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SUPREME COURT

IN THE SUPREME COURT OF WISCONSIN
Case No. 2020AP1032

JOHN DOE 1, JANE DOE 1, JANE DOE 3, AND JANE DOE 4,
Plaintiffs-Appellants-Petitioners,

JOHN DOE 5 AND JANE DOE 5,
Plaintiffs-Appellants,

JOHN DOE 6, JANE DOE 6, JOHN DOE 8 AND JANE DOE 8,
Plaintiffs,

v.

MADISON METROPOLITAN SCHOOL DISTRICT,
Defendant-Respondent,

GENDER EQUITY ASSOCIATION OF JAMES
MADISON MEMORIAL HIGH SCHOOL,
GENDER SEXUALITY ALLIANCE OF MADISON
WEST HIGH SCHOOL and GENDER SEXUALITY ALLIANCE OF
ROBERT M. LAFOLLETTE HIGH SCHOOL,
Intervenors-Defendants-Respondents.

On Appeal from the Circuit Court for Dane County
Honorable Frank D. Remington
Circuit Court Case No. 2020CV454

**BRIEF OF AMICI CURIAE
THE AMERICAN ACADEMY OF CHILD AND ADOLESCENT
PSYCHIATRY AND THE WISCONSIN COUNCIL OF CHILD
AND ADOLESCENT PSYCHIATRY
IN SUPPORT OF DEFENDANTS-RESPONDENTS**

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INTRODUCTION

The Madison Metropolitan School District (MMSD) adopted “Guidance & Policies to Support Transgender, Non-binary & Gender-Expansive Students” in April 2018 that include, among other protocols, the requirement that school employees refer to students by their affirmed (i.e., chosen) names and pronouns. The policies also dictate that, to ensure the safety and security of all students, employees use the names and pronouns documented in school databases (“Infinite Campus”) when communicating with the students’ families. Student-services staff is required to discuss with the student contingency plans in the event that their privacy is compromised.

Here, *amici* seek to provide the Court with well-accepted psychiatric guidance that supports (1) the fact that MMSD is not providing medical care to students by referring to them using their chosen names and pronouns, in part because not all people who want to use a different name or pronouns than assigned at birth

have gender dysphoria; and (2) the fact that policies like MMSD's can have a significant positive effect on students' futures and outcomes by providing a supportive environment for all students, including those who do not feel they are safe to explore their gender identity at home.

ARGUMENT

I. Understanding Gender Identity and Gender Dysphoria.

Gender identity is a person's "deep internal sense of being female, male, a combination of both, somewhere in between, or neither."¹ Everyone has a gender identity. Most people have a gender identity that aligns with the sex assigned to them at birth, but transgender people have a gender identity that does not.²

¹ See Jason Rafferty, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, PEDIATRICS, at 2 tbl. 1 (Oct. 2018), <https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for> ("AAP Policy Statement").

² See Am. Psychological Ass'n, *Guidelines for psychological practice with transgender and gender nonconforming people*, AMERICAN PSYCHOLOGIST, 832, 834-35 (Dec.

Research has shown that gender identity has a strong biological basis and cannot be voluntarily changed.³ According to the most recent demographic analysis, in the United States, there are approximately 1.5 million transgender people.⁴

Some, but not all transgender people experience a medical condition called gender dysphoria.⁵ Gender dysphoria is the clinical diagnostic classification used when an individual has clinically

2015), <https://www.apa.org/practice/guidelines/transgender.pdf> (“APA Guidelines”); AM. MEDICAL ASS’N, *Policy on Medical Spectrum of Gender* (2018), <https://policysearch.ama-assn.org/policyfinder/detail/medical%20spectrum%20of%20gender?uri=%2FAMADoc%2Fdirectives.xml-D-295.312.xml>.

³ Wylie C. Hembree et al., Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons, 102(11) *J. Clinical Endocrinology & Metabolism* 3869 (Nov. 2017), <https://academic.oup.com/jcem/article/102/11/3869/4157558> (“Endocrine Society Guidelines”).

⁴ Jody L. Herman et al., *Ages of Individuals Who Identify as Transgender*, WILLIAMS INSTITUTE (Jan. 2017), <https://williamsinstitute.law.ucla.edu/publications/age-trans-individuals-us/>.

