is limited, low-quality evidence on the impact of social transition for children and adolescents experiencing gender dysphoria/incongruence. Most published studies are cross-sectional with non-representative samples and *lack an appropriate comparator group.* (Hall 2024 at 6.)

F. Non-representative samples, such as Internet surveys, lack *external validity:* Their results do not apply outside the study population.

131. The purpose of clinical science is to establish from a finite sample of study participants information about the effectiveness and safety, or other variables, of a treatment that can be generalized to other people. Such extrapolation is only scientifically justified with populations matched on all relevant variables. The identification of those variables can itself be a complicated question, but when an experimental sample differs from another group on variables already known to be related, extrapolation cannot be assumed but must be demonstrated directly and explicitly.

G. Clinical "gate-keeping" permitted only the mentally healthy to transition, establishing a *selection bias,* a statistical illusion of improved mental health.

132. Importantly, clinics treating gender dysphoria are expected to conduct mental health assessments of applicants seeking medical transition, disqualifying from medical services patients with poor mental health. (The adequacy of the assessment procedures of specific clinics and clinicians remains under debate, however.) Such gate-keeping—which was also part of the original "Dutch Protocol" studies—can lead to misinterpretation of data unless care is explicitly taken. A side-effect of excluding those with significant mental health issues from medical transition is that when a researcher compares the average mental health of the gender dysphoric individuals first presenting to a clinic with the average mental health of those who completed medical transition, then the post-transition group would show better mental health—but only because of the *selection bias* (Larzelere 2004; Tripepi 2010), even when the transition had no effect at all.

IX. Four components are required for clinical decision-making—*Risks, Benefits, Alternatives,* and *Uncertainties*—with the absence of any invalidating the decision.

133. Clinical decision-making is based on assessing the *risk*-to-*benefit* ratios of each of the treatment *alternatives* given the *uncertainties* surrounding each. That is, a given benefit can be worth some risks, but not others. Treatments can be justified by low quality evidence of benefit when there is low risk of harm, but treatment with a high risk of harm require high quality evidence of benefit. A treatment can have a beneficial risk-to-benefit ratio, yet still be unacceptable because we are highly *uncertain* that the patient actually has that disorder. As well, the potential benefit of a treatment can be worth its risks when we have no choice, but not worth those risks when an *alternative* is available that poses less risk. Clinical decisions require the simultaneous consideration of all four components and are not valid if any is missing or isolated from the others.

134. These four criteria are reflected in, for example, the approval process of the U.S. Food and Drug Administration (FDA). In that process:

> FDA reviewers evaluate clinical *benefit* and *risk* information submitted by the drug maker, taking into account any *uncertainties*…Evidence that the drug will benefit the target population should outweigh any risks and uncertainties. (U.S. Food and Drug Administration 2022, italics added.)

To consider alternatives, the process also includes:

> [A] drug intended to treat patients with a life-threatening disease for which no other therapy exists may be considered to have benefits that outweigh the risks even if those risks would be considered unacceptable for a condition that is not life threatening. (U.S. Food and Drug Administration 2022.)

A. Treatment safety and effectiveness are assessed relative to each other as a risk-to-benefit ratio, not as 'safe' or 'effective' relative to one threshold.

135. Activists have asserted that use of puberty blockers and cross-sex hormones on adolescents to be "safe." This claim is unsupported by any substantial scientific evidence,

depreciates widely recognized risks of serious harm to minors so medicalized, and ignores both the many unknowns and the growing international doubts about their use.

136. At the outset, it is important to understand the meaning of "safety" in the clinical context. Treatments are not deemed simply "safe" or "unsafe," as activists repeatedly use those words. Rather, the criteria for assessing safety require simultaneous consideration of both components of the risk-to-benefit ratio, and discussion of the safety of hormonal interventions on the natural development of children requires consideration of both of them. These dual components are reflected in FDA regulations:

> There is reasonable assurance that a device is safe when it can be determined, based upon valid scientific evidence, that *the probable benefits* to health from use of the device for its intended uses and conditions of use, when accompanied by adequate directions and warnings against unsafe use, outweigh *any probable risks.* (Code of Federal Regulations Title 21 Sec. 860.7, italics added.)

B. The acceptability of risk-to-benefit ratios differ with the presence versus lack of alternatives and with diagnostic uncertainty and other unknowns.

137. Valuations of risk-to-benefit ratios are relative to the other treatment alternatives available. The risk-to-benefit ratio of a given treatment can be acceptable when there are no alternatives, but unacceptable when there are alternatives with superior risk-to-benefit ratios. In the present situation, for treating the psychological distress of youth reporting gender dysphoria, the pertinent task is comparing the risk-to-benefit ratios of social and subsequent medical transition to that of psychotherapy without social or medical transition.

138. Outcome studies of medical transition have found either no overall benefit to mental health in minors or found no benefit beyond that of psychotherapy alone. (See Section XIII on *Social Transition Not Associated with Mental Health Benefits.*) Although the elements of social transition do not themselves pose physical, medical risks, social transition is strongly associated with advancing to medicalized interventions. In contrast, psychotherapy poses very low risk of

harm (if any at all), whereas the risks of medicalization are objectively high. The evidence of potential benefits of transition is of low quality and is highly subjective. Because psychotherapy poses so much less risk than does medical transition, it does not hold the same burden of evidence as medical transition: It is the medicalization that holds the burden of proof to demonstrate it provides greater benefit to justify its greater harms to objectively healthy and functioning tissue. This represents an instance of the central medical ethic of *Do no harm.*

139. As the final component, valuations of risk-to-benefit ratios differ according to the relative certainty and unknowns of the alternatives. The risk-to-benefit ratio of a treatment may be acceptable given an objective and highly accurate blood test that reliably predicts outcomes, but not worth the risks when one is uncertain the patient actually has the condition corresponding to the treatment posing the risks. The diagnoses of purely medical conditions (such as precocious puberty and disorders of sexual development) can be made with very high accuracy and on the basis of objective, physical testing, but the diagnosis of gender dysphoria is highly uncertain, based on ambiguous features with no objective means of verification.

C. Evidence-Based Medicine opposes *discordant guidelines*—strong recommendations based on low quality evidence.

140. Within the Evidence-Based Medicine (EBM) model, strong recommendations generally require having strong evidence—weak evidence can support only weak recommendations. The World Health Organization makes this explicit in the *WHO Handbook for Guideline Development.* EBM refers to this issue as "discordance," and Chapter 14 of the WHO Handbook, *Strong recommendations when the evidence is low quality,* includes:

> [G]uidance *warns against discordant recommendations* because when either the benefits or harms of an intervention are uncertain, one cannot be confident that an intervention does more good than harm. Strong recommendations are directives that are meant to be followed by all or almost all guideline users and under all or almost all foreseeable circumstances. […] Because of this, discordant

> recommendations may entrench practices whose benefit is uncertain. For instance, a discordant recommendation may lead the users of a WHO guideline to carry out interventions that are detrimental individually or collectively or to waste scarce resources on ineffective interventions. (WHO 2014 at 170–171, italics added.)

141. A peer-reviewed article, published in *BMC Medical Research Methodology,* compared quality of evidence with strength of recommendations for all the National Clinical Guidelines (NCGs) of Ireland after 2019, when that country's national health care system formally adopted the evidence-based medicine approach. (Chong 2023). Chong opened by summarizing the basic principle behind evidence-based medicine:

> 1) Strong recommendations confirm confidence that the desirable effects outweigh the undesired consequences and 2) conditional/weak recommendations are made when there is uncertainty regarding potential harms or disadvantages. […] For the development of trustworthy guidelines there should be concordance between the quality (certainty) of the evidence and the strength of the recommendations. (Chong et al. 2023 at 2.)

142. There can exist exceptions in which EBM will support a discordant recommendation: As outlined in the following, these mostly refer to weak evidence being sufficient to justify strong recommendations when they are recommendations *against* the treatment. (Thus, it is not possible to assess treatment recommendations without knowing whether they are recommendations for or against that treatment.) As Chong noted: When the evidence of benefit is of low or very low quality, but the evidence of harm is high or moderate, then the recommendation is a strong recommendation *against* the treatment, and when the evidence shows that two treatments have potentially equivalent effectiveness but that one clearly poses less risk (such as with psychotherapy versus medical transition), then the recommendation is a strong recommendation *against* the treatment with the greater risk. (Chong 2023 at 3.)

143. WHO (2014) provides the same instructions:

> When guideline development groups are confident that the desirable consequences (benefits) of an intervention outweigh its undesirable consequences (risks or harms), they will likely issue a strong recommendation in favour of the

> intervention; when they are confident that the opposite is true, they issue a strong recommendation against the intervention. In cases in which the balance between desirable and undesirable consequences is less certain, the guideline development group will issue a conditional recommendation. (WHO 2014 at 169.)

For example, when there is only low or very low quality evidence of benefit (such as with mental health benefits from medical transition), but high or moderate level evidence of harm (such as with the sterilization caused by cross-sex hormones administered to prepubescent reproductive organs), the proper application of the principles of GRADE as clearly set out in these sources yields a strong recommendation *against* the intervention, not for it.

144. Both Chong (2023) and WHO (2014) identify five situations which represent exceptions to the concordance principle, in which strong recommendations may be appropriate despite low quality evidence. These give situations are listed below, with four of them being recommendations *against* the treatment:

Situations in which a strong recommendation may be indicated despite low quality evidence.

Situation	Evidence Quality		Recommendation
	Benefits	Harms	
Uncertain benefit, certain harm	Low or very low	High or moderate	Strong recommendation *against* the more harmful/costly option
Potentially equivalent options, one clearly less risky or costly than the other	Low or very low	High or moderate	Strong recommendation *against* the more harmful/costly option
High confidence in benefits being similar, but one option potentially more risky/costly	High or moderate	Low or very low	Strong recommendation *against* the potentially more harmful/costly option
Potential catastrophic harm	Immaterial (very low to high)	Low or very low	Strong recommendation *against* the more harmful/costly option
Life-threatening situation	Low or very low	Immaterial (very low to high)	Strong recommendation in favor of the intervention

145. A "life-threatening situation" is one for which it is well documented that death would result in very substantial proportion of the affected individuals. The *WHO Handbook* offers as an example that, because multidrug resistant tuberculosis so often results in death, it is acceptable to recommend a fluoroquinolone, despite the evidence of its lesser generally effectiveness and greater toxicity than front-line treatment. (At 172). As the science reviewed herein makes very clear, it is not possible to assert that a child or adolescent presenting at a gender clinic presents a comparable "life-threatening situation." Nor does any responsible voice (nor even WPATH) assert that the risks posed by administering puberty blockers or cross-sex hormones to minors are "immaterial." In short, the *only* situation in which the principles of evidence-based medicine permit a strong recommendation based on low quality evidence does not apply.

PART 4:

OUTCOMES OF GENDER TRANSITION

IN MINORS

X. Gender transition spans both medical and non-medical interventions, each carrying both medical and psychological implications.

146. Gender transition includes both social and medical aspects. Social transition describes steps such as: changing names, pronouns, and, when engaging in sex-segregated activities such as athletics or restroom/locker room use, doing so with the biologically opposite sex. Medical transition includes puberty-blockers, cross-sex hormones, and surgeries such as mastectomy, castration (orchiectomy) and vaginoplasty, or phalloplasty.

147. The available evidence strongly associates undergoing social transition with substantially greater likelihoods of subsequently undergoing medical interventions. Although the nature of this association has not been definitively established, even practitioners who advocate and practice social transition acknowledge that the interpretation that best explains the evidence is that social transition causes gender dysphoria to persist when it would otherwise remit, leading youth to undergo medical transition when they otherwise would not. Thus, knowledge of the effects of the medical interventions is necessary for making informed decisions about social transition. The known physical health risks to minors of treatment with puberty-blockers, cross-sex hormones, and their combination are summarized in a later section as are summaries of potential risks that remain untested. Although there do not yet exist data on the long-term consequences of these treatments when they are begun at puberty or during adolescence, the medical consequences known from the research with adult transitioners are also described in the present report.

148. Because of the association between social transition and greater likelihoods of medical transition, enabling or facilitating social transition conveys ethical responsibility for the effects of the then expectable medical procedures. By way of analogy, enabling and facilitating

opportunities for exercise and healthy eating are not themselves medical procedures, but nonetheless have profound medical implications.

149. *Gender Dysphoria* and the transition of gender represent a highly complicated interplay of physical and subjective elements. A person's claim of being the other sex contradicts all physical, objective evidence. Medicalized transition is carried out on objectively healthy tissue—interventions that reduce rather than increase their biological functioning. Despite being physical interventions, their outcomes are subjective and psychological: A surgical or hormonal procedure may achieve the desired physical effect, yet still be a failure, in that it does not achieve the psychological goal that was its only justification.

150. The alternatives for treating reported cases of gender dysphoria pit physical intervention (endocrinological and surgical) with nonphysical intervention (psychotherapy). Yet, these are performed by entirely different clinical providers: Despite any subjective perceptions by any clinicians of their own effectiveness or their own professional experiences, no one clinician can compare the outcomes of these distinct interventions with each other.

XI. Social changes to sex-specific indicators of gender status comprise *social transition,* a highly significant psychological intervention with potentially profound and enduring consequences.

151. Several of the best known and most widely cited clinicians and researchers on children who express gender dysphoria describe social transition as a very substantial mental health intervention unto itself.

> Social transition is also seen as a significant intervention which may alter the course of gender development with medical and surgical interventions being sought by children whose gender dysphoria/incongruence might not have otherwise persisted beyond puberty. (Hall 2024 at 1–2.)
>
> [T]hose who had socially transitioned at an earlier age and/or prior to being seen in clinic were more likely to proceed to a medical pathway…it is possible that social transition in childhood may change the trajectory of gender identity development for children with early gender incongruence. (Cass 2024a at 31–32.)
>
> [P]arents who support, implement, or encourage a gender social transition (and clinicians who recommend one) are implementing a psychosocial treatment that will increase the odds of long-term persistence. (Zucker 2018 at 237.)
>
> [I]f one conceptualizes gender social transition as a type of psychosocial treatment, it should come as no surprise that the rate of gender dysphoria persistence will be much higher as these children are followed into their adolescence and young adulthood (see Rae et al., 2019). If this is, in fact, the case, one might ask why would one recommend a first-line treatment that is, in effect, iatrogenic. (Zucker 2020 at 37.)

The research confirms such predictions. (See Section XII on *Social Transition and Persistence.*)

152. Despite activists describing social transition as merely 'a pause' that is simple to reverse, clinicians and researchers studying the development of youth expressing gender dysphoria describe the difficulties youth experience when actually experiencing in that situation:

> In the desisting group, two girls, who had transitioned when they were in elementary school, reported that they had been struggling with the desire to return to their original gender role, once they realized that they no longer wanted to live in the "other" gender role. Fear of teasing and shame to admit that they had been "wrong" resulted in a prolonged period of distress. (Steensma & Cohen-Kettenis 2011 at 649.)

XII. Social transition of children is associated with greatly elevated persistence of gender dysphoria, rates of medical transition, resulting in risks to physical health.

153. Despite only low quality evidence being available, studies repeatedly suggest social transition increases the probably of persistence. The Cass Report, integrating the results of its multiple systematic reviews and offering its final set of recommendations, noted "social transition in childhood may change the trajectory of gender identity development for children with early gender incongruence." (Cass 2024a at 32.)

154. Finland, when re-evaluating its medical policies, also conducted a systematic review of potential risks and benefits to minors of gender transition. (Finland PALKO/COHERE 2020.) It came to the same conclusion, warning that transition might interfere with desistance occurring as a natural process of maturation and instead *cause* or *prolong* gender dysphoria and its distress. (That is, that gender transition in minors may be *iatrogenic*.) According to Finland's subsequent recommendations:

> In cases of children and adolescents, ethical issues are concerned with the natural process of adolescent identity development, and the possibility that medical interventions may interfere with this process. It has been suggested that hormone therapy (e.g., pubertal suppression) alters the course of gender identity development; i.e., it may consolidate a gender identity that would have otherwise changed in some of the treated adolescents. The reliability of the existing studies with no control groups is highly uncertain, and because of this uncertainty, no decisions should be made that can permanently alter a still-maturing minor's mental and physical development. (Finland PALKO/COHERE 2020 at 8.)

The conclusions of these systematic reviews are consistent with my own analysis of the several lines of pertinent research, summarized in the following sections.

A. Absent social transition, childhood-onset gender dysphoria desisted for the majority of children, in all 11 of the 11 existing outcomes studies.

155. Currently, there exist 11 cohort studies that followed up children who expressed gender dysphoria before puberty, listed in the following table. I first published this

comprehensive list of studies in my own peer-reviewed article on the topic. (Cantor 2019.) The children in these studies were receiving professional mental health support during the study period, but were not permitted to engage in social transition. In sum, despite coming from a variety of countries, conducted by a variety of labs, using a variety of methods, at various times across four decades, every study without exception has come to the identical conclusion: Among prepubescent children expressing gender dysphoria, the majority cease to want to be the other gender over the course of puberty—ranging from 61–88% desistance across the large, prospective studies. Such cases are often referred to as "desisters," whereas children who continue to feel gender dysphoric are often called "persisters." After puberty, the majority of such children report being gay or lesbian instead of being transgendered.

156. The developers of the Dutch Protocol, at the Vrije University gender clinic, drew the same conclusions, noting that "Although the persistence rates differed between the various studies . . . the results unequivocally showed that the gender dysphoria remitted after puberty in the vast majority of children" (Steensma 2010 at 500) and that "a more likely psychosexual outcome in adulthood is a homosexual sexual orientation without gender dysphoria." (Steensma & Cohen-Kettenis 2011 at 649.) Those authors' reference to remittance of dysphoria "*after* puberty" is accurate and important. Many advocates of social transition for children mistakenly assert that these studies show that if a child is still experiencing dysphoria by the very *start* of puberty, then it is highly likely that he or she will persist into adulthood. There is no research justifying that claim; the cited studies followed up with patients only after puberty was well advanced or complete.

Cohort studies of gender dysphoric, prepubescent children.

Count	Group	Study
2/16 4/16 10/16	gay trans-/crossdress straight/uncertain	Lebovitz, P. S. (1972). Feminine behavior in boys: Aspects of its outcome. *American Journal of Psychiatry, 128,* 1283–1289.
2/16 2/16 12/16	trans- uncertain gay	Zuger, B. (1978). Effeminate behavior present in boys from childhood: Ten additional years of follow-up. *Comprehensive Psychiatry, 19,* 363–369.
0/9 9/9	trans- gay	Money, J., & Russo, A. J. (1979). Homosexual outcome of discordant gender identity/role: Longitudinal follow-up. *Journal of Pediatric Psychology, 4,* 29–41.
2/45 10/45 33/45	trans-/crossdress uncertain gay	Zuger, B. (1984). Early effeminate behavior in boys: Outcome and significance for homosexuality. *Journal of Nervous and Mental Disease, 172,* 90–97.
1/10 2/10 3/10 4/10	trans- gay uncertain straight	Davenport, C. W. (1986). A follow-up study of 10 feminine boys. *Archives of Sexual Behavior, 15,* 511–517.
1/44 43/44	trans- cis-	Green, R. (1987). The "sissy boy syndrome" and the development of homosexuality. New Haven, CT: Yale University Press.
0/8 8/8	trans- cis-	Kosky, R. J. (1987). Gender-disordered children: Does inpatient treatment help? *Medical Journal of Australia, 146,* 565–569.
21/54 33/54	trans- cis-	Wallien, M. S. C., & Cohen-Kettenis, P. T. (2008). Psychosexual outcome of gender-dysphoric children. *Journal of the American Academy of Child and Adolescent Psychiatry, 47,* 1413–1423.
3/25 6/25 16/25	trans- lesbian/bi- straight	Drummond, K. D., Bradley, S. J., Badali-Peterson, M., & Zucker, K. J. (2008). A follow-up study of girls with gender identity disorder. *Developmental Psychology, 44*, 34–45.
47/127 80/127	trans- cis-	Steensma, T. D., McGuire, J. K., Kreukels, B. P. C., Beekman, A. J., & Cohen-Kettenis, P. T. (2013). Factors associated with desistence and persistence of childhood gender dysphoria: A quantitative follow-up study. *Journal of the American Academy of Child and Adolescent Psychiatry, 52,* 582–590.
17/139 122/139	trans- cis-	Singh, D., Bradley, S. J., Zucker, K. J. (2021). A follow-up study of boys with Gender Identity Disorder. *Frontiers in Psychiatry*, 12:632784.

