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NEW YORK CITY COMMISSION ON HUMAN RIGHTS
PUBLIC HEARING ON PROPOSED RULES ON GENDER

September 25, 2018
11:00 A.M.
Spector Hall
22 Reade Street
New York, New York 10007

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A P P E A R A N C E S:

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PROCEEDINGS

THE HEARING OFFICER: Good morning, everyone. It is 11:00 a.m. and we are going to get started on the public hearing on the New York City Commission of Human Rights proposed rules on gender.

My name is Michael Silverman and I have been designated as the hearing officer for the public hearing on the New York City Commission on Human Rights' proposed rules on Gender. This hearing is being held at Spector Hall at 22 Reade Street, New York City. It is as I said 11:00 a.m. on Tuesday, September 25, 2018 and I am convening the public hearing on this proposed rule.

The proposed rule was published in the City Record on August 18, 2018. Copies of the published notice and rules are available on the Commission on Human Right's website, located at nyc.gov/humanrights on the

1 PROCEEDINGS

2 the New York City Rules website,
3 located the rules.cityofnewyork.us.
4 We also have additional copies here
5 at the table if anyone needs them.
6 Sections 905 and 1043 of the New York
7 City Charter authorize the Commission
8 to adopt these proposed rules.

9 This hearing affords the public
10 the opportunity to comment on all
11 aspects of the rules the Commission
12 has proposed. The Commission will
13 carefully review all testimony and
14 written comments received and will
15 give due weight and consideration to
16 proposals and recommendations that
17 are submitted for the record at
18 today's hearing.

19 To ensure that everyone seeking
20 to testify will have an opportunity
21 to do so, I will follow these simple
22 ground rules.

23 First, signing in and order of
24 appearance: Anyone seeking to
25 testify must complete a registration

1 PROCEEDINGS

2 card so that you can be correctly
3 identified in the hearing record.

4 Registration cards are located
5 on the table in front of you. Once
6 you fill them out, please turn them
7 into me.

8 Witnesses will be called to
9 testify in the order that they signed
10 in. Anyone who does not appear and
11 do not hear their names called will
12 be deemed to have passed over the
13 opportunity to testify. Persons who
14 are passed will be called at the end
15 of the hour.

16 Persons who still do not appear
17 then must sign in again if they still
18 want to testify.

19 We have time limits for
20 testimony. Each witness will have a
21 maximum of three minutes to testify.
22 I will be keeping time and be fair to
23 everyone seeking to testify, I will
24 apply the three-minute rule to every
25 speaker. If your comments take

1 PROCEEDINGS

2 longer than three minutes, synthesize
3 your oral testimony and leave a
4 written copy for the record.

5 Finally written testimony:
6 Unlike the limit on time for
7 testimony, there is no limit on the
8 number of pages you can submit as
9 written comments or as documents for
10 the record. The written submission
11 will be made part of the record as
12 exhibits presented with your
13 testimony and are also due today by
14 the close of business.

15 If you chose to submit written
16 comments after the hearing, the
17 record has closed you can send them
18 in by e-mail to policy at
19 CCHR.NYC.gov again at the close of
20 business today.

21 A couple of quick housekeeping
22 announcements about the physical
23 layout before we begin.

24 The emergency exits are behind
25 you at the far end of the room.

1 PROCEEDINGS

2 Restroom facilities are located out
3 in the hall and to your left and in
4 the reception area by the commission
5 area for Human Rights.

6 Finally, please take a moment
7 to turn off or silence your phone
8 calls so it doesn't interfere with
9 anyone's testimony.

10 I am ready to call the first
11 witness who is Kaleb Dornheim.

12 If you will approach the
13 podium.

14 Please identify your name on
15 the record.

16 MR. DORNHEIM: Hi, my name is
17 Kaleb Dornheim.

18 THE HEARING OFFICER: Please
19 begin.

20 MR. DORNHEIM: Good morning, my
21 name is Kaleb Dornheim. I work at
22 GMHC, men's health crisis and
23 advocacy specialist in the Policy
24 Department.

25 I would like to thank the

1 PROCEEDINGS

2 Commission for allowing me and other
3 transgender advocates to testify and
4 listening to us, and the City
5 Commission on Human Rights for making
6 moves to update their language.

7 GMHC has three general
8 comments. First, is that the
9 Commission takes steps to define
10 non-binary as its own category, not
11 only under the transgender umbrella.
12 Some non-binary folks identify as
13 trans like me, but there are many
14 others who don't claim a trans
15 identity. There have been many
16 efforts to move to position
17 non-binary as a separate umbrella
18 term.

19 Second, each of the examples
20 given within the updated definitions
21 should be at least include one
22 example for how it would apply to a
23 person who is non-binary. Many of
24 the examples provided do not make
25 sense to use to talk about

1 PROCEEDINGS

2 individuals outside the gender binary
3 and this further isolates us by
4 giving less visibility to our unique
5 experiences.

6 Third, when this document is
7 translated to other languages, the
8 Commission should ensure that there
9 is cultural sensitivity and proper
10 interpretation.

11 GMHC also would like to touch
12 on specific definition language
13 comments. On Page five under the
14 definition of gender non-conforming
15 we recommend to delete the word
16 traditional from the definition and
17 replace it with other people's gender
18 expectations, as many cultures
19 traditions have been affected and
20 changed by colonialism, and may not
21 be the root specific the Commission
22 is speaking about. We also suggest
23 that the Commission clarify that the
24 different individuals may or may not
25 identify as non-binary and or under

1 PROCEEDINGS

2 the definition of gender
3 non-conforming. Additionally on
4 page eight, under the definition of
5 transgender, we recommend that it is
6 made more clear that the list is not
7 exhaustive and does not include all
8 trans identities. We also propose a
9 change on the terms FTM and MTF to
10 trans man/masculine and or trans
11 woman/femme. The terms FTM and MTF
12 have too much emphasis on the
13 transition and the goal of the
14 journey for the trans person. The
15 terms center the sex coercively
16 assigned at birth and suggest an end
17 point for a transition.

18 Once again I would like to
19 thank the City Commission on Human
20 Rights for their time and willingness
21 to listen to trans folks about
22 language that we use and have a role
23 in shaping instead of having it
24 shaped for us, without us.

25 Thank you.

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THE HEARING OFFICER: If you can please provide a written copy of your comments.

I'm going to call our second witness, Kinjae Patel,

MS. PATEL: Hi, I'm Kinjae Patel. Legal Services New York City is the largest civil legal services provider in the country. It has been dedicated to serving LGBTQ communities for over 25 years.

LSNYC's LGBTQ/HIV Advocacy Project is the largest direct service provider for low income LGBTQ communities in the state. Every year, LSNYC's LGBTQ/HIV Advocacy Project represents hundreds of low-income LGBTQ clients across our practice areas. We also litigate extensively under the New York City Human Rights Laws.

LSNYC applauds the efforts of the NYC Commission on Human Rights to update and clarify protections contained in the one of the most

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expansive civil rights laws in the nation. The amendments to Title 47 of the rules of the New York City to establish definitions for cisgender, gender identity, gender expression, gender, gender non-conforming, intersex, sex and transgender will greatly benefit the clients and communities we serve. The amendments also describe and explain covered entities' non-discrimination obligations, which is an important step towards protecting our clients and the ability of all New Yorkers to work and live free from discrimination based on gender, including gender identity and gender expression.

LSNYC notes that the proposed amendments could benefit from even more clarity and more comprehensive language. Such clarity will further protect New Yorkers, and will also establish important precedence for

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PROCEEDINGS

other jurisdictions that choose to follow NYC's lead. This is especially important considering that NYC is already a leader in equality for transgender and gender non-binary individuals.

The definition for the term gender non-conforming is an important step for the law to be more comprehensive of all identities; however, the language in the subsequent definitions can be made clearer and more inclusive to further support gender non-conforming New Yorkers. Many of the our clients find that their identities fall somewhere in between or outside of the gender binary. In 2017 alone, LSNYC has assisted 57 New Yorkers who preferred gender neutral pronouns or neither identified as male or female. Although there is growing awareness about individuals who identify as gender non-conforming, gender

1 PROCEEDINGS

2 non-binary or genderqueer,
3 society-at-large is still largely
4 ignorant to these individuals'
5 identities. And every day, their
6 identities are disregarded and
7 disrespected.

8 First, for the definition of
9 cisgender, for the sake of clarity,
10 the definition should omit the word
11 sometimes. This is because in
12 contrast, the proposed definition of
13 transgender does not include the word
14 sometimes. Further, we note to be
15 more inclusive, the clause i.e.,
16 someone who is not transgender can be
17 changed to e.g., someone who is not
18 transgender or gender non-binary.
19 Otherwise the original proposed
20 definition leaves no room for gender
21 non-binary individuals and implies a
22 binary of either transgender or
23 cisgender.

24 Second, the definition of
25 gender identity to be more inclusive

1 PROCEEDINGS

2 can be modified from is not visible
3 to others to may or may not be
4 visible to others.

5 Third, in the definition of
6 gender non-conforming the phrase
7 traditional gender expectations can
8 be modified to other people's
9 expectations. The definition can
10 also be modified to include
11 alternative terms for gender
12 non-conforming, including gender
13 non-binary and genderqueer, as the
14 term gender non-conforming does not
15 fully encompass all the relevant
16 terminology. This change will also
17 reflect and respect the fact that
18 people who do not identify within the
19 gender binary often use many
20 different terms to describe
21 themselves.

22 THE HEARING OFFICER: Thank
23 you. Let me just interrupt you
24 there. I don't mean to be rude. But
25 the three minutes is up. Have you

1 PROCEEDINGS

2 submitted these comments.

3 MR. PATEL: I will submit it
4 now.

5 THE HEARING OFFICER: Please
6 do.

7 Thank you very much for coming
8 to testify.

9 The next person testifying is
10 Jose Rodriguez.

11 MR. RODRIGUEZ: Hello. I'm Jose
12 Rodriguez. Thank you for your
13 leadership in developing regulations
14 and model policy to prevent
15 discrimination in New York City,
16 GLSEN New York City commends the New
17 York City Commission on Human Rights'
18 for their intentional work to create
19 policies that protect all residents
20 from discrimination on the basis of
21 gender identity, gender expression
22 and sexual orientation. Policies
23 like this are an important step to
24 creating affirming climates for LGBTQ
25 students, educators and

1 PROCEEDINGS

2 administrators in all our schools.

3 At GLSEN New York City, we
4 believe that all students deserve a
5 safe and affirming school environment
6 where they can learn and grow. On a
7 national level, GLSEN conducts
8 extensive and original research to
9 inform evidence-based solutions for
10 K-12 education that works for all
11 students. GLSEN's 2015 National
12 School Climate Survey reflected that
13 66 percent of transgender students
14 throughout New York State were denied
15 access to a bathroom or locker room
16 that aligned with their gener
17 identity. Further, 46 percent of
18 transgender students in the state
19 reported that they were prevented
20 from using their name and pronouns in
21 schools.

22 When school districts and
23 individual schools adopt and
24 implement comprehensive
25 bullying/harassment policies with

1 PROCEEDINGS

2 enumerated categories of sexual
3 orientation, gender identity, and
4 gender expression and with clear and
5 effective systems for reporting,
6 students experience decreased
7 victimization and increased feeling
8 of belonging and additional positive
9 educational outcomes. By enumerating
10 protections for transgender
11 residents, including transgender
12 students, you are working to affirm
13 their right to attend school safely
14 and be included in the classroom.

15 In reviewing this policy, it is
16 explicit that the Commission was
17 intentional in recognizing the role
18 of fluidity, androgyny and
19 non-binary identities to the fabric
20 of the experience of transgender and
21 gender nonconforming people
22 throughout the state. This effort
23 should be applauded and words to
24 fully strengthen the policy. We
25 support the changes made to the New

1 PROCEEDINGS

2 York City proposed rule and have two
3 brief suggestions to ensure that the
4 policy is as effective as possible in
5 creating protections for transgender
6 stakeholders in schools.

