

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

B.P.J., by her next friend and mother, HEATHER JACKSON,

Plaintiff,

v.

WEST VIRGINIA STATE BOARD OF EDUCATION, HARRISON COUNTY BOARD OF EDUCATION, WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION, W. CLAYTON BURCH in his official capacity as State Superintendent, and DORA STUTLER in her official capacity as Harrison County Superintendent,

Defendants.

Civil Action No.

Hon.

DECLARATION OF HEATHER JACKSON

I, Heather Jackson, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I make this declaration of my own personal knowledge, and, if called as a witness, I could and would testify competently to the matters stated herein.

2. I am 53 years old. My husband and I are the parents of two sons, ages 20 and 13, and an 11-year-old daughter. We have been married for almost 21 years. We live in Lost Creek, West Virginia.

3. Our daughter's name is B.P.J. My daughter and I have a very deep connection and I believe she knows that she can come to me for anything—I love her very much.

4. I am fiercely protective of B.P.J. As her mother, I want to see her be able to achieve all of her dreams.

5. B.P.J. is bright and studious; she makes “straight As” and loves math and science.

6. B.P.J. is also transgender. B.P.J. knew from a very young age that “she didn’t want her boy parts.” She never wanted to be naked for bathing because she was deeply

uncomfortable with and did not want to see certain parts of her body. B.P.J. also did not like standing up to urinate. She would often ask me a lot of questions about my own body and about why our bodies were physically different, if we were both girls.

7. As a child, B.P.J. also presented differently than my other children, both of whom are boys. At or around the age of four, B.P.J. started asking and was allowed to play dress-up in my clothes around our home. Whenever B.P.J. was provided with the opportunity to pick out her clothes or toys, she always went straight for the “girly” items. I knew this was not a “phase” for her, and that there was something different happening.

8. When B.P.J. told us that she is a girl and wants to be addressed as a girl, I was not surprised because I spend so much time with her.

9. Because B.P.J. and I have such an open and communicative relationship, we would have conversations about how she was feeling. The more we talked and the more comfortable she became with expressing how she was feeling and who she is, the more she was able to clearly communicate that she knew she was a girl.

10. By the time B.P.J. was in the third grade she had chosen her name and was living as herself at home. Towards the end of that school year, B.P.J. informed her father and me that she did not want to continue going to school “dressed as a boy.” We agreed she could start going to school dressed as herself.

11. In 2019, B.P.J. was diagnosed by Dr. Gerald T. Montano at University of Pittsburgh Medical Center with gender dysphoria.

12. Early in B.P.J.’s social transition, she began seeing a therapist experienced in treating transgender children. In late 2019, when B.P.J.’s gender dysphoria was especially

severe, causing her to be depressed and anxious, her father and I would take her to visit her therapist more often than usual.

13. B.P.J. started puberty-delaying treatment on June 15, 2020 and has been on this treatment for almost a year. She began this care under the treatment of a multidisciplinary team of providers, and continues to see providers with expertise in transgender children.

14. B.P.J. is young and just beginning to explore her interest in sports.

15. During the 2019-20 and 2020-21 school years, B.P.J. was a member of the cheerleading team for the Bridgeport Youth Football League. All members of that team were girls. Even before B.P.J. started cheering with her team, she spent a year learning all the cheer team's routines from the stands. When B.P.J. received her girls' cheer uniform, she was glowing. B.P.J. always wanted me to be in the front row of her competitions. During the 2019-20 season, for the first time ever, B.P.J.'s cheer team placed at a cheer competition.

16. Being on the cheer team dramatically increased B.P.J.'s confidence and happiness. B.P.J. was supported and accepted by the other girls on her team and her coaches. B.P.J.'s participation on her cheer team taught her the importance of responsibility, trust, and team building. B.P.J. is especially proud to have served as part of the base for her cheer team's pyramids because it demonstrated to her that her teammates trusted and relied on her in order to complete their routine.

