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Question Presented

1. Whether under Title IX of the Education Amendments Act of 1972, the Dune Unified School District Board's policy of segregating human sexuality education classes by biological sex unlawfully discriminates against transgender students like Jane Boe by not accommodating their gender identity.
2. Whether under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, segregating human sexuality classes based on biological sex without considering transgender students' gender identity constitutes unlawful discrimination, thereby infringing upon the Equal Protection rights of students like Jane Boe.

Opinion Below

Boe v. Dune Unified Sch. Bd., 123 F.7th 45 (13th Cir. 2023)

Constitutional Rules and Provisions

20 U.S.C. § 1681.

U.S. Const. amend. XIV, § 1-Equal Protect.

Other Materials

Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, Exec. Order No. 13988, 86 FR 7023 (Jan. 25, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01761.pdf>

Joseph G. Kosciw et al., The 2019 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools (GLSEN, 2020)

Kyle Velte, Shifting Scapegoats: Learning from the Past to Navigate Today's Battles for Transgender-Inclusive Policies, 103 B.U. L. Rev. Online 44 (2023)

Introduction

This case addresses whether the Dune Unified School District Board's Resolution 2022-14 on human sexuality education ('the Policy') violates Jane Boe's rights under the Equal Protection Clause of the Fourteenth Amendment and Title IX of the Education Amendments Act of 1972. Jane, a seventh-grade transgender girl, argues that the Policy's mandated segregation of human sexuality education classes by biological sex

discriminates against transgender students, undermining federal protections designed to prohibit sex discrimination.

The significance of this case is underscored by the Supreme Court's decision in Bostock v. Clayton County, 140 S. Ct. 1731, 1753., which recognized discrimination against transgender individuals as a form of sex discrimination. Here, we contend that segregating students by biological sex, as required under the Policy, denies Jane the educational opportunities afforded to similarly-situated cisgender peers, instead placing her at risk of humiliation and social ostracization.

The exclusion of Jane from human sexuality classes in alignment with her gender identity by the Dune Unified School District Board's Policy violates Title IX. First, since Bostock, the Court has repeatedly interpreted "sex" as inclusive of gender identity in applying the term to Title IX disputes. Second, the Policy's reliance on sex stereotypes in segregating students constitutes a Title IX violation. Third, the Title IX carve-outs, intended for spaces of bodily exposure, do not justify excluding transgender students from classes consistent with their gender identity, as classroom settings do not pose the same privacy or dignity risks.

The Policy also contravenes the Fourteenth Amendment's Equal Protection Clause. First, the Policy discriminates against students based on transgender identity. Both parties agree that

transgender discrimination warrants heightened scrutiny because of transgender individuals' quasi-suspect classification. Second, the Policy fails heightened scrutiny because it is not "enough of a fit" in its substantial relation to the purported government interest. Moreover, Jane's constitutional rights outweigh the government's stake in advancing these interests, even if the Policy were capable of effectively doing so. Third, inclusive educational policies uphold the non-discrimination principles of the Fourteenth Amendment, protect the rights and dignity of transgender students, and serve as a desirable social good, benefiting society by fostering environments of acceptance and equality.

Jane's predicament exemplifies a systemic issue within our educational framework, where outdated policies clash with evolving understandings of gender identity. By compelling Jane to participate in a boys' human sexuality class, or to forgo essential educational content, the Board's Policy isolates and stigmatizes her. This discrimination undermines foundational principles of equality and dignity enshrined in Title IX and the Equal Protection Clause. This appeal seeks judicial recognition of the discriminatory impact of the Board's policy, and a ruling that affirms the rights of all students, regardless of gender identity, to an educational environment that respects their dignity.