7 First, we suggest that the
8 final policy remove the definitions
9 of gender and sex as defined in this
10 proposal. The definitions provided
11 under gender identity and gender
12 expression should suffice. Further,
13 the nature of defining sex as
14 encompassing gender identity as it
15 stands in the definition subsection
16 creates confusion about the
17 definition of gender identity itself.
18 For clarity, we suggest removing
19 these two definitions.

20 Secondly, the policy could be
21 strengthened by adding examples to
22 the violations, subsections a, b, c
23 (referring to gender markers,
24 sex-segregated facilities, and dress
25 codes respectively) that refer to the

1 PROCEEDINGS

2 ways that this impacts educational
3 settings. For example, the policy
4 would provide stronger guidance in
5 creating safe and affirming schools
6 if it listed violations such as
7 refusing to allow a student to use
8 the appropriate name and pronouns in
9 class, barring students from
10 accessing locker rooms in schools on
11 the basis of their gender expression
12 or identity or school dress codes may
13 not be enforced based on gender or
14 gender stereotypes. By specifically
15 tying these violations to the
16 experiences of students in New York
17 City schools, this policy will offer
18 clear direction for schools looking
19 to support transgender youth.

20 Above all we support the
21 proposed regulation to further
22 protect transgender students from
23 discrimination and support its
24 adoption in light of suggested
25 revisions.

1 PROCEEDINGS

2 Thank you for your dedication
3 to strengthen anti -- discrimination
4 protections in our schools.

5 THE HEARING OFFICER: The next
6 speaker is A.D. Dumlad.

7 MR. DUMLAO: Good morning.
8 Thank you to the New York City
9 Commission on Human Rights for
10 holding this public hearing today.

11 My name is AC Dumlao. I'm a
12 proud transgender non-binary person
13 and I use they/them pronouns. This
14 being so, I am no stranger to New
15 York City public hearings in regard
16 to gender inclusion. A little more
17 on me: I'm also a child of Filipino
18 immigrants and first generation
19 American. 27 years ago, I was born
20 right over the bridge in Brooklyn.
21 Today, I am here on behalf of the
22 Transgender Legal Defense and
23 Education Fund, also known as TLDEF,
24 where I lead both the Name Change
25 Project and Community Education

1 PROCEEDINGS

2 initiatives as programs manager. I
3 am joined by my colleague, Tabytha
4 Gonzalez who will be testifying after
5 me.

6 Two years ago I came out as
7 trans non-binary. Since then, I have
8 dealt with a bevy of reactions to my
9 gender identity in the workplace.
10 And while I've had my share of
11 uncomfortable moments, misgendering
12 as she instead of they and becoming
13 the token trans person/friend, it's
14 important for me to acknowledge how
15 incredibly privileged I am. I have a
16 college degree, a constant roof over
17 my head, a full-time salaried job at
18 a trans centered organization and so
19 many more advantages that are not
20 typical of transgender
21 non-conforming, non-binary and
22 intersex communities at large.

23 And so, what I am here today is
24 to speak up for my communities,
25 particularly the participants of

1 PROCEEDINGS

2 TLDEF's name change project:
3 Low-income trans, non-binary and
4 intersex individuals. When on intake
5 calls with these name change
6 participants, I've heard countless
7 stories of discrimination, almost all
8 of which are listed as examples of
9 violations in the proposed new
10 material: Individuals deliberately
11 being called the wrong pronoun, being
12 forced to use their legal name on HR
13 documentation or for their e-mail
14 handles, being discriminated against
15 when it comes to work provided health
16 insurance coverage, and so much more.
17 Because of this, I am proud to
18 support the Commission's proposed
19 amended roles to explicitly establish
20 definitions in regards to gender.

21 In addition to the compressive
22 proposed amendments, I respectfully
23 suggest the following: Adding in a
24 definition for the term non-binary,
25 just as cisgender, transgender,

1 PROCEEDINGS

2 gender non-conforming, and intersex
3 are given full definitions. To build
4 off of this, I suggest adding or
5 re-working the examples of
6 violations, to include more
7 non-binary examples and the use of
8 they/them pronouns. The current new
9 material as proposed leans heaviliy
10 binary and even though these are just
11 examples, language is important and
12 visibility is important. TLDEF
13 appreciates you keeping these
14 considerations top of mind as you
15 finalize these vital rules that will
16 have a profound impact on the lives
17 of New Yorkers.

18 I thank you so much again for
19 the opportunity to give testimony
20 today.

21 THE HEARING OFFICER: Thank you
22 very much.

23 Housekeeping rules. If you are
24 here to testify, please fill out a
25 card at the table here. Thank you

1 PROCEEDINGS

2 very much.

3 The next person speaking will
4 be Tabytha Gonzalez.

5 MS. GONZALEZ: Hi. I'm Tabytha
6 Gonzalez. Thank you for having me.
7 I am from transgender legal defense
8 and education firm.

9 Unlike my colleague, this is
10 actually my first time testifying.
11 So in effort to get here on time I
12 actually left my notes so I'm going
13 to wing it, but I'm going to speak
14 from a personal experience.

15 During my experience
16 identifying what is a black
17 transgender worker working for a
18 retailer I was discriminated many
19 times with regard to gender. At that
20 time of my transition, my
21 documentation was not directly cross
22 over so based upon just the
23 information that I was able to
24 submit. In the course of me
25 transferring that they still

1 PROCEEDINGS

2 misgendered me and I dealt with a lot
3 of violence there at my job. Not
4 physically, but emotional violence
5 because it is an act of violence to
6 misgender me and not direct me as my
7 presentation or the identity I choose
8 to live by as a trans female. So, me
9 being that presented a lot of
10 difficult obstacles in my
11 environment, hostile environment, the
12 type of bathroom I can use.

13 So, I think that with amending
14 this it will be great to clearly
15 identify gender for all my siblings
16 whether non-binary, gender,
17 non-conformance, I think it is clear
18 that we need this to be amended so
19 that way everyone has equal
20 opportunity to employ an equity with
21 a safe environment that will actually
22 address them according to the
23 identity that they choose. Right?
24 And for me I know that for some of us
25 is not a choice. This is my life.

1 PROCEEDINGS

2 So I would like to be respected in
3 the place of employment and I'm
4 speaking for workplace
5 discrimination.

6 I apologize for leaving my
7 notes home, but that is my experience
8 and I thank you for having me and I
9 hope that this works out great.

10 THE HEARING OFFICER: Thank you
11 very much for your testimony, and if
12 you want to send in your notes or
13 comments by the end of the day,
14 please do so by e-mail and we will
15 make sure they get into the record.

16 Is anyone else here to speak?

17 The next speaker is Mateo
18 Guerrero Tabares.

19 MR. TABARES: Hello. My name
20 is Mateo Guerrero Tabares and I am an
21 organizer at Make the Road NY, an
22 organization that builds power in
23 Latinx and working class communities
24 to achieve dignity and justice
25 through organizing, policy

PROCEEDINGS

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2 innovation, education and services.
3 Our Trans Immigrant Project in
4 Jackson Heights and GLOBE justice
5 project in Bushwick supports
6 Transgender, gender nonconforming,
7 gender non-binary and queer
8 communities to combat the different
9 forms of violence they face at
10 school, at work, at home, in the
11 streets, and in any aspects of their
12 life. We do so by providing
13 community education, leadership
14 development opportunities, organizing
15 around campaigns to shift towards
16 more progressive policy, rapid
17 response to hate violence and work in
18 conjunction with the legal team to
19 tackle individual and collective
20 cases of discrimination.

21 As an organization, we commend
22 the New York City Commission on Human
23 Rights for reviewing and clarifying
24 definitions that impact the
25 protections of our communities with

1 PROCEEDINGS

2 respect to gender in the New York
3 City Human Rights Law. There are
4 three main areas of comments, that we
5 are submitting today. One for the
6 purposes of consistency and/or
7 shifting language, the second one is
8 around concepts and the third one is
9 around diversify the gender examples.

10 In the first part there are
11 three areas.

12 So for the purpose of
13 consistency and/or shifting language:
14 In terms of cisgender, transgender
15 and gender nonconforming, the opening
16 sentences utilize as adjective to
17 begin to define how a person who uses
18 the terminology may or may not identify
19 as. We suggest that the Commission
20 uses the word term as an opening
21 sentence to remain in consistency
22 with the structures of definitions
23 suggested on Local Law 38 of 2018.

24 B, on the definition for gender
25 identity we consider that it is

1 PROCEEDINGS

2 important to replace the last
3 sentence of gender identity is not
4 the same as sexual orientation and is
5 not visible to others to gender
6 identity is may or may not be the
7 same as sexual orientation and may or
8 may not be visible to others in order
9 to expand what gender identity may or
10 may not be, as well as it allows for
11 future nuances on the understanding
12 of gender identity.

13 Regarding to the definition of
14 transgender, we suggest to move from
15 FTM as well as MTF to trans --
16 masculine/trans-man and
17 trans-femme/trans-woman and/or a
18 woman of trans experience and a man
19 of trans experience. The acronyms
20 FTM used for female to male, and MTF
21 for male to female, have a heavy
22 emphasis on the persons transition
23 and expectation on their goal/outcome
24 of their transition, rather than the
25 current identity of the person.

1 PROCEEDINGS

2 The term sex is used multiple
3 times throughout the proposed rule,
4 it is in the definitions of
5 cisgender, gender identity and
6 different examples of the impact of
7 discrimination on individuals at
8 single-sex facilities/programs.
9 Additionally, sex as it is described
10 in the proposed rule is consistent
11 with Local Law 38. However, being
12 part of a community group where the
13 definition of sex is more expansive
14 than assigned at birth, we suggest a
15 defocusing on the usage of the word
16 sex throughout the proposal and
17 rather use the term gender.

18 We believe --

19 THE HEARING OFFICER: I'm
20 sorry. But I just have to for the
21 record to be clear, you came a little
22 late, but we have a three-minute time
23 limit on each speaker.

24 Can I ask you if you have not
25 turned in written comments that you

1 PROCEEDINGS

2 do so, so we can benefit from
3 everything that you have to tell us.

4 MR. TABARES: Sounds good.

5 Can I just mention one thing?

6 THE HEARING OFFICER: One last
7 thing.

8 MR. TABARES: One last thing we
9 want to talk about a term that is
10 gender expansive, not just gender
11 binary and have that category since
12 there is an spectrum of gender
13 identities. The last piece is around
14 examples as other folks have
15 mentioned already the examples are
16 very binary even though they talking
17 about trans folks.

18 Thank you.

19 THE HEARING OFFICER: Is anyone
20 else here to testify? If anyone came
21 in late there are sign-in sheets on
22 the table in front of me. Please
23 fill them out and turn them in and
24 you will have the opportunity to
25 speak.

1 PROCEEDINGS

2 Seeing as there is no one
3 present to offer testimony at the
4 moment, we are going to adjourn the
5 meeting until someone appears to
6 testify or until 1:00 this afternoon,
7 whichever comes first.

8 So, thank you all very much for
9 coming. You don't need to stay
10 unless you want to stay on the chance
11 that someone else arrives, but we
12 will be here until at least 1:00 or
13 as soon as someone shows up to
14 testify.

15 Thank you very much.

16 Off the record.

17 (Whereupon, a recess was
18 taken.)

19 THE HEARING OFFICER: Back on
20 the record.

21 It is now 1:00 p.m. and we had
22 no further individuals come forward
23 to testify.

24 The room is empty and we are
25 going to adjourn this hearing and

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close the record. Thank you very
much.

(Whereupon, at 1:00 P.M., the
above matter concluded.)