*For brevity, the list uses "gay" for "gay and cis-", "straight" for "straight and cis-", etc.

157. The consistent observation of high rates of desistance among children who first express gender dysphoria before puberty demonstrates a pivotally important—yet often overlooked—feature: Because gender dysphoria so often desists on its own, clinical researchers cannot assume that therapeutic intervention cannot facilitate or speed desistance for at least some patients. That is, it cannot be assumed that gender identity is immune to influence such as from psychotherapy. Such is an empirical question, and there has not yet been any such research.

B. The two follow-up studies which included children who underwent social transition found gender dysphoria persisted for the great majority.

158. The Olson team have published a cohort study of prepubescent children, ages 3–12 (average age of 8), who had already made a complete, binary (rather than intermediate) social transition, including a change of pronouns. (Olson 2022.) The study did not employ DSM-5 diagnosis:

> This study did not assess whether participants met criteria for the Diagnostic and Statistical Manual of Mental Disorders, Fifth edition, diagnosis of gender dysphoria in children. Many parents in this study did not believe that such diagnoses were either ethical or useful and some children did not experience the required distress criterion. (Olson 2022 at 2.)

Conflicting entirely with the outcomes reported by all 11 prior studies, feelings of gender dysphoria desisted for only very few of Olson's sample of children who were socially transitioned already: 7.3%.

159. Although the Olson team did not mention it, their result confirms the prediction of other researchers who postulated that social transition *itself* represents an active intervention able to cause gender dysphoria to persist when it would otherwise have resolved and avert any need for subsequent medicalization and its attendant risks. That is, the Olson results suggest that the social transition of prepubescent children prevents gender dysphoria from desisting on its own. (Singh 2021; Zucker 2018, 2020.) Similarly, the Dutch team examined a variety of factors in an

attempt to develop a means of distinguishing the children whose gender dysphoria would desist versus persist past puberty and found social transition to be a significant indicator:

> *Childhood social transitions were important predictors of persistence,* especially among natal boys. Social transitions were associated with more intense GD in childhood, but have never been independently studied regarding the possible impact of the social transition itself on cognitive representation of gender identity or persistence. *[Social transition] may, with the hypothesized link between social transitioning and the cognitive representation of the self, influence the future rates of persistence.* (Steensma 2013 at 588−589, italics added.)

160. Consistent with my interpretations above, the systematic review of social transition for England's Cass Report identified these same two research studies and came to the same conclusion about the implications of the evidence:

> In this review, two studies suggest that children who socially transition are more likely to continue to experience gender dysphoria/incongruence in adolescence . . . One of these studies also reported that the majority of those who socially transitioned progressed to medical interventions. (Hall 2024 at 6.)

C. The distinct outcomes of youth who underwent social transition versus those who did not is accepted even by groups that endorse medical transition.

161. These conclusions are long established. They have been noted, not only by the recent Cass Report, but also by current and earlier versions of clinical practice guidelines. These include the guidelines from the Endocrine Society:

> [S]ocial transition (in addition to GD/gender incongruence) has been found to contribute to the likelihood of persistence. (Hembree 2017 at 3879.)

> In most children diagnosed with GD/gender in congruence, it did not persist into adolescence . . . the large majority (about 85%) of prepubertal children with a childhood diagnosis did not remain GD/gender incongruent in adolescence (20). *If children have completely socially transitioned, they may have great difficulty in returning to the original gender role upon entering puberty* (40). (Hembree 2017 at 3879, italics added.)

Similarly, such groups have historically recognized also that the common outcome was homosexuality or bisexuality, as already noted. (See Section IV.D.):

> In adolescence, a significant number of these desisters identify as homosexual or bisexual. (Hembree 2009 at 3876.)

162. WPATH noted that after social transition, "A change back to the original gender role can be highly distressing and [social transition can] even result in postponement of this second transition on the child's part." (Coleman 2012 at 176.)

D. There is no effective method of identifying the children for whom gender dysphoria will persist versus desist.

163. Although it has been shown that gender dysphoria will desist for the large majority of children in whom gender dysphoria manifests before puberty unless they are subjected to social intervention, research has not developed any reliable means of identifying those for whom it will persist. Groups of persisters are somewhat more gender non-conforming on average than desisters, but not so much more as to predict usefully the course of any particular child. (Singh 2021; Steensma 2013.) Thus, Endocrine Society's guidelines statement remains true: "With current knowledge, we cannot predict the psychosexual outcome for any specific child." (Hembree 2017 at 3876.)

164. In contrast with the above evidence, the Olson research team has instead claimed the opposite, asserting that they developed a method of distinguishing persisters from desisters, using a score representing a combination of children's "peer preference, toy preference, clothing preference, gender similarity, and gender identity." (Rae 2019 at 671.) They reported a statistical association (mathematically equivalent to a correlation) between that composite score and the probability of persistence. As they indicated:

> Our model predicted that a child with a gender-nonconformity score of .50 would have roughly a .30 probability . . . of socially transitioning. By contrast, a child with gender-nonconformity score of .75 would have roughly a .48 probability. (Rae 2019 at 673.)

165. Although the Olson team declared that "social transitions may be predictable from gender identification and preferences" (Rae 2019 at 669), their actual results suggest *the opposite:* The gender-nonconforming group who went on to transition (socially) had a mean composite score of .73 (i.e., less than .75), and the gender-nonconforming group who did *not* transition had a mean composite score of .61, also less than .75. (Rae 2019 supplemental material Table S1.) Because *both* of these scores are lower than .75, only *a minority of both* groups would transition. That is, despite their highly misleading language, Olson's statistical model does not distinguish *likely* from *unlikely* to transition; rather, it distinguishes *unlikely* from *even less likely* to transition.

XIII. Systematic review shows social transition to be unassociated with benefits to mental health.

A. The only systematic review of social transition outcomes in minors is from the *Cass Report,* which found the studies to be at high risk of bias and to fail to show improvements in mental health.

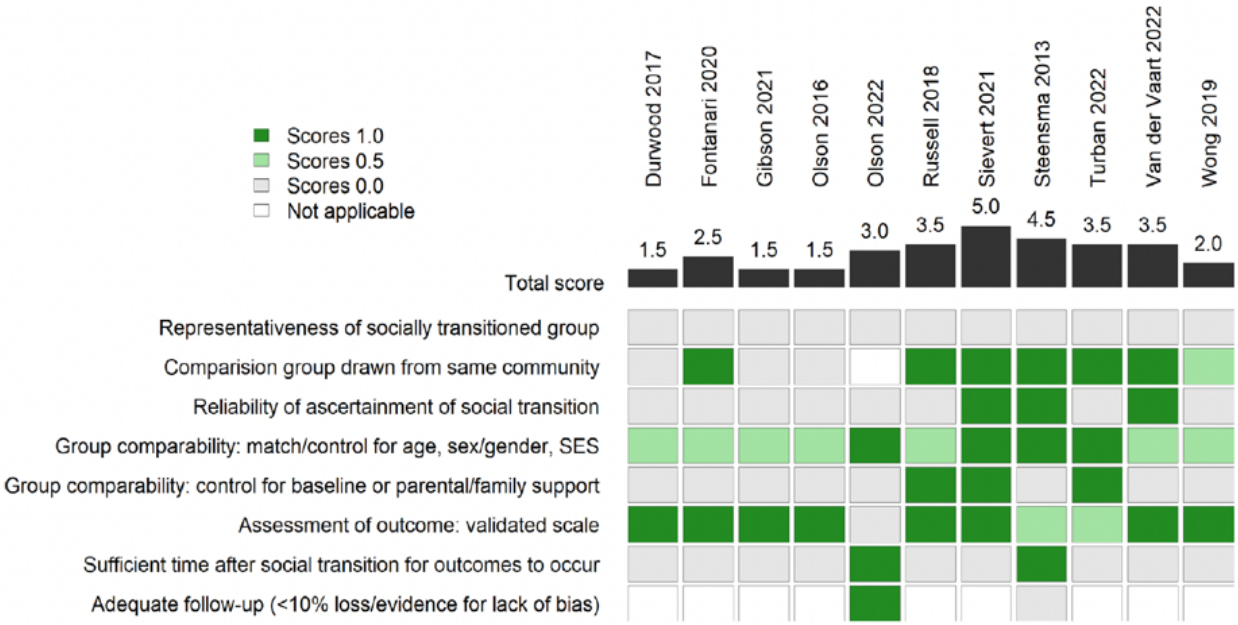
166. Although social transition typically precedes medical transition, much less research has been conducted on the effects of social transition. Before 2023, all research on the social transition of minors was highly limited, coming from subjective self-report and personal anecdote instead of objective measurement, and from convenience samples instead of samples representative of the wider population. Further limiting the reliability of their results, these self-reports were highly retrospective: coming from adults recalling their childhood emotions (e.g., Turban 2021) rather than anyone reporting on contemporaneous experiences. Studies came to highly contradictory conclusions, some reporting correlations between social transition and greater mental health or well-being (e.g., Kuvalanka 2017; Olson 2016), and others failing to find such a correlation (e.g., Sievert 2021; Wong 2019).

167. The systematic review commissioned for the Cass Review of England regarding impacts of social transition spanned studies up through April 27, 2022, and it confirmed the dearth of reliable evidence. (Hall 2024.) After conducting an exhaustive search of the research literature for studies of the effects of social transition, the review found that "there are no prospective longitudinal studies with appropriate comparator groups which have assessed the impact of social transition on the mental health or gender- related outcomes for children or adolescents." (Hall 2024 at 6.) The studies of social transition that did exist, 11 in total, were either cross-sectional (nine of the 11) or lacked any control group to compare to the youth undergoing social transition (two of the 11). That is, each of the studies used research designs providing only low levels of evidence. (See Section VIII.E on *Lack of Control Groups* an

Section VIII.F on *Non-Representative Surveys*.) The 11 studies (eight of children and three of adolescents) were then assessed individually on each of the eight criteria of the *Newcastle-Ottawa Scale* (NOS). The NOS was adapted to the aspects relevant to the social transition studies and to use ratings of 1.0, 0.5, or 0 (representing adequate, partially adequate, or inadequate) for each criterion. Their sum yielded the total quality or *Risk of Bias* score for each study, which represented:

Total score	**Quality Rating**
0.0–3.5	low
4.0–5.5	moderate
6.0–8.0	high

The scores of all 11 studies on each of the eight assessment criteria and the total quality scores appear in the figure below:



(Hall 2024 at 3.)

In addition to using research designs that provide only low levels of evidence, nine of the 11 social transition studies were of low quality even within that (low) level of evidence. The two

exceptions, assessed has having moderate quality in this level of evidence, were Sievert (2021), which found no mental health improvement, and Steensma (2013), which found that gender dysphoria was more likely to persist after social transition (See Section XII on *Social Transition and Increased Persistence.*)

168. The body of evidence contained in these 11 studies showed no mental health improvements with social transition. As summarized in the systematic review itself:

> Overall studies consistently reported no difference in mental health outcomes for children who socially transitioned across all comparators. Studies found mixed evidence for adolescents who socially transitioned. (Hall 2024 at 1.)

In light of these ratings, the review concluded:

> The studies included in this review are of low quality, therefore, it is difficult to assess the impact of social transition in this population. Importantly, there are no prospective longitudinal studies with appropriate comparator groups which have assessed the impact of social transition on the mental health or gender-related outcomes for children or adolescents experiencing gender dysphoria/ incongruence. Healthcare professionals, clinical guidelines and advocacy organisations should acknowledge the lack of robust evidence of the benefits or harms of social transition when working with children, adolescents and their families. (Hall 2024 at 6)

169. The review went on to criticize WPATH SoC8's recommendation in favor of early social transition as "not supported from the findings of this systematic review." (at 6.)

170. The 2025 DHHS review similarly concluded:

> [T]he impact of social transition on long-term GD, psychological outcomes and well-being, and future treatment decisions such as hormones or surgeries remains poorly understood. Evidence on regret associated with social transition is extremely limited. The certainty of evidence for these outcomes is very low. (DHHS 2025 at 84.)

B. Subsequent studies of social transition continue to confirm a lack of benefits to mental health.

171. The conclusions of the 2024 Cass Report from its systematic review of social transition confirm the conclusions on this topic. The systematic review completed its final scan for relevant studies on April 27, 2022 (Hall 2024). I therefore searched for any additional studies

in the peer-reviewed literature reported since that time. I was able to identify four such studies, and their results repeat and confirm the conclusions reached by the Cass Report and by my own reading of this literature, as shown in the following.

172. In 2023, the first study of the mental health impact of social transition based on objective and contemporaneous assessments conducted by professionals was published in the peer-reviewed literature: Morandini (2023) is a study by a team of co-authors including one from the gender dysphoria clinic at Vrije University, Amsterdam (a widely recognized source of the most-cited literature in *support* of medical transition of minors). The study examined "whether children and adolescents diagnosed with gender dysphoria who socially transitioned showed fewer psychological difficulties than those (also with gender dysphoria) who were still living in their birth-assigned gender." (Morandini 2023 at 1052.)

173. The study improved on prior studies in multiple aspects, including its use of objective and comprehensive mental health assessments, conducted by professional clinicians instead of only subjective self-reports; having a larger sample for analysis; and conducting separate analyses for: (1) the prepubescent versus adolescent age youth, (2) the male-to-female versus female-to-male transitioners, and (3) living status (biological sex or adopted gender) versus the names used (birth name versus new name). Ultimately, the analyses identified no significant differences in any mental health indicator (mood disorders, anxiety disorders, or suicide attempts).[4]

[4] The study noted a single potential exception among the 12 analyses conducted, suggesting the possibility that, among the male-to-female transitioners, when social transition was defined as living status, the frequency of mood disorders might have been lower. Subsequent analysis, however, suggested that to be a statistically spurious finding, "as more sensitive analyses that treated age as a continuous rather than as a categorical variable, failed to support that finding." (Morandini et al. 2023 at 1053.)

174. The study concluded that for children and adolescents expressing gender dysphoria:

> [T]here were no significant effects of social transition or name change on mental health status. (at 1045.)
>
> Living in role and birth-assigned gender were not associated with mood, anxiety, or suicide attempts. (at 1052.)
>
> The present findings, although preliminary, suggest that social gender transition is not associated with mental health status in children and adolescents, at least in the short term. These findings are consistent with the only other study that directly compared clinic-referred youth experiencing gender dysphoria who had socially transitioned with those who had not. (at 1058.)

175. In reporting their results, the researchers also warned against over-interpreting or over-simplifying their findings. Although their study represents an improvement on prior studies analyzing social transition, I agree with their reminder that cross-sectional evidence such as theirs can be superseded in the future by studies using still superior methods, such as randomized controlled trials (RCTs). (See Section VII.B. on *RCTs.*)

176. Durwood (2023) described a sample of prepubescent youth (under age 12, mean age of 6.8 years) who had socially transitioned (76.5% from male-to-female). According to the study, the parents reported that, on average, the youth showed fewer symptoms of depression and anxiety, "suggesting a possible mental-health benefit of these transitions" (at 1); however, the study did not indicate whether psychotherapy was also being provided at the same time, which might have been responsible for such mental-health benefits (i.e., represented a confound). Conversely, Engel (2023) and Diaz and Bailey (2023) found quality of life and mental health *worsened* after social transition. According to Engel (2023):

> An unexpected observation in our study was that those who had fully socially transitioned reported *lower* QOL [quality of life] scores. (Engel 2023 at 1, italics added.)

Diaz and Bailey (2023) found:

> According to the parents, AYA [adolescents and young adults] children's mental health *deteriorated considerably* after social transition. (Diaz & Bailey 2023 at 1, italics added.)

XIV. Systematic reviews of medical transition consistently show the research to be low quality and unassociated with benefits to mental health.

177. The goal of medical transition is to improve mental health. Whether medical transition benefits mental health has not been shown, or even examined, by RCT or other study of adequate research quality. All existing outcomes studies used lower level research designs, and their results are subject to the attendant biases and ambiguous interpretations of low-level studies.

178. There have been 18 studies of the mental health outcomes at the cohort-level of evidence. As these currently represent the highest level of evidence available, it is these which have been the subject to systematic review. That is, with the availability of multiple cohort studies, the lower quality and less reliable results from surveys and other cross-sectional research are moot.

179. All systematic reviews have come to the same conclusions: Of the cohort studies, approximately half report there being no meaningful improvement in mental health after medical transition. The other half report observing greater mental health after transition, but because the transitioners underwent both psychotherapy and medical transition (i.e., the treatments were *confounded;* See Section VIII.C), it cannot be known which, or what combination, produce the improvement. Very many of these studies also exhibited very high attrition rates and multiple other issues, any one of which prevents any reliable conclusion from being drawn. (See Section VIII.D). The only consistent conclusion of these studies is their identification of the need to conduct RCT-level studies, which has not yet been done.

180. The Cass Review for England's National Health Service included systematic reviews of the outcomes for minors following puberty-blockers (Taylor 2024a) and/or cross-sex hormones (Taylor 2024b). The systematic review of puberty-blockers (i.e., Taylor 2024a)

included not only the studies of mental health and psychosocial outcomes, but also the studies of medical and physiological outcomes. A total of 50 studies were identified (29 of which were published between 2020 and 2022). Because different studies examined different sets of variables (some examined bone density while others did not; some examined cognitive development while others did not; etc.), different analyses in the systematic review included different numbers of studies. The assessment found most studies to be of low quality (i.e., unlikely to identify accurate estimates of safety or effectiveness), suffering from methodological issues. Such deficiencies included the failure to control for pre-existing differences between groups (See Section VIII.C. on *Confounding*), lacking any control group (See Section VIII.E.), and examining only non-representative samples. (See Section VIII.F.) Regarding mental health, the review re-confirmed that the existing studies show little evidence of mental health improvement:

> These findings add to other systematic reviews in concluding there is insufficient and/or inconsistent evidence about the effects of puberty suppression on gender dysphoria, body satisfaction, psychological and psychosocial health, cognitive development, cardiometabolic risk and fertility. Regarding psychological health, one recent systematic review reported some evidence of benefit while others have not. The results in this review found no consistent evidence of benefit. (Taylor 2024a at 12.)
>
> There are no high-quality studies using an appropriate study design that assess outcomes of puberty suppression in adolescents experiencing gender dysphoria/incongruence. No conclusions can be drawn about the effect on gender-related outcomes, psychological and psychosocial health, cognitive development or fertility. Bone health and height may be compromised during treatment. High-quality research and agreement on the core outcomes of puberty suppression are needed. (At 13.)

