

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

MARY SMITH, *et al.*,
Plaintiffs,

v.

BOARD OF EDUCATION OF FREDERICK
COUNTY, MARYLAND, *et al.*,
Defendants.

Civil Action No. 1:17-cv-02302-ELH

DECLARATION OF MELISSA DIRKS
IN SUPPORT OF MOTION TO INTERVENE BY FREDERICK COUNTY TEACHERS
ASSOCIATION, MARYLAND STATE EDUCATION ASSOCIATION, AND NATIONAL
EDUCATION ASSOCIATION

I, Melissa Dirks, hereby declare:

1. I am the President of the Frederick County Teachers Association (“FCTA”). I am over eighteen (18) years of age, make this declaration based on my own personal knowledge, and if called as a witness, could and would testify competently as to the matters set forth below.
2. I have 21 years of teaching experience in the Frederick County Public School system.
3. The FCTA is the exclusive representative of the certificated educators in Frederick County Public Schools. Our members are: teachers, guidance counselors, reading specialists, school support teachers, teacher specialists, and others. We are an organization with a mission driven by, of, and for our members. FCTA is the local

affiliate of the state affiliate, the Maryland State Education Association (“MSEA”), as well as the national organization of teachers, the National Education Association (“NEA”).

4. Transgender and gender-nonconforming students have, of course, always existed, but in the late 2000s, and early 2010s, transgender and gender-nonconforming students began to transition and come out in high schools and middle schools in Frederick County. (There are elementary school students who have come out and are transitioning as well.) At that time, teachers began to experience issues which they had not encountered before: what bathrooms transgender and gender-nonconforming students should use (one associated with their gender-identity or with their gender assigned at birth), what pronouns and names teachers should use to identify them; what information (about transitioning, for instance) teachers could and could not disclose—both to parents and school administration; and how to tackle bullying and harassment towards such students.

Teachers also did not receive any formal training on these issues.

5. The issue of proper pronouns and names for transgender and gender-nonconforming students was complicated by the fact that attendance sheets were digital and prepopulated with transgender and gender-nonconforming students’ birth-assigned gender and name. This presented classroom teachers with a daily conundrum in how to refer to their students. Some teachers tried to avoid outing transgender and gender-nonconforming students to classmates by referring to them with their preferred names and pronouns. Other teachers referred to students by their birth-assigned gender and names. Since the attendance sheets referred to students’ birth-assigned gender and names, substitute

teachers placed in an unfamiliar classroom accidentally outed students who were not yet out at school when they took attendance.

6. For years, which bathrooms transgender and gender-nonconforming students could use varied, depending on the school, and the school's administration. When educators saw these issues arise, they asked their school's administration about which bathrooms students could use, but the response varied. Sometimes the same school gave conflicting directions to different educators. Some schools told transgender and gender-nonconforming students that they had to use the bathroom in the nurse's office. Other schools required students to use staff bathrooms, which often required the use of a key. Some schools told students to use sex-segregated facilities consistent with their gender identity; but others offered students no accommodations and teachers no direction whatsoever. Some of the bathrooms students were told to use were very far away from their classrooms. This caused students to miss class time in order to relieve themselves, or to avoid drinking and eating in order to limit their number of trips to the bathroom. Some students stayed home from school to avoid these issues. Teachers saw that transgender and gender-nonconforming students' learning and emotional wellbeing suffered because of these bathroom requirements, as did the overall classroom and school environment.
7. When educators saw bullying and harassment of transgender and gender-nonconforming students, they tried to intervene, but were also wary of how to address these issues because they didn't know how to talk about gender identity issues with other students. The Frederick County Board of Education ("BOE") still had not implemented training for

such situations. Teachers called the FCTA office and said, “I don’t know what I’m supposed to be doing.”

8. To respond to these inquiries, FCTA began to host a series of trainings. In November 2015, FCTA hosted a training which was led by a transgender student and a transgender teacher-member of FCTA, and taught educators how to be allies to transgender and gender-nonconforming students. Part of the training included “Schools in Transition,” available at: <http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Schools-In-Transition.pdf>, a guide developed by NEA and others on educators’ best practices to support transgender and gender-nonconforming students.
9. When the U.S. Department of Education’s Office for Civil Rights and the Department of Justice released their Dear Colleague Letter in 2016 on which bathrooms schools should provide to transgender and gender-nonconforming students, educators were relieved to see that the federal government required schools to afford students with bathrooms consistent with their gender identity. That letter provided clarity for educators, but many did not learn about it from the BOE. When parents questioned teachers on transgender and gender nonconforming students’ bathroom access, teachers still had nothing to point to. When questions arose, sometimes teachers would point parents to the BOE central office, which would usually direct parents to the Dear Colleague Letter. But even then, the handling of most of these inquiries was on an individual level, and educators still lacked training on the topic.
10. In early Spring 2016, FCTA co-sponsored and promoted members’ attendance at the LGBTQ rights group, the Frederick Center’s “Welcoming Frederick” program, a day-

long community training program for building inclusive schools for LGBTQ children.