Statement of the Case

Jane Boe (Jane), a seventh-grade transgender girl attending Dune Junior High School, is excluded from participating in the girls' sex education under Resolution 2022-14, a human sexuality education policy enacted by the Dune Unified School District Board (hereafter, the Policy). The events leading to the present appeal began with enactment of the Policy, which the Board introduced without discussion or debate. On December 8, 2023, the Board decided that "instruction on human sexuality shall be provided separately for male and female students" and specified that "students shall be assigned... according to biological sex... at birth." Boe v. Dune Unified Sch. Bd., 123 F.7th 45, 47 (13th Cir. 2023). Additionally, the Policy introduced an opt-out provision stating that "schools are required to... provide an opportunity to opt-out of this instruction for their child." Id. at 48. The Policy forces Jane to either attend a class that contradicts her gender identity or forgo vital sex education content, including "information about healthy relationships, the signs of sexual and emotional abuse, contraceptives and safe sex practices, [and] HIV and STIs." Id. at 49. This dilemma arises despite her being recognized as a girl and treated in accordance with her gender identity in all other aspects of her school experience.

The Board justifies the Policy by stating that it intends to standardize "accurate, age-appropriate, and evidence-based information about human sexuality" to further "protect and advance the individual and public health of young Dune residents." Id. at 47. The Policy, however, departs from the Board's previous positions on trans inclusion, under which Jane would have been admitted to the girls' sex education class. Prior policies enacted by the Board have required schools to combat bullying among transgender students and ensure access to gender-affirming facilities and athletics. By enforcing sex-segregation based on biological sex at birth, the Policy reverses the Board's previous initiatives under which Jane Boe's request to have her gender identity recognized would be accommodated.

Jane's parents, advocating for her right to equal educational opportunities, assert that the Dune Unified School District Board's Policy on human sexuality education excludes their daughter from receiving critical, age-appropriate instruction alongside her peers. They highlight the undue burden and financial cost of seeking alternative educational resources, underscoring the Policy's failure to accommodate the educational needs of transgender students like Jane. Jane states that she is afraid to be in a class that does not reflect her gender identity, as her transgender identity is not widely known among

her school peers. Id. at 49. She “would rather... stay home” than be placed in an uncomfortable and inappropriate educational setting, or risk unwanted disclosure of her transgender status that would potentially lead to humiliation and social isolation. Id.

In response to the Policy, Jane’s father initiated legal proceedings against the Board, challenging the Policy’s compliance with Title IX and the Equal Protection Clause of the Fourteenth Amendment. While the Board protests that the Policy is permissible under Title IX because it serves a legitimate government interest in “protecting and advancing the individual and public health of young Dune residents,” the Boe family contends that it unjustifiably and unconstitutionally discriminates against transgender students. Id. at 47.

The District Court granted summary judgment in favor of the Board, asserting that the policy does not violate either Title IX or the Equal Protection Clause. Jane Boe appeals this decision, and argues that the Policy impermissibly infringes upon her Constitutional and statutory rights.

Argument

- I. APPLICATION OF THE POLICY TO JANE BOE, EXCLUDING HER FROM HUMAN SEXUALITY CLASSES MATCHING HER GENDER IDENTITY, VIOLATES TITLE IX OF THE EDUCATION AMENDMENTS ACT OF 1972.

Title IX has provided a basis for remedying disparities in educational opportunities based on sex. First, the Bostock v.

Clayton Cnty. decision extends Title IX to protect transgender students because gender identity is included in Title IX's classification of sex. Secondly, under this definition, Jane experienced discrimination on the basis of sex. Third, the Policy itself relies on sex stereotypes to discriminate against transgender students. Lastly, the discrimination Jane faces does not fall within Title IX carve-outs concerning privacy or bodily dignity concerns.

A. The interpretation of sex as understood in *Bostock v. Clayton County* applies to Title IX.

The Supreme Court's 2020 decision in Bostock clarified that "sex" under Title VII includes sexual orientation and gender identity for the purposes of evaluating workplace discrimination. This interpretation also applies to Title IX, as demonstrated by subsequent cases that have routinely cited Bostock when interpreting the statute. 20 U.S.C. § 1681; see, e.g., Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586 (4th Cir. 2020); A.C. by M.C. v. Metro. Sch. Dist. of Martinsville, 75 F.4th 760 at 769 (7th Cir. 2023). While Bostock explicitly reserved judgment on its applicability to educational settings, including restrooms and locker rooms, it did not limit the potential extension of its principles to Title IX. Bostock 140 S.Ct. at 1753. There is little to suggest that there is any reason to interpret the "because of... sex" language from Title

