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DOUGLAS COUNTY
CIRCUIT COURT

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
IN THE COUNTY OF DOUGLAS

T.B., A Minor, By and Through His Guardian
SUMMER EASTWOOD,

Plaintiff,

v.

SUTHERLIN SCHOOL DISTRICT, An
Oregon Government Entity; TERRY
PRESTIANNI, In His Official Capacity as
Superintendent of the Sutherlin School
District; JUSTIN HUNTLEY, In His Official
Capacity as Principal of Sutherlin High
School; and DOES 1 THROUGH 20,
inclusive,

Defendants.

Case No.:

COMPLAINT 18CV20549

(Infringement on Right of Privacy; Violation
of Oregon's Privileges & Immunities Clause;
Declaratory and Injunctive Relief)

Plaintiff T.B., a minor, by and through his guardian SUMMER EASTWOOD, hereby alleges
as follows:

PARTIES & VENUE

1. Plaintiff is, and at all times herein was, a student at Sutherlin High School ("SHS").
2. Defendant SUTHERLIN SCHOOL DISTRICT (the "DISTRICT") is, and at all times
herein was, a public school district organized and operating under the laws of the State of Oregon and
charged with the administration and operation of SHS. The DISTRICT is, and at all times herein was,
responsible for the enactment, existence, implementation, application, and enforcement of policies and

1 responsible for the enactment, existence, implementation, application, and enforcement of policies and
2 practices governing student conduct at SHS, including the usage of restrooms, locker rooms, and other
3 facilities that are generally segregated by sex and in which students change clothes, shower, and/or use
4 the toilet (hereinafter collectively “undressing facilities”).

5 3. Defendant TERRY PRESTIANNI (“PRESTIANNI”) is, and at all times herein was, the
6 Superintendent of the DISTRICT. In his capacity as Superintendent, PRESTIANNI possesses, and at
7 all times herein possessed, the responsibility, final authority, and discretion as to the administration of
8 the DISTRICT’s policies related to student conduct at the DISTRICT’s schools, including SHS. In his
9 capacity as superintendent, PRESTIANNI also possesses, and at all times herein possessed, final
10 authority over the principal of SHS and, accordingly, is responsible for the policies and practices
11 leading to the infringement on Plaintiff’s rights under Oregon law, federal Title IX, and the Oregon
12 and U.S. constitutions. PRESTIANNI is therefore being sued in his capacity as Superintendent of the
13 DISTRICT.

14 4. Defendant JUSTIN HUNTLEY (“HUNTLEY,” and collectively with the DISTRICT
15 and PRESTIANNI the “Defendants”) is, and at all times herein was, an employee of the DISTRICT
16 and the Principal at SHS. In his capacity as principal at SHS, HUNTLEY is, and at all times herein
17 was, charged with the administration of SHS, including DISTRICT-delegated responsibility, authority,
18 and discretion as to the enforcement of the DISTRICT’s policies concerning student clubs.
19 Accordingly, HUNTLEY is responsible for the policies and practices leading to the infringement on
20 Plaintiff’s rights under Oregon law, federal Title IX, and the Oregon and U.S. constitutions that give
21 rise to this case. HUNTLEY is therefore being sued in his capacity as principal of SHS.

22 5. The true names and capacities of Defendants DOES 1 THROUGH 20 (collectively the
23 “DOES”), inclusive, are unknown to Plaintiffs, who therefore sue said Defendants under such
24 fictitious names. Each of the Defendants designated herein as one of the DOES is legally responsible
25 for the events and happenings herein referred to and proximately caused injuries and damages to
26

1 Plaintiffs thereby, as herein alleged. Plaintiffs will seek leave of this Court to amend this Complaint to
2 show the DOES' names and capacities once they have been ascertained.

3 6. Venue is proper in the County of Douglas because the incident(s) giving rise to this
4 Complaint occurred in the County of Douglas and all parties involved are located in, or residents of,
5 the County of Douglas.