FCTA also sponsored and participated in Frederick County Pride events to support issues confronting transgender and gender-nonconforming youth in school.

11. In May 2016, FCTA members created the LGBTQ+ Subcommittee with the goal to reach out to teachers, and train at least two staff allies in every school building in Frederick County. FCTA also distributed “I am FCTA” buttons with a rainbow flag on them to signal to LGBTQ+ students that the adults in their school cared about them. FCTA applied for and received a grant from MSEA to do such work. Many LGBTQ+ Subcommittee members also serve as advisors for Gender Sexuality Alliances and Gay-Straight Alliances (“GSAs”), which are student groups composed of and for LGBTQ students and their allies with chapters in various Frederick County Public Schools.
12. Then, in June 2016, FCTA became aware of the Maryland Youth Risk Behavior Survey (YRBS), which, when disaggregated by Frederick County (available here: <https://phpa.health.maryland.gov/ccdpc/Reports/Pages/yrbs.aspx#frederick>), indicated that lesbian, gay, and bisexual youth were more likely to contemplate suicide and more likely to be bullied than their straight peers (52% had seriously considered suicide, and 42% had made a plan to commit suicide), numbers that were four times the suicide risk for the general population, and 12 to 14 percentage points higher, respectively, than the suicide risk for the rest of Maryland’s students. Identifying as transgender and gender-nonconforming was not an option on the YRBS, but FCTA concluded that, since transgender and gender-nonconforming youth are more at risk than even their lesbian, gay, and bisexual peers in national surveys, Frederick County transgender and gender nonconforming youth are also likely to be more at risk. For example, the survey showed

that 16% of LGBTQ students in Frederick County were absent from school because of safety concerns, compared with 5% for the general student population; and that 20% of LGBTQ students had been in fights, compared with 8% for the general student population. FCTA members and leadership were disturbed by these revelations in Frederick County. Knowing that students' lives were at stake, FCTA members wished to do more. When they learned that having one ally in a school building for transgender and gender-nonconforming youth cuts down the suicide risk substantially, FCTA focused more efforts on training educators to create welcoming environments for transgender and gender nonconforming students.

13. In the Fall of 2016, student leaders from various GSAs began to advocate for the BOE to address inconsistencies in the treatment of LGBTQ+ students and GSAs.
14. In January 2017, FCTA conducted an "Educators as Allies" training on how educators could support LGBTQ+ students in their classroom, including how to combat bullying and bias.
15. Then, in February 2017, when the Departments of Education and Justice withdrew their Dear Colleague Letter on students' use of sex-segregated facilities, student leaders again stepped up to advocate. They encouraged the BOE to adopt a trans-inclusive policy. They held rallies and promoted events from the student-created Facebook page, "Support FCPS Trans Students" (available at: <https://www.facebook.com/supportfcpstransstudents/>). Many teachers from school building across the county, including myself, attended these rallies. On March 2, 2017, the FCTA Representative Assembly unanimously voted in favor of supporting a trans-inclusive policy, and elected me to speak on behalf of FCTA in support of the policy at

the March 8, 2017 BOE's meeting considering adoption. The BOE adopted Policy 443 in June 2017.

16. At the beginning of September 2017, FCTA participated in the student-led "I am Frederick" campaign for community members to show their support for transgender and gender-nonconforming students. Many FCTA members took a picture of themselves with an "I am Frederick" sign on their social media pages. At FCTA's annual picnic, NEA Secretary-Treasurer Princess Moss took one such picture with the "I am Frederick" sign. FCTA has continued trainings for educators on trans-inclusive issues. On October 24, 2017, FCTA's LGBTQ+ Subcommittee partnered with GLSEN Maryland to host a training, "Building Safe Spaces for LGBT Youth" which included information on Policy 443 for FCTA members.
17. FCTA members strive to create a positive school climate for their students. Educators know that creating a positive school climate—for all students—is impossible if one group of students is treated differently from their peers. Thus, FCTA also distributed NEA's poster, "Bullyfree It Starts with Me," which states that "This is a safe and affirming space for: Lesbian, Gay, Bisexual, Transgender and Questioning Students and their Allies" (available here: http://www.nea.org/assets/docs/Bully_Free_LGBTQ_Poster_FinalA.pdf). Many members displayed these posters in their classrooms. As part of the second year of the MSEA grant, FCTA also distributed t-shirts with the "I am FCTA" logo and a rainbow flag background similar to the buttons we made available to members the year before.
18. In response to this lawsuit, the FCTA Board of Directors passed a resolution seeking legal support from MSEA and NEA to defend Policies 443 and 437, because these

