

**Dallas Independent School
District,
ED TURNER, in his official
capacity as Board Trustee for the
Dallas Independent School
District,
*Defendants.***

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193rd JUDICIAL DISTRICT

**PETITION OF STATE OF TEXAS TO TAKE DEPOSITION TO
INVESTIGATE A CLAIM**

Plaintiff, the State of Texas, files this petition requesting authorization to take the deposition of DR. STEPHANIE S. ELIZALDE, in her official capacity as Superintendent of Dallas Independent School District, MAHOGANIE GASTON, in her official capacity as LGBT Youth Program Coordinator, JOE CARREON, in his official capacity as President and Trustee for the Dallas Independent School District, BEN MACKEY, in his official capacity as First Vice President and Trustee for the Dallas Independent School District, MAXIE JOHNSON, in his official capacity as Second Vice President and Trustee for the Dallas Independent School District, CAMILE D. WHITE, in her official capacity as Board Secretary and Trustee for the Dallas Independent School District, LANCE CURRIE, in his official capacity as Board Trustee for the Dallas Independent School District, SARAH WEINBERG, in her official capacity as Board Trustee for the Dallas Independent School District, DAN MICCICHE, in his official capacity as Board Trustee for the Dallas Independent School District, JOYCE FOREMAN, in her official capacity as Board Trustee for the Dallas Independent School District, and ED TURNER, in his official capacity as Board Trustee for the Dallas Independent School District. Defendants are trustees

and employees of Dallas Independent School District, located at 9400 N. Central Expressway, Dallas, TX, 75231, telephone number (972) 925-3700. Petitioner seeks to depose each Defendant for the purpose of investigating a potential claim or suit, and for cause shows the Court the following:

I.

Petitioner seeks to investigate a potential claim against Defendants for ultra vires actions where the Defendants implemented an unwritten policy of encouraging students to alter their birth certificates to participate in interscholastic athletic competitions in violation of Section 33.0834 of the Texas Education Code, which prohibits a student from competing in interscholastic athletic competitions designated for the opposite biological sex. Further, Governor Abbott has directed all Texas agencies to ensure that agency rules, internal policies, employment practices, and other actions comply with the law and the biological reality that there are only two sexes—male and female. While school districts are not directly implicated by this directive, this directive does apply to Texas Education Agency rules and University Interscholastic League policies regarding interscholastic athletic competitions that Defendants must comply with.

II.

The substance of the testimony that petitioner expects to elicit from the Defendants is as follows: Defendant Gaston, Dallas Independent School District's LGBT Youth Program Coordinator, was filmed advising a parent as to how the school district would consider a change of sex on a birth certificate for a student in

determining eligibility to participate in sports. Specifically, Defendant Gaston advised the parent that if the parent were to change her son's birth certificate to indicate "female," it would enable that male student to participate in interscholastic sports designated for young women. Defendant Gaston further stated that Dallas Independent School District "find[s] the loopholes in everything" and that Defendant Gaston is willing to go to jail for defying Texas law. Petitioner has sought documentation through a Public Information Act request about any potential policies and is unsatisfied with the answer received, specifically the altogether unresponsive nature of information provided. As the Defendants are all aware of Defendant Gaston's statements, and she is still employed by the Dallas Independent School District, Petitioner believes Defendant Gaston's statements and actions are impliedly endorsed by the District and the Defendants. As such, Petitioner seeks testimony from Defendants about the advice given by Defendant Gaston, specifically that Dallas Independent School District finds loopholes in the law and is noncompliant with TEA rules and UIL policies, as these statements, the adoption, endorsement, or implementation of any such unwritten policy, and any other act of circumventing the law would be an ultra vires act in direct violation of Section 33.0834 of the Texas Education Code.

Petitioner desires to obtain the testimony of each Defendant for the following reasons: Petitioner, the State of Texas, by and through Ken Paxton, the Attorney General of Texas, is authorized to prosecute all actions in which the state is interested before any adjudicative forum, including the courts of appeals and the supreme court.

See Tex. Const. art. IV, § 22; Tex. Gov't Code Ann. § 402.021; *State v. Thomas*, 766 S.W.2d 217, 219 (Tex. 1989). The Texas Supreme Court has long recognized the sovereign capacity and importance of the State's ability to enforce its laws. *Yett v. Cook*, 281 S.W. 837, 842 (Tex. 1926). Circumventing the state's ban on students from competing in interscholastic athletic competitions designated for the opposite biological sex is an ultra vires act. Defendants, acting as government officials, acted without legal authority in violation of Section 33.0834 of the Texas Education Code. "We have explained that where those laws are being defied or misapplied by a local official, an ultra vires suit is a tool 'to reassert the control of the state.' That tool would be useless—and our language null—if the State were required to demonstrate additional, particularized harm arising from a local official's specific unauthorized actions." *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020) (citing *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009)). Unless enjoined, Defendants will continue to act without legal authority in circumventing the state's ban on students from competing in interscholastic athletic competitions designated for the opposite biological sex, thereby continuing to commit an ultra vires act.

III.

Therefore, Petitioner prays that after notice and service have been perfected as provided in Rule 202 of the Texas Rules of Civil Procedure, this Court hold a hearing on this petition, find that the likely benefit of allowing Petitioner to take the requested depositions to investigate a potential claim outweighs the burden or expense of the procedure, and upon that finding issue an order authorizing the

Petitioner to take the deposition of the persons named in this petition.

Dated: March 20, 2025.

Respectfully, submitted,

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UNSWORN DECLARATION / JURAT

My name is Alexandre Louis Dubeau, and I am an employee / investigator of the following governmental agency: Office of the Attorney General, Administrative Law Division, located at 300 W. 15th Street, Austin, Texas 78701. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing factual statements in the Petition are true and correct.

Executed in Texas County, Texas on this the 18th day of March, 2025.



Alexandre Louis Dubeau
Declarant

Automated Certificate of eService

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Catherine Hughes on behalf of Steven Ogle

Bar No. 24044477

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Envelope ID: 98688374

Filing Code Description: Original Petition

Filing Description: PETITION OF STATE OF TEXAS TO TAKE DEPOSITION TO INVESTIGATE A CLAIM

Status as of 3/25/2025 9:21 AM CST

Case Contacts

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Catherine Hughes		catherine.hughes@oag.texas.gov	3/20/2025 12:10:01 PM	SENT