

SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT PALMER

**X.A.**, a minor, by and through his  
next friends **P.A.**, his father **and**  
**M.A.**, his mother,

Plaintiff

No. 3PA-24-\_\_\_\_\_ CI

v.

**Matanuska-Susitna Borough  
School District,**

Defendant

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

**Parties**

1. Plaintiff X.A. is a boy.<sup>1</sup>

2. X.A. is a transgender boy. This means that he was incorrectly assigned “female” at birth, although he is and identifies as male. X.A. knows that he is a boy and presents to the world as a boy. People who meet him know him as a boy.

3. M.A. and P.A. are X.A.’s biological and legal parents and are bringing this claim on his behalf since he is a minor child.

---

<sup>1</sup> To protect their identities, minor Plaintiff and his next friends/parents’ initials used here are pseudonyms. Plaintiff is filing a Motion to Proceed Pseudonymously along with this Complaint.

4. The Matanuska-Susitna Borough School District (MSBSD or District) is a government body created and authorized under Matanuska-Susitna Borough Code and Alaska law.

5. X.A. is an elementary school student at a public elementary school (“Elementary School”)]that is part of and administered by the MSBSD.

### **Jurisdiction and Venue**

6. This is a complaint for declaratory and injunctive relief brought pursuant to AS 22.10.020(a) and (g). This Court has original jurisdiction over the parties and over the subject matter of this dispute pursuant to AS 09.05.015(a)(1) and AS 22.10.020(a).

7. Venue is proper in this district pursuant to AS 22.10.030 and Alaska Rule of Civil Procedure 3(c) because the claim arises in this district.

### **General Allegations**

8. Each person has multiple sex-related characteristics, including hormones, external and internal morphological features, external and internal reproductive organs, chromosomes, and gender identity. These characteristics may not always be in alignment.

9. The phrase “sex assigned at birth” refers to the sex recorded on a person’s birth certificate at the time of birth. Typically, a person is

assigned a sex on their birth certificate solely on the basis of the appearance of external reproductive organs at the time of birth. Other sex-related characteristics (such as a person's chromosomal makeup and gender identity, for example) are typically not assessed or considered at the time of birth.

10. Gender identity—a person's core internal sense of their own gender—is the primary factor in determining a person's sex. Every person has a gender identity. There is a medical consensus that gender identity is innate and that efforts to change a person's gender identity are unethical and harmful to a person's health and well-being.

11. Transgender persons are people whose gender identity diverges from the sex they were assigned at birth. A transgender boy's sex is male (even though he was assigned the sex of female at birth) and a transgender girl's sex is female (even though she was assigned the sex of male at birth).

12. Cisgender persons are people whose gender identity aligns with the sex they were assigned at birth. A cisgender boy's sex is male (matching his assigned sex of male at birth) and a cisgender girl's sex is female (matching her assigned sex of female at birth).

13. The incongruence between a transgender person's gender identity and sex assigned at birth can sometimes be associated with

gender dysphoria. Gender dysphoria is a serious medical condition recognized in the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, Fifth Ed. (2013) (“DSM-V”), and by the other leading medical and mental health professional groups, including the American Medical Association and the American Psychological Association.

14. Gender dysphoria refers to clinically significant distress that can result when a person’s gender identity differs from the person’s sex assigned at birth. If left untreated, gender dysphoria may result in psychological distress, anxiety, depression, and even suicidal ideation or self-harm.

15. Treatment of gender dysphoria is usually provided pursuant to the Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People (“Standards of Care”), published by the World Professional Association of Transgender Health. The Standards of Care are recognized as authoritative by major medical and mental health professional organizations.

16. Treatments for gender dysphoria align the transgender person’s body and lived experience with the person’s true sex. Steps that transgender people may take to treat their gender dysphoria pursuant to the Standards of Care include: (1) social transition; (2)

hormone therapy; and/or (3) gender-affirming surgery. These treatments do not change a transgender person's sex, which is determined by their gender identity.

17. Not every transgender person develops gender dysphoria. Gender dysphoria can be lessened and even prevented by supportive environments and by allowing the transgender person to reduce the disjunction between their gender identity and the sex they were assigned at birth. Medical literature indicates that prepubescent children who are well accepted in their gender-diverse identities are generally well-adjusted.

18. When a person receives family and community acceptance and support in aligning their appearance, body, and lived experiences with their gender identity, this can help prevent gender dysphoria by minimizing or eliminating the distress caused by a misalignment of a person's gender identity with their sex as assigned at birth.

19. Social transition entails a transgender person living in accordance with the person's gender identity. For example, for a transgender boy like X.A., social transition can include, among other things, changing his first name to a name typically associated with boys, using male pronouns, changing his identity documents to indicate a male gender, wearing clothing and adopting grooming habits

stereotypically associated with boys, using restrooms and other facilities for boys, and otherwise living as a boy in all aspects of life.

20. Successful social transition requires that a transgender boy be recognized as a boy and treated the same as all other boys by family members, educators, and others in the community.

21. The ability to live in a manner consistent with one's gender identity is critical to the health and well-being of all transgender people.