policies have made Frederick County Public Schools safer and more welcoming for all students, and for transgender and gender-nonconforming students in particular.


By: 
Melissa Dirks

EXHIBIT B

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

MARY SMITH, *et al.*,

Plaintiffs,

v.

BOARD OF EDUCATION OF FREDERICK
COUNTY, MARYLAND, *et al.*,

Defendants.

Civil Action No. 1:17-cv-02302-ELH

DECLARATION OF ROCÍO INCLÁN
IN SUPPORT OF MOTION TO INTERVENE BY FREDERICK COUNTY TEACHERS
ASSOCIATION, MARYLAND STATE EDUCATION ASSOCIATION, AND NATIONAL
EDUCATION ASSOCIATION

I, Rocío Inclán, hereby declare:

1. I am the Director of the National Education Association (“NEA”) Center for Social Justice. I am over eighteen (18) years of age, make this declaration based on my own personal knowledge, and if called as a witness, could and would testify competently as to the matters set forth below.
2. NEA’s mission is to ensure that every student, regardless of zip code, has access to a great public school.
3. NEA has a history of advocating for the rights of transgender and gender-nonconforming students and educators at the national, state, and local levels.

4. At NEA's Center for Social Justice, I have overseen NEA's participation in advocacy, guidance, model policies, and advice on transgender and gender nonconforming students' rights in school.
5. The following is a non-exhaustive list of some of the New Business Items (NBI) that NEA has passed to advocate for transgender students:
 - a. In 2005, NEA adopted NBI 82, stating that "NEA will develop a comprehensive strategy to deal with new and more sophisticated attacks on curricula, policies and practices that support gay, lesbian, and bi-sexual and transgender students, families and staff members in public schools."
 - b. In 2011, NEA adopted NBI 28, which stated that "NEA shall publish, through NEA Today and other appropriate vehicles in the month of June every year an article/s to celebrate the contributions of GLBT (gay, lesbian, bi-sexual, transgender) teachers and GLBT friends of education and to highlight issues concerning GLBT members, including but not limited to bullying of GLBT students and educators and legislation that would affect our GLBT membership."
 - c. In 2012, NEA adopted two NBIs relating to transgender students: NBI 49 and NBI 51. NBI 49 states that "NEA will, using existing resources, influence state and local governments and educational institutions to specifically include sexual orientation and gender identity as explicitly enumerated categories of protection alongside race, ethnicity, and national origin in their policies and support policies that include proactive elements that prevent bullying." And NBI 51 states that "NEA will, using existing resources, assist state affiliates in urging policy makers on the district, state, and federal level to push for anti-bullying legislation that

specifically enacts three components proven to be most effective in bullying; they specifically name gay and transgender students as enumerated groups, address prohibition, prevention, and intervention of anti-gay and anti-transgender taunting and clearly outline the roles of school administrators and personnel.”

- d. In 2015, NEA adopted NBI 45, which states that “NEA will let state affiliates and members know, through appropriate communication, that school employees will allow transgender or gender nonconforming students the ability to let educators and support staff know how they want to be addressed and know these students are not required to change their official records or obtain a court-ordered name and/or gender change as a prerequisite to being addressed by the name and pronoun that corresponds to their gender identity.”
- e. In 2016, NEA passed NBI A to “implement an action plan to prevent acts of discrimination and violence targeted at people who are perceived or identify as lesbian, gay, bisexual, transgender or questioning (LGBTQ).” That action plan “will include: 1) Calling upon our members and society to take action to promote a culture of safety, support, affirmation that ensures civil rights and advocacy for LGBTQ members and students; . . . 6) Continuing to raise awareness among NEA members and affiliates of the rights and protections available to LGBTQ staff and students by broadly circulating and publicizing through existing NEA communication vehicles, the guidance developed by the NEA Office of General Counsel on religious exemption laws (including so-called religious freedom restoration acts and religious opt-out bills) as well as the NEA supported ‘Schools in Transition: A Guide to Support Transgender Students in K–12 Schools,’ and

further legal guidance on transgender student issues.” (Available at:

<https://ra.nea.org/business-item/2016-nbi-a/>.)