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C E R T I F I C A T E

STATE OF NEW YORK)
 : SS.:
COUNTY OF KINGS)

I, GARY MEROLA, a Notary Public for
and within the State of New York, do hereby
certify:

That the above is a correct
transcription of my stenographic notes.

I further certify that I am not
related to any of the parties to this
action by blood or by marriage and that I
am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 30th day of September
2018.



GARY MEROLA

1	<p>action [1] - 34:14 actually [3] - 24:10, 24:12, 25:21 adding [3] - 18:21, 22:23, 23:4 addition [1] - 22:21 additional [2] - 3:4, 17:8 additionally [2] - 9:3, 30:9 address [1] - 25:22 adjective [1] - 28:16 adjourn [2] - 32:4, 32:25 administrators [1] - 16:2 adopt [2] - 3:8, 16:23 adoption [1] - 19:24 advantages [1] - 21:19 Advocacy [2] - 10:13, 10:17 advocacy [1] - 6:23 advocates [1] - 7:3 affected [1] - 8:19 affirm [1] - 17:12 affirming [3] - 15:24, 16:5, 19:5 affords [1] - 3:9 after [2] - 5:16, 21:4 afternoon [1] - 32:6 again [4] - 4:17, 5:19, 9:18, 23:18 against [1] - 22:14 AGENCY [1] - 1:12 ago [2] - 20:19, 21:6 aligned [1] - 16:16 all [14] - 3:10, 3:13, 9:7, 11:15, 12:11, 14:15, 15:19, 16:2, 16:4, 16:10, 19:20, 22:7, 25:15, 32:8 allow [1] - 19:7 allowing [1] - 7:2 allows [1] - 29:10 almost [1] - 22:7 alone [1] - 12:19 already [2] - 12:5, 31:15 also [12] - 3:4, 5:13, 8:11, 8:22, 9:8, 10:19, 11:11, 11:24, 14:10, 14:16, 20:17, 20:23 alternative [1] - 14:11 although [1] - 12:23 am [12] - 2:17, 6:10, 20:14, 20:21, 21:3, 21:15, 21:23, 22:17, 24:7, 26:20, 34:12, 34:15 amended [2] - 22:19, 25:18 amending [1] - 25:13 amendments [4] - 11:3, 11:10, 11:21, 22:22 American [1] - 20:19 and/or [3] - 28:6, 28:13, 29:17 androgyny [1] - 17:18</p>	<p>announcements [1] - 5:22 anti [1] - 20:3 any [2] - 27:11, 34:13 anyone [6] - 3:5, 3:24, 4:10, 26:16, 31:19, 31:20 anyone's [1] - 6:9 apologize [1] - 26:6 appear [2] - 4:10, 4:16 appearance [1] - 3:24 appears [1] - 32:5 applauded [1] - 17:23 applauds [1] - 10:22 apply [2] - 4:24, 7:22 appreciates [1] - 23:13 approach [1] - 6:12 appropriate [1] - 19:8 are [23] - 2:4, 2:23, 3:17, 4:4, 5:13, 5:24, 6:2, 7:13, 13:6, 15:23, 17:12, 21:19, 22:8, 23:3, 23:10, 23:23, 28:3, 28:5, 28:10, 31:15, 31:21, 32:4, 32:24 area [2] - 6:4, 6:5 areas [3] - 10:19, 28:4, 28:11 around [4] - 27:15, 28:8, 28:9, 31:13 arrives [1] - 32:11 as [44] - 2:9, 2:16, 5:8, 5:9, 5:11, 7:10, 7:12, 7:17, 8:18, 8:25, 12:22, 12:24, 14:13, 18:4, 18:9, 18:13, 18:14, 19:6, 20:23, 21:2, 21:6, 21:12, 22:8, 22:25, 23:9, 23:14, 25:6, 25:8, 27:21, 28:16, 28:19, 28:20, 29:4, 29:7, 29:10, 29:15, 30:9, 31:14, 32:2, 32:13 ask [1] - 30:24 aspects [2] - 3:11, 27:11 assigned [2] - 9:16, 30:14 assisted [1] - 12:20 At [1] - 16:3 at [27] - 2:14, 2:25, 3:5, 3:17, 4:14, 5:18, 5:19, 5:25, 6:21, 7:21, 9:16, 13:3, 21:17, 21:22, 23:25, 24:19, 25:3, 26:21, 27:9, 27:10, 30:7, 30:14, 32:3, 32:12, 33:4 attend [1] - 17:13 August [1] - 2:21 authorize [1] - 3:7 available [1] - 2:23 awareness [1] - 12:23</p>	<p>based [4] - 11:17, 16:9, 19:13, 24:22 basis [2] - 15:20, 19:11 bathroom [2] - 16:15, 25:12 be [33] - 4:2, 4:8, 4:12, 4:14, 4:22, 5:11, 7:21, 8:21, 12:10, 12:13, 13:14, 13:16, 13:25, 14:2, 14:3, 14:8, 14:10, 14:24, 17:14, 17:23, 18:20, 19:13, 21:4, 24:4, 25:14, 25:18, 26:2, 29:6, 29:8, 29:10, 30:21, 32:12 because [3] - 13:11, 22:17, 25:5 becoming [1] - 21:12 been [4] - 2:9, 7:15, 8:19, 10:10 before [1] - 5:23 begin [3] - 5:23, 6:19, 28:17 behalf [1] - 20:21 behind [1] - 5:24 being [7] - 2:14, 20:14, 22:11, 22:14, 25:9, 30:11 believe [2] - 16:4, 30:18 belonging [1] - 17:8 benefit [3] - 11:9, 11:21, 31:2 between [1] - 12:18 bevy [1] - 21:8 binary [26] - 7:10, 7:12, 7:17, 7:23, 8:2, 8:25, 12:6, 12:19, 13:2, 13:18, 13:21, 13:22, 14:13, 14:19, 17:19, 20:12, 21:7, 21:21, 22:3, 22:24, 23:7, 23:10, 25:16, 27:7, 31:11, 31:16 birth [2] - 9:16, 30:14 black [1] - 24:16 blood [1] - 34:14 born [1] - 20:19 both [1] - 20:24 bridge [1] - 20:20 brief [1] - 18:3 Brooklyn [1] - 20:20 build [1] - 23:3 builds [1] - 26:22 bullying/harassment [1] - 16:25 Bushwick [1] - 27:5 business [2] - 5:14, 5:20 but [8] - 7:13, 14:24, 24:13, 25:4, 26:7, 30:20, 30:22, 32:11 by [15] - 5:13, 5:18, 6:4, 8:3, 8:20, 17:9, 18:21, 19:14, 21:3, 25:8, 26:13, 26:14, 27:12, 34:14</p>
2			
<p>2015 [1] - 16:11 2017 [1] - 12:19 2018 [5] - 1:4, 2:17, 2:22, 28:23, 34:19 22 [4] - 1:6, 1:13, 1:17, 2:14 25 [3] - 1:4, 2:17, 10:12 27 [1] - 20:19</p>			
3			
<p>30th [1] - 34:18 38 [2] - 28:23, 30:11</p>			
4			
<p>46 [1] - 16:17 47 [1] - 11:3</p>			
5			
<p>57 [1] - 12:20</p>			
6			
<p>66 [1] - 16:13</p>			
9			
<p>905 [1] - 3:6</p>			
A			
<p>A.D [1] - 20:6 A.M [1] - 1:5 a.m [2] - 2:3, 2:16 ability [1] - 11:15 able [1] - 24:23 about [8] - 5:22, 7:25, 8:22, 9:21, 12:24, 18:16, 31:9, 31:17 above [3] - 19:20, 33:5, 34:10 AC [1] - 20:11 access [1] - 16:15 accessing [1] - 19:10 according [1] - 25:22 achieve [1] - 26:24 acknowledge [1] - 21:14 acronyms [1] - 29:19 across [1] - 10:19 act [1] - 25:5</p>			
		B	
		<p>b [2] - 18:22, 28:24 back [1] - 32:19 barring [1] - 19:9</p>	
			C
			<p>c [1] - 18:22</p>

