

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Court Minutes

DATE: September 20, 2016
JUDGE: Pamela Pepper
CASE NO: 2016-cv-943
CASE NAME: Ashton Whitaker v. Kenosha Unified School District No. 1 Board of Education, *et al.*
NATURE OF HEARING: Oral argument on motion for preliminary injunction
APPEARANCES: Joseph J. Wardenski – Attorney for the plaintiff
Ilona Turner – Attorney for the plaintiff
Alison Pennington – Attorney for the plaintiff
Michael Allen – Attorney for the plaintiff
Robert Pledl - Attorney for the plaintiff
Ronald S. Stadler – Attorney for the defendants
Jonathan E. Sacks - Attorney for defendants
COURTROOM DEPUTY: Kristine Wrobel
TIME: 1:05 p.m. – 3:04 p.m.

The court had scheduled today's hearing to hear argument from the parties on the plaintiffs' motion for a preliminary injunction. As the parties had agreed at the prior day's hearing, the court considered only the plaintiffs' request that the court enjoin the defendants from prohibiting plaintiff Ash Whitaker from using the boys' restrooms at George Nelson Tremper High School during the pendency of this case; the court had previously declined to enjoin the defendants from wearing an identifying armband (given the lack of evidence indicating that the defendants were enforcing a policy requiring that the plaintiff wear a wristband), and deferred ruling on the plaintiffs' request that it enjoin the defendants from referring to plaintiff Ash Whitaker by a female moniker or by female pronouns (to give counsel for the defendants time to discuss that issue with his clients, in light of the fact that plaintiff Ash Whitaker recently had obtained a legal name-change order, and that the defendants were working on updating school records to reflect that fact).

The court heard argument from both counsel with regard to the issuance of the preliminary injunction. At the conclusion of the hearing, the court granted the plaintiffs' motion to the following extent: It enjoined the defendants from prohibiting Ash Whitaker from using the boys' restrooms at Tremper High School; enjoined the defendants from taking any punitive action against Ash Whitaker for using the boys' restrooms (including taking him out of class to chastise him); and enjoining the defendants from taking any action to monitor Ash Whitaker's restroom usage (such as having staff members surveil the plaintiff, or posting staff members outside boys' bathrooms to watch him).

Counsel for the defendants asked the court to stay its ruling until October 1, to allow the defendants to go to the Seventh Circuit. The court

declined, noting that the defendants could ask the appellate court to stay this court's order. The defendants also asked the court to require the plaintiffs to post a bond pursuant to Fed. R. Civ. P. 65(c). Counsel for the defendants argued that under the Wisconsin Supreme Court's decision in Muscoda Bridge Co. v. Worden-Allen Co., 207 Wis. 22 (Wis. 1931), the court should impose a bond in an amount sufficient to cover the fees and costs the defendants would incur should it turn out that the court improvidently granted the injunction. The plaintiffs responded that the court should not impose a bond, given the modest means of the plaintiffs. The court stated that it would take the issue of bond under advisement.

The court will issue a separate order.