17. Participating in cheer was a meaningful way for B.P.J. to learn responsibility. As her mother, I can preach about the importance of responsibility, but her position on her cheer team provided her with the real-life experience of having others rely on her to attend practice and participate, and this has helped her understand responsibility in a deeply personal and meaningful way.

18. Although B.P.J. enjoyed cheerleading, she joined the cheer team in part because it was one of the only sports offered to her grade level that she was interested in participating in. When B.P.J. begins junior high, however, she wants to try out for Bridgeport Middle School's girls' cross-country and track teams. I think that B.P.J. may also wish to try out for basketball and/or volleyball, in addition to trying out for and participating on the girls' cross-country and track teams.

19. From past experience with both of my sons, I believe that the cross-country team starts practicing in July of 2021. In the past, to be eligible to try out for the team when school starts in August, students must have already participated in 14 practices. If B.P.J. is unable to begin practicing with other girls in July, she will not have enough time to put 14 practices under her belt before try-outs.

20. Having the opportunity to run on the cross-country and track teams is important to B.P.J. because B.P.J. comes from a family of runners. When she was younger, I would take B.P.J. on runs with me through parks and she grew up watching her brothers run on their school teams. B.P.J. sees my medals on our walls from when I run 5Ks, and her brothers' medals, and she wants the opportunity to be able to run and win some for herself. More importantly, she wants a continued sense of belonging and camaraderie like she had with the cheer team.

21. I am so excited for B.P.J. to run and I am truly looking forward to attending her future cross-country and track meets. B.P.J.'s brothers also are both excited for B.P.J. and looking forward to seeing their sister compete.

22. B.P.J. has the support of her family, coaches, instructors, and peers. Our family is very supportive, and my 75-year-old mother, B.P.J.'s grandmother, and step-grandfather are B.P.J.'s biggest supporters.

23. On May 18, 2021, during a meeting with B.P.J.'s new Principal at Bridgeport Middle School, David Mazza, I was informed that because of H.B. 3293, my daughter will not be permitted to participate on the girls' cross-country or track teams this coming school year.

24. Principal Mazza explained to me (apparently based on his incorrect assumption that running on the boys' team is an option for B.P.J.) that the coaches for both the girls' and boys' cross-country teams will need to be informed that my daughter is transgender. Principal Mazza told me that this disclosure is necessary because B.P.J. looks and presents like a female, and it would be confusing for the girls' cross-country coach if she saw one of the girls walking over to the boys' side while the teams were practicing.

25. I am also aware that to try out and participate in the girls' cross-country team, B.P.J. needs to submit a form issued by the West Virginia Secondary School Activities Commission, and completed in part by a physician after a physical exam. A true and correct copy of this form is attached as Exhibit A. The form contains detailed questions about the student's medical history, but does not ask for the student's sex, genetics, or reproductive anatomy.

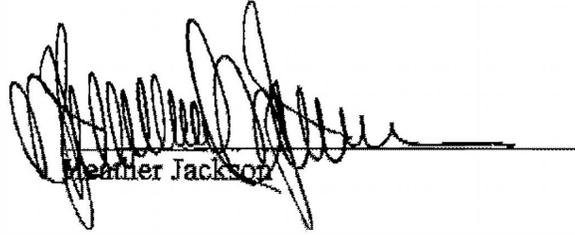
26. B.P.J. is a girl. It makes no sense for her to run with the boys. Forcing B.P.J. to compete on the boys' cross-country or track teams will mean that she will stand out like a sore thumb. B.P.J. knows she is not a boy, and we know she is not a boy.

27. Forcing B.P.J. to run with the boys would completely erase who she is, and it would devastate her. My daughter is simply saying, "Accept me for who I am." Forcing her to run to with the boys is a clear sign to her and others that the state refuses to see her and accept her for the girl that she is.