⁵ AM. PSYCHIATRIC ASS’N, *What Is Gender Dysphoria?* (Nov. 2020), <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>.

significant “psychological distress that results from an incongruence between one’s sex assigned at birth and one’s gender identity.”⁶

Children who experience such clinically significant distress are classified as having Gender Dysphoria of Childhood, according to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), when their emotional, psychological, and social development are impaired by being unable to live as the gender they internally experience or consistently express.⁷

The widely accepted recommendation of the medical community is that gender dysphoria be treated with “gender-affirming care”⁸ and according to evidence-based clinical

⁶ *Id.*

⁷ See also Jiska Ristori & Thomas D. Steensma, *Gender dysphoria in childhood*, INT’L REV. PSYCHIATRY (2016).

⁸ See AAP Policy Statement, *supra* note 1.

guidelines,⁹ which significantly improves the well-being of transgender people suffering from gender dysphoria.¹⁰ For some adolescents, medical interventions may be necessary.¹¹ In all cases involving children or adolescents experiencing gender dysphoria, however, treatment for gender dysphoria begins with a thorough evaluation and diagnosis by a qualified mental-health professional.¹² Pediatric or adolescent mental-health experts will perform a bio-psycho-social assessment with the child and family members. This comprehensive process typically requires many sessions to understand all the factors that are influencing the child or

⁹ Endocrine Society Guideline; WPATH, Standards of Care (7th Version), https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English.pdf (“WPATH Guidelines”).

¹⁰ APA Guidelines, *supra* note 2, at 832.

¹¹ *See, e.g.*, An Endocrine Society Position Statement, Endocrine Society (Dec. 15, 2020), <https://www.endocrine.org/advocacy/position-statements/transgender-health>.

¹² WPATH Guidelines, *supra* note 9, at 13.

adolescent's development and to develop a plan for the child's well-being.¹³

Decisions regarding appropriate medical treatment for transgender young people are tailored to an individual patient's needs, and they are made in consultation with the patient, their parents or guardians, and their medical and mental-healthcare team.¹⁴ Individual-treatment plans might involve a process of social transition, mental healthcare, and, where appropriate, medical interventions. Social transition refers to steps that one takes to present oneself as the gender with which they identify.¹⁵ Social transition can help to alleviate gender dysphoria and is one

¹³ Edwards-Leeper, L., Leibowitz, S., Sangganjanavanich, F., *Affirmative Practice with Transgender and Gender NonConforming Youth: Expanding the Model*, PSYCHOLOGY OF SEXUAL ORIENTATION AND GENDER (2016).

¹⁴ See WPATH Guidelines, *supra* note 9.

¹⁵ See Ilana Sherer, *Social Transition: Supporting Our Youngest Transgender Children*, PEDIATRICS (March 2016).

component of a child's more comprehensive gender-affirmation plan.¹⁶

Transgender young people whose parents and school environments are unsupportive are more likely than the general population to experience stress, anxiety, depression, and suicidality.¹⁷ One recent study reported that almost half of transgender students had missed school or changed schools because of fears for their safety.¹⁸ Another study found that 15% of transgender participants prematurely left educational settings because of harassment.¹⁹ These experiences have long-lasting

¹⁶ *Id.*

¹⁷ See AAP Policy Statement, *supra* note 1, at 4.

¹⁸ Joseph G. Kosciw et al., *2017 National School Climate Survey*, GLSEN, at 94 (2018), <https://www.glsen.org/sites/default/files/2019-10/GLSEN-2017-National-School-Climate-Survey-NSCS-Full-Report.pdf> ("2017 National School Climate Survey").

¹⁹ Jamie M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, THE NAT'L GAY AND LESBIAN TASK FORCE AND THE NAT'L

consequences: a 2015 survey of nearly 28,000 transgender adults found that those who had faced discrimination because of their transgender identity while in school were more likely to experience serious psychological distress or to have experienced homelessness later in life.²⁰

II. MMSD is Not Providing Medical Care in Using Affirming Names and Pronouns for All Students.

The use by school staff of names or pronouns selected by students that differ from those assigned at birth does not itself constitute medical treatment, and a young person's request to go by a different name or different pronouns does not, alone, warrant a clinical diagnosis. Students may seek to be referred to by a nickname, middle name, or simply a name that feels comfortable.

CTR. FOR TRANSGENDER EQUAL., at 33 (2011),
https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf.