181. England's systematic review of cross-sex hormone treatment (Taylor 2024b) came to similar conclusions. At total of 53 studies were identified, the majority of which pertain to whether the hormones successfully triggered puberty and corresponding physical development. The majority of studies of mental health and psychosocial outcomes were of low quality,

suffering problems including the failure to control for other treatments being administered at the same time (i.e., confounding) and of non-representativeness. Overall, the review found:

> There is a lack of high-quality research assessing the outcomes of hormone interventions in adolescents experiencing gender dysphoria/incongruence, and few studies that undertake long-term follow-up. No conclusions can be drawn about the effect on gender-related outcomes, body satisfaction, psychosocial health, cognitive development or fertility. Uncertainty remains about the outcomes for height/growth, cardiometabolic and bone health. (Taylor 2024b at 7.)

There was some evidence of some improvement in mental health, but because studies provided psychotherapy together with the hormone treatments, it cannot be known which, or both, might have contributed.

182. Sweden's systematic review spanned research on both the potential harms and benefits of medical transition and was published as a peer-reviewed article: Ludvigsson (2023). It included only those studies at moderate or low risk of bias. The review analyzed the studies' results for evidence of benefit to mental health; however, the review instead found that the studies "were limited by methodological weaknesses, for instance lack of or inappropriate control group, lack of intra-individual analyses, [and] high attrition rates that precluded conclusions to be drawn." (Ludvigsson 2023 at 9−10.) Their overall conclusion was that:

> This systematic review of almost 10 000 screened abstracts suggests that long-term effects of hormone therapy on psychosocial and somatic health are unknown, except that GnRHa treatment [blocking puberty] seems to delay bone maturation and gain in bone mineral density." (At 12.)

183. Finland, seeking to balance the risk-to-benefit ratio of the alternatives after completing its systematic reviews (Finland PALKO/COHERE 2020) found the evidence of potential benefit to be inadequate relative to the evidence of harms. Their health service concluded: "As far as minors are concerned, there are no medical treatments that can be considered evidence-based" (at 7).

184. Thompson (2023) conducted a systematic review, independent of any professional association or government healthcare service, and found the information available from the current evidence to be insufficient for supporting clinical decisions. The review, published in the peer-reviewed journal, *PLoS Global Public Health,* spanning the physical and mental health outcomes of puberty-blocking medications, of cross-sex hormone administration, and of surgery (primarily, double mastectomy) in adolescents, ages 12 to 18. The review identified 19 relevant research reports from six countries. Of the 19 studies, five reported on the mental health outcomes, and the remainer, on physical health outcomes. The physical parameters assessed included bone density, liver enzymes, hemoglobin, glucose metabolism, lipid profile, and blood pressure. Consistent with the other systematic reviews, Thompson (2023) confirmed the available evidence to be inadequate, especially with regard to safety and to any aspect of adolescent-onset gender dysphoria:

> The evidence base for the outcomes of gender dysphoria treatment in adolescents is lacking. It is impossible from the included data to draw definitive conclusions regarding the safety of treatment. There remain areas of concern, particularly changes to bone density caused by puberty suppression, which may not be fully resolved with hormone treatment. (At 2.)
>
> Whilst it is acknowledged that any intervention during puberty has to consider the potential negative impact on young people's development, there is a surprising lack of evidence of outcomes. Research has raised safety concerns around cardiovascular health, insulin resistance, and changes to lipid profile. (At 2.)
>
> It is clear that we simply do not know enough about the observed phenomenon referred to as [adolescent-onset gender dysphoria, or] AOGD, nor do we fully understand the huge increase in numbers of adolescents (and especially NF) presenting for GD intervention in recent years, nor the comorbidities and long-term outcomes. (At 42.)
>
> This review series has highlighted a lack of quality evidence in relation to adolescent GD in general: epidemiology, comorbidity, and treatment impact is difficult to robustly assess. Without an improvement in the scientific field, clinicians, parents, and young people are left ill-equipped to make safe and appropriate decisions. (At 43.)

185. More recently, a updated set of systematic reviews were published. Notably, these were conducted by a team at McMaster University in Canada, one of the originating and highly respected centers of evidence-based medicine itself, and participating in the project was Dr. Guyatt himself. The team has published independent systematic reviews on the outcomes both puberty blockers and cross-sex hormone administration. (Miroshnychenko 2025a; Miroshnychenko 2025b.) These systematic reviews confirm the prior conclusions, finding that the evidence base for interventions in both instances was too insufficient to "exclude the possibility of benefit or harm." (Miroshnychenko 2025a at 434; Miroshnychenko 2025b at 444.)

186. In contrast with the public healthcare systems of the countries noted above, none of the U.S.-based professional associations even attempted to conduct systematic reviews of evidence of the medical risks: The WPATH-sponsored review (Baker 2021) did not examine safety either of puberty-blockers or of cross-sex hormones. Neither of the two Endocrine Society reviews (i.e., Maraka 2017; Singh-Ospina 2017) included puberty-blocker treatment (either its risks of harm or any potential benefits). In its systematic review of the safety of cross-sex hormone treatment, the Endocrine Society included exactly one study (and zero studies of mental health outcomes). The AAP policy statement (Rafferty 2018) did not include any systematic review of any aspect of transition, medical or social. Thus, because evaluating the risk-to-benefit ratio of a treatment requires the evidence of both its risks and its benefits (See Section IX on *Risks, Benefits, Alternatives, and Uncertainties*), none of the associations issuing clinical guidelines or policy statements was capable of conducting that assessment. Any claim that their recommendations represents evidence-based medicine is necessarily and demonstrably false.

187. The DHHS umbrella review of the systematic reviews on puberty blockers and cross-sex hormones contained in its wider evidence review (DHHS 2025) made the following observations:

> [T]he certainty of evidence is very low regarding the effect of PBs on GD (or gender incongruence), improvement in mental health, and safety. (At 85.)
>
> Important gaps remain in both the range and quality of outcomes assessed across the existing literature [for PBs]. Many primary studies were not adequately designed for measuring or reporting on the outcomes related to PBs. For example, few primary studies included in the SRs assessed the impact of PBs on outcomes such as GD or mental health. (At 85.)
>
> The certainty of evidence is very low regarding the effect on GD or incongruence, improvement in mental health, and safety metrics including fertility and bone health. (At 86.)
>
> As with PBs, important evidence gaps exist for CSH. Many studies were not specifically designed to capture the full range of long-term outcomes and have primarily concentrated on short-term psychological or physiological changes. Key outcomes such as effects on GD, other mental health outcomes, and quality of life have been inconsistently measured and, when reported, often are derived from small, observational studies with limited follow-up. Critically important long-term outcomes remain poorly understood. (At 86.)

XV. Medical transition is associated with substantial medical risks of harms.

188. The evidence has strongly shown that after social transition of gender, minors are highly likely to persist in gender dysphoria and as a result to desire and proceed to medical transition procedures. (See Section XII on *Social Transition and Increased Persistence.*) Thus, the appropriate assessment of the risk-to-benefit ratio for social transition must include the increased risks posed by the medicalized path to which it is likely to lead. Similarly, the evidence has shown strongly that youth who undergo puberty blocking are highly likely to persist in experiencing dysphoria and to desire and proceed to undergo cross-sex hormone treatment. Thus, the appropriate risk-to-benefit evaluation of social transition must also consider its potential implications over the child's full lifespan.

A. In minors, harms of puberty-blockers (especially if followed by cross-sex hormones) include sterility, loss of bone mass, and abnormal brain development.

189. As expressed by the Cass Report, administering puberty blockers "could have a range of unintended and as yet unidentified consequences." (Cass 2024a at 178.)

190. Clinical guidelines for the medical transition of gender among children euphemistically include the need to counsel the children and their parents about "options for fertility preservation" (*Endocrine Society Guidelines,* Hembree 2017 at 3872.) For children receiving puberty-blockers from the start of puberty and proceeding to cross-sex hormones, however, there is no fertility to preserve. Fertility preservation for children prior to gamete maturation has been described as "nascent technology" that is largely "experimental." (Laidlaw et al. 2025 at 9.) The exposure of prepubescent gonad tissue to cross-sex hormones sterilizes it—permanently, so far as has yet been demonstrated—and *most* children using puberty-blockers

progress to using cross-sex hormones. That is, the decision to undergo medical transition also represents the decision never to have biological children of one's own.

191. Multiple studies have investigated the desires of transgender individuals to become biological parents, and these studies have subsequently been evaluated in a systematic review. (Stolk 2023.) Across a total of 76 individual studies, the review found the majority of adults undergoing medical transition desired to become parents in the future. The rates of actually utilizing fertility preservation procedures, however, were low, leaves large room for future regret and harm.

192. WPATH guidelines include no means of preventing the sterilization that results from blocking puberty at its onset until initiating cross-sex hormones. It instead recommends that such individuals receive counseling about their loss of biological parenting capacity, but without any indication of how effective such counseling can be with, for example, a 10-year-old or prepubescent child making the irreversible decision never to become a biological parent. No evidence or methodology exists for validating whether any consent or assent obtained from such a child could be meaningfully informed.

193. Similarly, while the removal of the breasts of an adolescent girl or young woman may be cosmetically revised, it is functionally irreversible; even if the woman later regrets and detransitions before or during adulthood, breast-feeding her child will never be possible. To the adolescent determined to transition, this may seem no cost at all. To the future adult mother, it may be a very severe harm indeed.

194. There has not been systematic investigation of the effects on adult sexuality among people medically transitioned at an early stage of puberty. Notably, Dr. Marci Bowers, a recent

president of WPATH and surgeon with substantial experience conducting penis-to-vagina operations, opined:

> If you've never had an orgasm pre-surgery, and then your puberty's blocked, it's very difficult to achieve that afterwards.…I consider that a big problem, actually. It's kind of an overlooked problem that in our 'informed consent' of children undergoing puberty blockers, we've in some respects overlooked that a little bit." (Shrier 2021.)

In my opinion as a psychologist and sex and couples therapist, this represents a large potential harm to future relationships and mental health to "overlook," and must be taken into consideration in any serious risk-to-benefit analysis of "safety."

195. Multiple voices have expressed concern that blocking the process of puberty during its natural time could have a negative and potentially permanent impact on brain development (Chen 2020; Hembree 2017 at 3874; Cass 2024a at 178; DHHS at 70.) As Chen (2020) observed:

> [I]t is possible these effects are temporary, with youth 'catching up'…However, pubertal suppression may prevent key aspects of development during a sensitive period of brain organization. Neurodevelopmental impacts might emerge over time, akin to the 'late effects' cognitive findings associated with certain [other] oncology treatments. (Chen 2020 at 249.)

Chen (2020) noted that no substantial studies have been conducted to identify such impacts outside "two small studies" (at 248) with conflicting results. I have not identified any systematic review of neurodevelopment or cognitive capacity.

196. University College London Professor Sallie Baxendale attempted to conduct a systematic review about whether puberty-blockers' supposed reversibility includes brain development: Unlike the visible features of growth of the body, brain development in mammals is characterized by critical periods and windows of plasticity. The sequential, time-limited sensitivities to imprinting among these features during pubertal development predict that the effects of altering the timing of the neurodevelopmental critical periods, or biological "windows

of opportunity", would not be reversible. After finding that there existed insufficient studies of puberty-blockers on the neurodevelopment among gender dysphoric youth, Dr. Baxendale reviewed the analogous research on laboratory animals (11 studies) and the few neuropsychological studies of puberty-blockers on children with precocious puberty (five studies). (Baxendale 2023.) In the animal research:

> The results from these studies indicate that treatment with a GnRH antagonist/agonist has a detrimental impact on learning and the development of social behaviours and responses to stress in mammals….There is no evidence in the animal literature that these effects are reversible following discontinuation of treatment. (Baxendale 2023 at 1159–1160.)

Studies of human children with central precocious puberty showed lower scores on IQ testing, with an effect sizes of d = –0.5 ("moderate") or more in some single case studies; however, the small samples and large proportions of people dropping out of the studies prevent firm conclusions.

197. A related concern is that by slowing or preventing stages of neural development, puberty blockers may impair precisely the maturing of cognitive capabilities that would be necessary to evaluation of, and meaningful informed consent to, the type of life-changing impacts that accompany cross-sex hormones.

198. Studies of effects on bone health were included in the systematic reviews by Sweden, Finland, and England. *The New York Times* also recently commissioned its own independent review of the available studies. (Twohey & Jewett 2022.) These reviews all identified subsets of the same group of eight studies of bone health. (Carmichael 2021; Joseph 2019; Klink 2015; Navabi 2021; Schagen 2020; Stoffers 2019; van der Loos 2021; Vlot 2017.) These studies repeatedly arrived at the same conclusion. As described by *The New York Times* review:

> [I]t's increasingly clear that the drugs are associated with deficits in bone development. During the teen years, bone density typically surges by about 8 to 12 percent a year. The analysis commissioned by *The Times* examined seven studies

> from the Netherlands, Canada and England involving about 500 transgender teens from 1998 through 2021. Researchers observed that while on blockers, the teens did not gain any bone density, on average—and lost significant ground compared to their peers.[5] (Twohey & Jewett 2022.)

199. There is some evidence that some of these losses of bone health are regained in some of these youth when cross-sex hormones are later administered. The rebounding appears to be limited to female-to-male cases, while bone development remains deficient among male-to-female cases.

200. The long-term effects of the deficient bone growth of people who undergo hormonal interventions at puberty remain unstudied. The trajectory of bone quality over the human lifetime includes decreases in bone strength during aging in later adulthood. Because these individuals may enter their senior years with already deficient bone health, greater risks of fracture and other issues are expectable in the long term. As the *New York Times'* analysts summarized, "That could lead to heightened risk of debilitating fractures earlier than would be expected from normal aging—in their 50s instead of 60s." Such harms, should they occur, would not be manifest during the youth and younger adulthood of these individuals.

201. There does not exist an evidence-based method demonstrated to prevent these harms. The recommendations offered by groups endorsing puberty blockers are quite limited. As summarized by *The Times:*

> A full accounting of blockers' risk to bones is not possible. While the Endocrine Society recommends baseline bone scans and then repeat scans every one to two years for trans youths, WPATH and the American Academy of Pediatrics provide little guidance about whether to do so. Some doctors require regular scans and recommend calcium and exercise to help to protect bones; others do not. Because most treatment is provided outside of research studies, there's little public documentation of outcomes. (Twohey & Jewett 2022.)

[5] The eighth study was Lee 2020, which reported the same deficient bone development.

B. In adulthood, long-term hormone use is linked to poor health indicators and greater frequencies of multiple diseases, and significant proportions of genital surgeries have surgical complications and urinary defects.

202. Minors undergoing social transition of gender are very likely to proceed to medical transition, and the maintenance of the medicalized status continues for life. Thus, the implications for one's health in adulthood are relevant to decisions about embarking on a trajectory of transition, now being made in childhood.

203. Because cross-sex hormones have been used with transgender adults for many years, much more evidence available about their effects in adults than in minors (reviewed below). Because adults who undergo medical transition have already completed puberty, there is little equivalent evidence for the use of puberty-blocking medication in adults, however. Although this class of drugs (gonadotropin releasing hormone agonists) is used in adults to treat hormone-dependent cancers or for sex-drive reduction in sex offenders (i.e., "chemical castration"), these situations do not involve the prevention of the natural sexual, neurological, and physical maturation process.

204. Because of the role of sex hormones in cardiovascular disease and differences between males and females in such diseases, researchers from the Dutch Centre of Expertise on Gender Dysphoria conducted a systematic review, *Cardiovascular disease in transgender people* (van Zijverden 2024). This peer-reviewed study included not only a systematic review of all other studies of the topic, but also a *meta-analysis* (an advanced type of analysis that statistically combines multiple studies) to analyze of rates of stroke, myocardial infarction, and pulmonary embolism, as well as death by any of these. The ten studies spanned a total of 14,781 male-to-female cases and 11,304 female-to-male cases. The rates of death by any of these cardiovascular diseases were 50% higher among males who transitioned to female (relative to control males

who were not transitioning), and 120% higher among cases of females who transitioned to male (relative to control females who did not transition). More specifically:

- Of the six studies of stroke among cases of males who transitioned to female, 5 found a higher incidence relative to control males, *30% greater overall;*
- Of the five studies of venous thromboembolism among cases of males who transitioned to female, all five found a higher incidence relative to control males, *120% greater overall;*
- Of the six studies of stroke among cases of females who transitioned to male, four found a higher incidence relative to control females, *30% greater overall;*
- Of the five studies of myocardial infarction among cases of females who transitioned to male, three found a higher incidence relative to control females, *70% higher overall;*
- Of the five studies of venous thromboembolism among cases of females who transitioned to male, three found a higher incidence relative to control females, *40% higher overall.*

205. The study's authors pointed out that (1) like other systematic reviews about this population, studies were at high risk of bias, especially of bias from confounding factors, (2) the research does not permit conclusions about the extent to which these outcomes are caused by hormone treatment, surgical interventions, or lifestyle issues, and (3) to the extent that hormone treatment is causing these conditions, the available evidence likely underestimates the levels of risk it poses.

206. There have been three systematic reviews of the research on the long-term effects of cross-sex hormone treatment on bone health. (Delgado-Ruiz 2019; Fighera 2019; Singh-Ospina 2017.) Overall, they reported the evidence to be of low quality, due to their observational (non-experimental) designs, small samples, and other methodology issues. They reported somewhat mixed results, with some studies showing no differences, and other studies associating treatment with estrogen with reduced bone mineral density and increased signs of osteoporosis in male-to-female transitioners.

207. The Endocrine Society, in preparation for the update of its clinical practice guidelines for gender dysphoric adults, sponsored a systematic review which identified 29 studies of the

effects of cross-sex hormone treatment on cardiovascular health. (Maraka 2017.) By the two-year follow-up mark, the testosterone administration to female-to-male transitioners was associated with increased serum triglycerides (indicating poorer health), increased low-density-lipid cholesterol (LDL; indicating poorer health), and decreased high-density-lipid cholesterol (HDL; indicating poorer health). Among male-to-female transitioners, the administration of estrogen was associated with increased serum triglycerides (indicating poorer health).

208. Regarding surgical transition, Nassiri (2021) conducted a systematic review of surgical complications following genital surgery. A total of 32 studies were identified, 23 reporting on complications of male-to-female surgeries, 10 on female-to-male, and one on both. Most studies consisted of compiling existing medical charts within surgical clinics (retrospective cohort studies). Combined, the studies examined a total of 3,463 patients' outcomes. High rates of surgical complications were found in both male-to-female but especially in female-to-male surgeries. Whereas urinary tract infections were often treatable with antibiotics, treating narrowness of the urethra or urethral opening often required more aggressive treatment, including follow-on corrective surgery.

Urethral complications with vaginoplasty or phalloplasty. (Nassiri 2020.)

Range of urethral complications reported amongst studies of male-to-female and female-to-male gender-affirming surgery. (From Nassiri 2020 at 797, Table 3.)