* * *

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 5-25-2021



Heather Jackson

EXHIBIT A

2875 Staunton Turnpike - Parkersburg, WV 26104

ATHLETIC PARTICIPATION/PARENTAL CONSENT/PHYSICIAN'S CERTIFICATE FORM

(Form required each school year on or after May 1st. File in School Administration Office)

ATHLETIC PARTICIPATION / PARENTAL CONSENT

PART I

Name _____ School Year: _____ Grade Entering: _____

Home Address: _____ Home Address of Parents: _____

City: _____ City: _____

Phone: _____ Date of Birth: _____ Place of Birth: _____

Last semester I attended _____ (High School) or (Middle School). We have read the condensed eligibility rules of the WVSSAC athletics. If accepted as a team member, we agree to make every effort to keep up school work and abide by the rules and regulations of the school authorities and the WVSSAC.

INDIVIDUAL ELIGIBILITY RULES

Attention Athlete! To be eligible to represent your school in any interscholastic contest, you:

- _____ must be a regular bona fide student in good standing of the school. (See exception under Rule 127-2-3)
- _____ must qualify under the Residence and Transfer Rule (127-2-7)
- _____ must have earned at least 2 units of credit the previous semester. Summer School may be included. (127-2-6)
- _____ must have attained an overall "C" (2.00) average the previous semester. Summer School may be included. (127-2-6)
- _____ must not have reached your 15th (MS), 19th (HS) birthday before August 1 of the current school year. (127-2-4)
- _____ must be residing with parent(s) as specified by Rule 127-2-7 and 8.
 - _____ unless parents have made a bona fide change of residence during school term.
 - _____ unless an AFS or other Foreign-Exchange student (one year of eligibility only).
 - _____ unless the residence requirement was met by the 365 calendar days attendance prior to participation.
- _____ if living with legal guardian/custodian, may not participate at the varsity level. (127-2-8)
- _____ must be an amateur as defined by Rule 127-2-11.
- _____ must have submitted to your principal before becoming a member of any school athletic team Participation/Parent Consent/Physician Form, completely filled in and properly signed, attesting that you have been examined and found to be physically fit for athletic competition and that your parents consent to your participation. (127-3-3)
- _____ must not have transferred from one school to another for athletic purposes. (127-2-7)
- _____ must not have received, in recognition of your ability as a HS or MS athlete, any award not presented or approved by your school or the WVSSAC. (127-3-5)
- _____ must not, while a member of a school team in any sport, become a member of any other organized team or as an individual participant in an unsanctioned meet or tournament in the same sport during the school sport season (See exception 127-2-10).
- _____ must follow All Star Participation Rule. (127-3-4)
- _____ must not have been enrolled in more than (8) semesters in grades 9 to 12. Must not have participated in more than three (3) seasons while in grades 6-7-8. (Rule 127-2-5).
- _____ qualify under homeschool rule. (Rule 127-2-3.11, 127-2-7.2k, 126-26-3.1.1k)

Eligibility to participate in interscholastic athletics is a privilege you earn by meeting not only the above listed minimum standards but also all other standards set by your school and the WVSSAC. If you have any questions regarding your eligibility or are in doubt about the effect any activity or action might have on your eligibility, check with your principal or athletic director. They are aware of the interpretation and intent of each rule. Meeting the intent and spirit of WVSSAC standards will prevent athletes, teams, and schools from being penalized.

PART II - PARENTAL CONSENT

In accordance with the rules of the WVSSAC, I give my consent and approval to the participation of the student named above for the sport **NOT MARKED OUT BELOW**:

BASEBALL	CROSS	GOLF	SWIMMING	VOLLEYBALL
BASKETBALL	COUNTRY	SOCCER	TENNIS	WRESTLING
CHEERLEADING	FOOTBALL	SOFTBALL	TRACK	BAND

MEDICAL DISQUALIFICATION OF THE STUDENT-ATHLETE / WITHHOLDING A STUDENT-ATHLETE FROM ACTIVITY

The member school's team physician has the final responsibility to determine when a student-athlete is removed or withheld from participation due to an injury, an illness or pregnancy. In addition, clearance for that individual to return to activity is solely the responsibility of the member school's team physician or that physician's designated representative.

