

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ASHTON WHITAKER, a minor, by his
mother and next friend, MELISSA
WHITAKER,

Plaintiff,

v.

KENOSHA UNIFIED SCHOOL DISTRICT
NO. 1 BOARD OF EDUCATION, *et al.*,

Defendants.

Civ. Action No. 2:16-cv-00943-PP
Judge Pamela Pepper

JOINT RULE 26(f) REPORT

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, and pursuant to this Court's October 5, 2016, Notice of the Rule 16 teleconference, scheduled for October 21, 2016, at 11:30 a.m., Plaintiff Ashton Whitaker and Defendants Kenosha Unified School District No. 1 Board of Education and Sue Savaglio-Jarvis, in her official capacity as Superintendent of the Kenosha Unified School District ("KUSD") (collectively, the "Parties"), jointly submit this report:

A. Brief description of the nature of the case

Plaintiff, a student at Tremper High School in KUSD, brings this civil action against Defendants under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*, and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution through 42 U.S.C. § 1983. Plaintiff, a transgender boy, alleges that Defendants discriminated against him based on sex in violation of Title IX and deprived him of equal protection of the laws based on his sex and transgender status under the Fourteenth Amendment by, *inter alia*, forbidding him from using boys' restrooms, segregating him from other students in overnight

sleeping accommodations, and using his birth name and feminine pronouns to refer to him. Plaintiff seeks a declaratory judgment, injunctive relief, compensatory damages, reasonable attorneys' fees and costs, and such other relief as this Court deems just and equitable.

B. Status of Related Proceedings

This Court denied Defendants' Motion to Dismiss on September 19, 2016, and issued a preliminary injunction on September 20, 2016, permitting Plaintiff to use boys' restrooms during the pendency of this litigation. Defendants' petition for interlocutory appeal of the Court's denial of the motion to dismiss, appeal of the preliminary injunction, and motion to stay the preliminary injunction during the appeal are currently pending in the Seventh Circuit.

C. Status of Pleadings

Plaintiff does not anticipate making further amendments to his Amended Complaint [Dkt. No. 12] at this time. Defendants will file an answer to the Amended Complaint no later than October 31, 2016.

D. Settlement Discussions

At this time, the Parties have not engaged in settlement discussions. The Parties will participate in a mandatory Rule 33 mediation with the Seventh Circuit mediator, which has been set for November 10, 2016.

E. Rule 26(f) Discovery Plan

The Parties propose the following discovery plan. A proposed schedule is below. Plaintiff requests an expedited schedule given the limited scope of disputed facts in this case and Plaintiff's desire to resolve this litigation before the end of the current school year in early June 2017 or as soon thereafter as reasonably practicable. Defendants too would like to move this case along quickly but need to the opportunity to engage in discovery given the significant issues and possible claims for damages.

1. Initial Disclosures

The Parties agree to exchange initial disclosures under Fed. R. Civ. P. 26(a)(1) by October 31, 2016.

2. Fact Discovery

The Parties believe the facts underlying Plaintiff's claims are, with limited exception, not in dispute. Facts related to damages may be more complicated and disputed. The Parties anticipate the exchange of written discovery requests and taking depositions. The Parties agree to exchange initial written discovery requests by November 14, 2016. Electronically stored information may be requested, and if so, the Parties agree to produce that information in native electronic format unless otherwise agreed to by the Parties. Any privilege logs will be served simultaneously with the written response and/or objections to the document production. At this time, the Parties are not asking the Court to impose any additional limits on discovery beyond those imposed by the Federal Rules of Civil Procedure.

Plaintiff estimates that fact discovery can be completed by February 28, 2017.

Defendants estimate that fact discovery can be completed by May 24, 2017.

3. Expert Discovery

The Parties anticipate calling expert witnesses at trial. Plaintiff estimates that expert witness discovery can be completed by March 31, 2017. Defendants estimate that expert witness discovery can be completed by July 1, 2017.

4. Protective Orders

The Parties anticipate requesting and producing information containing Personally Identifiable Information and other private, confidential, or sensitive information about Plaintiff, including, but not limited to, his educational records, medical history, medical treatments, mental health, and gender transition. As such, the Parties agree to enter into a

stipulated protective order, to be negotiated by the Parties and submitted to the Court for approval prior to the exchange of discovery, to address the proper handling of such information.

F. Dispositive Motions

The Parties agree that dispositive motions following the close of discovery may be useful in resolving the case or limiting the issues to be resolved at trial. The Parties will file dispositive motions, if any, after the close of discovery. Plaintiff proposes filing dispositive motions on March 14, 2017, 14 days after Plaintiff's proposed cutoff date of February 28, 2017. Defendants propose filing dispositive motions on August 1, 2017, 30 days after Defendants' proposed discovery cutoff date of July 1, 2017.

G. Trial

Defendants request a jury trial. The Parties estimate that a trial can be completed in approximately five days, but reserve the right to adjust that estimate following discovery and the outcome of any dispositive motions. Plaintiff estimates that a trial can begin following resolution of dispositive motions, as early as April 2017. Plaintiff requests that no trial be held in May 2017 since Plaintiff will take Advanced Placement (AP) exams and final exams that month. Plaintiff further requests that the trial be held no later than July 2017 to avoid unnecessary conflicts with his freshman year of college in the fall of 2017. Defendants estimate that a trial can begin following resolution of dispositive motions in the fall of 2017. The Parties agree to exchange final pre-trial disclosures no later than 30 days before trial and to participate in a pre-trial conference no later than seven days before trial.

Plaintiff's Proposed Schedule

Deadline	Date
Exchange of initial disclosures	10/31/16
Exchange of written discovery requests	11/14/16
Plaintiff's expert witness disclosures	12/12/16
Defendants' expert witness disclosures	12/22/16
Plaintiff's rebuttal expert witness disclosures	1/13/17
Defendants' rebuttal expert witness disclosures	1/23/17
Fact discovery cutoff	1/31/17
Expert discovery cutoff	2/28/17
Dispositive motions	3/14/17
Responses to dispositive motions	3/28/17
Replies to responses to dispositive motions	4/4/17
Pretrial disclosures	30 days before trial
Final pretrial conference	7 days before trial
Trial	April 2017 or later following resolution of dispositive motions

Defendants' Proposed Schedule

Deadline	Date
Exchange of initial disclosures	10/31/16
Exchange of written discovery requests	11/7/16
Plaintiff's expert witness disclosures	12/21/16
Defendants' expert witness disclosures	03/21/17
Plaintiff's rebuttal expert witness disclosures	04/23/17
Defendants' rebuttal expert witness disclosures	06/01/17
Fact discovery cutoff	05/24/17
Expert discovery cutoff	07/01/17
Dispositive motions	08/01/17
Responses to dispositive motions	09/01/17
Replies to responses to dispositive motions	09/15/17
Deadline for pretrial disclosures	30 days before trial
Final pretrial conference	14 days before trial
Trial	Following resolution of dispositive motions

Dated: October 14, 2016

Respectfully submitted,

/s Joseph J. Wardenski

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