VII any differently from the "on the basis of sex" phrase in Title IX. Furthermore, it is natural to interpret the two similarly given that Title IX was originally modeled after Title VI of the Civil Rights Act of 1964. Fitzgerald v. Barnstable Sch. Comm., 555 U.S. 246, 258, 129 S.Ct. 788, 172 L.Ed.2d 582 (2009). Because the intent of the framers of Title IX was to standardize educational policy on sex according to employment discrimination and racial discrimination, it is logical to interpret their definition of sex similarly.

B. Under an expanded definition of "sex," Jane experienced discrimination based on sex under Title IX.

The interpretation of "sex" under Title IX encompasses more than just the biological aspects assigned at birth. This broader understanding aligns with the Supreme Court's interpretation of Title VII in Bostock. In Bostock, the Court expanded the definition of discrimination "because of... sex" to include sexual orientation and gender identity, which are inherently tied to one's sex and, therefore, covered by Title IX. For instance, discrimination against a gay student for their attraction to the same sex is, fundamentally, discrimination based on sex, since such discrimination would not occur if the student's sex were different. According to Bostock, such cases of discrimination are directly linked to the student's sex, and as such fall within the purview of Title IX.

For Jane, discrimination arises from her gender identity, which conflicts with her sex assigned at birth. If Jane was cisgender, she would not face exclusion from sex education that matches her gender identity. The Policy's discrimination against Jane due to her gender identity constitutes a clear violation of Title IX forcing her to either attend the boys' human sexuality class, where she faces potential humiliation, or forego this educational opportunity. Title IX aims to ensure equitable access to educational opportunities for all students and to safeguard the dignity of students, regardless of gender - especially women and girls. However, the Policy obstructs Jane's access to an appropriate educational environment and diminishes her dignity, thereby contravening the core objectives of Title IX.

C. As per Price Waterhouse, the Policy is a violation of Title IX based on a theory of sex stereotyping.

The Policy constitutes a violation of Title IX by enforcing sex stereotypes, as established in Price Waterhouse v. Hopkins, 490 U.S. 228 (1989), where the Supreme Court recognized that Title VII discrimination based on sex stereotyping falls within the ambit of sex discrimination. This principle, applied to Title IX, underscores that the Policy's reliance on sex assigned at birth to determine students' participation in sex-segregated education programs inherently employs sex stereotypes. See

Chisholm v. St. Marys City Sch. Dist. Bd. of Educ., 947 F.3d 342 (6th Cir. 2020) (discussing the application of sex stereotypes in the context of Title IX). Moreover, courts have typically favored a broad understanding of stereotyping, not wishing to exclude any means by which one might prove sex stereotyping. M.A.B. v. Bd. of Educ. of Talbot Cnty., 286 F. Supp. 3d 704 at 715 (D. Md. 2018) (“the Supreme Court did not require gender stereotyping to take the specific form of discrimination on the basis of appearance or behavior”).

The decision to withhold admission to gender-appropriate sex education in favor of sex as assigned at birth is, at its crux, a decision based on sex stereotypes. The Policy relies upon assumptions of a child’s educational needs based on sex assigned at birth, regardless of how long the child has been living as their preferred identity, whether other students are aware of their transgender status, and whether that student has undergone any form of medical transition. The Policy’s lack of discretion with respect to a student’s transgender status asserts the stereotype that all males assigned at birth would benefit similarly from receiving sex-segregated instruction, and the same for females. These sex stereotypes also apply negatively to intersex children, who may be assigned to a sex education class that is not anatomically accurate or informative for that child. Overall, the Policy’s reliance on sex at birth

pigeonholes transgender and intersex children through stereotypes.

D. Allowing transgender students to access human sexuality classes consistent with their gender identity does not fall within the Title IX carve-outs.