<p>C [3] - 1:10, 34:2 call [2] - 6:10, 10:5 called [4] - 4:8, 4:11, 4:14, 22:11 calls [2] - 6:8, 22:5 came [3] - 21:6, 30:21, 31:20 campaigns [1] - 27:15 can [14] - 4:2, 5:8, 5:17, 10:3, 12:13, 13:16, 14:2, 14:7, 14:9, 16:6, 25:12, 30:24, 31:2, 31:5 card [2] - 4:2, 23:25 cards [1] - 4:4 carefully [1] - 3:13 cases [1] - 27:20 categories [1] - 17:2 category [2] - 7:10, 31:11 CCHR.NYC.gov [1] - 5:19 center [1] - 9:15 centered [1] - 21:18 certify [2] - 34:9, 34:12 chance [1] - 32:10 Change [1] - 20:24 change [4] - 9:9, 14:16, 22:2, 22:5 changed [2] - 8:20, 13:17 changes [1] - 17:25 Charter [1] - 3:7 CHENITZ [1] - 1:16 child [1] - 20:17 choice [1] - 25:25 choose [3] - 12:2, 25:7, 25:23 chose [1] - 5:15 cisgender [6] - 11:5, 13:9, 13:23, 22:25, 28:14, 30:5 CITY [3] - 1:3, 1:13, 1:16 City [21] - 2:6, 2:11, 2:15, 2:21, 3:2, 3:7, 7:4, 9:19, 10:8, 10:21, 11:4, 15:15, 15:16, 15:17, 16:3, 18:2, 19:17, 20:8, 20:15, 27:22, 28:3 civil [2] - 10:9, 11:2 claim [1] - 7:14 clarify [2] - 8:23, 10:24 clarifying [1] - 27:23 clarity [4] - 11:22, 11:23, 13:9, 18:18 class [2] - 19:9, 26:23 classroom [1] - 17:14 clause [1] - 13:15 clear [5] - 9:6, 17:4, 19:18, 25:17, 30:21 clearer [1] - 12:14 clearly [1] - 25:14 clients [4] - 10:18, 11:9, 11:14, 12:16 Climate [1] - 16:12</p>	<p>climates [1] - 15:24 close [3] - 5:14, 5:19, 33:2 closed [1] - 5:17 codes [2] - 18:25, 19:12 coercively [1] - 9:15 colleague [2] - 21:3, 24:9 collective [1] - 27:19 college [1] - 21:16 colonialism [1] - 8:20 combat [1] - 27:8 come [1] - 32:22 comes [2] - 22:15, 32:7 coming [2] - 15:7, 32:9 commend [1] - 27:21 commends [1] - 15:16 comment [1] - 3:10 comments [11] - 3:14, 4:25, 5:9, 5:16, 7:8, 8:13, 10:4, 15:2, 26:13, 28:4, 30:25 commission [1] - 6:4 COMMISSION [3] - 1:3, 1:13, 1:16 Commission [19] - 2:6, 2:12, 2:24, 3:7, 3:11, 3:12, 7:2, 7:5, 7:9, 8:8, 8:21, 8:23, 9:19, 10:23, 15:17, 17:16, 20:9, 27:22, 28:19 Commission's [1] - 22:18 communities [1] - 27:25 communities [7] - 10:12, 10:15, 11:10, 21:22, 21:24, 26:23, 27:8 community [2] - 27:13, 30:12 Community [1] - 20:25 complete [1] - 3:25 comprehensive [3] - 11:22, 12:11, 16:24 compressive [1] - 22:21 concepts [1] - 28:8 concluded [1] - 33:5 conducts [1] - 16:7 conformance [1] - 25:17 conforming [1] - 8:14, 9:3, 11:7, 12:9, 12:15, 12:25, 14:6, 14:12, 14:14, 21:21, 23:2 confusion [1] - 18:16 conjunction [1] - 27:18 consider [1] - 28:25 consideration [1] - 3:15 considerations [1] - 23:14 considering [1] - 12:4 consistency [3] - 28:6, 28:13, 28:21 consistent [1] - 30:10 constant [1] - 21:16 contained [1] - 10:25 contrast [1] - 13:12 convening [1] - 2:17</p>	<p>copies [2] - 2:22, 3:4 copy [2] - 5:4, 10:3 correct [1] - 34:10 correctly [1] - 4:2 could [2] - 11:21, 18:20 COUNSEL [2] - 1:12, 1:16 countless [1] - 22:6 country [1] - 10:10 COUNTY [1] - 34:5 couple [1] - 5:21 course [1] - 24:24 coverage [1] - 22:16 covered [1] - 11:11 create [1] - 15:18 creates [1] - 18:16 creating [3] - 15:24, 18:5, 19:5 crisis [1] - 6:22 cross [1] - 24:21 cultural [1] - 8:9 cultures [1] - 8:18 current [2] - 23:8, 29:25</p> <p style="text-align: center;">D</p> <p>day [3] - 13:5, 26:13, 34:18 dealt [2] - 21:8, 25:2 decreased [1] - 17:6 dedicated [1] - 10:11 dedication [1] - 20:2 deemed [1] - 4:12 Defense [1] - 20:22 defense [1] - 24:7 define [2] - 7:9, 28:17 defined [1] - 18:9 defining [1] - 18:13 definition [19] - 8:12, 8:14, 8:16, 9:2, 9:4, 12:8, 13:8, 13:10, 13:12, 13:20, 13:24, 14:5, 14:9, 18:15, 18:17, 22:24, 28:24, 29:13, 30:13 definitions [11] - 7:20, 11:5, 12:13, 18:8, 18:10, 18:19, 22:20, 23:3, 27:24, 28:22, 30:4 defocusing [1] - 30:15 degree [1] - 21:16 delete [1] - 8:15 deliberately [1] - 22:10 denied [1] - 16:14 Department [1] - 6:24 describe [2] - 11:11, 14:20 described [1] - 30:9 deserve [1] - 16:4 designated [1] - 2:9 developing [1] - 15:13 development [1] - 27:14 different [4] - 8:24, 14:20, 27:8, 30:6 difficult [1] - 25:10</p>	<p>dignity [1] - 26:24 direct [2] - 10:14, 25:6 direction [1] - 19:18 directly [1] - 24:21 discriminated [2] - 22:14, 24:18 discrimination [10] - 11:12, 11:17, 15:15, 15:20, 19:23, 20:3, 22:7, 26:5, 27:20, 30:7 disregarded [1] - 13:6 disrespected [1] - 13:7 districts [1] - 16:22 diversify [1] - 28:9 do [10] - 3:21, 4:11, 4:16, 7:24, 14:18, 15:6, 26:14, 27:12, 31:2, 34:8 document [1] - 8:6 documentation [2] - 22:13, 24:21 documents [1] - 5:9 does [4] - 4:10, 9:7, 13:13, 14:14 doesn't [1] - 6:8 don't [3] - 7:14, 14:24, 32:9 Dornheim [3] - 6:11, 6:17, 6:21 DORNHEIM [2] - 6:16, 6:20 dress [2] - 18:24, 19:12 due [2] - 3:15, 5:13 Dumlad [1] - 20:6 DUMLAO [1] - 20:7 Dumlao [1] - 20:11 during [1] - 24:15</p> <p style="text-align: center;">E</p> <p>e [3] - 5:18, 22:13, 26:14 E [4] - 1:10, 34:2 e-mail [3] - 5:18, 22:13, 26:14 e.g [1] - 13:17 each [3] - 4:20, 7:19, 30:23 education [4] - 16:10, 24:8, 27:2, 27:13 Education [2] - 20:23, 20:25 educational [2] - 17:9, 19:2 educators [1] - 15:25 effective [2] - 17:5, 18:4 effort [2] - 17:22, 24:11 efforts [2] - 7:16, 10:22 eight [1] - 9:4 either [1] - 13:22 else [3] - 26:16, 31:20, 32:11 emergency [1] - 5:24 emotional [1] - 25:4 emphasis [2] - 9:12, 29:22 employ [1] - 25:20 employment [1] - 26:3 empty [1] - 32:24</p>
---	--	--	---

<p>encompass [1] - 14:15 encompassing [1] - 18:14 end [4] - 4:14, 5:25, 9:16, 26:13 enforced [1] - 19:13 ensure [3] - 3:19, 8:8, 18:3 entities' [1] - 11:12 enumerated [1] - 17:2 enumerating [1] - 17:9 environment [4] - 16:5, 25:11, 25:21 equal [1] - 25:19 equality [1] - 12:5 equity [1] - 25:20 especially [1] - 12:4 establish [3] - 11:5, 11:25, 22:19 even [3] - 11:21, 23:10, 31:16 every [3] - 4:24, 10:16, 13:5 everyone [4] - 2:3, 3:19, 4:23, 25:19 everything [1] - 31:3 evidence [1] - 16:9 evidence-based [1] - 16:9 example [2] - 7:22, 19:3 examples [11] - 7:19, 7:24, 18:21, 22:8, 23:5, 23:7, 23:11, 28:9, 30:6, 31:14, 31:15 EXECUTIVE [1] - 1:12 exhaustive [1] - 9:7 exhibits [1] - 5:12 exits [1] - 5:24 expand [1] - 29:9 expansive [3] - 11:2, 30:13, 31:10 expectation [1] - 29:23 expectations [3] - 8:18, 14:7, 14:9 experience [7] - 17:6, 17:20, 24:14, 24:15, 26:7, 29:18, 29:19 experiences [2] - 8:5, 19:16 explain [1] - 11:11 explicit [1] - 17:16 explicitly [1] - 22:19 expression [6] - 11:6, 11:19, 15:21, 17:4, 18:12, 19:11 extensive [1] - 16:8 extensively [1] - 10:20</p>	<p>fall [1] - 12:17 far [1] - 5:25 feeling [1] - 17:7 female [4] - 12:22, 25:8, 29:20, 29:21 femme/trans [1] - 29:17 Filipino [1] - 20:17 fill [3] - 4:6, 23:24, 31:23 final [1] - 18:8 finalize [1] - 23:15 finally [2] - 5:5, 6:6 find [1] - 12:17 firm [1] - 24:8 first [9] - 3:23, 6:10, 7:8, 13:8, 18:7, 20:18, 24:10, 28:10, 32:7 five [1] - 8:13 fluidity [1] - 17:18 folks [4] - 7:12, 9:21, 31:14, 31:17 follow [2] - 3:21, 12:3 following [1] - 22:23 for [63] - 2:10, 3:17, 4:19, 5:4, 5:6, 5:9, 6:5, 7:2, 7:5, 7:22, 9:14, 9:17, 9:20, 9:24, 10:12, 10:15, 11:5, 11:25, 12:6, 12:8, 12:10, 13:8, 13:9, 13:20, 14:11, 15:7, 15:12, 15:18, 15:24, 16:9, 16:10, 17:5, 17:10, 18:5, 18:18, 19:3, 19:18, 20:2, 20:9, 21:14, 21:24, 22:13, 22:24, 23:18, 24:6, 24:17, 25:15, 25:24, 26:4, 26:6, 26:8, 26:11, 27:23, 28:5, 28:12, 28:24, 29:10, 29:20, 29:21, 30:20, 32:8, 34:7 forced [1] - 22:12 forms [1] - 27:9 forward [1] - 32:22 free [1] - 11:16 from [12] - 8:16, 11:16, 11:21, 14:2, 15:20, 16:20, 19:9, 19:22, 24:7, 24:14, 29:14, 31:2 front [2] - 4:5, 31:22 FTM [4] - 9:9, 9:11, 29:15, 29:20 full [2] - 21:17, 23:3 full-time [1] - 21:17 fully [2] - 14:15, 17:24 Fund [1] - 20:23 further [9] - 8:3, 11:23, 12:14, 13:14, 16:17, 18:12, 19:21, 32:22, 34:12 future [1] - 29:11</p>	<p style="text-align: center;">G</p> <p>GARY [2] - 34:7, 34:22 gender [63] - 2:7, 8:2, 8:14, 8:17, 9:2, 11:6, 11:7, 11:17, 11:18, 12:6, 12:9, 12:19, 12:21, 12:25, 13:18, 13:20, 13:25, 14:6, 14:7, 14:11, 14:12, 14:14, 14:19, 15:21, 17:3, 17:4, 17:21, 18:9, 18:11, 18:14, 18:17, 18:23, 19:11, 19:13, 19:14, 20:16, 21:9, 22:20, 23:2, 24:19, 25:15, 25:16, 27:6, 27:7, 28:2, 28:9, 28:15, 28:24, 29:3, 29:5, 29:9, 29:12, 30:5, 30:17, 31:10, 31:12 GENDER [1] - 1:3 Gender [1] - 2:13 genderqueer [2] - 13:2, 14:13 gener [2] - 12:15, 16:16 general [1] - 7:7 generation [1] - 20:18 get [3] - 2:4, 24:11, 26:15 give [2] - 3:15, 23:19 given [2] - 7:20, 23:3 giving [1] - 8:4 GLOBE [1] - 27:4 GLSEN [3] - 15:16, 16:3, 16:7 GLSEN's [1] - 16:11 GMHC [3] - 6:22, 7:7, 8:11 goal [1] - 9:13 goal/outcome [1] - 29:23 going [6] - 2:4, 10:5, 24:12, 24:13, 32:4, 32:25 GONZALEZ [1] - 24:5 Gonzalez [3] - 21:4, 24:4, 24:6 Good [1] - 6:20 good [3] - 2:2, 20:7, 31:4 great [2] - 25:14, 26:9 greatly [1] - 11:9 ground [1] - 3:22 group [1] - 30:12 grow [1] - 16:6 growing [1] - 12:23 Guerrero [2] - 26:18, 26:20 guidance [1] - 19:4</p>	<p>10:10, 12:20, 25:19 hate [1] - 27:17 have [23] - 2:9, 3:4, 3:20, 4:12, 4:19, 4:20, 7:15, 8:19, 9:12, 9:22, 18:2, 21:7, 21:15, 23:16, 29:21, 30:20, 30:22, 30:24, 31:3, 31:11, 31:14, 31:24, 34:17 have you [1] - 14:25 having [3] - 9:23, 24:6, 26:8 head [1] - 21:17 health [2] - 6:22, 22:15 hear [1] - 4:11 heard [1] - 22:6 HEARING [14] - 1:3, 1:12, 2:2, 6:18, 10:2, 14:22, 15:5, 20:5, 23:21, 26:10, 30:19, 31:6, 31:19, 32:19 hearing [11] - 2:5, 2:10, 2:11, 2:13, 2:18, 3:9, 3:18, 4:3, 5:16, 20:10, 32:25 hearings [1] - 20:15 heavily [1] - 23:9 heavy [1] - 29:21 Heights [1] - 27:4 held [1] - 2:14 hello [2] - 15:11, 26:19 here [9] - 3:4, 20:21, 21:23, 23:24, 23:25, 24:11, 26:16, 31:20, 32:12 hereby [1] - 34:8 hereunto [1] - 34:17 hi [3] - 6:16, 10:7, 24:5 holding [1] - 20:10 home [2] - 26:7, 27:10 hope [1] - 26:9 hostile [1] - 25:11 hour [1] - 4:15 housekeeping [1] - 5:21 Housekeeping [1] - 23:23 how [3] - 7:22, 21:14, 28:17 however [2] - 12:12, 30:11 HR [1] - 22:12 HUMAN [3] - 1:3, 1:13, 1:16 Human [12] - 2:6, 2:12, 2:24, 6:5, 7:5, 9:19, 10:21, 10:23, 15:17, 20:9, 27:22, 28:3 hundreds [1] - 10:18</p>
<p style="text-align: center;">F</p> <p>F [1] - 34:2 fabric [1] - 17:19 face [1] - 27:9 facilities [2] - 6:2, 18:24 facilities/programs [1] - 30:8 fact [1] - 14:17 fair [1] - 4:22</p>	<p style="text-align: center;">H</p> <p>had [2] - 21:10, 32:21 hall [1] - 6:3 Hall [2] - 1:5, 2:14 hand [1] - 34:18 handles [1] - 22:14 has [6] - 3:12, 5:17, 7:7,</p>	<p style="text-align: center;">I</p> <p>I [52] - 2:9, 2:16, 2:17, 3:21, 4:22, 4:23, 6:10, 6:21, 6:25, 9:18, 14:24, 15:3, 20:13, 20:14, 20:19, 20:21, 20:24, 21:2, 21:6, 21:7, 21:15, 21:23, 22:17, 22:22, 23:4, 23:18, 24:7, 24:11, 24:18, 24:23, 25:2, 25:7,</p>	<p style="text-align: center;">I</p>