I understand that participation may include, when necessary, early dismissal from classes and travel to participate in interscholastic athletic contests. I will not hold the school authorities or West Virginia Secondary School Activities Commission responsible in case of accident or injury as a result of this participation. I also understand that participation in any of those sports listed above may cause permanent disability or death. Please check appropriate space: He/She has student accident insurance available through the school (); has football insurance coverage available through the school (); is insured to our satisfaction ().

I also give my consent and approval for the above named student to receive a physical examination, as required in Part IV, Physician's Certificate, of this form, by an approved health care provider as recommended by the named student's school administration.

I consent to WVSSAC's use of the herein named student's name, likeness, and athletically related information in reports of Inter-School Practices or Scrimmages and Contests, promotional literature of the Association, and other materials and releases related to interscholastic athletics.

I have read/reviewed the concussion and Sudden Cardiac Arrest information as available through the school and at WVSSAC.org. (Click Sports Medicine)

Date: _____ Student Signature _____ Parent Signature _____

PART III – STUDENT’S MEDICAL HISTORY
(To be completed by parent or guardian prior to examination)

Name _____ Birthdate ____/____/____ Grade _____ Age _____

- | | |
|---|--|
| Has the student ever had: | Yes No 12. Have any problems with heart/blood pressure? |
| Yes No 1. Chronic or recurrent illness? (Diabetes, Asthma, Seizures, etc.) | Yes No 13. Has anyone in your family ever fainted during exercise? |
| Yes No 2. Any hospitalizations? | Yes No 14. Take any medicine? List _____ |
| Yes No 3. Any surgery (except tonsils)? | Yes No 15. Wear glasses ____, contact lenses____, dental appliances____? |
| Yes No 4. Any injuries that prohibited your participation in sports? | Yes No 16. Have any organs missing (eye, kidney, testicle, etc.)? |
| Yes No 5. Dizziness or frequent headaches? | Yes No 17. Has it been longer than 10 years since your last tetanus shot? |
| Yes No 6. Knee, ankle or neck injuries? | Yes No 18. Have you ever been told not to participate in any sport? |
| Yes No 7. Broken bone or dislocation? | Yes No 19. Do you know of any reason this student should not participate in sports? |
| Yes No 8. Heat exhaustion/sun stroke? | Yes No 20. Have a sudden death history in your family? |
| Yes No 9. Fainting or passing out? | Yes No 21. Have a family history of heart attack before age 50? |
| Yes No 10. Have any allergies? | Yes No 22. Develop coughing, wheezing, or unusual shortness of breath when you exercise? |
| Yes No 11. Concussion? If Yes _____
Date(s) | Yes No 23. (Females Only) Do you have any problems with your menstrual periods. |

PLEASE EXPLAIN ANY "YES" ANSWERS OR ANY OTHER ADDITIONAL CONCERNS.

I also give my consent for the physician in attendance and the appropriate medical staff to give treatment at any athletic event for any injury.

SIGNATURE OF PARENT OR GUARDIAN _____ DATE ____/____/____

PART IV – VITAL SIGNS

Height _____ Weight _____ Pulse _____ Blood Pressure _____

Visual acuity: Uncorrected ____/____; Corrected ____/____; Pupils equal diameter: Y N

PART V – SCREENING PHYSICAL EXAM

This exam is not meant to replace a full physical examination done by your private physician.

Mouth:		Respiratory:		Abdomen:	
Appliances	Y N	Symmetrical breath sounds	Y N	Masses	Y N
Missing/loose teeth	Y N	Wheezes	Y N	Organomegaly	Y N
Caries needing treatment	Y N	Cardiovascular:		Genitourinary (males only);	
Enlarged lymph nodes	Y N	Murmur	Y N	Inguinal hernia	Y N
Skin - infectious lesions	Y N	Irregularities	Y N	Bilaterally descended testicles	Y N
Peripheral pulses equal	Y N	Murmur with Valsalva	Y N		

Any "YES" under Cardiovascular requires a referral to family doctor or other appropriate healthcare provider.