Title IX protections do not prevent all discrimination based on sex. A number of carve-outs allow educational institutions to provide separate housing and bathroom facilities to men and women. These exceptions have historically included bathrooms, locker rooms, and showers. The intent of these deviations is to protect human dignity and privacy, often by avoiding bodily exposure. However, these arguments fail to justify sex discrimination in the classroom for two reasons. First, there is growing consensus amongst federal jurisdictions that privacy concerns are minimal with respect to the inclusion of trans people and these considerations are outweighed by the need for equitable treatment. Secondly, sex education is largely unrelated to issues of bodily exposure and is more analogous to a classroom setting, so it does not warrant the same Title IX carve-out granted in other contexts.

i. Privacy and dignity concerns justifying exclusion of transgender students are sheer conjecture and abstraction.

A growing number of jurisdictions are finding that apprehensions about the inclusion of transgender people in "intimate" areas are largely overblown. Nationally,

jurisdictions that have implemented inclusive policies for transgender students have seen a negligible number of incidents after the change in policy. Brief of Amici Curiae Sch. Adm'rs from Twenty-Nine States & D.C. in Supp. of Pl.-Appellee at 18-24, Grimm, 972 F.3d. Numerous federal districts have also recognized that traditional privacy protections are unsubstantiated in both bathrooms (A.C. by M.C. v. Metropolitan School District of Martinsville, 75 F.4th 760 (C.A.7 (Ind.), 2023)) and locker rooms (M.A.B., 286 F. Supp. 3d 704). Both jurisprudence and empirics show that while privacy is the most important concern in Title IX carve-outs, transgender students are seldom the cause of breaches of privacy.

ii. Sex education in a classroom setting does not risk the bodily exposure associated with Title IX exceptions.

While not formally enumerated, Title IX carve-outs typically focus on a number of areas, including living spaces and intimate spaces. These might, for example, include "places to disrobe, sleep, [and] perform bodily functions." Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty., 57 F.4th 791, at 804 (11th Cir. 2022). These notions of personal dignity have also been described as places where people "shit, shower, shave, shampoo, or shine." Grimm, 858 F.3d at 634 (Niemeyer, J.,dissenting). Absent an explicit brightline establishing when an activity or forum is too intimate to guarantee Title IX

protection, the guiding principles of bodily dignity and personal privacy are foregrounded.

In the case of sex education, the activities within a classroom are largely distinct from those associated with a place such as a living space or a bathroom. It is unreasonable to compare a class on bodily functions and sex to the same level of vulnerability that one experiences in a bathroom or locker room. While sex education classes may discuss sensitive topics, they do so in an academic context that does not raise the privacy concerns of bodily exposure in a bathroom. Maintaining a boundary between academic sensitivity in a classroom setting and bodily sensitivity in a private setting is of the utmost importance; a decision otherwise would allow schools to remove students from classes for the purpose of assuaging other students' discomfort. Such a precedent would broadly enable discrimination when talking about topics deemed sensitive.

II. THE POLICY VIOLATES THE EQUAL PROTECTION GUARANTEES OF THE FOURTEENTH AMENDMENT.

The Board's Policy, which segregates students in human sex education classes based on their sex assigned at birth, violates the Equal Protection Clause of the Fourteenth Amendment. This segregation denies Jane and similarly situated transgender students access to the same educational opportunities afforded to their cisgender peers. The Policy effectively forces

transgender students either to disclose their transgender identity to their peers by attending the incorrect class, or to opt out of class altogether. In the former instance, the student risks bullying that may result from such an unwilling disclosure, and in the latter they lose access to information of crucial importance to their health and well-being. The Board argues that the Policy is grounded in a justifiable government interest, "to protect and advance the individual and public health of young Dune residents." Boe, 123 F.7th 45, 55 (13th Cir. 2023). But the Policy need not exclude or disadvantage transgender students to achieve its goal. The Board can meet its educational and health goals with a gender-inclusive human sexuality class policy. In view of the manifest harms that Jane would suffer, namely stigmatization, humiliation, non-consensual exposure of her transgender status, and deprivation of access to sex education, the State has failed to establish the relative importance of the interest it asserts.