<p>25:12, 25:13, 25:17, 25:24, 26:2, 26:6, 26:8, 26:20, 30:20, 30:24, 31:5, 34:2, 34:7, 34:12, 34:14, 34:17 I'm [10] - 10:5, 10:7, 15:11, 20:11, 20:17, 24:5, 24:12, 24:13, 26:3, 30:19 I've [2] - 21:10, 22:6 i.e [1] - 13:15 idefy [1] - 28:18 identified [2] - 4:3, 12:22 identities [1] - 12:11 identify [6] - 6:14, 7:12, 8:25, 12:24, 14:18, 25:15 identifying [1] - 24:16 identities [6] - 9:8, 12:17, 13:5, 13:6, 17:19, 31:13 identity [21] - 7:15, 11:6, 11:18, 13:25, 15:21, 16:17, 17:3, 18:11, 18:14, 18:17, 19:12, 21:9, 25:7, 25:23, 28:25, 29:3, 29:6, 29:9, 29:12, 29:25, 30:5 if [11] - 3:5, 4:17, 4:25, 5:15, 6:12, 10:2, 19:6, 23:23, 26:11, 30:24, 31:20 ignorant [1] - 13:4 Immigrant [1] - 27:3 immigrants [1] - 20:18 impact [3] - 23:16, 27:24, 30:6 impacts [1] - 19:2 implement [1] - 16:24 implies [1] - 13:21 important [9] - 11:13, 11:25, 12:4, 12:9, 15:23, 21:14, 23:11, 23:12, 29:2 IN [1] - 34:17 in [72] - 2:21, 3:23, 4:3, 4:5, 4:9, 4:10, 4:17, 5:18, 6:3, 6:23, 9:23, 10:10, 10:15, 10:25, 11:2, 12:5, 12:12, 12:18, 12:19, 13:11, 14:5, 15:13, 15:15, 16:2, 16:18, 16:20, 17:14, 17:15, 17:17, 18:4, 18:6, 18:9, 18:15, 19:4, 19:8, 19:10, 19:16, 19:24, 20:4, 20:15, 20:20, 21:9, 22:9, 22:20, 22:21, 22:23, 24:11, 24:24, 25:10, 26:2, 26:12, 26:22, 27:3, 27:5, 27:10, 27:11, 27:17, 28:2, 28:10, 28:14, 28:21, 29:8, 30:4, 30:10, 30:25, 31:21, 31:22, 31:23, 34:15 include [5] - 7:21, 9:7, 13:13, 14:10, 23:6 included [1] - 17:14 including [3] - 11:18, 14:12, 17:11</p>	<p>inclusion [1] - 20:16 inclusive [3] - 12:14, 13:15, 13:25 income [3] - 10:15, 10:18, 22:3 increased [1] - 17:7 incredibly [1] - 21:15 individual [2] - 16:23, 27:19 individuals [9] - 8:2, 8:24, 12:7, 12:24, 13:21, 22:4, 22:10, 30:7, 32:22 individuals' [1] - 13:4 inform [1] - 16:9 information [1] - 24:23 initiatives [1] - 21:2 innovation [1] - 27:2 instead [2] - 9:23, 21:12 insurance [1] - 22:16 intake [1] - 22:4 intentional [2] - 15:18, 17:17 interested [1] - 34:15 interfere [1] - 6:8 interpretation [1] - 8:10 interrupt [1] - 14:23 intersex [4] - 11:8, 21:22, 22:4, 23:2 into [2] - 4:7, 26:15 is [59] - 2:3, 2:8, 2:13, 2:15, 5:7, 6:16, 6:21, 8:6, 8:9, 8:22, 9:5, 9:6, 10:9, 10:13, 11:13, 12:3, 12:5, 12:9, 12:23, 13:3, 13:11, 14:2, 14:25, 15:9, 17:15, 18:4, 20:6, 20:11, 21:23, 23:11, 23:12, 24:9, 25:5, 25:17, 25:25, 26:7, 26:16, 26:17, 26:20, 28:7, 28:8, 28:25, 29:3, 29:4, 29:6, 30:2, 30:4, 30:9, 30:10, 30:13, 31:9, 31:12, 31:13, 31:19, 32:2, 32:21, 32:24, 34:10 is that [1] - 7:8 isolates [1] - 8:3 it [22] - 2:3, 2:15, 6:8, 7:22, 8:17, 9:5, 9:23, 10:10, 15:3, 17:15, 18:14, 19:6, 22:15, 24:13, 25:5, 25:14, 25:17, 28:25, 29:10, 30:4, 30:9, 32:21 it's [1] - 21:13 its [2] - 7:10, 19:23 itself [1] - 18:17</p>	<p>jurisdictions [1] - 12:2 just [7] - 14:23, 22:25, 23:10, 24:22, 30:20, 31:5, 31:10 justice [2] - 26:24, 27:4</p> <p style="text-align: center;">K</p> <p>K-12 [1] - 16:10 Kaleb [3] - 6:11, 6:17, 6:21 keeping [2] - 4:22, 23:13 KINGS [1] - 34:5 Kinjae [2] - 10:6, 10:7 know [1] - 25:24 known [1] - 20:23</p> <p style="text-align: center;">L</p> <p>language [8] - 7:6, 8:12, 9:22, 11:23, 12:12, 23:11, 28:7, 28:13 languages [1] - 8:7 large [2] - 13:3, 21:22 largely [1] - 13:3 largest [2] - 10:9, 10:14 last [4] - 29:2, 31:6, 31:8, 31:13 late [2] - 30:22, 31:21 Latinx [1] - 26:23 law [1] - 12:10 Law [3] - 28:3, 28:23, 30:11 Laws [1] - 10:21 laws [1] - 11:2 layout [1] - 5:23 lead [2] - 12:3, 20:24 leader [1] - 12:5 leadership [2] - 15:13, 27:13 leans [1] - 23:9 learn [1] - 16:6 least [2] - 7:21, 32:12 leave [1] - 5:3 leaves [1] - 13:20 leaving [1] - 26:6 left [2] - 6:3, 24:12 legal [5] - 10:8, 10:9, 22:12, 24:7, 27:18 Legal [1] - 20:22 less [1] - 8:4 let [1] - 14:23 level [1] - 16:7 LGBTQ [4] - 10:11, 10:15, 10:18, 15:24 LGBTQ/HIV [2] - 10:13, 10:17 life [2] - 25:25, 27:12 light [1] - 19:24 like [6] - 6:25, 7:13, 8:11, 9:18, 15:23, 26:2 limit [3] - 5:6, 5:7, 30:23 limits [1] - 4:19 list [1] - 9:6</p>	<p>listed [2] - 19:6, 22:8 listen [1] - 9:21 listening [1] - 7:4 litigate [1] - 10:20 little [2] - 20:16, 30:21 live [2] - 11:16, 25:8 lives [1] - 23:16 Local [2] - 28:23, 30:11 located [4] - 2:25, 3:3, 4:4, 6:2 locker [2] - 16:15, 19:10 longer [1] - 5:2 looking [1] - 19:18 lot [2] - 25:2, 25:9 low [3] - 10:15, 10:18, 22:3 low-income [2] - 10:18, 22:3 LSNYC [3] - 10:22, 11:20, 12:20 LSNYC's [2] - 10:13, 10:16</p> <p style="text-align: center;">M</p> <p>made [4] - 5:11, 9:6, 12:13, 17:25 mail [3] - 5:18, 22:13, 26:14 main [1] - 28:4 make [2] - 7:24, 26:15 Make [1] - 26:21 making [1] - 7:5 male [3] - 12:22, 29:20, 29:21 man [2] - 29:16, 29:18 man/masculine [1] - 9:10 manager [1] - 21:2 many [8] - 7:13, 7:15, 7:23, 8:18, 12:16, 14:19, 21:19, 24:18 markers [1] - 18:23 marriage [1] - 34:14 masculine/trans [1] - 29:16 masculine/trans-man [1] - 29:16 Mateo [2] - 26:17, 26:20 material [2] - 22:10, 23:9 matter [2] - 33:5, 34:16 maximum [1] - 4:21 may [14] - 8:20, 8:24, 14:3, 19:12, 28:18, 29:6, 29:7, 29:8, 29:9, 29:10 me [16] - 4:7, 7:2, 7:13, 14:23, 20:17, 21:5, 21:14, 24:6, 24:24, 25:2, 25:6, 25:8, 25:24, 26:8, 31:22 mean [1] - 14:24 meeting [1] - 32:5 men's [1] - 6:22 mention [1] - 31:5 mentioned [1] - 31:15 MEROLA [2] - 34:7, 34:22 MICHAEL [1] - 1:12</p>
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<p>Michael [1] - 2:8 mind [1] - 23:14 minute [2] - 4:24, 30:22 minutes [3] - 4:21, 5:2, 14:25 misgender [1] - 25:6 misgendered [1] - 25:2 misgendering [1] - 21:11 model [1] - 15:14 modified [3] - 14:2, 14:8, 14:10 moment [2] - 6:6, 32:4 moments [1] - 21:11 more [13] - 9:6, 11:22, 12:10, 12:14, 13:15, 13:25, 20:16, 21:19, 22:16, 23:6, 27:16, 30:13 morning [3] - 2:3, 6:20, 20:7 most [1] - 10:25 move [2] - 7:16, 29:14 moves [1] - 7:6 MR [8] - 6:16, 6:20, 15:3, 15:11, 20:7, 26:19, 31:4, 31:8 MS [2] - 10:7, 24:5 MTF [4] - 9:9, 9:11, 29:15, 29:20 much [10] - 9:12, 15:7, 22:16, 23:18, 23:22, 24:2, 26:11, 32:8, 32:15, 33:3 multiple [1] - 30:2 must [2] - 3:25, 4:17 my [24] - 2:8, 6:16, 6:20, 20:11, 21:3, 21:8, 21:10, 21:17, 21:24, 24:9, 24:10, 24:12, 24:15, 24:20, 25:3, 25:6, 25:10, 25:15, 25:25, 26:6, 26:7, 34:11, 34:18 My [1] - 26:19</p>	<p>10:8, 10:20, 11:4, 11:15, 11:24, 12:15, 12:20, 15:15, 15:16, 16:3, 16:14, 17:25, 19:16, 20:8, 20:14, 23:17, 27:22, 28:2, 34:8 next [4] - 15:9, 20:5, 24:3, 26:17 no [6] - 5:7, 13:20, 20:14, 32:2, 32:22, 34:15 non [32] - 7:10, 7:12, 7:17, 7:23, 8:14, 8:25, 9:3, 11:7, 11:12, 12:6, 12:9, 12:15, 12:25, 13:2, 13:18, 13:21, 14:6, 14:12, 14:13, 14:14, 17:19, 20:12, 21:7, 21:21, 22:3, 22:24, 23:2, 23:7, 25:16, 25:17, 27:7 non-binary [19] - 7:10, 7:12, 7:17, 7:23, 8:25, 12:6, 13:2, 13:18, 13:21, 14:13, 17:19, 20:12, 21:7, 21:21, 22:3, 22:24, 23:7, 25:16, 27:7 non-conformance [1] - 25:17 non-conforming [11] - 8:14, 9:3, 11:7, 12:9, 12:15, 12:25, 14:6, 14:12, 14:14, 21:21, 23:2 non-discrimination [1] - 11:12 nonconforming [3] - 17:21, 27:6, 28:15 not [31] - 4:10, 4:11, 4:16, 7:10, 7:24, 8:20, 8:24, 9:6, 9:7, 13:13, 13:16, 13:17, 14:2, 14:3, 14:14, 14:18, 19:13, 21:19, 24:21, 25:3, 25:6, 25:25, 28:18, 29:3, 29:5, 29:6, 29:8, 29:10, 30:24, 31:10, 34:12 Notary [1] - 34:7 note [1] - 13:14 notes [5] - 11:20, 24:12, 26:7, 26:12, 34:11 notice [1] - 2:22 now [2] - 15:4, 32:21 nuances [1] - 29:11 number [1] - 5:8 NY [1] - 26:21 NYC [2] - 10:23, 12:5 NYC's [1] - 12:3 nyc.gov/humanrights [1] - 2:25</p>	<p>of [106] - 2:6, 2:22, 3:6, 3:11, 3:23, 4:5, 4:15, 4:21, 5:8, 5:11, 5:14, 5:19, 5:21, 5:25, 7:19, 7:23, 8:14, 9:2, 9:4, 9:13, 9:23, 10:3, 10:18, 10:22, 10:25, 11:4, 11:15, 12:11, 12:16, 12:18, 13:8, 13:9, 13:12, 13:22, 13:24, 14:5, 15:20, 16:13, 16:17, 17:2, 17:8, 17:18, 17:20, 18:9, 18:13, 18:17, 19:11, 19:16, 19:24, 20:17, 20:21, 21:8, 21:10, 21:12, 21:20, 21:25, 22:7, 22:8, 22:17, 23:4, 23:5, 23:7, 23:14, 23:17, 24:20, 24:24, 25:3, 25:5, 25:9, 25:12, 25:24, 26:3, 26:13, 27:9, 27:11, 27:20, 27:25, 28:4, 28:6, 28:12, 28:14, 28:22, 28:23, 29:3, 29:12, 29:13, 29:18, 29:19, 29:24, 29:25, 30:4, 30:6, 30:12, 30:13, 30:15, 31:12, 31:22, 34:8, 34:11, 34:13, 34:15, 34:18 off [3] - 6:7, 23:4, 32:16 offer [2] - 19:17, 32:3 officer [1] - 2:10 OFFICER [13] - 1:12, 2:2, 6:18, 10:2, 14:22, 15:5, 20:5, 23:21, 26:10, 30:19, 31:6, 31:19, 32:19 often [1] - 14:19 omit [1] - 13:10 ON [5] - 1:3, 1:3, 1:13, 1:16 on [50] - 2:4, 2:5, 2:7, 2:11, 2:12, 2:13, 2:16, 2:18, 2:21, 2:23, 2:24, 2:25, 3:10, 4:5, 5:6, 5:7, 6:14, 7:5, 8:12, 8:13, 9:3, 9:9, 9:12, 9:19, 10:23, 11:17, 15:17, 15:20, 16:6, 19:10, 19:13, 20:9, 20:17, 20:21, 22:4, 22:12, 23:16, 24:11, 27:22, 28:23, 28:24, 29:11, 29:22, 29:23, 30:7, 30:15, 30:23, 31:21, 32:10, 32:19 once [2] - 4:5, 9:18 one [8] - 7:21, 10:25, 28:5, 28:7, 28:8, 31:5, 31:8, 32:2 One [1] - 31:6 only [1] - 7:11 opening [2] - 28:15, 28:20 opportunities [1] - 27:14 opportunity [6] - 3:10, 3:20, 4:13, 23:19, 25:20, 31:24 or [27] - 5:9, 6:7, 8:24, 8:25, 9:10, 12:18, 12:21, 12:22, 13:2, 13:18, 13:22, 14:3, 16:15, 19:12, 19:13, 22:13,</p>	<p>23:4, 25:7, 26:12, 28:18, 29:6, 29:7, 29:9, 32:6, 32:12, 34:14 oral [1] - 5:3 order [3] - 3:23, 4:9, 29:8 organization [3] - 21:18, 26:22, 27:21 organizer [1] - 26:21 organizing [2] - 26:25, 27:14 orientation [4] - 15:22, 17:3, 29:4, 29:7 original [2] - 13:19, 16:8 other [6] - 7:2, 8:7, 8:17, 12:2, 14:8, 31:14 others [5] - 7:14, 14:3, 14:4, 29:5, 29:8 otherwise [1] - 13:19 our [8] - 8:4, 10:5, 10:19, 11:14, 12:16, 16:2, 20:4, 27:25 Our [1] - 27:3 out [6] - 4:6, 6:2, 21:6, 23:24, 26:9, 31:23 outcome [1] - 34:15 outcomes [1] - 17:9 outside [2] - 8:2, 12:18 over [5] - 4:12, 10:12, 20:20, 21:16, 24:22 own [1] - 7:10</p>
<p style="text-align: center;">N</p> <p>N [1] - 1:10 name [11] - 2:8, 6:14, 6:16, 6:21, 16:20, 19:8, 20:11, 22:2, 22:5, 22:12, 26:19 Name [1] - 20:24 names [1] - 4:11 nation [1] - 11:3 national [1] - 16:7 National [1] - 16:11 nature [1] - 18:13 need [2] - 25:18, 32:9 needs [1] - 3:5 neither [1] - 12:22 neutral [1] - 12:21 NEW [4] - 1:3, 1:13, 1:16, 34:4 new [2] - 22:9, 23:8 New [31] - 1:6, 1:14, 1:17, 2:5, 2:11, 2:15, 3:2, 3:6,</p>	<p style="text-align: center;">O</p> <p>obligations [1] - 11:13 obstacles [1] - 25:10 OF [2] - 34:4, 34:5</p>	<p>of [106] - 2:6, 2:22, 3:6, 3:11, 3:23, 4:5, 4:15, 4:21, 5:8, 5:11, 5:14, 5:19, 5:21, 5:25, 7:19, 7:23, 8:14, 9:2, 9:4, 9:13, 9:23, 10:3, 10:18, 10:22, 10:25, 11:4, 11:15, 12:11, 12:16, 12:18, 13:8, 13:9, 13:12, 13:22, 13:24, 14:5, 15:20, 16:13, 16:17, 17:2, 17:8, 17:18, 17:20, 18:9, 18:13, 18:17, 19:11, 19:16, 19:24, 20:17, 20:21, 21:8, 21:10, 21:12, 21:20, 21:25, 22:7, 22:8, 22:17, 23:4, 23:5, 23:7, 23:14, 23:17, 24:20, 24:24, 25:3, 25:5, 25:9, 25:12, 25:24, 26:3, 26:13, 27:9, 27:11, 27:20, 27:25, 28:4, 28:6, 28:12, 28:14, 28:22, 28:23, 29:3, 29:12, 29:13, 29:18, 29:19, 29:24, 29:25, 30:4, 30:6, 30:12, 30:13, 30:15, 31:12, 31:22, 34:8, 34:11, 34:13, 34:15, 34:18 off [3] - 6:7, 23:4, 32:16 offer [2] - 19:17, 32:3 officer [1] - 2:10 OFFICER [13] - 1:12, 2:2, 6:18, 10:2, 14:22, 15:5, 20:5, 23:21, 26:10, 30:19, 31:6, 31:19, 32:19 often [1] - 14:19 omit [1] - 13:10 ON [5] - 1:3, 1:3, 1:13, 1:16 on [50] - 2:4, 2:5, 2:7, 2:11, 2:12, 2:13, 2:16, 2:18, 2:21, 2:23, 2:24, 2:25, 3:10, 4:5, 5:6, 5:7, 6:14, 7:5, 8:12, 8:13, 9:3, 9:9, 9:12, 9:19, 10:23, 11:17, 15:17, 15:20, 16:6, 19:10, 19:13, 20:9, 20:17, 20:21, 22:4, 22:12, 23:16, 24:11, 27:22, 28:23, 28:24, 29:11, 29:22, 29:23, 30:7, 30:15, 30:23, 31:21, 32:10, 32:19 once [2] - 4:5, 9:18 one [8] - 7:21, 10:25, 28:5, 28:7, 28:8, 31:5, 31:8, 32:2 One [1] - 31:6 only [1] - 7:11 opening [2] - 28:15, 28:20 opportunities [1] - 27:14 opportunity [6] - 3:10, 3:20, 4:13, 23:19, 25:20, 31:24 or [27] - 5:9, 6:7, 8:24, 8:25, 9:10, 12:18, 12:21, 12:22, 13:2, 13:18, 13:22, 14:3, 16:15, 19:12, 19:13, 22:13,</p>	<p style="text-align: center;">P</p> <p>P [2] - 1:10 p.m [1] - 32:21 P.M [1] - 33:4 page [1] - 9:4 Page [1] - 8:13 pages [1] - 5:8 part [3] - 5:11, 28:10, 30:12 participants [2] - 21:25, 22:6 particularly [1] - 21:25 parties [1] - 34:13 passed [2] - 4:12, 4:14 Patel [2] - 10:6, 10:8 PATEL [2] - 10:7, 15:3 people [2] - 14:18, 17:21 people's [2] - 8:17, 14:8 percent [2] - 16:13, 16:17 person [7] - 7:23, 9:14, 15:9, 20:12, 24:3, 28:17, 29:25 person/friend [1] - 21:13 personal [1] - 24:14 persons [3] - 4:13, 4:16, 29:22 phone [1] - 6:7 phrase [1] - 14:6 physical [1] - 5:22 physically [1] - 25:4 piece [1] - 31:13 place [1] - 26:3</p>