	Male-to-female	Female-to-Male
Urethral stricture (abnormal narrowing of the urethra)	15–23%	2.0–56%
Meatal stenosis (constriction of the urethral opening)	4.0–40%	4.7–20%
Fistulae (opening of urethra to skin, bladder, other tissue)	1.7–4.0%	5.0–60.3%
Incontinence (inability to hold urine)	4.0–19.3%	50–59%
Retention (inability to urinate)	5.4–12.8%	12–20%
Voiding dysfunction (splayed stream of urine; weak or dribbling stream)	5.6–33%	10–72.7%
Urinary tract infection	0.0–32%	3.4–45.8%

XVI. *Suicide* and *suicidality* are distinct phenomena representing distinct mental health issues, and neither is shown to be reduced by reliable evidence.

209. *Suicide* refers to completed suicides. It is substantially associated with impulsivity, using more lethal means, and being a biological male. (Freeman 2017.) *Suicidality* refers to *para*-suicidal behaviours, including suicidal ideation, threats, and gestures.

A. Suicidality is substantially more common among females, but suicide, among males. Sexual orientation is strongly associated with suicidality, but much less so with suicide.

210. Notwithstanding public misconceptions about the frequency of suicide and related behaviours, the highest rates of death by suicide are among middle-aged and elderly men in high income countries. (Turecki & Brent 2016 at 3.) Males are at three times greater risk of death by suicide than are females, whereas suicidal ideation, plans, and attempts are three times more common among females. (Klonsky 2016; Turecki & Brent 2016.) In contrast with completed suicides, the frequency of suicidal ideation, plans, and attempts is highest during adolescence and young adulthood, with reported ideation rates spanning 12.1–33%. (Borges 2010; Nock 2008.) Relative to other countries, Americans report elevated rates of each of suicidal ideation (15.6%), plans (5.4%), and attempts (5.0%). (Klonsky 2016.) Suicide attempts occur up to 30 times more frequently than completed suicides. (Bachmann 2018.) The rate of completed suicides in the U.S. population is 14.5 per 100,000 people. (WHO 2022.)

211. There is substantial research associating sexual orientation with suicidality, but much less so with completed suicide. (Haas 2014.) More specifically, there is some evidence suggesting gay adult men are more likely to die by suicide than are heterosexual men, but there is less evidence of an analogous pattern among lesbian women. Regarding suicidality, surveys of self-identified LGB Americans repeatedly report rates of suicidal ideation and suicide attempts to

be 2–7 times higher than their heterosexual counterparts. Because of this association of suicidality with sexual orientation, one must apply caution in interpreting findings allegedly about gender identity. That is, because of the overlap between people who self-identify as non-heterosexual and people who self-identify as transgender or gender diverse, correlations detected between suicidality and gender dysphoria may instead reflect (that is, be confounded by) sexual orientation. Indeed, other authors have made explicit their surprise that so many studies, purportedly of gender identity, entirely omitted measurement or consideration of sexual orientation, creating the situation where features that are claimed to be associated with gender identity instead reflect the sexual orientation of the members of the sample. (McNeil 2017.)

B. Systematic reviews consistently find transition not to be associated with reductions of suicide or suicidality in minors or adults.

212. It is repeatedly asserted that, despite the known risks and despite the lack of research into the reality or severity of unquantified risks, it is essential and ”the only ethical response” to provide medical transition to minors because medical transition is a ‘lifesaving intervention’ allegedly known to reduce the likelihood of suicide among minors who suffer from gender dysphoria. This is simply untrue. *Zero* studies have documented either social or medical transition reducing suicide rates in minors (or any other population). No methodologically sound studies have provided evidence that medical transition causes any reduction in suicidality in minors. Instead, multiple studies show tragically high rates of suicide even after medical transition, with that rate spiking several years *after* medical transition, as shown in this section.

213. Among adults who medically transition, completed suicide rates remain elevated. (Wiepjes 2020.) Systematic review of 17 studies of suicidality in transsexual adults confirmed suicide rates remain elevated even after complete transition. (McNeil 2017.) Even in Sweden’s highly tolerant culture, death by suicide is 19 times higher among post-operative transsexual

adults than among age- and sex-matched controls. (Dhejne 2011.) Among post-operative patients in the Netherlands, long-term suicide rates 6−8 times that of the general population were observed depending on age group. (Asscheman 2011 at 638.) Also studying patients in the Netherlands, Wiepjes (2020) reported what it called the "important finding [that] suicide occurs similarly" both before and after medical transition. (Wiepjes 2020 at 490.) In other words, *transition did not reduce suicide*. Likewise, a very large dataset from the U.K. GIDS clinic showed that those referred to the GIDS clinic for evaluation and treatment for gender dysphoria committed suicide at a rate five times that of the general population, both before *and after* commencement of medical transition (Biggs 2022). Reviewing the available evidence, the recent DHHS review found that "transgender individuals appear to have higher mortality risk when compared to members of the general population of similar age and sex." (DHHS 2025 at 124.) Finally, in a still-ongoing longitudinal study of U.S. patients, Chen have reported a shockingly high rate of completed suicide among adolescent subjects in the first two years *after* hormonal transition, although they provide no pre-treatment data for this population to compare against. (Chen 2023 at 245.)

214. The WPATH-commissioned systematic review of the effectiveness of puberty blockers and cross-sex hormones in minors concluded that "It was impossible to draw conclusions about the effects of [either] hormone therapy on death by suicide." (Baker 2021 at 12.) Similarly, the DHHS review found "there is no evidence that pediatric medical transition reduces the incidence of suicide, which remains, fortunately, very low." (DHHS 2025 at 16.) In short, I am aware of no respected voice that asserts that medical transition causes reduction in suicide among minors who suffer from gender dysphoria. ACLU counsel Chase Strangio agreed with me on this critical point during the oral argument in the Skrmetti case on December 3, 2024,

acknowledging in response to a question from Justice Alito that "there is no evidence in . . . the studies that [hormonal] treatment reduces completed suicide."

215. As to the distinct and far more common phenomenon of suicidality, of course, that claim is widely made. Rather than support the common hypothesis that suicidal ideation and suicidal attempts rates would decrease upon transition however, the McNeil systematic review of studies of adults instead revealed a complicated set of interrelated factors: Rates of suicidal ideation did not show the same patterns as suicide attempts, male-to-female transitioners did not show the same patterns as female-to-male transitioners, and social transition did not show the same patterns as medical transition. Importantly, the review included one study (Bauer 2015) that reported "a positive relationship between higher levels of social support from leaders (e.g., employers or teachers) and *increased* suicide attempt, which [Bauer] suggested may be due to attempts instigating increased support from those around the person, rather than causing it." (McNeil 2017 at 348.)

216. Christensen (2023) conducted the first systematic review of that research, which has now been published in the peer-reviewed journal, *Child Psychiatry & Human Development,* concluding that there is no evidence of sufficient quality to conclude that medical transition reduces rates of suicide or suicidality. Specifically, Christensen reviewed studies of preventing suicide in transgender youth ages 24 and under, including medical transition and other interventions (such as crisis intervention or online media). The review followed well-established and high-quality review procedures, including the PRISMA guidelines for data extraction, and applying a criterion-based assessment of the risk of bias posed by the included studies. In total, Christensen identified 17 studies, eight of which pertained specifically to medical transition. These eight yielded only inconsistent results, with some, but not other studies reporting

statistically significant differences in rates of suicidality among medically transitioned youth.

The review reported:

- Common flaws that created high risk of bias included self-reporting, lack of controls for comparability, small sample sizes, and lack of generalizability; (at 7.)
- Despite the pressing need for suicide prevention within this population, there has been a lack of high-quality evidence focusing on prevention of suicide amongst transgender youth; (at 7–8.)
- [N]o randomized controlled trials to date investigate the impact of interventions on rates of suicidal ideation and suicide attempt in transgender and gender diverse youth; (at 9.), and
- [T]he overall quality of evidence is low, and the risk of bias is high. There is an urgent need for high-quality studies of interventions to reduce risk of suicide amongst transgender youth. . . (at 9.)

Christensen concluded: "It is yet largely unproven what the effect of such interventions may be on rates of suicidal ideation and attempt—let alone completion—amongst transgender and gender-diverse youth" (at 9).

217. Importantly, of the 17 studies included in this review, only two existed before 2019.[6] That is, both the Endocrine Society guidelines (published in 2017) and the AAP policy (published in 2018) lack the benefit of the relevant studies nearly entirely. The published systematic review conducted by WPATH (i.e., Baker 2021) cited zero of these 17 studies.

218. Moreover, Christensen et al. reiterated the fact that there have been no RCT studies, and called for high quality studies to be conducted (without any indication that it would be unethical to conduct such RCTs). (Christensen et al. 2023 at 9.)

[6] Namely:
Lytle, M. C., Silenzio, V., Homan, C. M., Schneider, P., & Caine, E. D. (2018). Suicidal and help-seeking behaviors among youth in an online lesbian, gay, bisexual, transgender, queer, and questioning social network. *Journal of Homosexuality, 65,* 1916–1933.
Russell, S. T., Pollitt, A. M., Li, G., & Grossman, A. H. (2018) Chosen name use is linked to reduced depressive symptoms, suicidal ideation, and suicidal behavior among transgender youth. *Journal of Adolescent Health, 63,* 503–505.

219. Importantly, the 2020 Kuper cohort study of minors receiving hormone treatment found increases in each of suicidal ideation (from 25% to 38%), attempts (from 2% to 5%), and non-suicidal self-injury (10% to 17%). (Kuper 2020 at Table 5.) Research has found social support to be associated with increased suicide attempts, suggesting the reported suicidality may represent attempts to evoke more support. (Bauer 2015; Canetto 2021.)

220. Overall, the research evidence is only minimally consistent with the hypothesis that an absence or delay of transition causes mental health issues and suicide, but is very strongly consistent with the hypothesis that other mental health issues, such as Borderline Personality Disorder (BPD), cause both suicidality and unstable identity formation (including gender identity confusion). (See Sections IV.E on *Adolescent-Onset Gender Dysphoria.*) BPD is repeatedly documented to be greatly elevated among sexuality minorities (Reuter 2016; Rodriguez-Seiljas 2021; Zanarini 2021), and both suicidality and identity confusion are symptoms of BPD. Diverting psychologically distressed youth towards transition necessarily diverts youth away from receiving the psychotherapies designed for treating the issues actually causing their distress.

221. Despite the fact that mental health issues, including suicidality, are repeatedly required by clinical standards of care to be resolved before transition, threats of suicide are instead oftentimes used as the very justification for labelling transition a "medical necessity." The epidemiological evidence does not support the assertion that failing to affirm transition causes suicidality or that medical transition represents a "life-saving" procedure.

PART 5:

LACK OF EVIDENCE AND CONSENSUS

XVII. Both the *known-unknowns* and *unknown-unknowns* are acknowledged by clinical scientists, international healthcare authorities, and even transition advocates.

A. Governmental health care agencies conducting systematic reviews consistently conclude transition in minors to be *experimental.*

222. The international institutions reviewing the research repeatedly concluded that gender transition must be classed as experimental. After conducting a systematic review of the evidence of safety and effectiveness, the council responsible for the assessment of public health care services in Finland (Finland COHERE 2020) concluded, "In light of available evidence, gender reassignment of minors *is an experimental practice*." (Finland PALKO/COHERE 2020 at 9, italics added.) Sweden's research on gender transition is conducted at the Karolinska Institutet in Stockholm. In 2015, that facility registered its research on medical transition with the U.S. National Institutes for Health (NIH), noting "[H]ormonal treatment includes inhibition of one's own sex hormone production followed by treatment with testosterone or estrogen levels that are normal for the opposite sex. *Seen as experimental model,* this is a process that provides an opportunity to study the sex hormone dependent influences." (Clinicaltrials.gov.) In its policy updates in 2021, Sweden limited medicalized treatments for gender dysphoria in minors to clinical research studies approved by the Swedish national research ethics board ("EPM"). (Nainggolan 2021.) In its 2023 policy review, Norway's National Commission of Inquiry for the Health and Care Services (Ukom) explicitly recommended that "gender-affirming treatment for children and adolescents be *defined as experimental treatment."* (Ukom Norway 2023 at 6.)

223. The widely cited Dutch studies were co-conducted by Dr. Thomas Steensma. Despite being an originator and international leader of medical transition of gender dysphoric minors, Dr. Steensma stated in an interview in 2021 that he still considers it to be experimental: "Little research has yet been done on the treatment with puberty inhibitors and hormones in young

people. That is why it is also *seen as experimental."* Dr. Steensma decried other clinics for "blindly adopting our research" despite the indications that those results may not actually apply: "We don't know whether studies we have done in the past are still applicable to today. Many more children are registering, and also a different type." Steensma opined that "every doctor or psychologist who is involved in transgender care should feel the obligation to do a good pre- and post-test." (Tetelepta 2021.) Few, if any, are doing so, however.

B. Multiple other risks are suggested by preliminary research and remain unstudied, rather than ruled out.

224. The research cited by the WPATH Standards of Care (version 8) includes the evidence that children whose natural puberty started very late (top 2.3% in age) have elevated risks of multiple health issues in adulthood. (Zhu & Chan 2017.) These issues include elevations in metabolic and cardiovascular disease, lower height, and decreased bone mineral density. It is also known that undergoing puberty much later than one's peers is associated with poorer psychosocial functioning and lesser educational achievement. (Koerselman & Pekkarinen 2018.) It has not been studied whether these correlations also occur in children whose puberty is chemically delayed.

225. Epidemiological research has shown that adult women (without gender dysphoria) who undergo surgical removal of both ovaries for medical reasons have substantially elevated odds of developing Parkinson's Disease, relative to age-matched women randomly selected from the local population in an on-going epidemiological study. (Rocca 2022.) Importantly, the effect was greater among younger women (under age 43), for whom the odds were 7–8 times greater. The observed delay between removal of ovaries and the onset of Parkinson's was 26.5 years. It remains unknown whether chemically suppression of the ovaries of a biological female via

puberty blockers during adolescence followed by cross-sex hormones will have the same harmful effect.

C. The many groups acknowledging untested hypotheses, continuing unknowns, and lack of research include WPATH.

226. The current WPATH Standards of Care (version 8; Coleman 2022) side-stepped the word "experimental," which would disqualify transition from health insurance coverage. Nonetheless, the document repeatedly included synonymous terms and phrases indicating the experimental status and lack of evidence for transition (italics added):

- "The criteria in this chapter [on assessment of adults] have been significantly revised from SOC-7 to reduce requirements and unnecessary barriers to care. *It is hoped that future research will explore the effectiveness* of this model" (at S33.)
- "It primarily includes an assessment approach that uses specific criteria that are examined by [a Health Care Provider, or] HCP in close cooperation with a TGD adult and does not include randomized controlled trials or long-term longitudinal research" (at S33.)
- "While there was *limited supportive research,* this recommendation was considered to be good clinical practice as it allows a more reversible experience prior to the irreversible experience of surgery" (at S40.)
- "Due to *the limited research in this area,* clinical guidance is based primarily on individual case studies and the expert opinion of HCPs" (at S41.)
- "While available research shows consistent positive outcomes for the majority of TGD adults who choose to transition…some TGD adults may decompensate or experience a worsened condition following transition. *Little research has been conducted to systematically examine variables that correlate with poor or worsened biological, psychological, or social conditions following transition"* (at S42.)
- "Future research would shed more light on gender identity development if conducted over long periods of time with diverse cohort groups" (at S45.)
- "In addition, elevated scrotal temperatures can be associated with poor sperm characteristics, and genital tucking could theoretically affect spermatogenesis and fertility (Marsh 2019) although *there are no definitive studies evaluating these adverse outcomes.* Further *research is needed to determine the specific benefits and risks* of tucking in youth" (at S54.)
- *"There is no formal research evaluating* how menstrual suppression may impact gender incongruence and/or dysphoria" (at S54−S55.)
- "Currently, there are only preliminary results from retrospective studies evaluating transgender adults and the decisions they made when they were young regarding the

consequences of medical-affirming treatment on reproductive capacity. It is important not to make assumptions about what future adult goals an adolescent may have" (at S57.)

- *"Only limited empirical research exists* to evaluate such interventions" (at S75.)
- *"Research has not been conclusive* about when in the life span such detransition is most likely to occur, or what percentage of youth will eventually experience gender fluidity and/or a desire to detransition" (at S77.)
- "Research on pitch-lowering surgeries is limited" (at S139.)
- "The number and quality of research studies evaluating pitch-lowering surgeries are currently insufficient" (at S141.)
- "To date, *research on the long-term impact of [Gender Affirming Hormone Treatment or] GAHT on cancer risk is limited*…We have *insufficient evidence* to estimate the prevalence of cancer of the breast or reproductive organs among TGD populations (Joint et al., 2018.)" (at S144.)
- "Contraceptive *research gaps within this population are profound. No studies have examined* how the use of exogenous androgens (e.g., testosterone) may modify the efficacy or safety profile of hormonal contraceptive methods (e.g., combined estrogen and progestin hormonal contraceptives, progestin-only based contraceptives) or non-hormonal and barrier contraceptive methods" (at S162.)
- "TGD individuals AFAB undergoing abortion still represents a critical gap in research" (at S162.)
- "The effects of current TGD-related medical treatments on sexuality are heterogeneous (Ozer et al., 2022; T'Sjoen et al., 2020), and *there has been little research on the sexuality of TGD adolescents"* (at S163.)
- "While sex-positive approaches to counseling and treatment for sexual difficulties experienced by TGD individuals have been proposed (Fielding, 2021; Jacobson et al., 2019; Richards, 2021), to date *there is insufficient research on the effectiveness of such interventions"* (at S163.)

D. WHO excluded minors from clinical guidelines, due to lack of evidence.

227. In December, 2023, the World Health Organization announced developing a guideline for the health services and legal recognition of self-determined gender identity. (WHO 2023). In January 2024, WHO then announced the guideline would no longer pertain to minors, because of the unknowns:

> Why will the guideline only cover adults and not also children or adolescents?
>
> The scope will cover adults only and not address the needs of children and adolescents, because on review, the evidence base for children and adolescents is

limited and variable regarding the longer-term outcomes of gender affirming care for children and adolescents. (World Health Organization 2024.)

XVIII. There is no consensus regarding gender transition in minors beyond acknowledgment of its many unknowns and lack of reliable evidence.

228. Health care providers and the national health care systems of several countries have noted not only the lack of professional consensus in the medical and clinical communities regarding appropriate responses to gender dysphoria in children and adolescents, but also the lack of free discussion of the issue.

229. Any seeming consensus is limited to U.S.-based organizations, increasingly isolated from the international consensus. Whereas public health care ministries in Europe shifted from affirmation-oriented to heavily restrictive policies, American professional associations instead have failed to employ the evidence-based practice methods they profess and failed to conduct the systematic reviews of research they otherwise use. Their leadership have instead reflected professional guild interests, limiting professional liability, maximizing profitability, resisting governmental regulation, and ideological pre-commitment.

230. When interviewed or surveyed in contexts without fear of reprisal, health care professionals and researchers report a "cancellation culture" blocking meaningful expressions of views or open debate. England's *Cass Report* included interviews with people representing the wide range of stakeholders in public policy. In the *British Medical Journal,* Dr. Cass noted:

> [M]any people are afraid to express an opinion; this is a dangerous situation for both doctors and patients. Indeed, in my 40 years of medical practice it proved to be the first time that it was not even possible to get individuals with the most polarised views into a room together.[…]A 2015 study[3] approached 17 multi-professional treatment teams worldwide to determine their views on the use of early intervention with puberty blockers. They identified seven themes on which there were widely disparate views, with two being fundamental to attitudes to treatment: 'the (non-) availability of an explanatory model for gender dysphoria' and 'the nature of gender dysphoria (normal variation, social construct or [mental] illness)'. (Cass 2024a at 1-2.)