22. Living in a manner consistent with one's gender identity, including the use of restroom facilities that match one's gender identity, is both a way to prevent gender dysphoria and a key aspect of treatment for gender dysphoria for those who suffer from it.

23. According to every major medical and mental health organization, including the American Medical Association, the American Academy of Pediatrics, the American Psychiatric Association, and the American Psychological Association, excluding transgender boys and girls from using the same restrooms as cisgender boys and girls is harmful to the health and wellbeing of those transgender students. When they are excluded from multiple-occupancy restrooms consistent with their gender identities, transgender students often avoid using the restroom entirely. This may be because using

designated single-occupancy restrooms would reveal that they are transgender to others, is stigmatizing, or is impractical because of how far the single occupancy restrooms are from a student's classes.

Children who avoid using restrooms at school may suffer infections and other negative health consequences as a result of avoiding being forced to use a restroom that does not align with their gender identity.

Treating transgender boys and girls differently than their peers and excluding them from the same restrooms used by their same-gender classmates also increases their risk of, or worsens, anxiety, depression, suicidal ideation, and self-harm; could lead to suicide; and may cause or increase the intensity of gender dysphoria.

24. Educators and school administrators across the country also recognize that excluding transgender students from multiple occupancy restrooms that align with their gender identity interferes with their ability to learn and thrive at school. It impairs the ability to develop a healthy sense of self, peer relationships, and the cognitive skills necessary to succeed in adult life. In light of these harms, the National Association of School Psychologists, National Association of Secondary School Principals, National Association of Elementary School Principals, and the American School Counselor Association have

all called upon schools to allow transgender boys and girls to use the same restrooms as their cisgender peers.

25. According to the American Academy of Pediatrics and other major medical and mental health organizations, there is no evidence that allowing transgender boys and girls to use the same restrooms as their cisgender counterparts causes any harm to cisgender students.

### **X.A.'s Journey as a Transgender Boy**

26. Even though X.A.'s sex assigned at birth was female, and even before he was aware that transgender people existed, X.A. knew that his body did not feel like it fit him.

27. When X.A. was about two years old, he began expressing that he thought boys were "better" and threw fits if anyone tried to get him to wear anything stereotypically girly: pink, rainbows, sparkles, and the like.

28. From a very young age, if anyone complimented X.A. by saying he was "pretty," he would reply with some iteration of, "I don't want to be pretty, I want to be cool!" When asked what "cool" meant to him, he described things like shirts with "sharks and dinosaurs eating [his] chest."

29. At age three, X.A. cut all of his hair off.



30. As a toddler and young child, X.A. introduced himself as “Jeff” to others.

31. In the summer of 2022, when X.A. reached the age where his soccer league’s teams are separated by gender, he did not want to join the summer soccer team anymore, something he had previously loved. He did not want to be on the girls’ team.

32. X.A.’s parents began noticing more and more signs of X.A.’s gender diversity. But it was when X.A. told his aunt “I feel like a boy” that X.A.’s parents asked him about his gender and pronouns.

33. When X.A.’s parents discussed what gender and pronouns fit him best, they asked him if “they/them” pronouns might work. X.A. thought about it but then said “I’m not a they/them. I’m a boy!”

34. X.A. chose a new name for himself when he was seven years old. The name he was given at birth was feminine, and he knew that it was not appropriate for him, because he is a boy. His chosen name is easily recognized as a boy’s name. X.A. has consistently used his chosen boy’s name since July 2023.

35. As X.A. started using his chosen male name, wearing more traditionally masculine clothing, and sporting a short boy haircut, he became happier and happier. He was so excited to tell his friends and family that he had switched genders and was living truthfully as a boy.

36. X.A. is remarkably mature about gender for such a young person. When he first transitioned to living as a boy, he would get angry at anyone who misgendered him or called him by his “dead name”—a term used for a transgender person’s name given at birth that does not fit their true gender identity. But now, X.A. is discerning: he is patient with people as they learn about him and interacting with transgender people generally, and less patient with people he knows should know better.

### **Defendant’s Enactment of a Discriminatory Bathroom Policy**

37. On October 19, 2022, the MSBSD adopted Policy No. 5134 BP, entitled “Restroom/Changing Area Use.”

38. The policy includes a statement of purpose, as follows: “It is the policy of the Mat-Su Borough School Board to maintain an effective learning and working environment. In order to achieve an effective learning and work environment, it is important to create clear and consistent policy in every building and facility in the District.”

39. Policy No. 5134 BP further states:

1. ‘Sex’ means the physical condition of being male or female based on genetics and physiology, as designated at the individual’s birth. The biological sex listed on an individual’s birth certificate may be relied on to establish the individual’s biological

sex designated at the individual's birth if the sex designated on the birth certificate was designated at or near the time of the individual's birth.

2. To ensure privacy and safety in all Mat-Su Borough School District buildings and facilities, the stated policy will be actively enforced in every restroom or changing area designated as follows:
  - a. For the exclusive use of the male sex; or
  - b. For the exclusive use of the female sex.
  - c. Each Mat-Su Borough School District building shall provide a reasonable accommodation to any individual who does not wish to comply with the provisions of section 2. A reasonable accommodation shall be access to a single-occupancy restroom or changing room (such as a nurse's office or family restroom).