<p>please [9] - 4:6, 6:6, 6:14, 6:18, 10:3, 15:5, 23:24, 26:14, 31:22 podium [1] - 6:13 point [1] - 9:17 policies [3] - 15:19, 15:22, 16:25 POLICY [1] - 1:16 policy [11] - 5:18, 15:14, 17:15, 17:24, 18:4, 18:8, 18:20, 19:3, 19:17, 26:25, 27:16 Policy [1] - 6:23 position [1] - 7:16 positive [1] - 17:8 possible [1] - 18:4 power [1] - 26:22 practice [1] - 10:19 precedence [1] - 11:25 preferred [1] - 12:21 present [1] - 32:3 presentation [1] - 25:7 presented [2] - 5:12, 25:9 prevent [1] - 15:14 prevented [1] - 16:19 privileged [1] - 21:15 profound [1] - 23:16 programs [1] - 21:2 progressive [1] - 27:16 Project [4] - 10:13, 10:17, 20:25, 27:3 project [2] - 22:2, 27:5 pronoun [1] - 22:11 pronouns [5] - 12:21, 16:20, 19:8, 20:13, 23:8 proper [1] - 8:9 proposal [2] - 18:10, 30:16 proposals [1] - 3:16 propose [1] - 9:8 PROPOSED [1] - 1:3 proposed [17] - 2:7, 2:12, 2:18, 2:20, 3:8, 3:12, 11:20, 13:12, 13:19, 18:2, 19:21, 22:9, 22:18, 22:22, 23:9, 30:3, 30:10 protect [3] - 11:24, 15:19, 19:22 protecting [1] - 11:14 protections [5] - 10:24, 17:10, 18:5, 20:4, 27:25 proud [2] - 20:12, 22:17 provide [2] - 10:3, 19:4 provided [3] - 7:24, 18:10, 22:15 provider [2] - 10:10, 10:14 providing [1] - 27:12 Public [1] - 34:7 PUBLIC [1] - 1:3 public [6] - 2:5, 2:10, 2:18,</p>	<p>3:9, 20:10, 20:15 published [2] - 2:20, 2:22 purpose [1] - 28:12 purposes [1] - 28:6</p> <p style="text-align: center;">Q</p> <p>queer [1] - 27:7 quick [1] - 5:21</p> <p style="text-align: center;">R</p> <p>R [2] - 1:10, 34:2 rapid [1] - 27:16 rather [2] - 29:24, 30:17 re [1] - 23:5 re-working [1] - 23:5 reactions [1] - 21:8 Reade [4] - 1:6, 1:13, 1:17, 2:15 ready [1] - 6:10 received [1] - 3:14 reception [1] - 6:4 recess [1] - 32:17 recognizing [1] - 17:17 recommend [2] - 8:15, 9:5 recommendations [1] - 3:16 Record [1] - 2:21 record [12] - 3:17, 4:3, 5:4, 5:10, 5:11, 5:17, 6:15, 26:15, 30:21, 32:16, 32:20, 33:2 refer [1] - 18:25 referring [1] - 18:23 reflect [1] - 14:17 reflected [1] - 16:12 refusing [1] - 19:7 regard [2] - 20:15, 24:19 regarding [1] - 29:13 regards [1] - 22:20 registration [2] - 3:25, 4:4 regulation [1] - 19:21 regulations [1] - 15:13 related [1] - 34:13 relevant [1] - 14:15 remain [1] - 28:21 remove [1] - 18:8 removing [1] - 18:18 replace [2] - 8:17, 29:2 reported [1] - 16:19 reporting [1] - 17:5 represents [1] - 10:17 research [1] - 16:8 residents [2] - 15:19, 17:11 respect [2] - 14:17, 28:2 respected [1] - 26:2 respectfully [1] - 22:22 respectively [1] - 18:25 response [1] - 27:17 restroom [1] - 6:2</p>	<p>retailer [1] - 24:18 review [1] - 3:13 reviewing [2] - 17:15, 27:23 revisions [1] - 19:25 right [3] - 17:13, 20:20, 25:23 Right's [1] - 2:24 RIGHTS [3] - 1:3, 1:13, 1:16 rights [1] - 11:2 Rights [9] - 2:6, 6:5, 7:5, 9:20, 10:21, 10:23, 20:9, 27:23, 28:3 Rights' [2] - 2:12, 15:17 Road [1] - 26:21 Rodriguez [2] - 15:10, 15:12 RODRIGUEZ [1] - 15:11 role [2] - 9:22, 17:17 roles [1] - 22:19 roof [1] - 21:16 room [4] - 5:25, 13:20, 16:15, 32:24 rooms [1] - 19:10 root [1] - 8:21 rude [1] - 14:24 rule [6] - 2:19, 2:20, 4:24, 18:2, 30:3, 30:10 RULES [1] - 1:3 rules [9] - 2:7, 2:13, 2:23, 3:8, 3:11, 3:22, 11:4, 23:15, 23:23 Rules [1] - 3:2 rules.cityofnewyork.us [1] - 3:3</p> <p style="text-align: center;">S</p> <p>S [2] - 1:10, 1:16 safe [3] - 16:5, 19:5, 25:21 safely [1] - 17:13 said [1] - 2:16 sake [1] - 13:9 salaried [1] - 21:17 same [2] - 29:4, 29:7 School [1] - 16:12 school [5] - 16:5, 16:22, 17:13, 19:12, 27:10 schools [9] - 16:2, 16:21, 16:23, 18:6, 19:5, 19:10, 19:17, 19:18, 20:4 second [4] - 7:19, 10:5, 13:24, 28:7 secondly [1] - 18:20 sections [1] - 3:6 seeing [1] - 32:2 seeking [3] - 3:19, 3:24, 4:23 segregated [1] - 18:24 send [2] - 5:17, 26:12 sense [1] - 7:25 sensitivity [1] - 8:9 sentence [2] - 28:21, 29:3 sentences [1] - 28:16</p>	<p>separate [1] - 7:17 September [3] - 1:4, 2:17, 34:18 serve [1] - 11:10 service [1] - 10:14 Services [1] - 10:8 services [2] - 10:9, 27:2 servicing [1] - 10:11 set [1] - 34:18 settings [1] - 19:3 sex [10] - 9:15, 11:8, 18:9, 18:13, 18:24, 30:2, 30:8, 30:9, 30:13, 30:16 sex-segregated [1] - 18:24 sexual [4] - 15:22, 17:2, 29:4, 29:7 shaped [1] - 9:24 shaping [1] - 9:23 share [1] - 21:10 she [1] - 21:12 sheets [1] - 31:21 shift [1] - 27:15 shifting [2] - 28:7, 28:13 should [5] - 7:21, 8:8, 13:10, 17:23, 18:12 shows [1] - 32:13 siblings [1] - 25:15 sign [2] - 4:17, 31:21 sign-in [1] - 31:21 signed [1] - 4:9 signing [1] - 3:23 silence [1] - 6:7 Silverman [1] - 2:8 SILVERMAN [1] - 1:12 simple [1] - 3:21 since [2] - 21:7, 31:11 single [1] - 30:8 single-sex [1] - 30:8 so [21] - 3:21, 4:2, 6:8, 20:14, 21:18, 21:23, 22:16, 23:18, 24:11, 24:12, 24:22, 25:8, 25:13, 25:18, 26:2, 26:14, 27:12, 28:12, 31:2, 32:8 society [1] - 13:3 society-at-large [1] - 13:3 solutions [1] - 16:9 some [2] - 7:12, 25:24 someone [5] - 13:16, 13:17, 32:5, 32:11, 32:13 sometimes [2] - 13:11, 13:14 somewhere [1] - 12:18 soon [1] - 32:13 sorry [1] - 30:20 sounds [1] - 31:4 speak [4] - 21:24, 24:13, 26:16, 31:25 speaker [4] - 4:25, 20:6, 26:17, 30:23 speaking [3] - 8:22, 24:3,</p>
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PROCEEDINGS