6 **GENERAL ALLEGATIONS**

7 7. Plaintiff is a 15-year-old sophomore at SHS who is biologically male.

8 8. On January 31, 2018, Plaintiff and his friend were using one of the boys' restrooms on
9 SHS' campus when a girl who identifies as a boy entered the restroom.

10 9. Signage placed in a highly visible location on or near the entrance of the restroom
11 indicated that the restroom was designated for exclusive use by males only.

12 10. The girl, who identifies as "transgender" and goes by the name Tyler, entered the boys'
13 restroom even though (1) SHS has made single-stalled restrooms available to her and (2) the nearest
14 girls' restroom was empty at the time.

15 11. When SHS' assistant principal asked Tyler why she used the boys' restroom instead of
16 any of the girls' restrooms or single-stalled restrooms on campus, Tyler responded, "Because I can."

17 12. Tyler's presence in the boys' restroom made Plaintiff feel very uncomfortable: Not
18 only did Tyler's presence create feelings of anxiety in Plaintiff, Plaintiff considered it an intrusion on
19 his privacy and personal dignity, especially given the unique way boys urinate – i.e., standing at a
20 urinal in a state of partial undress with their penises exposed.

21 13. The DISTRICT has openly declared that it plans to allow Tyler and other "transgender"
22 or "gender non-conforming" students to use changing facilities consistent with their self-proclaimed
23 "gender identity" for the foreseeable future. *See* Attached **Exhibit "A"** [a copy of a letter that the
24 DISTRICT issued to parents concerning the use of restrooms by transgender and gender non-
25 conforming students].

**FIRST CAUSE OF ACTION:
DECLARATORY RELIEF [O.R.S. § 28.020]**

14. Plaintiff hereby incorporates paragraphs 1-13, above, as if fully set forth herein.

15. Section 28.020 of the Oregon Revised Statutes permits persons “whose rights, legal status or other legal relations are affected by a constitution [or] statute” to “obtain a declaration of rights, status or other legal relations thereunder.”

16. Oregon courts recognize that people have a protected right to privacy when using undressing facilities, even when those undressing facilities must necessarily be shared with other persons due to the large numbers of people they serve. In other words, just because one’s expectation of privacy is reduced in undressing facilities because one must change clothes, shower, or use the toilet in the presence of others does not mean that one’s expectation of privacy is eliminated entirely.

17. The privacy right described above includes the right to not be seen, without consent, in states of complete or partial undress: The desire to shield one’s unclothed body parts – genitalia in particular – from the view of strangers, especially those of the opposite sex, is driven by one’s innate self-respect and desire for personal dignity. When a state or local government agency infringes on one’s right to not be seen in a state of complete or unpartial undress by a member of the opposite sex, it can lead to feelings of anxiety, such as those that Plaintiff experienced when Tyler, who is biologically female, entered the boys’ restroom.

18. Oregon Revised Statutes § 659.850, which prohibits discrimination in Oregon’s public schools, defines “discrimination” as “any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on race, color, religion, sex, sexual orientation, marital status, age, or disability.” O.R.S. § 659.850(1) (emphasis added); *see also id.*, subsection (2). Since Oregon public school students’ right to privacy in school undressing facilities includes the right to not be seen, without consent, in states of complete or partial undress by members of the opposite sex, it is not unreasonable for the DISTRICT or SHS to maintain separate undressing facilities for male and female students, nor is it unreasonable to require

1 students to use the undressing facilities associated with their biological sex or, in the alternative,
2 single-stalled restrooms.

3 19. Article I, § 20 of the Oregon Constitution prohibits Oregon’s state and local
4 governments from “granting to any citizen or class of citizens privileges, or immunities, which, upon
5 the same terms, shall not equally belong to all citizens.” That constitutional provision is considered
6 Oregon’s equivalent of the U.S. Constitution’s Equal Protection Clause.