40. Prior to passing Policy No. 5134 BP, the District had a policy that permitted all students to utilize bathrooms that were consistent with their gender identities.

41. In deciding to enact Policy No. 5134 BP, the District inappropriately relied on public testimony that was rooted in factual misinformation, prejudice, and bias against transgender people.

### **Defendant's Denial of X.A.'s Access to Appropriate Bathrooms at School**

42. X.A. is now a student at Elementary School in the Matanuska-Susitna Borough School District ("Mat-Su District" or "District"). He loves school and especially loves attending Elementary School.

43. X.A. attended a different elementary school last school year, but he and his family did not believe the environment would be welcoming to a young transgender student. They transferred to Elementary School for the 2023-24 school year after hearing that it was a more progressive, welcoming place for a student like X.A.

44. Ahead of the 2023-24 school year, X.A. and X.A.'s parents met with the principal of Elementary School over the summer to discuss X.A.'s school transition plan.

45. During this meeting, the principal spoke to X.A. directly and informed him that District policy requires him to use either the bathrooms at school associated with his assigned sex at birth, or a gender-neutral bathroom. The principal told X.A. that he would not be allowed to use the boy's restroom. The principal informed him that the school nurse had a gender-neutral bathroom that X.A. could use.

46. In that same meeting, X.A.'s mother raised concerns that barring her male child from using the restrooms designated for males was not aligned with national standards for creating a gender-affirming environment for all students. The principal referred to the District's Policy 5134 BP: Restroom/Changing Area Use, and essentially told the family that the principal's hands were tied.

47. When school started, X.A. followed the principal's instructions even though he felt very uncomfortable using the girl's restroom. But during the first few weeks of the school year, multiple students complained to teachers that they saw him enter the girl's restroom and alerted other staff that there was a boy going into the girl's bathroom. The principal then questioned X.A. as if he had done something wrong by trying to sneak into the girl's restroom. X.A. was horrified and upset; he was complying with a policy that violated his gender identity only because he was directed to do so by the principal, and now he was being shamed and might be punished for doing what he was ordered to do. While the teachers and staff involved eventually understood that X.A. was following the rules all along, this experience was too traumatic for X.A. to feel comfortable to use the girl's restroom at all anymore.

48. As this incident illustrates, because X.A. presents as a boy, he attracts unwanted attention by other children and adults in the girl's bathroom, because he looks as though he does not belong and should not be using the girl's facilities, leading him to be singled out and shamed. Using the girl's bathroom is not a safe option for X.A.

49. X.A. is also permitted to use the bathroom in the nurse's office, which is a gender-neutral bathroom. X.A. uses this bathroom

sometimes. But this bathroom is at the opposite end of the school from X.A.'s classroom, so any time he uses this restroom, he misses more class time than if he were able to use the regular restrooms placed more conveniently throughout the school.

50. Additionally, the nurse's office is not a private option for X.A. When X.A. goes into the nurse's office to use the restroom, the nurse knows why X.A. is there and lets him use the restroom without explanation. But there are usually other children in the nurse's office seeking medical assistance from the nurse, who now see X.A. having to use the nurse's office bathroom. Often the other children will ask why X.A. is there and why he is using the nurse's bathroom. Because this bathroom is not typically used by cisgender children, using it singles X.A. out as different. X.A. must out himself as transgender to the other children in the nurse's office every time he uses that restroom.

51. While the regular nurse knows why X.A. uses that restroom, substitute medical staff may not. In December 2023, a substitute nurse stopped X.A. as he was leaving the nurse's restroom and asked him if he was a boy or a girl. X.A. was distraught from this interaction. The harmful question revealed that even the "gender-neutral" option was not a safe or private one for X.A.

52. This incident also revealed that the nurse’s office bathroom accommodation is not sufficient to protect X.A.’s privacy, since using it singles him out, causing both other children and school employees to question his gender identity and to ask him uncomfortable personal questions about his bathroom use and gender identity.

53. Elementary School leadership have worked with X.A.’s parents to try to work out a “solution” to X.A. feeling unsafe and being singled out for his bathroom use, despite feeling bound by the MSBSD Policy 5134 BP. This “solution” has been for X.A. to go “help out” in the preschool classroom, which has its own private single restroom attached, so he can use that bathroom. X.A. now goes to the preschool classroom twice a day, in the morning and afternoon. X.A. helps the preschool teacher pass out snacks or crafts to the younger children, participate in story time, or another similar task, for about 10-15 minutes, uses the restroom, and then can return to his own classroom.

54. This “solution” is fraught with problems. These preschool visits are at set times only, so if X.A. needs to use the restroom outside of that set schedule, he must use the nurse’s office restroom. And there is no preschool on Mondays, so for one-fifth of the school week, X.A. does not have any access to this restroom.

55. When the preschool bathroom option is available, it is the option that feels the most safe and private to X.A. But using the preschool bathroom results in X.A. missing valuable instructional time in his own, age-appropriate classroom. X.A. misses at least 10 minutes of class time in his own classroom twice a day—a total of 20 minutes a day that all the other students in his class can use for learning.