Musculoskeletal: (note any abnormalities)

Neck:	Y N	Elbow:	Y N	Knee/Hip:	Y N	Hamstrings:	Y N
Shoulder:	Y N	Wrist:	Y N	Ankle:	Y N	Scoliosis:	Y N

RECOMMENDATIONS BASED ON ABOVE EVALUATION:

After my evaluation, I give my:

- _____ Full Approval;
- _____ Full approval; but needs further evaluation by Family Dentist ____; Eye Doctor ____; Family Physician ____; Other ____;
- _____ Limited approval with the following restrictions: _____;
- _____ Denial of approval for the following reasons: _____.

_____ / _____ / _____

MD/DO/DC/Advanced Registered Nurse Practitioner/Physician's Assistant

Date

DON'T LET AN INJURY LEAD TO AN OPIOID ADDICTION

2 MILLION ATHLETES ARE EXPECTED TO SUFFER A SPORTS INJURY THIS YEAR

MANY OF THESE ATHLETES WILL BE PRESCRIBED OPIOID PAINKILLERS

75% OF HIGH SCHOOL HEROIN USERS STARTED WITH PRESCRIPTION OPIOIDS

HIGH SCHOOL ATHLETES ARE AT RISK OF BECOMING ADDICTED TO PRESCRIPTION DRUGS

- 28.4% used medical opioids at least once over a three year period.
- 11% of high school athletes have used an opioid medication for nonmedical reasons.
- Nearly 25% of students who chronically use prescription opioids also use heroin.

HOW TO PROTECT YOUR CHILD

- Talk to your healthcare provider about alternative pain management treatment options (see below).
 - First-time prescription opioid users have a 64% higher risk of early death than patients who use alternative pain medication.
- If your child is prescribed an opioid painkiller, talk about the dangers of misusing medication, including overuse and medication sharing.
- Monitor your child's intake of prescription medication to ensure he/she is following dosage instructions.
- Safely dispose of any unused medication through a prescription drug drop box or a DEA Take-Back program.

WHAT ARE OPIOIDS?

Opioids are a powerful and addictive type of prescription painkiller that have similar chemical properties and addiction risks as heroin. While opioids may provide temporary relief, they do nothing to address the underlying injury and can have serious side effects.

These drugs may lead to: dependence, tolerance, accidental overdose, coma and death.

The most common prescribed opioid painkillers in West Virginia are:

- Oxycodone (OxyContin)
- Hydrocodone (Lortab and Vicodin)

NON-NARCOTIC PAIN MANAGEMENT ALTERNATIVES

- Physical Therapy
- Chiropractic
- Massage Therapy
- Acupuncture
- Over-the-Counter Medication



WEST VIRGINIA
ATTORNEY GENERAL'S OFFICE



West Virginia
Board of
Medicine

HEADS ^x UP

CONCUSSION IN HIGH SCHOOL SPORTS

A FACT SHEET FOR PARENTS

What is a concussion?

A concussion is a type of traumatic brain injury. Concussions are caused by a bump or blow to the head. Even a "ding," "getting your bell rung," or what seems to be a mild bump or blow to the head can be serious.

You can't see a concussion. Signs and symptoms of concussion can show up right after the injury or may not appear or be noticed until days or weeks after the injury. If your child reports any symptoms of concussion, or if you notice the symptoms yourself, seek medical attention right away.

What are the signs and symptoms of a concussion?

If your child has experienced a bump or blow to the head during a game or practice, look for any of the following signs of a concussion:

SYMPTOMS REPORTED BY ATHLETE	SIGNS OBSERVED BY PARENTS/GUARDIANS
<ul style="list-style-type: none"> • Headache or "pressure" in head • Nausea or vomiting • Balance problems or dizziness • Double or blurry vision • Sensitivity to light • Sensitivity to noise • Feeling sluggish, hazy, foggy, or groggy • Concentration or memory problems • Confusion • Just "not feeling right" or "feeling down" 	<ul style="list-style-type: none"> • Appears dazed or stunned • Is confused about assignment or position • Forgets an instruction • Is unsure of game, score, or opponent • Moves clumsily • Answers questions slowly • Loses consciousness (even briefly) • Shows mood, behavior, or personality changes

How can you help your child prevent a concussion or other serious brain injury?