7 20. Gender-based classifications that (1) reflect specific biological differences between
8 males and females and (2) are not based on archaic, overbroad, and harmful gender stereotypes do not
9 violate the Oregon Constitution.

10 21. Assigning separate restrooms to boys and girls in public schools reflects specific
11 biological differences between males and females, whose anatomies are rather distinct. That boys and
12 girls are anatomically different is not based on archaic, overbroad, and harmful stereotypes, but factual.

13 22. Equal protection does not require that things which are different in fact be treated in
14 law as though they are the same. If one thing is abundantly clear about students who identify as
15 “transgender” – that is, students whose anatomy does not match the gender to which they claim they
16 belong – it is that they are different from their “cisgender” counterparts (those whose anatomy does
17 match their self-proclaimed “gender identity”). Defendants thus need not treat biological girls who
18 claim to be boys as actual boys for purposes of undressing facility usage.

19 23. Accordingly, Plaintiff seeks from the Court a declaration stating that, in permitting
20 Tyler to use – or at least making no effort to prevent Tyler from using – the boys’ restroom at SHS,
21 Defendants (1) violated Plaintiff’s right to privacy, (2) denied him equal protection of the laws that
22 should be accorded to males under the Oregon Constitution, and (3) would not have violated, and
23 would not violate, Oregon law by requiring students to use the undressing facilities associated with
24 their biological sex.

**SECOND CAUSE OF ACTION:
INJUNCTIVE RELIEF [O.R.S. § 28.080]**

24. Plaintiff hereby incorporates paragraphs 1-23, above, as if fully set forth herein.

25. Section 28.020 of the Oregon Revised Statutes permits courts to “grant further relief based on a declaratory judgment ... whenever necessary or proper.” Such relief includes injunctive relief.

26. Plaintiff, a sophomore at SHS, lacks an adequate remedy at law to prevent Defendants from allowing transgender and gender non-conforming students such as Tyler from using the boys’ restroom during his final two years at SHS.

27. The DISTRICT’s decision to allow transgender and gender non-conforming students to use bathrooms that are not consistent with their biological sex, and PRESTIANNI’s and HUNTLEY’s enforcement of that decision, has infringed upon Plaintiff’s legally recognized privacy interest, and his constitutional right to equal protection, in using undressing facilities at SHS.

28. Plaintiff has suffered a real injury as a result of the Defendants’ actions: He now experiences anxiety, as he reasonably, understandably, and rightfully fears not only that will Tyler or other girls will see him in a state of partial undress, without his consent, in the restroom at SHS in the future, but also that he may be accused of rape, sexual assault, or sexual harassment for exposing his penis to a girl, however unavoidably and inadvertently, in said restroom.

29. A decision by the Court would have a practical effect on the privacy right that Plaintiff seeks to vindicate, as a permanent injunction would require Defendants to ensure that the DISTRICT’s students use the undressing facilities associated with their biological sex for the remainder of Plaintiff’s tenure at SHS and beyond.

30. Accordingly, Plaintiff seeks injunctive relief from the Court mandating that Defendants henceforth require the DISTRICT’s students to use the bathrooms associated with their biological sex and not their self-proclaimed gender identity.

PRAYER FOR RELIEF

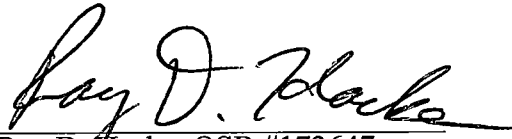
WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

ON ALL CAUSES OF ACTION:

1. For a declaration stating that the Defendants have violated Plaintiff's rights under Oregon law;
2. For injunctive relief mandating that Defendants henceforth require students at SHS and other schools in the DISTRICT to use the undressing facilities consistent with the students' biological sex;
3. For attorney's fees and costs associated with bringing and maintaining this action in accordance with the law; and
4. For such other and further relief as the Court may deem proper.