Footnote-3 of that passage referred to:

Vrouenraets, L. J. J. J., Fredriks, A. M., Hannema, S. E., Cohen-Kettenis, P. T., & de Vries, M. C. (2015). Early medical treatment of children and adolescents with gender dysphoria: An empirical ethical study. *Journal of Adolescent Health, 57,* 367–373.

The head of the youth gender clinic in Finland, Dr. Kaltiala, expressed observing the same phenomenon as did Dr. Cass:

> I understood this silence. Anyone, including physicians, researchers, academics, and writers, who raised concerns about the growing power of gender activists, and about the effects of medically transitioning young people, were subjected to organized campaigns of vilification and threats to their careers. (Kaltiala 2023)

231. The peer-reviewed systematic review of social transition outcomes explicitly noted the lack of consensus with regard to that issue specifically:

> *Social transition among children is contentious with diverging views between clinicians* as to its role and potential benefits or harms. (Hall 2024 at 1, italics added.)

> *Social transition has become the subject of clinical and academic debate,* mainly centred on whether social transition is an active intervention with potential for benefits as well as risks or longer term consequences. […] The concern then is that if children undergo an early social transition they may find it difficult to socially revert to their former gender.[2] By extension, some children may also then unnecessarily pursue medical and surgical[9] interventions, so raising concerns about iatrogenic harm. (Hall 2024 at 6, italics added.)

The footnotes of that passage referred to:

Steensma, T. D., & Cohen-Kettenis P. T. (2011). Gender transitioning before puberty. *Archives of Sexual Behavior, 40,* 649–50.

Zucker, K. J. (2020). Debate: Different strokes for different folks. *Child and Adolescent Mental Health, 25,* 36–7.

The peer-reviewed systematic review of clinical practice guidelines indicated the lack of consensus among the guidelines:

> Published guidance recommends a care pathway for children and adolescents experiencing gender dysphoria/incongruence for which there is limited evidence about benefits and risks, and long-term effects. *Divergence of recommendations in recent guidelines suggest there is no current consensus about the purpose and process of assessment, or about when psychosocial care or hormonal interventions*

> *should be offered and on what basis.* (Taylor, Hall, Heathcote 2024b at 8, italics added.)

In summing up the conclusions of the multiple systematic reviews and other evidence gathered, the Cass Report emphasized the lack of consensus both regarding social transition and medical transition:

> *There remains diversity of opinion* as to how best to treat these children and young people. The evidence is weak and clinicians have told us they are unable to determine with any certainty which children and young people will go on to have an enduring trans identity. (Cass 2024a at 22, italics added)

> *There are different views on the benefit versus the harms of early social transition.* Some consider that it may improve mental health for children experiencing gender-related distress, while others consider that it makes it more likely that a child's gender dysphoria, which might have resolved at puberty, has an altered trajectory potentially, culminating in life-long medical intervention. (Cass 2024a at 31, italics added)

232. Upon the release of the Cass Report and its systematic reviews, England's National Health Service (NHS) accepted and supported the Report's conclusions.[7] One professional group in that country, the British Medical Association (BMA), initially opposed implementation of the Review's conclusions; hundreds of physicians, including clinical leaders in the NHS and former presidents of medical royal college, resigned from the BMA in protest (Hayward 2024), and the BMA ultimately withdrew its opposition to the conclusions and recommendations of the Cass Report (Barnes 2024).

233. The *United Kingdom Council for Psychotherapy* (UKCP) is the national registering body for psychotherapists in the UK, comprising 80 member organizations. It is the primary organization in that country for the education, training, accreditation, and regulation for

[7] See also: https://www.england.nhs.uk/long-read/nhs-englands-response-to-the-final-report-of-the-independent-review-of-gender-identity-services-for-children-and-young-people/

psychotherapy and psychotherapeutic counselling. That body recently issued a statement explaining its guidance for psychotherapy with gender dysphoric minors:

> Psychotherapists and psychotherapeutic counsellors who hold [gender critical] views are likely to believe that the clinically most appropriate approach to working therapeutically with individuals who present with gender dysphoria, particularly children and young people, is exploratory therapy[…]*The UKCP continues to recognise the fact that there are different professional beliefs on many differing topics within the psychotherapeutic community.* (United Kingdom Council for Psychotherapy 2023, italics added.)

234. The American Psychological Association appointed a task force to develop their *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People,* but noted:

> When the Task Force discovered a *lack of professional consensus,* every effort was made to include divergent opinions in the field relevant to that issue" (American Psychological Association 2015 at 834, italics added.)

235. In revising its recommendations to reverse its policies and to restrict gender transition, Sweden's National Board of Health and Welfare explicated the factors that shifted its assessment of the risk-to-benefits ratio, which included, "*The experience-based knowledge of participating experts is less uniform than it was in 2015."* (National Board of Health and Welfare. (2022, Dec.)

236. According to the Dutch research team, widely recognized as the international leaders on these issues:

> The Endocrine Society and the World Professional Association for Transgender Health published guidelines for the treatment of adolescents with gender dysphoria (GD). The guidelines recommend the use of gonadotropin-releasing hormone agonists in adolescence to suppress puberty. However, in actual practice, *no consensus exists* whether to use these early medical interventions…Strikingly, the *guidelines are debated both for being too liberal and for being too limiting*. (Vrouenraets 2015 at 367, italics added).

237. The European Academy of Paediatrics published its statement on the clinical management of children and adolescents with gender dysphoria in 2024, noting:

> There is *an ongoing, increasingly polarised and vituperative debate* about how our current diverse society should treat transgender individuals (especially children) and how their rights should be respected. (Brierly 2024 at 2, italics added.)
>
> The optimal management of transgender children (both prepubertal and adolescent) remains *an area of active controversy* and increasingly politicised debate. (Brierly 2024 at 2, italics added.)
>
> [C]oncerns about the practical difficulties of doing so and doubts about long-term outcomes have led to *international reconsideration of this [gender affirming] approach.* (Brierly 2024 at 3, italics added.)

238. In developing their statement, the Royal Australian and New Zealand College of Psychiatrists concluded:

> Evidence and *professional opinion is divided* as to whether an affirmative approach should be taken in relation to treatment of transgender children or whether other approaches are more appropriate". (Royal Australian & New Zealand College of Psychiatrists 2021, italics added.)

239. With respect to their own area of expertise, the American Society of Plastic Surgeons issued the following statement in 2024:

> ASPS currently understands that there is considerable uncertainty as to the long-term efficacy for the use of chest and genital surgical interventions for the treatment of adolescents with gender dysphoria, and the existing evidence base is viewed as low quality/low certainty. (American Society of Plastic Surgeons 2024)

240. The recent 2025 DHHS review expressed the same observation:

> [S]ystematic reviews of the evidence have revealed deep uncertainty about the purported benefits of these interventions. The controversies surrounding the medical transition of minors *extend beyond scientific debate; they are deeply cultural and political*. Public discourse is dominated by intensely polarizing narratives. (At 10.)

241. The lack of consensus and that there exists enormous controversy and disagreement among experts is itself the topic of major media coverage. Recent examples include:

> Bazelon, E. (2022, June 15). The battle over gender therapy. *The New York Times Magazine.* Available from https://www.nytimes.com/2022/06/15/magazine/gender-therapy.html

Block, J. (2023). Gender dysphoria in young people is rising—and so is professional disagreement. [Feature BMJ Investigation] *British Medical Journal, 380,* 382. https://doi.org/10.1136/bmj.p382

Kaufman, E. (July 21, 2023) Is transgender care for children based on evidence?: Experts and readers debate the Endocrine Society's guidelines for 'gender-affirming care.' *Wall Street Journal.* Available from https://www.wsj.com/ articles/is-transgender-care-for-children-based-on-evidence-83315077?mod =WTRN_pos1&cx_testId=3&cx_testVariant=cx_171&cx_artPos=0

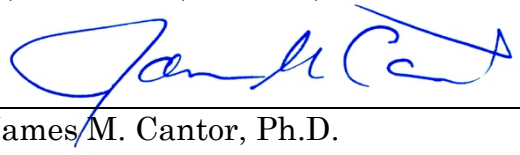
Klotz, F. (2023). A teen gender-care debate is spreading across Europe. *The Atlantic.* Available from https://www.theatlantic.com/health/archive/2023/04/gender-affirming-care-debate-europe-dutch-protocol/673890/?utm_source=twitter&utm_medium=social&utm_campaign=share

McDowell, M. (2023, March 8). Achieving a caring consensus on gender issues requires a broad national discussion. *The Irish Times*. Available from https://www.irishtimes.com/opinion/2023/03/08/achieving-a-caring-consensus-on-gender-issues-requires-a-broad-national-discussion/

In short, regardless of anyone's view on these issues, there is no meaningful way to claim there exists a consensus in the relevant medical or professional communities.

I declare under 28 U.S.C. § 1746 and under penalty of perjury under the laws of the United States of America that this declaration is true and correct.

Executed this 29th day of May, 2025, at Toronto, Ontario, Canada.



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Appendix

Curriculum Vita

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EDUCATION

Postdoctoral Fellowship Jan., 2000–May, 2004
Centre for Addiction and Mental Health • Toronto, Canada

Doctor of Philosophy Sep., 1993–Jun., 2000
Psychology • McGill University • Montréal, Canada

Master of Arts Sep., 1990–Jan., 1992
Psychology • Boston University • Boston, MA

Bachelor of Science Sep. 1984–Aug., 1988
Interdisciplinary Science • Rensselaer Polytechnic Institute • Troy, NY
Concentrations: Computer science, mathematics, physics

EMPLOYMENT HISTORY

Director Feb., 2017–Present
Toronto Sexuality Centre • Toronto, Canada

Senior Scientist (Inaugural Member) Aug., 2012–May, 2018
Campbell Family Mental Health Research Institute
Centre for Addiction and Mental Health • Toronto, Canada

Senior Scientist Jan., 2012–May, 2018
Complex Mental Illness Program
Centre for Addiction and Mental Health • Toronto, Canada

Head of Research Nov., 2010–Apr. 2014
Sexual Behaviours Clinic
Centre for Addiction and Mental Health • Toronto, Canada

Research Section Head Dec., 2009–Sep. 2012
Law & Mental Health Program
Centre for Addiction and Mental Health • Toronto, Canada

Psychologist May, 2004–Dec., 2011
Law & Mental Health Program
Centre for Addiction and Mental Health • Toronto, Canada

Clinical Psychology Intern Sep., 1998–Aug., 1999
Centre for Addiction and Mental Health • Toronto, Canada

Teaching Assistant Sep., 1993–May, 1998
Department of Psychology
McGill University • Montréal, Canada

Pre-Doctoral Practicum Sep., 1993–Jun., 1997
Sex and Couples Therapy Unit
Royal Victoria Hospital • Montréal, Canada

Pre-Doctoral Practicum May, 1994–Dec., 1994
Department of Psychiatry
Queen Elizabeth Hospital • Montréal, Canada

ACADEMIC APPOINTMENTS

Associate Professor Jul., 2010–May, 2019
Department of Psychiatry
University of Toronto Faculty of Medicine • Toronto, Canada

Adjunct Faculty Aug. 2013–Jun., 2018
Graduate Program in Psychology
York University • Toronto, Canada

Associate Faculty (Hon) Oct., 2017–Dec., 2017
School of Behavioural, Cognitive & Social Science
University of New England • Armidale, Australia

Assistant Professor Jun., 2005–Jun., 2010
Department of Psychiatry
University of Toronto Faculty of Medicine • Toronto, Canada

Adjunct Faculty Sep., 2004–Jun., 2010
Clinical Psychology Residency Program
St. Joseph's Healthcare • Hamilton, Canada

PUBLICATIONS

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6. Cantor, J. M. (2018). Can pedophiles change? *Current Sexual Health Reports, 10,* 203–206. doi: 10.1007/s11930-018-0165-2
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13. Stephens, S., Leroux, E., Skilling, T., Cantor, J. M., & Seto, M. C. (2017). A taxometric analysis of pedophilia utilizing self-report, behavioral, and sexual arousal indicators. *Journal of Abnormal Psychology, 126,* 1114–1119. doi: 10.1037/abn0000291
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PUBLICATIONS

LETTERS AND COMMENTARIES

1. Cantor, J. M. (2015). Research methods, statistical analysis, and the phallometric test for hebephilia: Response to Fedoroff [Editorial Commentary]. *Journal of Sexual Medicine, 12,* 2499–2500. doi: 10.1111/jsm.13040
2. Cantor, J. M. (2015). In his own words: Response to Moser [Editorial Commentary]. *Journal of Sexual Medicine, 12,* 2502–2503. doi: 10.1111/jsm.13075
3. Cantor, J. M. (2015). Purported changes in pedophilia as statistical artefacts: Comment on Müller et al. (2014). *Archives of Sexual Behavior, 44,* 253–254. doi: 10.1007/s10508-014-0343-x
4. McPhail, I. V., & Cantor, J. M. (2015). Pedophilia, height, and the magnitude of the association: A research note. *Deviant Behavior, 36,* 288–292. doi: 10.1080/01639625.2014.935644
5. Soh, D. W., & Cantor, J. M. (2015). A peek inside a furry convention [Letter to the Editor]. *Archives of Sexual Behavior, 44,* 1–2. doi: 10.1007/s10508-014-0423-y
6. Cantor, J. M. (2012). Reply to Italiano's (2012) comment on Cantor (2011) [Letter to the Editor]. *Archives of Sexual Behavior, 41,* 1081–1082. doi: 10.1007/s10508-012-0011-y
7. Cantor, J. M. (2012). The errors of Karen Franklin's *Pretextuality* [Commentary]. *International Journal of Forensic Mental Health, 11,* 59–62. doi: 10.1080/14999013.2012.672945
8. Cantor, J. M., & Blanchard, R. (2012). White matter volumes in pedophiles, hebephiles, and teleiophiles [Letter to the Editor]. *Archives of Sexual Behavior, 41, 749–752.* doi: 10.1007/s10508-012-9954-2
9. Cantor, J. M. (2011). New MRI studies support the Blanchard typology of male-to-female transsexualism [Letter to the Editor]. *Archives of Sexual Behavior, 40*, 863–864. doi: 10.1007/s10508-011-9805-6
10. Zucker, K. J., Bradley, S. J., Own-Anderson, A., Kibblewhite, S. J., & Cantor, J. M. (2008). Is gender identity disorder in adolescents coming out of the closet? *Journal of Sex and Marital Therapy, 34,* 287–290.
11. Cantor, J. M. (2003, Summer). Review of the book *The Man Who Would Be Queen* by J. Michael Bailey. *Newsletter of Division 44 of the American Psychological Association, 19*(2), 6.
12. Cantor, J. M. (2003, Spring). What are the hot topics in LGBT research in psychology? *Newsletter of Division 44 of the American Psychological Association, 19*(1), 21–24.
13. Cantor, J. M. (2002, Fall). Male homosexuality, science, and pedophilia. *Newsletter of Division 44 of the American Psychological Association, 18*(3), 5–8.
14. Cantor, J. M. (2000). Review of the book *Sexual Addiction: An Integrated Approach. Journal of Sex and Marital Therapy, 26*, 107–109.

EDITORIALS

1. Cantor, J. M. (2012). Editorial. *Sexual Abuse: A Journal of Research and Treatment, 24*.

2. Cantor, J. M. (2011). Editorial note. *Sexual Abuse: A Journal of Research and Treatment, 23,* 414.
3. Barbaree, H. E., & Cantor, J. M. (2010). Performance indicates for *Sexual Abuse: A Journal of Research and Treatment* (SAJRT) [Editorial]. *Sexual Abuse: A Journal of Research and Treatment, 22,* 371–373.
4. Barbaree, H. E., & Cantor, J. M. (2009). *Sexual Abuse: A Journal of Research and Treatment* performance indicators for 2007 [Editorial]. *Sexual Abuse: A Journal of Research and Treatment, 21,* 3–5.
5. Zucker, K. J., & Cantor, J. M. (2009). Cruising: Impact factor data [Editorial]. *Archives of Sexual Research, 38,* 878–882.
6. Barbaree, H. E., & Cantor, J. M. (2008). Performance indicators for *Sexual Abuse: A Journal of Research and Treatment* [Editorial]. *Sexual Abuse: A Journal of Research and Treatment, 20,* 3–4.
7. Zucker, K. J., & Cantor, J. M. (2008). The *Archives* in the era of online first ahead of print[Editorial]. *Archives of Sexual Behavior, 37,* 512–516.
8. Zucker, K. J., & Cantor, J. M. (2006). The impact factor: The *Archives* breaks from the pack [Editorial]. *Archives of Sexual Behavior, 35,* 7–9.
9. Zucker, K. J., & Cantor, J. M. (2005). The impact factor: “Goin’ up” [Editorial]. *Archives of Sexual Behavior, 34,* 7–9.
10. Zucker, K., & Cantor, J. M. (2003). The numbers game: The impact factor and all that jazz [Editorial]. *Archives of Sexual Behavior, 32,* 3–5.