²⁰ Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, NAT'L CTR. FOR TRANSGENDER EQUAL., at 132 (2016),
<https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

Moreover, regardless of whether a student's choice of name and pronouns is related to the student's exploration of their gender identity, a child or adolescent's choice to use a different name or pronouns is alone insufficient to meet the clinical criteria for gender dysphoria. Such choices are often related to exploration and expression—and do not by themselves justify any clinical treatment.²¹

A student needing clinical attention would typically demonstrate signs of significant emotional, psychological, or behavioral distress such as depression, anxiety, or high-risk behaviors. A student asking others to use a different name or pronoun, in the absence of other challenges, would not automatically require clinical treatment, for gender dysphoria or

²¹ Leeper, *supra* note 13.

otherwise.²² In fact, the use of a different name or pronoun is not even a diagnostic criterion for gender dysphoria. MMSD's policies of respecting students' requests to be identified by different names or pronouns does not constitute clinical treatment, even though the policies are likely to improve the mental and physical wellbeing of students, including but not limited to those experiencing gender dysphoria.

III. School Communities like MMSD Should Adopt Policies That Provide Safety and Security for All Students.

For better or for worse, schools can have a serious effect on a child's mental health and development. Research shows that school environments that support the social needs of transgender students can dramatically reduce the risks of negative outcomes.²³ Schools

²² Toomey, R. B., Ryan, C., Diaz, R. M., Card, N. A., & Russell, S. T. *Gender-nonconforming lesbian, gay, bisexual, and transgender youth: school victimization and young adult psychosocial adjustment*, DEVELOPMENTAL PSYCHOLOGY (2010).

²³ See, e.g., Jonathan T. Pryor, *Out in the Classroom: Transgender Student Experiences at a Large Public University*, 56 J. COLL. STUDENT DEV. 440, 442 (2015); Asaf Orr, et al., *Schools in Transition: A Guide for Supporting Transgender Youth in K-12 Schools*

such as MMSD must choose policies that foster an inclusive environment for transgender students, including policies that ensure that transgender students are called by the names and pronouns that accurately reflect their gender identities. These policies can help alleviate the long-term effects of trauma experienced by such students. A study published in the *Journal of Adolescent Health* found that transgender youth who are able to use names and pronouns consistent with their gender identities experience positive mental-health outcomes, including a 29% decrease in reported thoughts of suicide and a 56% decrease in suicide attempts.²⁴ Multiple studies also show that consistent recognition of transgender students' names and pronouns by school staff models

22, NAT'L EDUC. ASS'N (2015), <http://assets2.hrc.org/files/assets/resources/Schools-In-Transition.pdf> ("*Schools in Transition*").

²⁴ Stephen T. Russell et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior among Transgender Youth*, 63 J. ADOLESCENT HEALTH 503, 505 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6165713/pdf/nihms945849.pdf>.

expectations for the school community and discourages bullying from other students.²⁵

Requests to use a different name or pronoun can be met with rejection from the family, including threats of being disowned, thrown out of the home, or potentially physically or emotionally victimized.²⁶ MMSD's policies support all students choosing to use different names or pronouns at school and contribute to a supportive and caring school environment.

Adolescents may use a different name or pronouns as part of an identity-exploration process, which is a common human experience of development. A desire to go by a different name might or might not reflect an underlying gender identity that differs from their birth-assigned sex.

²⁵ *Schools in Transition*, *supra* note 23.

²⁶ Roberts, A., Rosario, M., Corliss, H., Koenen, K., Austin, SB, *Childhood Gender Nonconformity: A Risk Indicator for Childhood Abuse and Posttraumatic Stress in Youth*, *PEDIATRICS* (2012); D'Augelli AR, Grossman AH, Starks MT, *Childhood gender atypicality, victimization, and PTSD among lesbian, gay, and bisexual youth.*, *J INTERPERSONAL VIOLENCE* (2006).

Allowing students to explore their identity using a different name or pronoun in a non-home setting could be of great benefit to a student who feels unsafe to do so at home. This is true whether or not an adolescent meets criteria for gender dysphoria.

For these reasons, the scientific literature supports MMSD's policy that school employees refer to students by their affirmed names and pronouns, while maintaining the security and safety of students by using the names and pronouns listed in "Infinite Campus" in all staff correspondence and communication with families.

CONCLUSION

The Court should decline Plaintiffs' invitation to interfere with the safe and secure school environment that MMSD provides through policies that allow all students the opportunity to experience social affirmation of their gender at school, no matter their circumstances at home.

Dated this 25th day of March, 2022.

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8) (b) and (c) for a brief produced with a monospaced, proportional serif font. The length of this brief is 2,371 words.

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CERTIFICATION AS TO ELECTRONIC FILING

I hereby certify that:

I have submitted an electronic copy of this brief, which complies with the requirements of Wis. Stat. § 809.19(12)(f).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 25th day of March, 2022.



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