Dated: May 21, 2018

PACIFIC JUSTICE INSTITUTE


Ray D. Hacke, OSB #173647
Attorneys for Plaintiff
T.E., By and Through His Next Friend
SUMMER EASTWOOD

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EXHIBIT “A”

SUTHERLIN SCHOOL DISTRICT #130

531 E. Central Ave

Sutherlin, Oregon 97479-9532

(541) 459-2223 telephone

(541) 459-2454 fax

Terry Prestianni,

Superintendent of Schools

terry.prestianni@sutherlin.k12.or.us

February 6, 2018

A recent issue has arisen with regard to the use of restrooms by transgender or gender nonconforming students. This issue has required the District to make a decision with regard to whether a transgender or gender nonconforming student has a legal right to use the restroom that matches his or her gender identity.

This complex issue is currently the subject of much legal and political debate. The District is not the authority to decide that issue, but it must come to an informed decision based on the current state of the law and current legal guidance. The law on this issue is continuing to change and develop on an ongoing basis, and as changes to the law occur, the District must continue to reassess its approach.

The Sutherlin School District, with the aid of legal counsel, has reviewed the current state of the law regarding transgender and gender nonconforming restroom use. Oregon law currently prohibits discrimination on the basis of sexual orientation. The Oregon Department of Education has promulgated a rule, which defines "sexual orientation" to include "gender identity." "Gender identity" means a person's internal sense of being male, female, or some other gender, regardless of whether the individual's appearance, expression or behavior differs from that traditionally associated with the individual's sex assigned at birth. Thus, under current Oregon law, the District cannot discriminate against students on the basis of their gender identity.

Like state law, federal law also prohibits discrimination on the basis of sex. Several federal courts have held that this includes prohibiting discrimination by prohibiting transgender or gender nonconforming students from using the restroom that matches their gender identity. The view of these federal courts is consistent with the viewpoint of the Oregon Department of Education. Further, the Trump administration issued guidance last year, which reflects its intention to defer to the states on this issue.

The current view of the Oregon Department of Education and several courts across the nation is that prohibiting transgender or gender nonconforming students from using the restroom that matches their gender identity is illegal discrimination. Further, the current predominant view is that requiring transgender and gender nonconforming students to use a unisex restroom or other restroom that other students are not required to use constitutes discrimination under the law.

There are counterarguments to the above positions. However, the District must follow current state law, including the rules and guidance of the Oregon Department of Education. For those reasons, in order to come to an immediate decision triggered by recent circumstances, the District will be following the advice of legal counsel and allowing transgender and gender nonconforming students to use the restroom that matches that student's gender identity. In the meantime, the District will be further reviewing its policies and considering modifications of its existing facilities to ensure the safety and privacy of all of its students.

Sutherlin Schools: Providing Quality Education,
Preparing Students to Successfully Face Life's Challenges

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
) ss.
)
COUNTY OF SACRAMENTO)

I am employed in the County of Sacramento, State of California. I am over the age of eighteen and not a party to the within action; my business address is 9851 Horn Road, Suite 115, Sacramento, CA 95826.

On May 21, 2018, I served the following documents on the interested parties by placing a true copy thereof enclosed in sealed envelope(s) addressed to said parties:

SUMMONS

COMPLAINT

PLEASE SEE ATTACHED SERVICE LIST

X BY MAIL: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. postal service on that same date with postage thereon fully prepaid at Roseburg, OR in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the office of the addressee(s):

BY FACSIMILE TRANSMISSION: The facsimile machine I used complied with California Rules of Court 2003(3) and no error was reported by the machine. Pursuant to rule 2005(i), I caused the machine to print a record of the transmission, a copy of which is attached to this proof of service.

BY FEDERAL EXPRESS: I caused the above-referenced document(s) to be delivered via Federal Express, for delivery to the above address(es).

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 21, 2018, at Sacramento, California.


Ray D. Hacke

SERVICE LIST

Jason Montgomery
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