FUNDING HISTORY

Principal Investigators:	Doug VanderLaan, Meng-Chuan Lai
Co-Investigators:	James M. Cantor, Megha Mallar Chakravarty, Nancy Lobaugh, M. Palmert, M. Skorska
Title:	*Brain function and connectomics following sex hormone treatment in adolescents experience gender dysphoria*
Agency:	Canadian Institutes of Health Research (CIHR), Behavioural Sciences-B-2
Funds:	$650,250 / 5 years (July, 2018–August, 2020)
Principal Investigator:	Michael C. Seto
Co-Investigators:	Martin Lalumière , James M. Cantor
Title:	*Are connectivity differences unique to pedophilia?*
Agency:	University Medical Research Fund, Royal Ottawa Hospital
Funds:	$50,000 / 1 year (January, 2018–March, 2022)
Principal Investigator:	Lori Brotto
Co-Investigators:	Anthony Bogaert, James M. Cantor, Gerulf Rieger
Title:	*Investigations into the neural underpinnings and biological correlates of asexuality*
Agency:	Natural Sciences and Engineering Research Council (NSERC), Discovery Grants Program
Funds:	$195,000 / 5 years (April, 2017–March, 2022)
Principal Investigator:	Doug VanderLaan
Co-Investigators:	Jerald Bain, James M. Cantor, Megha Mallar Chakravarty, Sofia Chavez, Nancy Lobaugh, and Kenneth J. Zucker
Title:	*Effects of sex hormone treatment on brain development: A magnetic resonance imaging study of adolescents with gender dysphoria*
Agency:	Canadian Institutes of Health Research (CIHR), Transitional Open Grant Program
Funds:	$952,955 / 5 years (September, 2015–August, 2020)
Principal Investigator:	James M. Cantor
Co-Investigators:	Howard E. Barbaree, Ray Blanchard, Robert Dickey, Todd A. Girard, Phillip E. Klassen, and David J. Mikulis
Title:	*Neuroanatomic features specific to pedophilia*
Agency:	Canadian Institutes of Health Research (CIHR)
Funds:	$1,071,920 / 5 years (October, 2008–September, 2014)
Principal Investigator:	James M. Cantor
Title:	*A preliminary study of fMRI as a diagnostic test of pedophilia*
Agency:	Dean of Medicine New Faculty Grant Competition, Univ. of Toronto
Funds:	$10,000 (July, 2008–July, 2013)

Principal Investigator:	James M. Cantor
Co-Investigator:	Ray Blanchard
Title:	*Morphological and neuropsychological correlates of pedophilia*
Agency:	Canadian Institutes of Health Research (CIHR)
Funds:	$196,902 / 3 years (April, 2006–March, 2009)

KEYNOTE AND INVITED ADDRESSES

1. Cantor, J. M. (2025, May 15). *Paedophilia: Nature or nurture?* UK National Organisation for the Treatment of Abuse. Belfast, Northern Ireland.
2. Cantor, J. M. (2024, July 7). *Treating Gender Dysphoria in minors: Latest developments in science and policy.* Alliance Defending Freedom, Religious Liberties Summit. Fort Meyers, Florida.
3. Cantor, J. M. (2024, April 19). *Treating Gender Dysphoria in minors: Latest developments in science and policy.* Alliance Defending Freedom, Senior Staff Retreat. Vail, Colorado.
4. Cantor, J. M. (2022, December 5). The science of gender dysphoria and transgenderism. Lund University, Latvia. https://files.fm/f/4bzznufvb
5. Cantor, J. M. (2022, July 20). *Suicidality research on minors with gender dysphoria.* Alliance Defending Freedom, Religious Liberties Summit. Atlanta, Georgia.
6. Cantor, J. M. (2022, April 9). *Suicidality research on minors with gender dysphoria.* Alliance Defending Freedom, Senior Staff Retreat. Reno, Nevada.
7. Cantor, J. M. (2021, September 28). *No topic too tough for this expert panel: A year in review.* Plenary Session for the 40th Annual Research and Treatment Conference, Association for the Treatment of Sexual Abusers.
8. Cantor, J. M. (2019, May 1). *Introduction and Q&A for 'I, Pedophile.'* StopSO 2nd Annual Conference, London, UK.
9. Cantor, J. M. (2018, August 29). *Neurobiology of pedophilia or paraphilia? Towards a 'Grand Unified Theory' of sexual interests.* Keynote address to the International Association for the Treatment of Sexual Offenders, Vilnius, Lithuania.
10. Cantor, J. M. (2018, August 29). *Pedophilia and the brain: Three questions asked and answered.* Preconference training presented to the International Association for the Treatment of Sexual Offenders, Vilnius, Lithuania.
11. Cantor, J. M. (2018, April 13). *The responses to* I, Pedophile *from We, the people.* Keynote address to the Minnesota Association for the Treatment of Sexual Abusers, Minneapolis, Minnesota.
12. Cantor, J. M. (2018, April 11). *Studying atypical sexualities: From vanilla to* I, Pedophile. Full day workshop at the Minnesota Association for the Treatment of Sexual Abusers, Minneapolis, Minnesota.
13. Cantor, J. M. (2018, January 20). *How much sex is enough for a happy life?* Invited lecture to the University of Toronto Division of Urology Men's Health Summit, Toronto, Canada.
14. Cantor, J. M. (2017, November 2). Pedophilia as a phenomenon of the brain: Update of evidence and the public response. Invited presentation to the 7th annual SBC education event, Centre for Addiction and Mental Health, Toronto, Canada.
15. Cantor, J. M. (2017, June 9). Pedophilia being in the brain: The evidence and the public's reaction. Invited presentation to *SEXposium at the ROM: The science of love and sex,* Toronto, Canada.
16. Cantor, J. M., & Campea, M. (2017, April 20). *"I, Pedophile" showing and discussion.* Invited presentation to the 42nd annual meeting of the Society for Sex Therapy and Research, Montréal, Canada.
17. Cantor, J. M. (2017, March 1). *Functional and structural neuroimaging of pedophilia:*

Consistencies across methods and modalities. Invited lecture to the Brain Imaging Centre, Royal Ottawa Hospital, Ottawa, Canada.

18. Cantor, J. M. (2017, January 26). *Pedophilia being in the brain: The evidence and the public reaction.* Inaugural keynote address to the University of Toronto Sexuality Interest Network, Toronto, Ontario, Canada.
19. Cantor, J. M. (2016, October 14). *Discussion of CBC's "I, Pedophile."* Office of the Children's Lawyer Educational Session, Toronto, Ontario, Canada.
20. Cantor, J. M. (2016, September 15). *Evaluating the risk to reoffend: What we know and what we don't.* Invited lecture to the Association of Ontario Judges, Ontario Court of Justice Annual Family Law Program, Blue Mountains, Ontario, Canada. [Private link only: https://vimeo.com/239131108/3387c80652]
21. Cantor, J. M. (2016, April 8). *Pedophilia and the brain: Conclusions from the second generation of research.* Invited lecture at the 10th annual Risk and Recovery Forensic Conference, Hamilton, Ontario.
22. Cantor, J. M. (2016, April 7). *Hypersexuality without the hyperbole.* Keynote address to the 10th annual Risk and Recovery Forensic Conference, Hamilton, Ontario.
23. Cantor, J. M. (2015, November). *No one asks to be sexually attracted to children: Living in Daniel's World.* Grand Rounds, Centre for Addiction and Mental Health. Toronto, Canada.
24. Cantor, J. M. (2015, August). *Hypersexuality: Getting past whether "it" is or "it" isn't.* Invited address at the 41st annual meeting of the International Academy of Sex Research. Toronto, Canada.
25. Cantor, J. M. (2015, July). *A unified theory of typical and atypical sexual interest in men: Paraphilia, hypersexuality, asexuality, and vanilla as outcomes of a single, dual opponent process.* Invited presentation to the 2015 Puzzles of Sexual Orientation conference, Lethbridge, AL, Canada.
26. Cantor, J. M. (2015, June). *Hypersexuality.* Keynote Address to the Ontario Problem Gambling Provincial Forum. Toronto, Canada.
27. Cantor, J. M. (2015, May). *Assessment of pedophilia: Past, present, future.* Keynote Address to the International Symposium on Neural Mechanisms Underlying Pedophilia and Child Sexual Abuse (NeMUP). Berlin, Germany.
28. Cantor, J. M. (2015, March). *Prevention of sexual abuse by tackling the biggest stigma of them all: Making sex therapy available to pedophiles.* Keynote address to the 40th annual meeting of the Society for Sex Therapy and Research, Boston, MA.
29. Cantor, J. M. (2015, March. *Pedophilia: Predisposition or perversion?* Panel discussion at Columbia University School of Journalism. New York, NY.
30. Cantor, J. M. (2015, February). *Hypersexuality.* Research Day Grand Rounds presentation to Ontario Shores Centre for Mental Health Sciences, Whitby, Ontario, Canada.
31. Cantor, J. M. (2015, January). *Brain research and pedophilia: What it means for assessment, research, and policy.* Keynote address to the inaugural meeting of the Netherlands Association for the Treatment of Sexual Abusers, Utrecht, Netherlands.
32. Cantor, J. M. (2014, December). *Understanding pedophilia and the brain: Implications for safety and society.* Keynote address for The Jewish Community Confronts Violence and Abuse: Crisis Centre for Religious Women, Jerusalem, Israel.
33. Cantor, J. M. (2014, October). *Understanding pedophilia & the brain.* Invited full-day workshop for the Sex Offender Assessment Board of Pennsylvania, Harrisburg, PA.

34. Cantor, J. M. (2014, September). *Understanding neuroimaging of pedophilia: Current status and implications.* Invited lecture presented to the Mental Health and Addition Rounds, St. Joseph's Healthcare, Hamilton, Ontario, Canada.
35. Cantor, J. M. (2014, June). *An evening with Dr. James Cantor.* Invited lecture presented to the Ontario Medical Association, District 11 Doctors' Lounge Program, Toronto, Ontario, Canada.
36. Cantor, J. M. (2014, April). *Pedophilia and the brain.* Invited lecture presented to the University of Toronto Medical Students lunchtime lecture. Toronto, Ontario, Canada.
37. Cantor, J. M. (2014, February). *Pedophilia and the brain: Recap and update.* Workshop presented at the 2014 annual meeting of the Washington State Association for the Treatment of Sexual Abusers, Cle Elum, WA.
38. Cantor, J. M., Lafaille, S., Hannah, J., Kucyi, A., Soh, D., Girard, T. A., & Mikulis, D. M. (2014, February). *Functional connectivity in pedophilia.* Neuropsychiatry Rounds, Toronto Western Hospital, Toronto, Ontario, Canada.
39. Cantor, J. M. (2013, November). *Understanding pedophilia and the brain: The basics, the current status, and their implications.* Invited lecture to the Forensic Psychology Research Centre, Carleton University, Ottawa, Canada.
40. Cantor, J. M. (2013, November). *Mistaking puberty, mistaking hebephilia.* Keynote address presented to the 32nd annual meeting of the Association for the Treatment of Sexual Abusers, Chicago, IL.
41. Cantor, J. M. (2013, October). *Understanding pedophilia and the brain: A recap and update.* Invited workshop presented at the 32nd annual meeting of the Association for the Treatment of Sexual Abusers, Chicago, IL.
42. Cantor, J. M. (2013, October). *Compulsive-hyper-sex-addiction: I don't care what we all it, what can we* do*?* Invited address presented to the Board of Examiners of Sex Therapists and Counselors of Ontario, Toronto, Ontario, Canada.
43. Cantor, J. M. (2013, September). *Neuroimaging of pedophilia: Current status and implications.* McGill University Health Centre, Department of Psychiatry Grand Rounds presentation, Montréal, Québec, Canada.
44. Cantor, J. M. (2013, April). *Understanding pedophilia and the brain.* Invited workshop presented at the 2013 meeting of the Minnesota Association for the Treatment of Sexual Abusers, Minneapolis, MN.
45. Cantor, J. M. (2013, April). *The neurobiology of pedophilia and its implications for assessment, treatment, and public policy.* Invited lecture at the 38th annual meeting of the Society for Sex Therapy and Research, Baltimore, MD.
46. Cantor, J. M. (2013, April). *Sex offenders: Relating research to policy.* Invited roundtable presentation at the annual meeting of the Academy of Criminal Justice Sciences, Dallas, TX.
47. Cantor, J. M. (2013, March). *Pedophilia and brain research: From the basics to the state-of-the-art.* Invited workshop presented to the annual meeting of the Forensic Mental Health Association of California, Monterey, CA.
48. Cantor, J. M. (2013, January). *Pedophilia and child molestation.* Invited lecture presented to the Canadian Border Services Agency, Toronto, Ontario, Canada.
49. Cantor, J. M. (2012, November). *Understanding pedophilia and sexual offenders against children: Neuroimaging and its implications for public safety.* Invited guest lecture to

University of New Mexico School of Medicine Health Sciences Center, Albuquerque, NM.

50. Cantor, J. M. (2012, November). *Pedophilia and brain research.* Invited guest lecture to the annual meeting of the Circles of Support and Accountability, Toronto, Ontario, Canada.
51. Cantor, J. M. (2012, January). *Current findings on pedophilia brain research.* Invited workshop at the San Diego International Conference on Child and Family Maltreatment, San Diego, CA.
52. Cantor, J. M. (2012, January). *Pedophilia and the risk to re-offend.* Invited lecture to the Ontario Court of Justice Judicial Development Institute, Toronto, Ontario, Canada.
53. Cantor, J. M. (2011, November). *Pedophilia and the brain: What it means for assessment, treatment, and policy.* Plenary Lecture presented at the Association for the Treatment of Sexual Abusers, Toronto, Ontario, Canada. https://www.youtube.com/watch?v=4IZxcdskmUs
54. Cantor, J. M. (2011, July). *Towards understanding contradictory findings in the neuroimaging of pedophilic men.* Keynote address to 7th annual conference on Research in Forensic Psychiatry, Regensberg, Germany.
55. Cantor, J. M. (2011, March). *Understanding sexual offending and the brain: Brain basics to the state of the art.* Workshop presented at the winter conference of the Oregon Association for the Treatment of Sexual Abusers, Oregon City, OR.
56. Cantor, J. M. (2010, October). *Manuscript publishing for students.* Workshop presented at the 29th annual meeting of the Association for the Treatment of Sexual Abusers, Phoenix, AZ.
57. Cantor, J. M. (2010, August). *Is sexual orientation a paraphilia?* Invited lecture at the International Behavioral Development Symposium, Lethbridge, Alberta, Canada.
58. Cantor, J. M. (2010, March). *Understanding sexual offending and the brain: From the basics to the state of the art.* Workshop presented at the annual meeting of the Washington State Association for the Treatment of Sexual Abusers, Blaine, WA.
59. Cantor, J. M. (2009, January). *Brain structure and function of pedophilia men.* Neuropsychiatry Rounds, Toronto Western Hospital, Toronto, Ontario.
60. Cantor, J. M. (2008, April). *Is pedophilia caused by brain dysfunction?* Invited address to the University-wide Science Day Lecture Series, SUNY Oswego, Oswego, NY.
61. Cantor, J. M., Kabani, N., Christensen, B. K., Zipursky, R. B., Barbaree, H. E., Dickey, R., Klassen, P. E., Mikulis, D. J., Kuban, M. E., Blak, T., Richards, B. A., Hanratty, M. K., & Blanchard, R. (2006, September). *MRIs of pedophilic men.* Invited presentation at the 25th annual meeting of the Association for the Treatment of Sexual Abusers, Chicago.
62. Cantor, J. M., Blanchard, R., & Christensen, B. K. (2003, March). *Findings in and implications of neuropsychology and epidemiology of pedophilia.* Invited lecture at the 28th annual meeting of the Society for Sex Therapy and Research, Miami.
63. Cantor, J. M., Christensen, B. K., Klassen, P. E., Dickey, R., & Blanchard, R. (2001, July). *Neuropsychological functioning in pedophiles.* Invited lecture presented at the 27th annual meeting of the International Academy of Sex Research, Bromont, Canada.
64. Cantor, J. M., Blanchard, R., Christensen, B., Klassen, P., & Dickey, R. (2001, February). *First glance at IQ, memory functioning and handedness in sex offenders.* Lecture presented at the Forensic Lecture Series, Centre for Addiction and Mental Health, Toronto, Ontario, Canada.

65. Cantor, J. M. (1999, November). *Reversal of SSRI-induced male sexual dysfunction: Suggestions from an animal model.* Grand Rounds presentation at the Allan Memorial Institute, Royal Victoria Hospital, Montréal, Canada.

PAPER PRESENTATIONS AND SYMPOSIA

1. Cantor, J. M. (2020, April). "I'd rather have a trans kid than a dead kid": Critical assessment of reported rates of suicidality in trans kids. *Paper presented at the annual meeting of the Society for the Sex Therapy and Research.* Online in lieu of in person meeting.
2. Stephens, S., Lalumière, M., Seto, M. C., & Cantor, J. M. (2017, October). *The relationship between sexual responsiveness and sexual exclusivity in phallometric profiles.* Paper presented at the annual meeting of the Canadian Sex Research Forum, Fredericton, New Brunswick, Canada.
3. Stephens, S., Cantor, J. M., & Seto, M. C. (2017, March). *Can the SSPI-2 detect hebephilic sexual interest?* Paper presented at the annual meeting of the American-Psychology Law Society Annual Meeting, Seattle, WA.
4. Stephens, S., Seto, M. C., Goodwill, A. M., & Cantor, J. M. (2015, October). *Victim choice polymorphism and recidivism.* Symposium Presentation. Paper presented at the 34th annual meeting of the Association for the Treatment of Sexual Abusers, Montréal, Canada.
5. McPhail, I. V., Hermann, C. A., Fernane, S. Fernandez, Y., Cantor, J. M., & Nunes, K. L. (2014, October). *Sexual deviance in sexual offenders against children: A meta-analytic review of phallometric research.* Paper presented at the 33rd annual meeting of the Association for the Treatment of Sexual Abusers, San Diego, CA.
6. Stephens, S., Seto, M. C., Cantor, J. M., & Goodwill, A. M. (2014, October). *Is hebephilic sexual interest a criminogenic need?: A large scale recidivism study.* Paper presented at the 33rd annual meeting of the Association for the Treatment of Sexual Abusers, San Diego, CA.
7. Stephens, S., Seto, M. C., Cantor, J. M., & Lalumière, M. (2014, October). *Development and validation of the Revised Screening Scale for Pedophilic Interests (SSPI–2).* Paper presented at the 33rd annual meeting of the Association for the Treatment of Sexual Abusers, San Diego, CA.
8. Cantor, J. M., Lafaille, S., Hannah, J., Kucyi, A., Soh, D., Girard, T. A., & Mikulis, D. M. (2014, September). *Pedophilia and the brain: White matter differences detected with DTI.* Paper presented at the 13th annual meeting of the International Association for the Treatment of Sexual Abusers, Porto, Portugal.
9. Stephens, S., Seto, M., Cantor, J. M., Goodwill, A. M., & Kuban, M. (2014, March). *The role of hebephilic sexual interests in sexual victim choice.* Paper presented at the annual meeting of the American Psychology and Law Society, New Orleans, LA.
10. McPhail, I. V., Fernane, S. A., Hermann, C. A., Fernandez, Y. M., Nunes, K. L., & Cantor, J. M. (2013, November). *Sexual deviance and sexual recidivism in sexual offenders against children: A meta-analysis.* Paper presented at the 32nd annual meeting of the Association for the Treatment of Sexual Abusers, Chicago, IL.
11. Cantor, J. M. (2013, September). *Pedophilia and the brain: Current MRI research and its implications.* Paper presented at the 21st annual World Congress for Sexual Health, Porto Alegre, Brazil. [Featured among Best Abstracts, top 10 of 500.]
12. Cantor, J. M. (Chair). (2012, March). *Innovations in sex research.* Symposium conducted at the 37th annual meeting of the Society for Sex Therapy and Research, Chicago.
13. Cantor, J. M., & Blanchard, R. (2011, August). fMRI versus phallometry in the diagnosis of pedophilia and hebephilia. In J. M. Cantor (Chair), *Neuroimaging of men's object*

preferences. Symposium presented at the 37th annual meeting of the International Academy of Sex Research, Los Angeles, USA.

14. Cantor, J. M. (Chair). (2011, August). *Neuroimaging of men's object preferences.* Symposium conducted at the 37th annual meeting of the International Academy of Sex Research, Los Angeles.
15. Cantor, J. M. (2010, October). A meta-analysis of neuroimaging studies of male sexual arousal. In S. Stolerú (Chair), *Brain processing of sexual stimuli in pedophilia: An application of functional neuroimaging.* Symposium presented at the 29th annual meeting of the Association for the Treatment of Sexual Abusers, Phoenix, AZ.
16. Chivers, M. L., Seto, M. C., Cantor, J. C., Grimbos, T., & Roy, C. (April, 2010). *Psychophysiological assessment of sexual activity preferences in women.* Paper presented at the 35th annual meeting of the Society for Sex Therapy and Research, Boston, USA.
17. Cantor, J. M., Girard, T. A., & Lovett-Barron, M. (2008, November). *The brain regions that respond to erotica: Sexual neuroscience for dummies.* Paper presented at the 51st annual meeting of the Society for the Scientific Study of Sexuality, San Juan, Puerto Rico.
18. Barbaree, H., Langton, C., Blanchard, R., & Cantor, J. M. (2007, October). *The role of age-at-release in the evaluation of recidivism risk of sexual offenders.* Paper presented at the 26th annual meeting of the Association for the Treatment of Sexual Abusers, San Diego.
19. Cantor, J. M., Kabani, N., Christensen, B. K., Zipursky, R. B., Barbaree, H. E., Dickey, R., Klassen, P. E., Mikulis, D. J., Kuban, M. E., Blak, T., Richards, B. A., Hanratty, M. K., & Blanchard, R. (2006, July). *Pedophilia and brain morphology.* Abstract and paper presented at the 32nd annual meeting of the International Academy of Sex Research, Amsterdam, Netherlands.
20. Seto, M. C., Cantor, J. M., & Blanchard, R. (2006, March). *Child pornography offending is a diagnostic indicator of pedophilia*. Paper presented at the 2006 annual meeting of the American Psychology-Law Society Conference, St. Petersburg, Florida.
21. Blanchard, R., Cantor, J. M., Bogaert, A. F., Breedlove, S. M., & Ellis, L. (2005, August). *Interaction of fraternal birth order and handedness in the development of male homosexuality.* Abstract and paper presented at the International Behavioral Development Symposium, Minot, North Dakota.
22. Cantor, J. M., & Blanchard, R. (2005, July). *Quantitative reanalysis of aggregate data on IQ in sexual offenders.* Abstract and poster presented at the 31st annual meeting of the International Academy of Sex Research, Ottawa, Canada.
23. Cantor, J. M. (2003, August). *Sex reassignment on demand: The clinician's dilemma.* Paper presented at the 111th annual meeting of the American Psychological Association, Toronto, Canada.
24. Cantor, J. M. (2003, June). *Meta-analysis of VIQ–PIQ differences in male sex offenders.* Paper presented at the Harvey Stancer Research Day, Toronto, Ontario, Canada.
25. Cantor, J. M. (2002, August). *Gender role in autogynephilic transsexuals: The more things change…* Paper presented at the 110th annual meeting of the American Psychological Association, Chicago.