56. Sometimes X.A. does not go to the preschool classroom, even if he has to use the restroom, because he does not want to miss the activity or lesson that is going on in his own classroom at the time. In that case, X.A. just holds it until the afternoon or the end of the day, or uses the nurse's bathroom if he has to.

57. X.A. feels the effects of Policy 5134 BP physically and mentally. He has limited his fluid intake during the day so that he does not have to use the restroom as often at school. Not drinking enough water and holding in his urine because he does not feel safe using the bathroom at school and/or does not want to miss class causes him physical discomfort and pain. When he does have to use the restroom, he misses valuable educational time, whether because he is going to the inconvenient nurse's office bathroom or to the preschool classroom during the designated windows.



58. X.A. just wants to be able to go to school like any other kid, to focus on learning and socializing with his peers, and not have constant stress and anxiety about where and when he is going to be able to use the bathroom.

59. Unlike cisgender students in the District, in order to use the bathroom at school, X.A. must give up his privacy, suffer physical discomfort and pain from holding in urine, suffer mental embarrassment, and miss out on valuable instructional time at school. Cisgender children at Elementary School do not suffer any of these effects; unlike X.A., cisgender children are permitted to use convenient bathrooms appropriate to their gender identities whenever they feel the need.

60. At no point has any school or District official ever provided X.A. or his parents with information suggesting that his use of the boy's restroom harms anyone else. When X.A. is in settings outside of school, he uses the men's or boy's restroom. To his knowledge, there has never been an incident or complaint by others with his restroom use outside of school. X.A. does not want to invade anyone else's privacy or call attention to himself in the bathroom. He just wants to use the restroom, wash his hands, and leave like everyone else does. He wants to be normal and blend in with his peers.

61. Access to the boy’s restroom is important to X.A. because he wants to interact with his peers like an equal. He is recognized as the boy that he is in every respect by peers and teachers, except at the moment he needs to enter a restroom. It does not work for him to be a boy in every other part of his school life, but not when he needs to perform one of life’s most basic functions. When X.A. is singled out for special treatment, it suggests to others a false distinction: that a transgender boy is not a “real” boy. Such stigma is not only deleterious for X.A., it is a harmful statement to others, creating a stigma associated with being transgender.

62. Being banned from the boys’ restrooms is humiliating to X.A. It sends a signal to other students that X.A. is not a real boy, and treats him as if he is unfit to share a communal space with others. It also creates a negative perception and reinforces stereotypes—all of which are unfounded and harmful—that transgender children are more likely to behave inappropriately or that they are inferior to other boys.

63. By barring X.A. from using the boy’s restrooms like the other boys do, Defendant isolates and separates X.A. based on his sex and his transgender status.

64. By barring X.A. from the restrooms consistent with who he is, Defendant refuses to recognize X.A.'s gender identity even as they recognize the gender identity of all of his cisgender peers.

65. No cisgender child at Elementary School has to cope with the stress of being denied access to the bathroom that accords with his gender identity, or face consistent loss of classroom time just to do something as basic as go to the restroom. This creates a Hobson's choice for X.A., one that forces him to choose between the importance and fun of learning and being present in class, with his physiological need to use the restroom. Equally as bad is the constant reminder that he is being treated differently. Given the importance of living as a boy in all respects, this distinction creates an emotional and social hardship on X.A.

66. X.A. has a happy and supportive home life with parents who respect and support him as a transgender boy. A play therapist evaluated X.A. and confirmed that the support of X.A.'s parents and community in accepting him as a boy and respecting and supporting him as a boy has enabled X.A. to avoid a diagnosis of gender dysphoria to date. But the constant stress, outing, shaming, and being singled out at school as a result of not being permitted to use the boy's bathroom like the other boys do and having his transgender identity

shared regularly with school staff and other children places X.A. at heightened risk for developing gender dysphoria and other negative mental health outcomes. Based on the therapist's evaluation and the current national research, X.A.'s family has well-founded concerns that harmful policies like the District's may contribute to the development of gender dysphoria and other negative mental health outcomes.

67. As a result of MSBSD Policy 5134 BP, X.A. has experienced and continues to experience the harmful effects of being separated from, and treated differently than, his cisgender classmates of the same gender identity at Elementary School, including lowered self-esteem, embarrassment, humiliation, social isolation, and stigma. MSBSD Policy 5134 BP places X.A. at heightened and significant risk for developing gender dysphoria.

68. Through their actions in promulgating and relying on MSBSD Policy 5134 BP, Defendant has purposefully disrupted and compromised X.A.'s education.

69. The principal and some leadership staff at Elementary School have been supportive of X.A., and the principal has tried to work with the family to find solutions that allow X.A. to be treated fairly and equally to the other boys at Elementary School. But the District's discriminatory policy has tied the principal's hands, forcing the

principal to treat X.A. differently, invade his privacy, and compromise his education.

### **Defendant’s Disclosures of Plaintiff’s Personal Information**

70. X.A.’s legal name is still his name assigned at birth, a traditionally female name. Because X.A. has chosen a new, gender-appropriate name, the name on his birth certificate is his “dead name.” X.A. does not want to be called this name anymore. Hearing himself referred to by a girl’s name is stressful and upsetting to him.