A. The Policy discriminates on the basis of gender identity.

The Board's Policy on human sexuality education discriminates on the basis of gender identity by segregating students based on their sex assigned at birth and disregarding self-identified gender. Jane's exclusion from the girls' sex education class exposes her to manifest interpersonal and psychological harms. The judiciary has repeatedly acknowledged

that transgender students are susceptible to significant psychic and social harms from policies which exclude them on the basis of their sex assigned at birth.

The court in Whitaker held that a school policy which segregated trans students from other students of the same gender "very publicly brand[ed] all transgender students with a scarlet 'T'." Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist., 858 F.3d 1034, 1045 (7th Cir. 2017). The court held that the exposure and questioning the petitioner faced as a result of his segregation "further intensified his depression and anxiety surrounding the School District's policy." Id., at 1045-46. In Grimm, the Fourth Circuit held that a school's insistence that a transgender boy use gender-neutral facilities was "tantamount to humiliation and a continuing mark of difference among his fellow students." Grimm, 822 F.3d at 729 (4th Cir. 2016).

Moreover, the Board's Policy negates the needs of students who have already undergone medical transition, or who exhibit intersex characteristics. As suggested by the suspect status of sex-based policy classifications, biological sex is a treacherous and imprecise metric. As developments in the popular understanding of gender continue to rapidly progress, so does acknowledgement that the supposition of sex as a binary is poorly supported by science. The phrase "biological sex" itself is imprecise, as "a person's sex encompasses the sum of several

biological attributes, including sex chromosomes, certain genes, gonads, sex hormone levels, internal and external genitalia, other secondary sex characteristics, and gender identity.” Hecox, 79 F.4th 1009, 1023-24 (holding that biological sex was not a neutral scientific basis upon which to exclude transgender women from intercollegiate sports). The court in F.V. v. Barron further stated that our medical comprehension of biological sex and gender has significantly evolved. Along with ongoing studies on the impact of variations in sex chromosomes and brain chemistry, there is medical consensus that gender identity plays an important role in individuals’ “determination of their own sex.” F.V., 286 F. Supp. 3d at 1131, 1143-44. As such, to conclude that discrimination on the basis of gender identity or transgender status is not sex discrimination would be to “depart from advanced medical understanding in favor of archaic reasoning.” Id.

The Equal Protection Clause mandates that no “State shall... deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, §1. This broad constitutional protection has been interpreted as a directive that all similarly-situated individuals be treated alike. City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). The Policy contravenes these principles because it denies transgender students the equal educational opportunities

afforded to their cisgender peers. This discriminatory regime exacerbates the stigmatization and isolation experienced by transgender students; this subjects these students to increased anxiety, depression, and alienation that in turn detrimentally affects their academic performance.

B. Transgender discrimination merits heightened scrutiny under the Equal Protection Clause.

Both parties agree that discrimination based on transgender identity is inherently a form of sex discrimination, meriting heightened scrutiny as reinforced by Supreme Court precedents including Bd. of Educ. of the Highland Sch. Dist. v. U.S. Dept. of Ed., 208 F. Supp. 3d 850 (S.D. Ohio 2016).

C. The Policy fails heightened scrutiny because it is not substantially related to the purported government interest.

By broadly categorizing students based on biological sex, the Dune School Board's Policy on human sexuality instruction fails Constitutional muster under heightened scrutiny. To establish that a challenged policy is justifiable under the heightened scrutiny standard, it must "(1) advance an important governmental objective and (2) be substantially related to that objective". Adams, 57 F.4th 791, 803.

In D.H. v. Williamson Cnty. Bd. of Educ., the Court applied this test to determine whether the school board's ban on a transgender girl's use of the multi-occupancy girls' restroom was a violation of the Equal Protection Clause of the Fourteenth

Amendment. D.H., 2023 WL 6302148, at *8. In holding that the petitioner had a plausible claim for relief against her school's exclusionary bathroom policy, the Court noted that "the government's interest... appears less substantial". Id. at *10. Similarly, Hecox found that "the absence of any credible showing that the [challenged law] addressed a particularly acute problem" was "quite relevant" to its conclusion that the law excluding transgender athletes did not survive the heightened scrutiny standard.