<p>26:4 specialist [1] - 6:23 specific [2] - 8:12, 8:21 specifically [1] - 19:14 Specter [1] - 1:5, 2:14 spectrum [1] - 31:12 SS [1] - 34:4 stakeholders [1] - 18:6 stands [1] - 18:15 started [1] - 2:4 State [2] - 16:14, 34:8 STATE [1] - 34:4 state [3] - 10:16, 16:18, 17:22 stay [2] - 32:9, 32:10 stenographic [1] - 34:11 step [3] - 11:14, 12:10, 15:23 steps [1] - 7:9 stereotypes [1] - 19:14 still [4] - 4:16, 4:17, 13:3, 24:25 stories [1] - 22:7 stranger [1] - 20:14 Street [4] - 1:6, 1:13, 1:17, 2:15 streets [1] - 27:11 strengthen [2] - 17:24, 20:3 strengthened [1] - 18:21 stronger [1] - 19:4 structures [1] - 28:22 student [1] - 19:7 students [10] - 15:25, 16:4, 16:11, 16:13, 16:18, 17:6, 17:12, 19:9, 19:16, 19:22 submission [1] - 5:10 submit [4] - 5:8, 5:15, 15:3, 24:24 submitted [2] - 3:17, 15:2 submitting [1] - 28:5 subsection [1] - 18:15 subsections [1] - 18:22 subsequent [1] - 12:13 such [2] - 11:23, 19:6 suffice [1] - 18:12 suggest [9] - 8:22, 9:16, 18:7, 18:18, 22:23, 23:4, 28:19, 29:14, 30:14 suggested [2] - 19:24, 28:23 suggestions [1] - 18:3 support [6] - 12:15, 17:25, 19:19, 19:20, 19:23, 22:18 supports [1] - 27:5 sure [1] - 26:15 Survey [1] - 16:12 synthesize [1] - 5:2 systems [1] - 17:5</p>	<p>Tabares [2] - 26:18, 26:20 TABARES [3] - 26:19, 31:4, 31:8 table [4] - 3:5, 4:5, 23:25, 31:22 Tabytha [3] - 21:3, 24:4, 24:5 tackle [1] - 27:19 take [2] - 4:25, 6:6 taken [1] - 32:18 takes [1] - 7:9 talk [2] - 7:25, 31:9 talking [1] - 31:16 team [1] - 27:18 tell [1] - 31:3 term [8] - 7:18, 12:8, 14:14, 22:24, 28:20, 30:2, 30:17, 31:9 terminology [2] - 14:16, 28:18 terms [6] - 9:9, 9:11, 9:15, 14:11, 14:20, 28:14 testify [14] - 3:20, 3:25, 4:9, 4:13, 4:18, 4:21, 4:23, 7:3, 15:8, 23:24, 31:20, 32:6, 32:14, 32:23 testifying [3] - 15:9, 21:4, 24:10 testimony [10] - 3:13, 4:20, 5:3, 5:5, 5:7, 5:13, 6:9, 23:19, 26:11, 32:3 than [3] - 5:2, 29:24, 30:14 Thank [1] - 14:22 thank [17] - 6:25, 9:19, 9:25, 15:7, 15:12, 20:2, 20:8, 23:18, 23:21, 23:25, 24:6, 26:8, 26:10, 31:18, 32:8, 32:15, 33:2 That [1] - 34:10 that [52] - 3:16, 3:19, 4:2, 4:9, 8:8, 8:23, 9:5, 9:6, 9:22, 11:20, 12:2, 12:4, 12:17, 14:17, 15:19, 16:4, 16:10, 16:12, 16:16, 16:19, 17:16, 18:3, 18:7, 18:25, 19:2, 21:19, 23:15, 24:19, 24:23, 24:25, 25:9, 25:13, 25:18, 25:19, 25:21, 25:23, 25:24, 26:7, 26:9, 26:22, 27:24, 28:4, 28:19, 28:25, 30:25, 31:3, 31:9, 31:11, 32:11, 34:12, 34:14 THE [12] - 2:2, 6:18, 10:2, 14:22, 15:5, 20:5, 23:21, 26:10, 30:19, 31:6, 31:19, 32:19 the [233] - 2:5, 2:9, 2:10, 2:11, 2:18, 2:20, 2:21, 2:22, 2:23, 2:25, 3:2, 3:3, 3:5, 3:6, 3:7, 3:9, 3:10, 3:11, 3:12, 3:17, 4:3, 4:5,</p>	<p>4:9, 4:12, 4:14, 4:15, 4:24, 5:4, 5:6, 5:7, 5:10, 5:11, 5:14, 5:16, 5:19, 5:22, 5:24, 5:25, 6:3, 6:4, 6:10, 6:12, 6:15, 6:23, 6:25, 7:4, 7:8, 7:11, 7:19, 7:20, 7:24, 8:2, 8:7, 8:13, 8:15, 8:16, 8:21, 8:23, 9:2, 9:4, 9:6, 9:9, 9:11, 9:12, 9:13, 9:14, 9:15, 9:19, 10:9, 10:10, 10:14, 10:16, 10:20, 10:22, 10:23, 10:25, 11:2, 11:3, 11:4, 11:9, 11:10, 11:15, 11:20, 12:8, 12:10, 12:12, 12:16, 12:19, 13:8, 13:9, 13:10, 13:12, 13:13, 13:15, 13:19, 13:24, 14:5, 14:6, 14:9, 14:13, 14:15, 14:17, 14:18, 14:25, 15:9, 15:16, 15:20, 16:18, 17:14, 17:16, 17:17, 17:19, 17:20, 17:22, 17:24, 17:25, 18:3, 18:7, 18:8, 18:10, 18:13, 18:15, 18:16, 18:20, 18:22, 18:25, 19:3, 19:8, 19:11, 19:15, 19:20, 20:5, 20:8, 20:20, 20:21, 20:24, 21:9, 21:13, 21:25, 22:9, 22:11, 22:18, 22:21, 22:23, 22:24, 23:5, 23:7, 23:8, 23:16, 23:19, 23:25, 24:3, 24:22, 24:24, 25:7, 25:11, 25:22, 26:3, 26:13, 26:15, 26:17, 26:21, 27:8, 27:10, 27:18, 27:22, 27:24, 28:2, 28:5, 28:7, 28:8, 28:9, 28:10, 28:12, 28:15, 28:18, 28:19, 28:20, 28:22, 28:24, 29:2, 29:4, 29:6, 29:11, 29:13, 29:19, 29:22, 29:24, 29:25, 30:2, 30:3, 30:4, 30:6, 30:10, 30:12, 30:15, 30:16, 30:17, 30:20, 31:13, 31:15, 31:22, 31:24, 32:3, 32:4, 32:10, 32:16, 32:20, 32:24, 33:2, 33:4, 34:8, 34:10, 34:13, 34:15 their [15] - 4:11, 7:6, 9:20, 12:17, 13:5, 15:18, 16:16, 16:20, 17:13, 19:11, 22:12, 22:13, 27:11, 29:23, 29:24 them [7] - 3:5, 4:6, 5:17, 25:22, 31:23 themselves [1] - 14:21 then [2] - 4:17, 21:7 there [12] - 5:7, 7:13, 7:15, 8:8, 12:23, 14:24, 25:3, 28:3, 28:10, 31:12, 31:21, 32:2 these [10] - 3:8, 3:21, 13:4,</p>	<p>15:2, 18:19, 19:15, 22:5, 23:10, 23:13, 23:15 they [10] - 4:9, 4:17, 16:6, 16:19, 21:12, 24:25, 25:23, 26:15, 27:9, 31:16 they/them [2] - 20:13, 23:8 thing [3] - 31:5, 31:7, 31:8 think [2] - 25:13, 25:17 third [3] - 8:6, 14:5, 28:8 this [28] - 2:13, 2:18, 3:9, 8:3, 8:6, 12:3, 13:11, 14:16, 15:23, 17:15, 17:22, 18:9, 19:2, 19:17, 20:10, 20:13, 22:17, 23:4, 24:9, 25:14, 25:18, 25:25, 26:9, 32:6, 32:25, 34:13, 34:16, 34:18 though [2] - 23:10, 31:16 three [8] - 4:21, 4:24, 5:2, 7:7, 14:25, 28:4, 28:11, 30:22 three-minute [2] - 4:24, 30:22 through [1] - 26:25 throughout [4] - 16:14, 17:22, 30:3, 30:16 time [9] - 4:19, 4:22, 5:6, 9:20, 21:17, 24:10, 24:11, 24:20, 30:22 times [2] - 24:19, 30:3 Title [1] - 11:3 TLDEF [2] - 20:23, 23:12 TLDEF's [1] - 22:2 to [145] - 2:4, 3:8, 3:10, 3:15, 3:19, 3:20, 3:21, 3:24, 4:8, 4:12, 4:13, 4:18, 4:21, 4:22, 4:23, 4:24, 5:15, 5:18, 6:3, 6:7, 6:10, 6:25, 7:3, 7:4, 7:6, 7:9, 7:16, 7:22, 7:25, 8:4, 8:7, 8:11, 8:15, 9:9, 9:18, 9:21, 10:5, 10:11, 10:23, 11:3, 11:4, 11:15, 12:2, 12:10, 12:14, 13:4, 13:14, 13:17, 13:25, 14:3, 14:4, 14:8, 14:10, 14:20, 14:24, 15:8, 15:14, 15:18, 15:23, 16:8, 16:15, 17:12, 17:13, 17:19, 17:23, 17:25, 18:3, 18:21, 18:23, 18:25, 19:7, 19:15, 19:19, 19:21, 20:3, 20:8, 20:14, 20:16, 21:8, 21:14, 21:24, 22:12, 22:15, 22:17, 22:19, 22:20, 22:21, 23:3, 23:6, 23:19, 23:24, 24:11, 24:13, 24:19, 24:23, 25:5, 25:8, 25:14, 25:18, 25:20, 25:22, 26:2, 26:12, 26:16, 26:24, 27:8, 27:15, 27:17, 27:18, 28:2, 28:16, 28:17, 28:21, 29:2, 29:5, 29:8, 29:9,</p>
T			
T [2] - 34:2			