- f. In 2016, NEA also passed NBI 57, which states that “NEA will encourage all state and local affiliates to use valid and existing resources to provide transgender and gender nonconforming awareness training for faculty, staff, and administrators such as, but not limited to, ‘The Teaching Transgender Toolkit: A Facilitator’s Guide to Increasing Knowledge, Decreasing Prejudice & Building Skills.’ This resource can be found at <http://www.teachingtransgender.org>.” (Available at: <https://ra.nea.org/business-item/2016-nbi-057/>.)
6. In 2015, NEA partnered with the National Center for Lesbian Rights and others to produce “Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools,” available at: <http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Schools-In-Transition.pdf>, which serves as a practical resource guide for educators and administrators on the issues facing transgender and gender-nonconforming youth in schools.
7. Then, in 2016, NEA adopted NBI 60, which states that “NEA will provide all state and local affiliates with existing model language developed jointly by Gay, Lesbian, and Straight Education Network (GLSEN) and the National Center for Transgender Equity focused on district policy on transgender and gender nonconforming students that our school boards can adopt. This resource can be found at: http://www.glsen.org/sites/default/files/GLSEN%20Trans%20Model%20Policy%2016_0

.pdf.”¹ (Available at: <https://ra.nea.org/business-item/2016-nbi-060/>.) This policy is very similar to Frederick County’s Policies 437 and 443.

8. Also in 2016, NEA released the “Legal Guidance on Transgender Students’ Rights,” available at: https://www.nea.org/assets/docs/20184_Transgender%20Guide_v4.pdf, which outlines transgender students’ rights under the law, and provides model non-discrimination and anti-harassment policies for transgender and gender-nonconforming students, for adoption by school districts.
9. NEA has hosted webinars for its members on this guidance, and on getting school districts to pass trans-inclusive policies. NEA held one such webinar on September 26, 2017, which was called “Supporting LGBTQ Students: Recent Transgender Legal Developments and Advocating for Transgender Inclusive School District Policies.”
10. NEA has hosted trainings and presentations on transgender and gender nonconforming students’ rights at national and regional conferences, with attendees from across the country. For example, in August 2016, NEA, in collaboration with GLSEN, an LGBTQ students’ rights organization, held the first National Summit for GSA Advisors, which brought together NEA member-GSA advisors for sessions on legal updates, sharing resources, and action plans for advocating for LGBTQ students.
11. NEA has filed amici briefs in support of transgender students in several federal cases. In *G.G. v. Gloucester County School District*, NEA filed an amicus brief in the U.S. Supreme Court in support of the respondent, a transgender boy who was denied access to school facilities consistent with his gender identity, available here:

¹ The link in NBI 60 is no longer operable. However, the same document can be found at this link: <https://www.glsen.org/sites/default/files/Trans%20Model%20Policy.pdf>.

<http://www.nea.org/assets/docs/16->

[%20273%20obsac%20National%20Education%20Association%20\(FINAL\).pdf](http://www.nea.org/assets/docs/16-20273%20obsac%20National%20Education%20Association%20(FINAL).pdf). NEA

filed another brief in that case after the Supreme Court remanded it to the U.S. Court of Appeals for the Fourth Circuit. NEA also filed an amicus brief in *Carcaño v. McCrory*, in support of plaintiffs-appellants, who were challenging North Carolina's H.B. 2 law, which, among other things, prohibited transgender and gender-nonconforming students from using sex-segregated facilities consistent with their gender identity, available here:

[https://www.nea.org/assets/docs/NEA%20NCAE%20Carcano%20v.%20McCrory%204th%20Cir.%20am-brf%2010-16%20\(filed%20version\).pdf](https://www.nea.org/assets/docs/NEA%20NCAE%20Carcano%20v.%20McCrory%204th%20Cir.%20am-brf%2010-16%20(filed%20version).pdf). For those briefs, NEA

interviewed dozens of members from across the country, who expressed their support for trans-inclusive policies in school.

12. I and others at NEA have provided advice, support, and training to members and state and local affiliates on how to handle issues that arise with transgender and gender nonconforming students, and how to become an advocate for those students.

By: 
Rocío Inclán