71. The District’s electronic student information system maintains and produces a swath of different records and document types, from attendance sheets to bus pick-up lists to the lunch-line register screen. All of these display a child’s full legal name, even if school staff know the child by a preferred name.

72. In August 2023, ahead of the school year, X.A.’s parents met with the Elementary School principal and registrar, and X.A.’s new teacher, about protecting X.A.’s personally identifying information. School staff informed X.A.’s family that there was no way for X.A.’s preferred name—instead of his legal name—to be used on attendance sheets, testing data, report cards, school photos, lunch line purchase screens, or bus pick-up lists.

73. Staff's plan instead was to create notes for any substitute teachers indicating X.A.'s preferred name and pronouns. In addition, the principal made a staff-wide announcement that the school had enrolled a transgender child at the in-service meeting for staff prior to the first day of school.

74. In or around October 2023, X.A. was going through the lunch line, and a substitute staff member was working the register. When X.A. tried to purchase his lunch and his feminine legal name popped up on the screen, the lunch line worker was confused and began loudly asking X.A. questions about "who [feminine name] was," until a teacher familiar with X.A. came over to explain and tell X.A. that it was okay and to go eat his lunch. The system's procedure of displaying only the legal name outed X.A. to the substitute lunch line worker as well as any other children and adults who could hear the loud questions.

75. Although the District may need to maintain pupil records, including students' legal names and their sex as assigned at birth, there is no reason that a lunch line worker or the librarian would need to know a X.A.'s legal name versus his preferred name. It would actually make it easier for substitute teachers to take attendance and communicate with students if the teacher were provided with an

attendance sheet of preferred names instead of one of legal names with additional notes to juggle.

76. There is no educational, pedagogical, or any other legitimate need for teachers and staff at Elementary School or within the broader MSBSD to know that X.A. is transgender and was assigned female at birth, unless they are health care providers providing medical or psychological care to X.A. that is relevant to X.A.'s sex or gender identity, the custodian of mandatory school records that contain this information, or if X.A. or his family wishes them to have this information.

77. On information and belief, it is more than feasible to reprogram the school's information system to display a X.A.'s preferred name instead of his legal name, except for in central records maintained by the school's office.

### **Administrative Complaint Process**

78. Concerned for their child's wellbeing, safety, and privacy, X.A.'s parents filed a Mat-Su Borough Conflict Resolution Form with the District on August 28, 2023.

79. In the Form, essentially an administrative complaint, X.A.'s parents explained the issues with both restroom access and personal information protection.

80. The District assigned Investigator Michael “Mikey” Evans to X.A.’s administrative case. He informed X.A.’s parents that, according to District policy, he was supposed to return his findings within thirty days, but he wanted to be “thorough” and might take longer than that.

81. December 15, 2023—109 days after the complaint was filed, and only after being contacted by undersigned counsel about the delay—Mr. Evans returned his findings and officially closed his investigation. Mr. Evans found the vast majority of the family’s claims “substantiated” by District evidence.

82. The District’s investigator substantiated the following claims: that X.A.’s “personally identifiable information was disclosed to a parent volunteer and students”; that X.A. “has been singled out for not being able to use the bathroom consistent with their gender identity”; that X.A. “limits fluid intake during the instructional day to minimize bathroom use”; and that the “MSBSD Student Information System allows a parent/guardian to designate a ‘preferred name,’ but this is not consistently used across multiple platforms within MSBSD's systems.”

83. The only allegation that Mr. Evans did not find to be substantiated was the allegation that, in Mr. Evans’s words, the



“Elementary School Administrator [violated] the complainant's child’s privacy by revealing personally identifiable information ‘to the entire school staff as different and needing specialized attention.’”

84. Despite substantiating all but one of the allegations in the family’s complaint, the Investigator simply closed the investigation, without recommending or taking any actions to address the problems that he had substantiated or providing any other assistance to X.A. or his family.

**COUNT I:  
CONSTITUTIONAL PRIVACY VIOLATION (BATHROOM  
POLICY)**

85. Plaintiffs reallege and incorporate by reference paragraphs 1 through 84 as though fully set forth herein.

86. Article I, Section 22 of the Alaska Constitution, guarantees the right to privacy. It provides that “[t]he right of the people to privacy is recognized and shall not be infringed.”

87. Article VII, Section 1 of Alaska’s constitution guarantees all children in Alaska the right to receive a public education.

88. Alaska’s constitution protects children against violations of their fundamental rights both inside and outside of school gates.

Alaskan schoolchildren “are possessed of fundamental rights which the State must respect,” and children's constitutional rights may “not be

denied in deference to governmental benevolence or popular social theories.” *Breese v. Smith*, 501 P.2d 159, 167 (Alaska 1972) (quoting *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 511 (1969)).

89. Alaska’s constitution is more protective of fundamental rights than the United States Constitution.

90. Alaska’s constitutional privacy protections protect a person’s right to be left alone, a fundamental aspect of liberty. This includes protecting a person’s decisions about how they dress, wear their hair, and present themselves to others.