26. Cantor, J. M., Christensen, B. K., Klassen, P. E., Dickey, R., & Blanchard, R. (2001, June). *IQ, memory functioning, and handedness in male sex offenders.* Paper presented at the Harvey Stancer Research Day, Toronto, Ontario, Canada.
27. Cantor, J. M. (1998, August). *Convention orientation for lesbian, gay, and bisexual students*. Papers presented at the 106th annual meeting of the American Psychological Association.
28. Cantor, J. M. (1997, August). *Discussion hour for lesbian, gay, and bisexual students*. Presented at the 105th annual meeting of the American Psychological Association.
29. Cantor, J. M. (1997, August). *Convention orientation for lesbian, gay, and bisexual students*. Paper presented at the 105th annual meeting of the American Psychological Association.
30. Cantor, J. M. (1996, August). *Discussion hour for lesbian, gay, and bisexual students*. Presented at the 104th annual meeting of the American Psychological Association.
31. Cantor, J. M. (1996, August). *Symposium: Question of inclusion: Lesbian and gay psychologists and accreditation*. Paper presented at the 104th annual meeting of the American Psychological Association, Toronto.
32. Cantor, J. M. (1996, August). *Convention orientation for lesbian, gay, and bisexual students*. Papers presented at the 104th annual meeting of the American Psychological Association.
33. Cantor, J. M. (1995, August). *Discussion hour for lesbian, gay, and bisexual students*. Presented at the 103rd annual meeting of the American Psychological Association.
34. Cantor, J. M. (1995, August). *Convention orientation for lesbian, gay, and bisexual students*. Papers presented at the 103rd annual meeting of the American Psychological Association.
35. Cantor, J. M. (1994, August). *Discussion hour for lesbian, gay, and bisexual students*. Presented at the 102nd annual meeting of the American Psychological Association.
36. Cantor, J. M. (1994, August). *Convention orientation for lesbian, gay, and bisexual students*. Papers presented at the 102nd annual meeting of the American Psychological Association.
37. Cantor, J. M., & Pilkington, N. W. (1992, August). *Homophobia in psychology programs: A survey of graduate students.* Paper presented at the Centennial Convention of the American Psychological Association, Washington, DC. (ERIC Document Reproduction Service No. ED 351 618)
38. Cantor, J. M. (1991, August). *Being gay and being a graduate student: Double the memberships, four times the problems*. Paper presented at the 99th annual meeting of the American Psychological Association, San Francisco.

POSTER PRESENTATIONS

1. Klein, L., Stephens, S., Goodwill, A. M., Cantor, J. M., & Seto, M. C. (2015, October). *The psychological propensities of risk in undetected sexual offenders.* Poster presented at the 34th annual meeting of the Association for the Treatment of Sexual Abusers, Montréal, Canada.
2. Pullman, L. E., Stephens, S., Seto, M. C., Goodwill, A. M., & Cantor, J. M. (2015, October). *Why are incest offenders less likely to recidivate?* Poster presented at the 34th annual meeting of the Association for the Treatment of Sexual Abusers, Montréal, Canada.
3. Seto, M. C., Stephens, S. M., Cantor, J. M., Lalumiere, M. L., Sandler, J. C., & Freeman, N. A. (2015, August). *The development and validation of the Revised Screening Scale for Pedophilic Interests (SSPI-2).* Poster presentation at the 41st annual meeting of the International Academy of Sex Research. Toronto, Canada.
4. Soh, D. W., & Cantor, J. M. (2015, August). *A peek inside a furry convention.* Poster presentation at the 41st annual meeting of the International Academy of Sex Research. Toronto, Canada.
5. VanderLaan, D. P., Lobaugh, N. J., Chakravarty, M. M., Patel, R., Chavez, S. Stojanovski, S. O., Takagi, A., Hughes, S. K., Wasserman, L., Bain, J., Cantor, J. M., & Zucker, K. J. (2015, August). *The neurohormonal hypothesis of gender dysphoria: Preliminary evidence of cortical surface area differences in adolescent natal females.* Poster presentation at the 31st annual meeting of the International Academy of Sex Research. Toronto, Canada.
6. Cantor, J. M., Lafaille, S. J., Moayedi, M., Mikulis, D. M., & Girard, T. A. (2015, June). *Diffusion tensor imaging (DTI) of the brain in pedohebephilic men: Preliminary analyses.* Harvey Stancer Research Day, Toronto, Ontario Canada.
7. Newman, J. E., Stephens, S., Seto, M. C., & Cantor, J. M. (2014, October). *The validity of the Static-99 in sexual offenders with low intellectual abilities.* Poster presentation at the 33rd annual meeting of the Association for the Treatment of Sexual Abusers, San Diego, CA.
8. Lykins, A. D., Walton, M. T., & Cantor, J. M. (2014, June). *An online assessment of personality, psychological, and sexuality trait variables associated with self-reported hypersexual behavior.* Poster presentation at the 30th annual meeting of the International Academy of Sex Research, Dubrovnik, Croatia.
9. Stephens, S., Seto, M. C., Cantor, J. M., Goodwill, A. M., & Kuban, M. (2013, November). *The utility of phallometry in the assessment of hebephilia.* Poster presented at the 32nd annual meeting of the Association for the Treatment of Sexual Abusers, Chicago.
10. Stephens, S., Seto, M. C., Cantor, J. M., Goodwill, A. M., & Kuban, M. (2013, October). *The role of hebephilic sexual interests in sexual victim choice.* Poster presented at the 32nd annual meeting of the Association for the Treatment of Sexual Abusers, Chicago.
11. Fazio, R. L., & Cantor, J. M. (2013, October). *Analysis of the Fazio Laterality Inventory (FLI) in a population with established atypical handedness.* Poster presented at the 33rd annual meeting of the National Academy of Neuropsychology, San Diego.
12. Lafaille, S., Hannah, J., Soh, D., Kucyi, A., Girard, T. A., Mikulis, D. M., & Cantor, J. M. (2013, August). *Investigating resting state networks in pedohebephiles.* Poster presented at the 29th annual meeting of the International Academy of Sex Research, Chicago.

13. McPhail, I. V., Lykins, A. D., Robinson, J. J., LeBlanc, S., & Cantor, J. M. (2013, August). *Effects of prescription medication on volumetric phallometry output.* Poster presented at the 29th annual meeting of the International Academy of Sex Research, Chicago.
14. Murray, M. E., Dyshniku, F., Fazio, R. L., & Cantor, J. M. (2013, August). *Minor physical anomalies as a window into the prenatal origins of pedophilia.* Poster presented at the 29th annual meeting of the International Academy of Sex Research, Chicago.
15. Sutton, K. S., Stephens, S., Dyshniku, F., Tulloch, T., & Cantor, J. M. (2013, August). *Pilot group treatment for "procrasturbation."* Poster presented at 39th annual meeting of the International Academy of Sex Research, Chicago.
16. Sutton, K. S., Pytyck, J., Stratton, N., Sylva, D., Kolla, N., & Cantor, J. M. (2013, August). *Client characteristics by type of hypersexuality referral: A quantitative chart review.* Poster presented at the 39th annual meeting of the International Academy of Sex Research, Chicago.
17. Fazio, R. L., & Cantor, J. M. (2013, June). *A replication and extension of the psychometric properties of the Digit Vigilance Test.* Poster presented at the 11th annual meeting of the American Academy of Clinical Neuropsychology, Chicago.
18. Lafaille, S., Moayedi, M., Mikulis, D. M., Girard, T. A., Kuban, M., Blak, T., & Cantor, J. M. (2012, July). *Diffusion Tensor Imaging (DTI) of the brain in pedohebephilic men: Preliminary analyses.* Poster presented at the 38th annual meeting of the International Academy of Sex Research, Lisbon, Portugal.
19. Lykins, A. D., Cantor, J. M., Kuban, M. E., Blak, T., Dickey, R., Klassen, P. E., & Blanchard, R. (2010, July). *Sexual arousal to female children in gynephilic men.* Poster presented at the 38th annual meeting of the International Academy of Sex Research, Prague, Czech Republic.
20. Cantor, J. M., Girard, T. A., Lovett-Barron, M., & Blak, T. (2008, July). *Brain regions responding to visual sexual stimuli: Meta-analysis of PET and fMRI studies.* Abstract and poster presented at the 34th annual meeting of the International Academy of Sex Research, Leuven, Belgium.
21. Lykins, A. D., Blanchard, R., Cantor, J. M., Blak, T., & Kuban, M. E. (2008, July). *Diagnosing sexual attraction to children: Considerations for DSM-V.* Poster presented at the 34th annual meeting of the International Academy of Sex Research, Leuven, Belgium.
22. Cantor, J. M., Blak, T., Kuban, M. E., Klassen, P. E., Dickey, R. and Blanchard, R. (2007, October). *Physical height in pedophilia and hebephilia.* Poster presented at the 26th annual meeting of the Association for the Treatment of Sexual Abusers, San Diego.
23. Cantor, J. M., Blak, T., Kuban, M. E., Klassen, P. E., Dickey, R. and Blanchard, R. (2007, August). *Physical height in pedophilia and hebephilia.* Abstract and poster presented at the 33rd annual meeting of the International Academy of Sex Research, Vancouver, Canada.
24. Puts, D. A., Blanchard, R., Cardenas, R., Cantor, J., Jordan, C. L., & Breedlove, S. M. (2007, August). *Earlier puberty predicts superior performance on male-biased visuospatial tasks in men but not women.* Abstract and poster presented at the 33rd annual meeting of the International Academy of Sex Research, Vancouver, Canada.
25. Seto, M. C., Cantor, J. M., & Blanchard, R. (2005, November). *Possession of child pornography is a diagnostic indicator of pedophilia.* Poster presented at the 24th annual meeting of the Association for the Treatment of Sexual Abusers, New Orleans.

26. Blanchard, R., Cantor, J. M., Bogaert, A. F., Breedlove. S. M., & Ellis, L. (2005, July). *Interaction of fraternal birth order and handedness in the development of male homosexuality.* Abstract and poster presented at the 31st annual meeting of the International Academy of Sex Research, Ottawa, Canada.
27. Cantor, J. M., & Blanchard, R. (2003, July). *The reported VIQ–PIQ differences in male sex offenders are artifactual?* Abstract and poster presented at the 29th annual meeting of the International Academy of Sex Research, Bloomington, Indiana.
28. Christensen, B. K., Cantor, J. M., Millikin, C., & Blanchard, R. (2002, February). *Factor analysis of two brief memory tests: Preliminary evidence for modality-specific measurement.* Poster presented at the 30th annual meeting of the International Neuropsychological Society, Toronto, Ontario, Canada.
29. Cantor, J. M., Blanchard, R., Paterson, A., Bogaert, A. (2000, June). *How many gay men owe their sexual orientation to fraternal birth order?* Abstract and poster presented at the International Behavioral Development Symposium, Minot, North Dakota.
30. Cantor, J. M., Binik, Y., & Pfaus, J. G. (1996, November). *Fluoxetine inhibition of male rat sexual behavior: Reversal by oxytocin*. Poster presented at the 26th annual meeting of the Society for Neurosciences, Washington, DC.
31. Cantor, J. M., Binik, Y., & Pfaus, J. G. (1996, June). *An animal model of fluoxetine-induced sexual dysfunction: Dose dependence and time course*. Poster presented at the 28th annual Conference on Reproductive Behavior, Montréal, Canada.
32. Cantor, J. M., O'Connor, M. G., Kaplan, B., & Cermak, L. S. (1993, June). *Transient events test of retrograde memory: Performance of amnestic and unimpaired populations*. Poster presented at the 2nd annual science symposium of the Massachusetts Neuropsychological Society, Cambridge, MA.

EDITORIAL AND PEER-REVIEWING ACTIVITIES

Editor-in-Chief

Sexual Abuse: A Journal of Research and Treatment Jan., 2010–Dec., 2014

Editorial Board Memberships

Journal of Sexual Aggression Jan., 2010–Dec., 2021
Journal of Sex Research, The Jan., 2008–Aug., 2020
Sexual Abuse: A Journal of Research and Treatment Jan., 2006–Dec., 2019
Archives of Sexual Behavior Jan., 2004–Present
The Clinical Psychologist Jan., 2004–Dec., 2005

Peer Reviewer Activity

American Journal of Psychiatry
Annual Review of Sex Research
Archives of General Psychiatry
Assessment
Biological Psychiatry
BMC Psychiatry
Brain Structure and Function
British Journal of Psychiatry
British Medical Journal
Canadian Journal of Behavioural Science
Canadian Journal of Psychiatry
Cerebral Cortex
Clinical Case Studies
Comprehensive Psychiatry
Developmental Psychology
European Psychologist
Frontiers in Human Neuroscience
Human Brain Mapping
International Journal of Epidemiology
International Journal of Impotence Research
International Journal of Sexual Health
International Journal of Transgenderism
Journal of Abnormal Psychology
Journal of Clinical Psychology
Journal of Consulting and Clinical Psychology
Journal of Forensic Psychology Practice
Journal for the Scientific Study of Religion
Journal of Sexual Aggression
Journal of Sexual Medicine
Journal of Psychiatric Research
Nature Neuroscience
Neurobiology Reviews
Neuroscience & Biobehavioral Reviews
Neuroscience Letters
Proceedings of the Royal Society B (Biological Sciences)
Psychological Assessment
Psychological Medicine
Psychological Science
Psychology of Men & Masculinity
Sex Roles
Sexual and Marital Therapy
Sexual and Relationship Therapy
Sexuality & Culture
Sexuality Research and Social Policy
The Clinical Psychologist
Traumatology
World Journal of Biological Psychiatry

GRANT REVIEW PANELS

2024–2025 Member, Multidisciplinary Review Panel, New Frontiers in Research Fund, *Tri-Agency Institutional Programs* (SSHRC/NSRC/CIHR), Canada.

2024 Reviewer. *Narodowe Centrum Nauki* [National Science Center]. Kraków, Poland.

2017–2021 Member, College of Reviewers, *Canadian Institutes of Health Research,* Canada.

2017 Committee Member, Peer Review Committee—Doctoral Research Awards A. *Canadian Institutes of Health Research*, Canada.

2017 Member, International Review Board, Research collaborations on behavioural disorders related to violence, neglect, maltreatment and abuse in childhood and adolescence. *Bundesministerium für Bildung und Forschung [Ministry of Education and Research],* Germany.

2016 Member, Peer Review Committee—Doctoral Research Awards A. *Canadian Institutes of Health Research*, Canada.

2015 Assessor (Peer Reviewer). Discovery Grants Program. *Australian Research Council,* Australia.

2015 Reviewer. *Czech Science Foundation,* Czech Republic.

2015 Reviewer, "Off the beaten track" grant scheme. *Volkswagen Foundation,* Germany.

2015 External Reviewer, Discovery Grants program—Biological Systems and Functions. *National Sciences and Engineering Research Council of Canada*, Canada

2015 Member, Peer Review Committee—Doctoral Research Awards A. *Canadian Institutes of Health Research*, Canada.

2014 Assessor (Peer Reviewer). Discovery Grants Program. *Australian Research Council,* Australia.

2014 External Reviewer, Discovery Grants program—Biological Systems and Functions. *National Sciences and Engineering Research Council of Canada*, Canada.

2014 Member, Dean's Fund—Clinical Science Panel. *University of Toronto Faculty of Medicine*, Canada.

2014 Member, Peer Review Committee—Doctoral Research Awards A. *Canadian Institutes of Health Research*, Canada.

2013 Member, Grant Miller Cancer Research Grant Panel. *University of Toronto Faculty of Medicine*, Canada.

2013 Member, Dean of Medicine Fund New Faculty Grant Clinical Science Panel. *University of Toronto Faculty of Medicine,* Canada.

2012 Board Member, International Review Board, Research collaborations on behavioural disorders related to violence, neglect, maltreatment and abuse in childhood and adolescence (2nd round). *Bundesministerium für Bildung und Forschung [Ministry of Education and Research],* Germany.

2012 External Reviewer, University of Ottawa Medical Research Fund. *University of Ottawa Department of Psychiatry*, Canada.

2012 External Reviewer, Behavioural Sciences—B. *Canadian Institutes of Health Research*, Canada.

2011 Board Member, International Review Board, Research collaborations on behavioural disorders related to violence, neglect, maltreatment and abuse in childhood and adolescence. *Bundesministerium für Bildung und Forschung [Ministry of Education and Research],* Germany.