The Board asserts that the Policy is designed to serve the substantial government interests of education and public health. However, the Policy is over-inclusive because it results in unnecessary discriminatory effects against transgender students like Jane Boe. The Policy directly inhibits the Board's stated goal of advancing the individual and public health of young residents by providing accurate, age-appropriate and evidence-based human sexuality education by discriminating against transgender students and hindering their educational opportunities. The seminal case of Brown v. Bd. of Educ. emphatically recognized the critical role of education in the lives of young people:

Today, education is perhaps the most important function of state and local governments... it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

Brown v Bd. of Educ., 347 U.S. 483, 493 (1954).

The broad categorization advanced by the policy is not only over-inclusive but also fails to advance any legitimate government interest. This is particularly evident when set in contrast with the Board's prior 2019 policy supporting transgender students' rights. The collateral harm that transgender students are subject to under the Policy exhibits how deficient the connection is between the interest invoked in the Board's argument and the Policy implementation.

Indeed, the Policy sets up a structure that risks exposing transgender students to the very issues - humiliation, bullying, and harassment - that the Board's 2019 anti-bullying policy aimed to prevent. The current Policy was enacted without debate or discussion, suggesting a lack of thorough evaluation of its potential negative impacts on students' educational experience and welfare. This lack of consideration starkly contrasts with the Board's prior commitment to include gender identity in anti-bullying measures. Under the Policy, as highlighted in the dissent by Judge Bernstein, "the only realistic option for protecting transgender students... is to remove them from instruction related to sexual health altogether." Boe, 123 F.7th at 54. Isolating transgender students and denying their lived gender identity in educational settings undermines the Board's earlier efforts to protect transgender students' rights.

In Adams, the Court held that in the Eleventh Circuit, a policy must be "enough of a fit" to qualify as substantially related to the government objective. Adams, 57 F.4th. The Board's deficient Policy fails to satisfy this standard. The troubling breadth of the Policy denies agency to students and assigns students to sex education class regardless of their personal or biological circumstances. A restrictive approach which makes no attempt to match its scope with a target demographic in an informed way cannot be fit for the purposes the defendant espouses. The practical effect of a policy which would require Jane to expose her transgender status to her peers and teachers is to create such a risk of harm that Jane would be obliged to forego public sex education entirely to avoid humiliation and stigmatization. Clearly, the result of this policy defeats the government interest which purports to justify it.

The Board has furnished no support for their argument that dividing sex education classes according to sex assigned at birth is better suited to advance the government's educational and health interests than a class division according to gender. The rigid application of the policy discounts the social and cultural concerns addressed in sex education such as women's safety, which require that Jane attend the girls' class to receive the correct information. Dune Junior High School's sex

education addresses topics such as detecting “signs of sexual and emotional abuse”, a subject which is clearly informed by gender-based concerns. A more complete view of the factors which comprise a full and effective sex education curriculum indicates that the content of the girl’s class would better address the Board’s stated aims to provide appropriate education to Jane Boe. Because the Policy fails in this respect, it is not “enough of a fit” to qualify as substantially related to the stated government interests.

An inclusive sex education policy would satisfy this test and demonstrate a qualifying substantial relationship to the educational and health interests of Dune residents. The 2019 National School Climate Survey by GLSEN underscores the significant positive impact of inclusive sex education on both transgender and cisgender students' academic outcomes and well-being. Joseph G. Kosciw et al., *The 2019 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation’s schools* (GLSEN, 2020). In line with the curriculum modifications suggested by GLSEN, Jane Boe's case emphasizes the necessity of allowing transgender students to participate in sex education classes that match their gender identity within the current educational framework. This minimal yet crucial adjustment aligns with the Policy’s aim to enhance educational and health benefits for transgender students.

University of Kansas Law School Associate Dean Kyle Velte highlights the transformative role of proactive school policies in affirming transgender students' rights and fostering an inclusive school culture that benefits all students. Kyle Velte, Shifting Scapegoats: Learning from the Past to Navigate Today's Battles for Transgender-Inclusive Policies, 103 B.U. L. Rev. Online 44 (2023).