91. Alaska's constitutional rights of privacy and liberty encompass the prerogative to control aspects of one's personal appearance, the right to privacy in the home, the right to make decisions about reproductive rights, the right to control decisions about medical treatments, and the right to refuse psychiatric medication. The Alaska Supreme Court has held that “few things [are] more personal than one’s own body.” *Myers v. Alaska Psychiatric Inst.*, 138 P.3d 238, 246 (Alaska 2006) (quoting *Breese*, 501 P.2d at 169).

92. Alaska’s right to privacy is “grounded upon such basic values as the preservation of maximum individual choice, protection of minority sentiments, and appreciation for divergent lifestyles. The

spectre of governmental control of the physical appearances of private citizens, young and old, is antithetical to a free society, contrary to our notions of a government of limited powers, and repugnant to the concept of personal liberty.” *Breese*, 501 P.2d at 169.

93. Sex, gender identity, and transgender status are a fundamental aspect of personhood, and they are protected by Alaska’s privacy clause.

94. X.A.’s status as a transgender boy is a fundamental aspect of his personhood and is protected under Alaska’s constitutional privacy guarantee.

95. Alaska’s privacy clause guarantees that the government “may not infringe upon an individual’s fundamental right of personal autonomy unless a compelling governmental interest justifies the infringement.” *Planned Parenthood of The Great Nw. v. State*, 375 P.3d 1122, 1134 (Alaska 2016).

96. The government may regulate personal freedom only when the exercise of individual freedom intrudes on the freedom of others. When the government seeks to justify an infringement on an individual’s freedom, it must justify that infringement with real evidence, not mere speculation and vague generalizations about the problems that supposedly justify the infringement. A school cannot

constitutionally restrict the freedom of one student who wants to express himself for fear that others will react badly; the correct response is to control the students who are being disruptive.

97. MSBSD Policy 5134 BP infringes on X.A.’s constitutional right to privacy because it infringes on his fundamental right to make his own choices about his body, his name, his gender identity, and the appropriate bathroom for him to use, and there is no compelling government interest justifying these infringements.

98. Article I, Section 22 of the Alaska Constitution also protects Alaskans against government disclosure of their sensitive personal information. *Doe v. Dep’t of Pub. Safety*, 444 P.3d 116, 126 (Alaska 2019).

99. Strict scrutiny analysis applies when the government seeks to disclose sensitive personal information. If a person has a legitimate expectation that the materials or information at issue will not be disclosed, then the government may only disclose it if disclosure is “required to serve a compelling state interest” and “the necessary disclosures [will] occur in a manner which is least intrusive with respect to the right to privacy.” *Doe*, 444 P.3d at 126 (Alaska 2019).

100. X.A. has a legitimate expectation of privacy regarding government disclosure of his sex and name as assigned at birth and his

transgender status. Transgender status is sensitive personal information that, if disclosed, could cause embarrassment, anxiety, humiliation, or economic or physical reprisals. Transgender persons suffer prejudice in our society; transgender children are subject to bullying, shaming, and humiliation. School districts have an obligation to protect vulnerable students at school; it is reasonable and appropriate for transgender children to expect that their schools will not out them to other children, parents, and staff.

101. Policy 5134 BP operates to out X.A. as a transgender boy because he is singled out and is forced to use a different bathroom than the other boys at his school. No compelling government interest justifies the District's disclosure of X.A.'s sex assigned at birth or his transgender status.

102. There is no legitimate government interest whatsoever in disclosing X.A.'s transgender status, dead name, or sex assigned at birth to other students and parents.

103. There is no compelling or legitimate educational, pedagogical, or any other need for teachers and staff at Elementary School or within the broader MSBSD to know that X.A. is transgender and was assigned female at birth, unless they are health care providers providing medical or psychological care to X.A. that is relevant to X.A.'s

sex or gender identity, the custodian of mandatory school records that contain this information, or if X.A. or his family wishes them to have this information.

104. The District’s repeated violations of X.A.’s privacy do not occur in the least intrusive way possible. The privacy violations are severe, pervasive, and damaging to X.A.

105. Policy 5134 BP is not well-tailored to achieve its goals. In fact, it does not further the goals it purports to achieve at all. The policy is intended “to maintain an effective learning and working environment.” But the policy actually does the opposite: X.A.’s learning and working environment is compromised by this policy, not enhanced by it. Following Policy 5134 BP requires X.A. to miss class in order to use inconvenient bathrooms located far from his classroom, which disrupts and compromises the efficacy of his classroom learning. If X.A. wants to stay in his classroom and learn from his teacher on the same terms as the other children do, he must avoid using the bathroom at school entirely so as not to miss classroom instructional time—but when he tries to limit his fluid intake and “hold it,” he experiences physical discomfort and pain, which are antithetical to an effective learning environment. And the shaming, outing, and violations of privacy resulting from Policy 5134 BP further compromise X.A.’s ability

to learn effectively by causing him embarrassment, stress, and discomfort at school and placing him at heightened risk for psychological harm such as gender dysphoria.

106. MSBSD Policy 5134 BP violates Article I, Section 22 of the Alaska Constitution both on its face and as applied to X.A.

