

old transgender girl enrolled at Highland Elementary School, from using the bathroom that other female students use. After Jane’s legal guardian filed a complaint with the Department of Education’s Office of Civil Rights (“OCR”), OCR determined that Highland’s treatment of Jane violated Title IX. On June 10, 2016, the School District commenced this lawsuit, alleging that Defendants’ actions violated: (1) the Administrative Procedure Act; (2) the Spending Clause of Article I, Section 8 of the United States Constitution; (3) the federalism guarantees of the Constitution; (4) the separation-of-powers guarantees of the Constitution; and (5) the Regulatory Flexibility Act. (Compl., Doc. 1 at ¶¶ 132-247.) On July 15, 2016, the School District filed a motion for a preliminary injunction, seeking to enjoin enforcement of the offending regulations. (Doc. 10.) The Court granted the motion to intervene of Jane Doe and her legal guardians as Third-Party Plaintiffs. (Doc. 29.) Jane then filed a motion for preliminary injunction against Third-Party Defendants.

II. ANALYSIS

Highland asks the Court to allow three fact witnesses—Parent S. and Parent H., who are parents of minor students at Highland schools, as well as S.B., the foster parent of five minor children, two of whom are victims of sexual abuse, to “protect each of the above-listed individuals from publicly revealing his or her identity, and to prevent the public revelation of the identities of each individual’s minor children, which could cause them harm in the form of harassment and retaliation.” (*Id.*) On August 15, 2016, the Court granted Jane Doe’s motion to proceed pseudonymously and also allowed her legal guardians to proceed pseudonymously on the ground that identifying them by name would, for all intents and purposes, also reveal Jane’s identity. (Doc. 29 at 9.)

The decision to grant a motion to proceed pseudonymously is within the sound discretion of the district court. *Doe v. Porter*, 370 F.3d 558, 560 (6th Cir. 2004). A district court must set forth its reasons for granting such a motion. *See, e.g., Doe v. Smith*, 429 F.3d 706, 710 (7th Cir. 2005).

As a general matter, litigating under a pseudonym is disfavored, *see* Fed. R. Civ. P. 10(a), but under Federal Rule of Civil Procedure 5.2(a), unless a court orders otherwise, a filing that contains “the name of an individual known to be a minor . . . may include only” the minor’s initials. In this case, Highland argues that revealing the three parents’ full names would identify their children, and because the nature of this case is sensitive and politically charged, the children would risk harassment and retaliation if they were publicly identified. (Doc. 60 at 4.) In one case cited by Highland, a district court held that “having children involved in the suit was a significant factor in favor of anonymity, particularly given the inflammatory subject matter of the case and the risk of harm the plaintiff children faced if their identities were made known through the revealing of their parents’ names.” *P.D. ex rel. C.D. v. Carroll Consol. Sch. Corp.*, 820 F. Supp. 2d 97, 909 (N.D. Ind. 2011). This concern is heightened for the two foster children of S.B. who have suffered sexual abuse. *E.E.O.C. v. Spoa, LLC*, No. CCB-13-1615, 2014 WL 47337, at *2 (D. Md. Jan. 3, 2014) (“[T]his case involves highly private and sensitive experiences of sexual assault, and Doe and Smith may face psychological harm from having these experiences made widely available.”).

The Court agrees that the subject matter of this case and the involvement of children warrant granting leave to proceed using initials. Moreover, granting the motion will not prejudice other parties to this suit, because Highland has agreed to negotiate and stipulate to a

protective order that will permit Defendants and Third-Party Plaintiffs access to information they might need from the three fact witnesses during the course of litigation.

III. CONCLUSION

For these reasons, Highland's Motion to Allow Fact Witnesses to Proceed Using Initials is **GRANTED**, on the condition that Highland negotiate and agree to a protective order that will permit Defendants and Third-Party Plaintiffs access to the anonymous witnesses as necessary.

(Doc. 59.)

IT IS SO ORDERED.

s/ Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

DATED: September 7, 2016