In conclusion, the Dune School Board's human sexuality instruction policy starkly contravenes equal protection principles, unjustly barring transgender students from classes aligning with their gender identity and ignoring broader educational and health imperatives. Such exclusion not only contradicts the Board's prior inclusivity pledges, but also defies legal evolutions affirming transgender rights; this underscores the urgent need for policy reevaluation to foster a truly inclusive, respectful educational setting.

D. Evolving legal standards support the rights of transgender students.

Recent legal developments apply heightened scrutiny to sex-based classifications to affirm transgender students' rights. In M.A.B., for example, the Court questions the often abstract and conjectural nature of privacy and safety arguments, suggesting that educational policies should prioritize inclusivity and the well-being of all students over unfounded concerns. M.A.B., 286

F. Supp. 3d at 723. Title IX's original interpretation allowed for sex-segregated facilities aimed at safeguarding student privacy and safety, especially for women and girls, although jurisdictions are beginning to recognize Title IX as a tool to protect the educational opportunities of transgender children. The judicial trend towards recognizing gender identity within Title IX's protections has been bolstered by legislative actions across nineteen states and the District of Columbia that adopt explicit anti-discrimination policies and broaden sex discrimination laws to encompass sexual orientation and gender identity.

Transgender-inclusive education policy is informed by legal reasoning, progressive societal values, and medical insights regarding gender identity. The medical community's approach to treating gender dysphoria, for example, highlights the significance of social transition, including the right to access facilities and participate in programs that affirm an individual's gender identity. Policies obstructing this process can negatively impact transgender students' mental health and well-being, affecting their educational engagement and success. The Grimm court explained that these disparities in mental health accumulate and result in depression, substance abuse, self-harm, and suicide which disproportionately impacts transgender youth. Grimm, 972 F.3d at 596. Courts are beginning

to address this public health crisis through the implementation of bathroom policies which protect equitable access to educational opportunities for transgender children.

Moreover, the categorical ban on transgender women in sports was ruled unconstitutional due to its overbreadth and its failure to account for biological variances. Hecox, 79 F.4th at 1030 (holding was additionally supported by the Act's proponents' failure to provide any evidence demonstrating actual need for the policy). Similarly, the Board's categorical restriction on transgender individuals in sex education overlooks scenarios of infertility, whether from intersex characteristics, gender-affirming procedures, or other causes. While the Board argues that their Policy advances the government's interest in protecting and advancing the health of young Dune residents, its indifferent application to infertile students demonstrates its disregard for biological diversity and unsupportable overreach. Such an overbroad approach has been deemed unconstitutional under the Equal Protection Clause for its failure to consider these variances. Id. at 1023-24.

The disparate treatment of transgender students is felt broadly. A majority of transgender students experience verbal harassment in school and almost a quarter report being physically assaulted for their transgender status. 13% of transgender youth in America report sexual abuse because of

their identity and 17% have switched schools to avoid negative treatment. Grimm, 972 F.3d at 597. Grimm also outlines the denigration and spiritual harm that transgender youth face. Since Brown, American jurisprudence has long recognized that segregation implicitly cultivates a culture of inferiority and inequality. The extension of this doctrine to the transgender community is long overdue.

The push for transgender inclusive policies reflects both these constitutional legal requirements and rising progress in valuing the equality and dignity of transgender individuals. Such developments in educational policy align with the principles of the Equal Protection Clause, advocating for an interpretation of equality that embraces the diversity of student experiences and identities. By advocating for inclusive policies, we contribute to a more accepting and inclusive society.

Conclusion

For the foregoing reasons, the Appellant, Jane Boe, by and through her next friend and father, Jack Boe, respectfully requests that the Supreme Court reverse the decision of the Thirteenth Circuit and hold that the application of the Policy to Jane Boe violated Title IX and the Policy itself violates the Equal Protection Clause of the Fourteenth Amendment.

Respectfully Submitted,

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