**COUNT II  
CONSTITUTIONAL PRIVACY VIOLATION (COMPUTER  
SYSTEM)**

107. Plaintiffs reallege and incorporate by reference paragraphs 1 through 106 as though fully set forth herein.

108. Publicizing X.A.'s "dead name" and sex assigned at birth at school operates to out him as a transgender boy because it makes clear that his gender identity, sex, and name are different from those assigned to him at birth.

109. X.A. has a legitimate expectation that the government will not out him as transgender or disclose personal and private information about him to other students, staff, and parents.

110. X.A. has a legitimate expectation of privacy regarding government disclosure of his sex, name as assigned at birth, and transgender status. Transgender status is sensitive personal information that, if disclosed, could cause embarrassment, anxiety,

humiliation, or economic or physical reprisals. Transgender persons suffer prejudice in our society, and transgender children are subject to bullying, shaming, and humiliation. School districts have an obligation to protect vulnerable students at school; it is reasonable and appropriate for transgender children to expect that their schools will not out them to other children, parents, and staff.

111. There is no legitimate government interest whatsoever in disclosing X.A.'s transgender status, dead name, or sex assigned at birth to other students and parents.

112. There is no compelling or legitimate educational, pedagogical, or any other need or reason for teachers and staff at Elementary School or within the broader MSBSD to know that X.A. is transgender and was assigned female at birth, unless they are health care providers providing medical or psychological care to X.A. that is relevant to X.A.'s sex or gender identity, the custodian of mandatory school records that contain this information, or if X.A. or his family wishes them to have this information.

113. The District's repeated violations of X.A.'s privacy do not occur in the least intrusive way possible. The privacy violations are severe, pervasive, and damaging to X.A.



114. The disclosure of X.A.'s privacy through the computer system is not well-tailored to achieve any legitimate government purpose. Reprogramming the school's information system to display a X.A.'s preferred name instead of their legal name, except for in central records maintained by the school's office, would protect X.A.'s privacy yet still allow the District to maintain adequate records.

115. By using a computer system that repeatedly discloses X.A.'s personal and private information to other children, parents, and staff who do not need to have this information, the District violates Article I, Section 22 of the Alaska Constitution as applied to X.A.

### COUNT III CONSTITUTIONAL EQUAL PROTECTION VIOLATION

116. Plaintiffs reallege and incorporate by reference paragraphs 1 through 115 as though fully set forth herein.

117. The Alaska Constitution protects the right to equal treatment of similarly situated persons. *Pub. Emps.' Ret. Sys. v. Gallant*, 153 P.3d 346, 349 (Alaska 2007).

118. Alaska's equal protection clause guarantees that the government "may not discriminate between individuals with respect to a fundamental right unless a compelling governmental interest justifies

the discrimination.” *Planned Parenthood of The Great Nw. v. State*, 375 P.3d 1122, 1134 (Alaska 2016).

119. Alaska’s Equal Protection Clause is more protective than its federal counterpart.

120. In reviewing an equal protection challenge, Alaska courts apply a three-part sliding scale approach. *Watson v. State*, 487 P.3d 568, 570-71 (Alaska 2021). The court considers (1) the individual interest at stake, (2) the government interest served by the challenged classification, and (3) the means-ends nexus between the classification and the government interest. *Id.* at 571. The more important the individual right at issue, the closer the relationship between the challenged classification and the government interest in the classification must be. *Id.*

121. A law that by its own terms classifies persons for differential treatment is facially discriminatory. *American Civil Liberties Union v. State*, 122 P.3d 781, 789 (Alaska 2005). Policy 5134 BP is facially discriminatory because it defines “sex” with sole reference to a person’s sex as assigned at birth. This creates a facial distinction between cisgender persons—whose sex assigned at birth matches their gender identity—and transgender persons, whose gender identity differs from that assigned at birth. These categories of people are then

treated differently under the policy: cisgender students may use the bathrooms that correspond with their gender identities, but transgender persons may not.

122. The individual interests at stake are X.A.'s right to be free from discrimination based on sex, gender identity, and transgender status. These are fundamental rights.

123. X.A. is similarly situated to other boys in his grade at his school.

124. The District's exclusion of transgender students like X.A. from the single-sex facilities matching their gender identity treats transgender students differently from cisgender students who are similarly situated. Under Defendant's discriminatory policy, cisgender students are able to access restrooms and other single-sex facilities consistent with their gender identity, but transgender students are banned from single-sex facilities consistent with their gender identity.

125. **Discrimination based on sex:** Under Alaska's equal protection clause, discrimination based on sex is subject to heightened scrutiny. Discrimination based on sex includes, but is not limited to, discrimination based on gender, gender nonconformity, transgender status, gender expression, and gender transition.

126. Defendant's exclusion of X.A. from boy's restrooms in the school district discriminates against him on the basis of sex.

127. Defendant's policy also discriminates against X.A. based on gender nonconformity and sex stereotyping. For example, although X.A. is a boy and is perceived as a boy in public, he does not conform to Defendant's sex-stereotyped expectations for boys because his sex assigned at birth was female.