- Ensure that they follow their coach's rules for safety and the rules of the sport.
- Encourage them to practice good sportsmanship at all times.
- Make sure they wear the right protective equipment for their activity. Protective equipment should fit properly and be well maintained.
- Wearing a helmet is a must to reduce the risk of a serious brain injury or skull fracture.
 - However, helmets are not designed to prevent concussions. There is no "concussion-proof" helmet. So, even with a helmet, it is important for kids and teens to avoid hits to the head.

What should you do if you think your child has a concussion?

SEEK MEDICAL ATTENTION RIGHT AWAY. A health care professional will be able to decide how serious the concussion is and when it is safe for your child to return to regular activities, including sports.

KEEP YOUR CHILD OUT OF PLAY. Concussions take time to heal. Don't let your child return to play the day of the injury and until a health care professional says it's OK. Children who return to play too soon—while the brain is still healing—risk a greater chance of having a repeat concussion. Repeat or later concussions can be very serious. They can cause permanent brain damage, affecting your child for a lifetime.

TELL YOUR CHILD'S COACH ABOUT ANY PREVIOUS CONCUSSION. Coaches should know if your child had a previous concussion. Your child's coach may not know about a concussion your child received in another sport or activity unless you tell the coach.

If you think your teen has a concussion:
 Don't assess it yourself. Take him/her out of play. Seek the advice of a health care professional.

It's better to miss one game than the whole season.

For more information, visit www.cdc.gov/Concussion.





WVSSAC

SUDDEN CARDIAC ARREST AWARENESS



What is Sudden Cardiac Arrest?

- Occurs suddenly and often without warning.
- An electrical malfunction (short-circuit) causes the bottom chambers of the heart (ventricles) to beat dangerously fast (ventricular tachycardia or fibrillation) and disrupts the pumping ability of the heart.
- The heart cannot pump blood to the brain, lungs and other organs of the body.
- The person loses consciousness (passes out) and has no pulse.
- Death occurs within minutes if not treated immediately.

What are the symptoms/warning signs of Sudden Cardiac Arrest?

- SCA should be suspected in any athlete who has collapsed and is unresponsive
- Fainting, a seizure, or convulsions during physical activity
- Dizziness or lightheadedness during physical activity
- Unusual fatigue/weakness
- Chest pain
- Shortness of breath
- Nausea/vomiting
- Palpitations (heart is beating unusually fast or skipping beats)
- Family history of sudden cardiac arrest at age <50

ANY of these symptoms/warning signs may necessitate further evaluation from your physician before returning to practice or a game.

What causes Sudden Cardiac Arrest?

- Conditions present at birth (inherited and non-inherited heart abnormalities)
- A blow to the chest (Commotio Cordis)
- An infection/inflammation of the heart, usually caused by a virus. (Myocarditis)
- Recreational/Performance-Enhancing drug use.
- Other cardiac & medical conditions / Unknown causes. (Obesity/Idiopathic)

What are ways to screen for Sudden Cardiac Arrest?

- The American Heart Association recommends a pre-participation history and physical which is mandatory annually in West Virginia.
- Always answer the heart history questions on the student Health History section of the WVSSAC Physical Form completely and honestly.
- Additional screening may be necessary at the recommendation of a physician.

What is the treatment for Sudden Cardiac Arrest?

- Act immediately; time is critical to increase survival rate
- Activate emergency action plan
- Call 911
- Begin CPR
- Use Automated External Defibrillator (AED)

Where can one find additional information?

- Contact your primary health care provider
- American Heart Association (www.heart.org)