PROCEEDINGS

<p>29:13, 29:14, 29:15, 29:20, 29:21, 30:20, 30:21, 31:3, 31:9, 31:20, 31:24, 32:3, 32:4, 32:5, 32:9, 32:10, 32:13, 32:23, 32:25, 34:13 today [7] - 5:13, 5:20, 20:10, 20:21, 21:23, 23:20, 28:5 today's [1] - 3:18 token [1] - 21:13 too [1] - 9:12 top [1] - 23:14 touch [1] - 8:11 towards [2] - 11:14, 27:15 traditional [2] - 8:16, 14:7 traditions [1] - 8:19 trans [17] - 7:13, 7:14, 9:8, 9:10, 9:14, 9:21, 21:7, 21:13, 21:18, 22:3, 25:8, 29:15, 29:17, 29:18, 29:19, 31:17 Trans [1] - 27:3 trans-femme/trans-woman [1] - 29:17 transcription [1] - 34:11 transferring [1] - 24:25 transgender [24] - 7:3, 7:11, 9:5, 11:8, 12:6, 13:13, 13:16, 13:18, 13:22, 16:13, 16:18, 17:10, 17:11, 17:20, 18:5, 19:19, 19:22, 20:12, 21:20, 22:25, 24:7, 24:17, 28:14, 29:14 Transgender [2] - 20:22, 27:6 transition [5] - 9:13, 9:17, 24:20, 29:22, 29:24 translated [1] - 8:7 Tuesday [1] - 2:16 turn [3] - 4:6, 6:7, 31:23 turned [1] - 30:25 two [3] - 18:2, 18:19, 21:6 tying [1] - 19:15 type [1] - 25:12 typical [1] - 21:20</p>	<p>upon [1] - 24:22 us [6] - 7:4, 8:3, 9:24, 25:24, 31:3 usage [1] - 30:15 use [9] - 7:25, 9:22, 14:19, 19:7, 20:13, 22:12, 23:7, 25:12, 30:17 used [2] - 29:20, 30:2 uses [2] - 28:17, 28:20 using [1] - 16:20 utilize [1] - 28:16</p>	<p>who [8] - 4:10, 4:16, 7:14, 12:20, 12:24, 14:18, 21:4, 28:17 who are [1] - 4:13 who is [4] - 6:11, 7:23, 13:16, 13:17 will [26] - 3:12, 3:14, 3:20, 3:21, 4:8, 4:11, 4:14, 4:20, 4:22, 4:23, 5:11, 6:12, 11:8, 11:23, 11:24, 14:16, 15:3, 19:17, 21:4, 23:15, 24:3, 25:14, 25:21, 26:14, 31:24, 32:12 willingness [1] - 9:20 wing [1] - 24:13 with [16] - 5:12, 6:8, 8:17, 16:16, 16:25, 17:4, 21:8, 22:5, 24:19, 25:2, 25:13, 25:20, 27:18, 27:25, 28:22, 30:11 within [3] - 7:20, 14:18, 34:8 without [1] - 9:24 WITNESS [1] - 34:17 witness [3] - 4:20, 6:11, 10:6 witnesses [1] - 4:8 woman [2] - 29:17, 29:18 woman/femme [1] - 9:11 word [5] - 8:15, 13:10, 13:13, 28:20, 30:15 words [1] - 17:23 work [6] - 6:21, 11:16, 15:18, 22:15, 27:10, 27:17 worker [1] - 24:17 working [4] - 17:12, 23:5, 24:17, 26:23 workplace [2] - 21:9, 26:4 works [2] - 16:10, 26:9 would [6] - 6:25, 7:22, 8:11, 9:18, 19:4, 26:2 written [8] - 3:14, 5:4, 5:5, 5:9, 5:10, 5:15, 10:3, 30:25 wrong [1] - 22:11</p>	<p>12:16, 12:20, 23:17 you [39] - 4:2, 4:5, 4:6, 5:8, 5:15, 5:17, 5:25, 6:12, 9:25, 10:2, 14:23, 15:7, 15:12, 17:12, 20:2, 20:8, 23:13, 23:14, 23:18, 23:21, 23:23, 23:25, 24:6, 26:8, 26:10, 26:12, 30:21, 30:24, 30:25, 31:3, 31:18, 31:24, 32:8, 32:9, 32:10, 32:15, 33:2 your [11] - 4:25, 5:3, 5:12, 6:3, 6:7, 6:14, 10:4, 15:12, 20:2, 26:11, 26:12 youth [1] - 19:19</p>
	V		Z
	<p>very [8] - 15:7, 23:22, 24:2, 26:11, 31:16, 32:8, 32:15, 33:2 victimization [1] - 17:7 violations [5] - 18:22, 19:6, 19:15, 22:9, 23:6 violence [5] - 25:3, 25:4, 25:5, 27:9, 27:17 visibility [2] - 8:4, 23:12 visible [4] - 14:2, 14:4, 29:5, 29:8 vital [1] - 23:15</p>		ZOEY [1] - 1:16
	W		°
	<p>want [4] - 4:18, 26:12, 31:9, 32:10 was [7] - 2:20, 17:16, 20:19, 24:18, 24:21, 24:23, 32:17 way [2] - 25:19, 34:15 ways [1] - 19:2 we [34] - 2:4, 3:4, 4:19, 5:23, 8:15, 8:22, 9:5, 9:8, 9:22, 10:19, 11:10, 13:14, 16:3, 17:24, 18:7, 18:18, 19:20, 25:18, 26:14, 27:12, 27:21, 28:4, 28:19, 28:25, 29:14, 30:14, 30:18, 30:22, 31:2, 31:8, 32:4, 32:11, 32:21, 32:24 website [2] - 2:24, 3:2 weight [1] - 3:15 well [2] - 29:10, 29:15 were [2] - 16:14, 16:19 what [2] - 21:23, 29:9 what is [1] - 24:16 when [4] - 8:6, 16:22, 22:4, 22:15 where [3] - 16:6, 20:24, 30:12 WHEREOF [1] - 34:17 Whereupon [2] - 32:17, 33:4 whether [1] - 25:16 which [2] - 11:13, 22:8 whichever [1] - 32:7 while [1] - 21:10</p>		° [4] - 33:7
U			X
<p>umbrella [2] - 7:11, 7:17 uncomfortable [1] - 21:11 under [6] - 7:11, 8:13, 8:25, 9:4, 10:20, 18:11 understanding [1] - 29:11 unique [1] - 8:4 unless [1] - 32:10 Unlike [1] - 24:9 unlike [1] - 5:6 until [3] - 32:5, 32:6, 32:12 up [3] - 14:25, 21:24, 32:13 update [2] - 7:6, 10:24 updated [1] - 7:20</p>			X X [2] - 1:2, 1:7
			Y
		<p>year [1] - 10:16 years [3] - 10:12, 20:19, 21:6 YORK [4] - 1:3, 1:13, 1:16, 34:4 York [26] - 1:6, 1:14, 1:17, 2:5, 2:11, 2:15, 3:2, 3:6, 10:8, 10:21, 11:4, 15:15, 15:16, 15:17, 16:3, 16:14, 18:2, 19:16, 20:8, 20:15, 27:22, 28:2, 34:8 Yorkers [5] - 11:15, 11:24,</p>	