128. **Discrimination based on transgender status:** Under Alaska's equal protection clause, discrimination based on sex is subject to heightened scrutiny. Discrimination based on transgender status is also subject to heightened scrutiny.

129. Transgender people have suffered a long history of extreme discrimination in Alaska and across the country, and continue to suffer such discrimination to this day.

130. Transgender people are a discrete and insular group and lack the political power to protect their rights through the legislative process. Transgender people have largely been unable to secure explicit state and federal protections to protect them against discrimination.

131. A person's gender identity or transgender status bears no relation to a person's ability to contribute to society.

132. Gender identity is a core, defining trait and is so fundamental to one's identity and conscience that a person cannot be required to abandon it as a condition of equal treatment.

133. Gender identity generally is fixed at an early age and highly resistant to change through intervention.

134. Defendant's discrimination against X.A. is not narrowly tailored or substantially related to any compelling or important government interest. Indeed, it is not even rationally related to any legitimate government interest. The discriminatory policy does not promote the safety, privacy, security, or well-being of cisgender students, but it does undermine the safety and privacy of X.A., who is publicly marked as different and inferior every time he has to access a different restroom from other boys. Nor does the policy create or maintain an effective learning environment; instead, it detracts from the ability of transgender children like X.A. to focus on their schoolwork.

135. Even if this Court were to apply the lowest level of scrutiny, X.A.'s differential treatment would not pass muster, because the fit between means and ends is so poor that MSBSD Policy 5134 BP is not rationally related to the government interests that it purports to achieve.

136. The classification therefore fails at every level of the sliding scale test under the Equal Protection Clause and therefore violates the Alaska Constitution. MSBSD Policy 5134 BP violates Article I, Section 1 of the Alaska Constitution.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendant on all claims, as follows:

A. Enter a declaratory judgment that MSBSD Policy No. 5134 BP violates X.A.'s rights under Article I, Section 22 of the Alaska Constitution and Article I, Section 1 of the Alaska Constitution.

B. Enter a declaratory judgment that District's exclusion of X.A. from boys' restrooms within the District violates X.A.'s rights under Article I, Section 22 of the Alaska Constitution, which guarantees the right to privacy;

C. Enter a declaratory judgment that the District's exclusion of X.A. from boys' restrooms within the District violates X.A.'s rights under Article I, Section 1 of the Alaska Constitution, which guarantees equal protection of the law;

D. Enter a declaratory judgment that the MSBSD's policy and practice of disregarding X.A.'s preferred name and his gender in its

*X.A. v. Matanuska-Susitna Borough School District*  
COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

school information system and instead publicizing his “dead name” and his sex as assigned at birth to school personnel whose job duties do not require them to access X.A.’s personal and private information violates X.A.’s right to privacy under Article I, Section 22 of the Alaska Constitution;

E. Issue preliminary and permanent injunctive relief enjoining the Defendant (i) from enforcing or relying on MSBSD Policy No. 5134 BP; (ii) from treating X.A. differently from other boys in any respect, including but not limited to by denying X.A. equal access to boy’s restrooms within the District on the same terms as all other boys; (iii) from denying any students, including those who are transgender, from using single-sex multi-user facilities in accordance with the students’ gender identity; and (iv) from publicizing X.A.’s sex as assigned at birth and “dead name” through the school’s information and computer system to employees whose job duties do not require them to access X.A.’s personal and private information.

F. Award X.A. his costs, expenses, and reasonable attorneys’ fees under Alaska Civil Rule 82, AS 09.60.010, and any other applicable sources of law; and

G. Grant such other and further relief as the Court deems just and proper.

DATED this 31st day of January, 2024.

Respectfully Submitted,

/s/ Ruth Botstein

Ruth Botstein (Bar # 9906016)  
Melody Vidmar (Bar # 230544)  
Susan Orlandy (Bar # 8106042)  
ACLU of Alaska  
1057 Fireweed Ln,  
Suite 207  
Anchorage, AK 99503  
Tel: 907-263-2006  
Fax: 907-263-2016  
[courtfilings@acluak.org](mailto:courtfilings@acluak.org)  
[rbotstein@acluak.org](mailto:rbotstein@acluak.org)  
[mvidmar@acluak.org](mailto:mvidmar@acluak.org)  
[sorlansky@acluak.org](mailto:sorlansky@acluak.org)

Tim Seaver (Bar # 9711092)  
SEAVER & WAGNER, LLC  
500 L Street, Suite 501  
Anchorage, Alaska 99501  
Tel: (907) 646-9033  
Fax: (907) 258-7280  
[tseaver@seaverwagner.com](mailto:tseaver@seaverwagner.com)

*Counsel for Plaintiff*

*X.A. v. Matanuska-Susitna Borough School District*  
COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Case No. 3PA-24-\_\_\_\_\_ CI

Page 40 of 40

ACLU OF ALASKA FOUNDATION  
1057 W. Fireweed Ln. Suite 207  
Anchorage, Alaska 99503  
TEL: 907.258.0044  
FAX: 907.263.2016  
EMAIL: [courtfilings@acluak.org](mailto:courtfilings@acluak.org)