TEACHING AND TRAINING

PostDoctoral Research Supervision
Law & Mental Health Program, Centre for Addiction and Mental Health, Toronto, Canada

Dr. Katherine S. Sutton	Sept., 2012–Dec., 2013
Dr. Rachel Fazio	Sept., 2012–Aug., 2013
Dr. Amy Lykins	Sept., 2008–Nov., 2009

Doctoral Research Supervision
Centre for Addiction and Mental Health, Toronto, Canada

Michael Walton • University of New England, Australia	Sept., 2017–Aug., 2018
Debra Soh • York University	May, 2013–Aug, 2017
Skye Stephens • Ryerson University	April, 2012–June, 2016

Masters Research Supervision
Centre for Addiction and Mental Health, Toronto, Canada

Nicole Cormier • Ryerson University	June, 2012–present
Debra Soh • Ryerson University	May, 2009–April, 2010

Undergraduate Research Supervision
Centre for Addiction and Mental Health, Toronto, Canada

Kylie Reale • Ryerson University	Spring, 2014
Jarrett Hannah • University of Rochester	Summer, 2013
Michael Humeniuk • University of Toronto	Summer, 2012

Clinical Supervision (Doctoral Internship)
Clinical Internship Program, Centre for Addiction and Mental Health, Toronto, Canada

Katherine S. Sutton • Queen's University	2011–2012
David Sylva • Northwestern University	2011–2012
Jordan Rullo • University of Utah	2010–2011
Lea Thaler • University of Nevada, Las Vegas	2010–2011
Carolin Klein • University of British Columbia	2009–2010
Bobby R. Walling • University of Manitoba	2009–2010

TEACHING AND TRAINING

Clinical Supervision (Doctoral- and Masters- level practica)
Centre for Addiction and Mental Health, Toronto, Canada

Tyler Tulloch • Ryerson University	2013–2014
Natalie Stratton • Ryerson University	Summer, 2013
Fiona Dyshniku • University of Windsor	Summer, 2013
Mackenzie Becker • McMaster University	Summer, 2013
Skye Stephens • Ryerson University	2012–2013
Vivian Nyantakyi • Capella University	2010–2011
Cailey Hartwick • University of Guelph	Fall, 2010
Tricia Teeft • Humber College	Summer, 2010
Allison Reeves • Ontario Institute for Studies in Education/Univ. of Toronto	2009–2010
Helen Bailey • Ryerson University	Summer, 2009
Edna Aryee • Ontario Institute for Studies in Education/Univ. of Toronto	2008–2009
Iryna Ivanova • Ontario Institute for Studies in Education/Univ. of Toronto	2008–2009
Jennifer Robinson • Ontario Institute for Studies in Education/Univ. of Toronto	2008–2009
Zoë Laksman • Adler School of Professional Psychology	2005–2006
Diana Mandelew • Adler School of Professional Psychology	2005–2006
Susan Wnuk • York University	2004–2005
Hiten Lad • Adler School of Professional Psychology	2004–2005
Natasha Williams • Adler School of Professional Psychology	2003–2004
Lisa Couperthwaite • Ontario Institute for Studies in Education/Univ. of Toronto	2003–2004
Lori Gray, née Robichaud • University of Windsor	Summer, 2003
Sandra Belfry • Ontario Institute for Studies in Education/Univ. of Toronto	2002–2003
Althea Monteiro • York University	Summer, 2002
Samantha Dworsky • York University	2001–2002
Kerry Collins • University of Windsor	Summer, 2001
Jennifer Fogarty • Waterloo University	2000–2001
Emily Cripps • Waterloo University	Summer, 2000
Lee Beckstead • University of Utah	2000

PROFESSIONAL SOCIETY ACTIVITIES

OFFICES HELD

2018–2019	Local Host. Society for Sex Therapy and Research.
2015	Member, International Scientific Committee, World Association for Sexual Health.
2015	Member, Program Planning and Conference Committee, Association for the Treatment of Sexual Abusers
2012–2013	Chair, Student Research Awards Committee, Society for Sex Therapy & Research
2012–2013	Member, Program Planning and Conference Committee, Association for the Treatment of Sexual Abusers
2011–2012	Chair, Student Research Awards Committee, Society for Sex Therapy & Research
2010–2011	Scientific Program Committee, International Academy of Sex Research
2002–2004	Membership Committee • APA Division 12 (Clinical Psychology)
2002–2003	Chair, Committee on Science Issues, APA Division 44
2002	Observer, Grant Review Committee • Canadian Institutes of Health Research Behavioural Sciences (B)
2001–2009	Reviewer • APA Division 44 Convention Program Committee
2001, 2002	Reviewer • APA Malyon-Smith Scholarship Committee
2000–2005	Task Force on Transgender Issues, APA Division 44
1998–1999	Consultant, APA Board of Directors Working Group on Psychology Marketplace
1997	Student Representative • APA Board of Professional Affairs' Institute on TeleHealth
1997–1998	Founder and Chair • APA/APAGS Task Force on New Psychologists' Concerns
1997–1999	Student Representative • APA/CAPP Sub-Committee for a National Strategy for Prescription Privileges
1997–1999	Liaison • APA Committee for the Advancement of Professional Practice
1997–1998	Liaison • APA Board of Professional Affairs
1993–1997	Founder and Chair • APA/APAGS Committee on LGB Concerns

PROFESSIONAL SOCIETY ACTIVITIES

MEMBERSHIPS

2022–2024 Consultant • *Society for the Advancement of Actuarial Risk Needs Assessment* (SAARNA)

2017–2021 Member • *Canadian Sex Research Forum*

2009–Present Member • *Society for Sex Therapy and Research*

2007–Present Fellow • *Association for the Treatment and Prevention of Sexual Abuse*

2006–Present Full Member (elected) • *International Academy of Sex Research*

2006–Present Research and Clinical Member • *Association for the Treatment and Prevention of Sexual Abuse*

2003–2006 Associate Member (elected) • *International Academy of Sex Research*

2002 Founding Member • CPA Section on Sexual Orientation and Gender Identity

2001–2013 Member • *Canadian Psychological Association* (CPA)

2000–2015 Member • *American Association for the Advancement of Science*

2000–2015 Member • *American Psychological Association* (APA)

APA Division 12 (Clinical Psychology)

APA Division 44 (Society for the Psychological Study of LGB Issues)

2000–2020 Member • *Society for the Scientific Study of Sexuality*

1995–2000 Student Member • *Society for the Scientific Study of Sexuality*

1993–2000 Student Affiliate • *American Psychological Association*

1990–1999 Member, American Psychological Association of Graduate Students (APAGS)

CLINICAL LICENSURE/REGISTRATION

Certificate of Registration, Number 3793
College of Psychologists of Ontario, Ontario, Canada

AWARDS AND HONORS

2022 Distinguished Contribution Award
Association for the Treatment and Prevention of Sexual Abuse (ATSA)

2011 Howard E. Barbaree Award for Excellence in Research
Centre for Addiction and Mental Health, Law and Mental Health Program

2004 fMRI Visiting Fellowship Program at Massachusetts General Hospital
American Psychological Association Advanced Training Institute and NIH

1999–2001 CAMH Post-Doctoral Research Fellowship
Centre for Addiction and Mental Health Foundation and Ontario Ministry of Health

1998 Award for Distinguished Contribution by a Student
American Psychological Association, Division 44

1995 Dissertation Research Grant
Society for the Scientific Study of Sexuality

1994–1996 McGill University Doctoral Scholarship

1994 Award for Outstanding Contribution to Undergraduate Teaching
"TA of the Year Award," from the McGill Psychology Undergraduate Student Association

EXPERT TESTIMONY AT TRIAL OR BY DEPOSITION
(Within the preceding four years)

2021

State of Arizona vs Franklin Arnett Clifton
IR# JWID 14-70629; Cr2017-150114-001
Maricopa County, Arizona

Re Commitment of Michael Hughes (Frye Hearing)
Case No. 10-CR-80013
Circuit Court, Cook County, Chicago, Illinois

In the Matter of Alexander Aurora Cox
Cause number 48C02-215-JC-000143
Madison Circuit Court 2, Indiana

Josephson v University of Kentucky
Case No: 3:19-cv-00230-RGJ
Kentucky Western District, Louisville Division

B.P.J. v West Virginia
Civil Action No. 2:21-cv-00316
US District Court, Southern District, Charleston Division

Cross, et al. v Loudoun School Board
Case No. CL21-3254
Circuit Court, County of Loudoun, VA

2022

A.M. v. Indianapolis Public Schools, et al.
Cause No. 1:22-cv-01705-JMS-DLP
U.S. District Court, Southern District of Indiana

Boe, et al., USA v Marshall, et al.
Civil Action No. 2:22-cv-00184- LCB
U.S. District Court, Middle District of Alabama, Northern Div

Bridge, et al. v Oklahoma State Department of Education, et al.
Case No. CIV-22-787-JD
Oklahoma, Western District Court

Dekker, et al. v Florida Agency for Health Care Admin.
Case 4:22-cv-00325-RH-MAF
Florida, Northern District Court

Doe, et al. v Abbott, et al.
Case No. D-1-GN-22-000977
Texas, Travis County

Xavier Hersom and John Doe v West Virginia
Civil Action No. 2:21-cv-00450
US District Court, Southern District, Charleston Division

N.Y. v Frederick B. (Re: Commitment of Frederick B.)
Index No. 001141/2022
New York Supreme Court

Pamela Ricard v USD 475 Geary County School Board
Case No. 5:22-cv-04015
US District Court, District of Kansas

Roe, et al. v. Utah High School Activities Association, et al.
Case No. 220903262
Salt Lake County, Utah Third Judicial District Court

Voe, PFLAG, et al. v Abbott
NO. D-1-GN-22-002569
Texas, Travis County District Court

2023

Doe, et al. v. Thornbury, et al.
Civil No. 3:23CV-230-RGJ
U.S. District Court, Western District of Kentucky

Doe, et al. v. Horne, et al.
Case No. 4:23-cv-00185-JGZ
District of Arizona, Tucson Division

K.C., et al. v. Medical Licensing Board of Indiana, et al.
Case No. 1:23-CV-595
Southern District of Indiana, Indianapolis Division

L.W., et al. v. Skrmetti, et al.
Case No. 3:23-cv-00376
Middle District of Tennessee, Nashville Division

Poe, et al., v. Drummond, et al.
Case No. 23-CV-00177-JFH-SH
Northern District of Oklahoma

Koe, et al., v. Noggle, et al.
Civil Action No. 1:23-cv-02904-SEG
U.S. District Court, Northern District of Georgia, Atlanta Div

Poe, et al., v. Labrador
Case No. 1:23-cv-00269-CWD
U.S. District Court, District of Idaho, Southern Division

Roe, et al., v. Critchfield, et al.
Case No. 1:23-cv-00315-DCN
U.S. District Court, District of Idaho

Lazaro Loe v Texas
Cause No. D-1-GN-23-003616
201st Judicial District, Travis County, Texas

Noe, et al., v. Parson, et al.
Case No 23AC-CC04530
Circuit Court of Cole County, State of Missouri

Van Garderen, et al. v. Montana, et al.
Cause No. DV 2023–0541
Fourth Judicial District Court, Missoula County, Montana

B.C. College of Nurses and Midwives v Amy HAMM
Citation issued under Health Professional Act

Voe, et al. v Mansfield, et al.
Civil No. 1:23-cv-864
U.S. District Court, North Carolina, Middle District, Durham Div.

T.D., et al. v Wrigley, et al.
Case No. 08-2023-CV-2189
District Court, South Central Judicial District, North Dakota

2024

Cano v S.C. Dept. of Corrections
Civil Action No. 9:22-cv-4247-DCC-MHC
District Court, South Carolina, Columbia Division

Moe, et al. v Yost, et al.
Case No. 24-cv-002481
Court of Common Pleas, Franklin County, Ohio

McComb Children's Clinic v Xavier Becerra (HHS)
Case No. 5:24-cv-48-KS-LGI
U.S. District Court, Southern District of Mississippi, Western Division

Roe, et al. v Labrador
Case No. 1:24-cv-00306-CDW
U.S. District Court, Idaho

M.H., et al. v Jeppesen, et al.
Case No. 1:22-CV-409
U.S. District Court, Idaho

Misanin, et al., v. Wilson, et al.
Case No. 2:24-cv-4734-BHH
U.S. District Court, South Carolina

Hartlen, et al. v. Webster
Case No. CV-22-96
Ontario Superior Court, Canada

Forget, et al. v. Webster
Case No. CV-23-58
Ontario Superior Court, Canada

Egale Canada, et al. v. Province of Alberta
Court of King's Bench of Alberta, Calgary

2025

Rapides Parish School Board v U.S. Dept. of HHS
Case No. 1:25-cv-00070
U.S. District Court, Western Dist., Alexandria Div., Louisiana

Wailes, et al., vs. Jefferson County Public Schools, BoE
Case No. 1:24-cv-02439-RMR-NRN
U.S. District Court, District of Colorado

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

Rapides Parish School Board, *Plaintiff*, v. **United States Department of Health and Human Services**, et al., *Defendants*.	**Case No.** 1:25-cv-00070-DDD-JPM **Judge Dee D. Drell** **Magistrate Judge Joseph H.L. Perez-Montes**

DECLARATION OF JULIE MARIE BLAKE

I, Julie Marie Blake, declare as follows:

1. I am above the age of 21. I am fully competent to make this declaration.

2. I am Senior Counsel at Alliance Defending Freedom (ADF) and counsel for Plaintiff Rapides Parish School Board.

3. These facts are within my personal knowledge and are true and correct. If called to testify, I could and would testify competently to these facts.

4. As this exhibit chart shows, I caused the listed documents to be accessed from the specified federal government websites as they appeared on these websites on the dates listed:

Exhibit Number	Description
1	Excerpts from *HHS Grants Policy Statement* (effective Apr. 16, 2025), https://www.hhs.gov/sites/default/files/hhs-grants-policy-statement-october-2024.pdf

Exhibit Number	Description
2	HHS Dear Colleague Letter from Melanie Fontes Rainer, Director, Office for Civil Rights, to Health Care Officials re Nondiscrimination on the Basis of Disability: Section 504 of the Rehabilitation Act and Section 1557 of the Affordable Care Act (Jan. 7, 2025), https://www.hhs.gov/sites/default/files/ocr-dcl-section-504-section-1557-disability.pdf
3	DOJ Letter from Kristen Clarke, Assistant Attorney General, to State Attorneys General (Mar. 31, 2022), https://www.justice.gov/opa/press-release/file/1489066/dl?inline=
4	Excerpts from *EEOC Enforcement Guidance on Harassment in the Workplace* (Apr. 29, 2024), https://web.archive.org/web/20250116114856/https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace (archived Jan. 16, 2025), also available at https://perma.cc/7V7L-PN7P (captured Jan. 13, 2025)
5	*EEOC Sex-Based Discrimination*, https://web.archive.org/web/20250113200613/https://www.eeoc.gov/sex-based-discrimination (archived Jan. 13, 2025), also available at https://perma.cc/EE2T-XRLA (captured Jan. 13, 2025)
6	*EEOC Prohibited Employment Policies/Practices*, https://web.archive.org/web/20250113200622/https://www.eeoc.gov/prohibited-employment-policiespractices (archived Jan. 13, 2025), also available at https://perma.cc/74GK-E4DS (captured Jan. 13, 2025)
7	*Sexual Orientation and Gender Identity (SOGI) Discrimination*, EEOC, https://web.archive.org/web/20250113200649/https://www.eeoc.gov/sexual-orientation-and-gender-identity-sogi-discrimination (archived Jan. 13, 2025), also available at https://perma.cc/3WMS-R7D4 (captured Jan. 13, 2025)
8	*EEOC Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity*, https://web.archive.org/web/20250113220318/https://www.eeoc.gov/laws/guidance/protections-against-employment-discrimination-based-sexual-orientation-or-gender (archived Jan. 13, 2025), also available at https://perma.cc/V4ZX-636V (captured Jan. 13, 2025)

Exhibit Number	Description
9	*The State of the EEOC: Frequently Asked Questions*, https://www.eeoc.gov/wysk/state-eeoc-frequently-asked-questions (last visited May 28, 2025)
10	EEOC Press Release, *Removing Gender Ideology and Restoring the EEOC's Role of Protecting Women in the Workplace* (Jan. 28, 2025), https://www.eeoc.gov/newsroom/removing-gender-ideology-and-restoring-eeocs-role-protecting-women-workplace (last visited May 28, 2025)
11	EEOC Press Release, *Federal Court Vacates Portions of EEOC Harassment Guidance* (May 20, 2025), https://www.eeoc.gov/newsroom/federal-court-vacates-portions-eeoc-harassment-guidance (last visited May 28, 2025)
12	*Commissioner Andrea R. Lucas's Statement on EEOC Enforcement Guidance on Harassment in the Workplace*, https://www.eeoc.gov/commissioner-andrea-r-lucass-statement-eeoc-enforcement-guidance-harassment-workplace (last visited May 28, 2025)

5. Each is a true and accurate copy of the government document as downloaded.

I declare under 28 U.S.C. § 1746 and under penalty of perjury that this declaration is true and correct based on my personal knowledge.

Executed this 29th day of May, 2025, at Lovettsville, Virginia.

Julie Marie Blake
Counsel for Plaintiff Rapides Parish School Board

PLAINTIFF'S EXHIBIT LIST

Exhibit Number	Description
1	Excerpts from *HHS Grants Policy Statement* (effective Apr. 16, 2025), https://www.hhs.gov/sites/default/files/hhs-grants-policy-statement-october-2024.pdf
2	HHS Dear Colleague Letter from Melanie Fontes Rainer, Director, Office for Civil Rights, to Health Care Officials re Nondiscrimination on the Basis of Disability: Section 504 of the Rehabilitation Act and Section 1557 of the Affordable Care Act (Jan. 7, 2025), https://www.hhs.gov/sites/default/files/ocr-dcl-section-504-section-1557-disability.pdf
3	DOJ Letter from Kristen Clarke, Assistant Attorney General, to State Attorneys General (Mar. 31, 2022), https://www.justice.gov/opa/press-release/file/1489066/dl?inline=
4	Excerpts from *EEOC Enforcement Guidance on Harassment in the Workplace* (Apr. 29, 2024), https://web.archive.org/web/20250116114856/https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace (archived Jan. 16, 2025), also available at https://perma.cc/7V7L-PN7P (captured Jan. 13, 2025)
5	*EEOC Sex-Based Discrimination*, https://web.archive.org/web/20250113200613/https://www.eeoc.gov/sex-based-discrimination (archived Jan. 13, 2025), also available at https://perma.cc/EE2T-XRLA (captured Jan. 13, 2025)
6	*EEOC Prohibited Employment Policies/Practices*, https://web.archive.org/web/20250113200622/https://www.eeoc.gov/prohibited-employment-policiespractices (archived Jan. 13, 2025), also available at https://perma.cc/74GK-E4DS (captured Jan. 13, 2025)
7	*Sexual Orientation and Gender Identity (SOGI) Discrimination*, EEOC, https://web.archive.org/web/20250113200649/https://www.eeoc.gov/sexual-orientation-and-gender-identity-sogi-discrimination (archived Jan. 13, 2025), also available at https://perma.cc/3WMS-R7D4 (captured Jan. 13, 2025)

8	*EEOC Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity*, https://web.archive.org/web/20250113220318/https://www.eeoc.gov/laws/guidance/protections-against-employment-discrimination-based-sexual-orientation-or-gender (archived Jan. 13, 2025), also available at https://perma.cc/V4ZX-636V (captured Jan. 13, 2025)
9	*The State of the EEOC: Frequently Asked Questions*, https://www.eeoc.gov/wysk/state-eeoc-frequently-asked-questions (last visited May 28, 2025)
10	EEOC Press Release, *Removing Gender Ideology and Restoring the EEOC's Role of Protecting Women in the Workplace* (Jan. 28, 2025), https://www.eeoc.gov/newsroom/removing-gender-ideology-and-restoring-eeocs-role-protecting-women-workplace (last visited May 28, 2025)
11	EEOC Press Release, *Federal Court Vacates Portions of EEOC Harassment Guidance* (May 20, 2025), https://www.eeoc.gov/newsroom/federal-court-vacates-portions-eeoc-harassment-guidance (last visited May 28, 2025
12	*Commissioner Andrea R. Lucas's Statement on EEOC Enforcement Guidance on Harassment in the Workplace*, https://www.eeoc.gov/commissioner-andrea-r-lucass-statement-eeoc-enforcement-guidance-harassment-workplace (last visited May 28, 2025)
13	Declaration of Jeff Powell
13-A	Excerpts from the *2024–2025 Rapides Parish School Board Policies Handbook and Student Code of Conduct*
13-B	*Rapides Parish School Board Field Trips and Excursions Policy*
13-C	*Rapides Parish School Board Employee Conduct Policy*
14	Declaration of James M. Cantor, PhD
15	Declaration of Julie Marie Blake