IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STUDENTS AND PARENTS FOR PRIVACY, a voluntary unincorporated association; **C.A.**, a minor, by and through her parent and guardian, **N.A.**; **A.M.**, a minor, by and through her parents and guardians, **S.M.** and **R.M.**; **N.G.**, a minor, by and through her parent and guardian, **R.G.**; **A.V.**, a minor, by and through her parents and guardians, **T.V.** and **A.T.V.**; and **B.W.**, a minor, by and through his parents and guardians, **D.W.** and **V.W.**,	)	Case No. 16-cv-4945
Plaintiffs,	)	Judge Jorge L. Alonso
v.	)	
	)	Magistrate Judge Jeffrey T. Gilbert
UNITED STATES DEPARTMENT OF EDUCATION; **JOHN B. KING, JR.**, in his official capacity as United States Secretary of Education; **UNITED STATES DEPARTMENT OF JUSTICE**; **LORETTA E. LYNCH**, in her official capacity as United States Attorney General, and **SCHOOL DIRECTORS OF TOWNSHIP HIGH SCHOOL DISTRICT 211, COUNTY OF COOK AND STATE OF ILLINOIS**,	)	
Defendants.	)	

DEFENDANT TOWNSHIP HIGH SCHOOL DISTRICT 211'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' RESPONSE TO MAGISTRATE'S REPORT AND RECOMMENDATION

Defendant Board of Education of Township High School District No. 211, by its attorneys Franczek Radelet, P.C., hereby submits its Memorandum of Law in Opposition to Plaintiffs' Response to Magistrate Judge Gilbert's Report and Recommendation. In support, the District states as follows:

INTRODUCTION

Plaintiffs seek a preliminary injunction prohibiting the District from allowing Student A to use female restrooms (which she had been doing for almost three years prior to the filing of

this lawsuit). Plaintiffs also seek an injunction prohibiting the District from following the terms of the Locker Room Agreement between the District and the Department of Education (DOE), under which the District agreed to allow Student A to use female locker rooms, subject to certain conditions and privacy protections as laid out in the Agreement. The Plaintiffs contend that Student A's presence in female locker rooms and restrooms violates the Plaintiffs' constitutional "right to privacy" and creates an unlawful hostile environment under Title IX of the Civil Rights Act. The Magistrate's Report and Recommendation recommends that Plaintiffs' motion for preliminary injunction be denied because they have not demonstrated a likelihood of success on these claims. The Magistrate also found that Plaintiffs have not established any of the other elements that would warrant entry of a preliminary injunction.

The bulk of the Magistrate's Report and Recommendation and Plaintiffs' Response concerns whether the DOE's interpretation of Title IX and its implementing regulations to require the District to provide locker room access to Student A consistent with her gender identity is entitled to *Auer* deference. If this Court adopts the Magistrate's Report and Recommendation on this issue, the Court must deny Plaintiffs' request for Injunctive Relief against the District because the District obviously did not violate Title IX or the Constitution by providing Student A with access to female facilities that was required by Title IX and the DOE's lawful interpretation of that statute.

Ultimately, however, whether Title IX grants the DOE the legal authority to require the District to allow Student A access to female facilities has little bearing on whether the District itself violated either the Constitution or Title IX by allowing Student A to use facilities that are consistent with her gender identity. For all the reasons set forth in the Report and Recommendation, and as explained in further detail below, the Magistrate correctly determined

that no preliminary injunction should issue against the District, and this portion of his decision must be adopted even if this Court determines that the DOE exceeded its statutory authority.

I. The Magistrate Properly Disregarded Unsupported Factual Assertions in the Verified Complaint

The Magistrate's Report and Recommendation on Plaintiffs' constitutional privacy and Title IX hostile environment claims against the District should be adopted for the simple reason that the Girl Plaintiffs have not provided any evidentiary or factual support for their claims. Plaintiffs falsely assert that the "Girl Plaintiffs" have "spoken with authority" through the allegations in the Verified Complaint regarding the impact of having Student A using "their" locker rooms and that "Defendants fail to controvert the vast majority of Girl Plaintiff's sworn statements." Doc. # 146 at 13-14 of 39. In fact, the "Girl Plaintiffs" have not submitted *any* sworn statements and have not "spoken" *at all* with respect to the allegations in the Verified Complaint because the Verified Complaint is not verified by any of the "Girl Plaintiffs;" it is verified only by some of the "Girl Plaintiffs" parents. *See* Doc. # 1 at 79-83.

In order for assertions in a verified complaint to be accepted as evidence, the allegations must meet the requirements for summary judgment affidavits specified in Rule 56(e) - they "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." *Ford v. Wilson*, 90 F.3d 245, 247 (7th Cir. 1996); *see Lucas v. Chicago Transit Authority*, 367 F.3d 714, 726 (7th Cir. 2004) (Rule 56 requires affidavits that cite specific concrete facts establishing the existence of truth of the matter asserted). "[P]ersonal knowledge" may include inferences and, therefore, opinions, "[b]ut the inferences and opinions must be grounded in observation or other first-hand personal experience." *Visser v. Packer Eng'g Associates, Inc.*, 924 F.2d 655, 659 (7th Cir. 1991). They must not be "flights of fancy,

speculations, hunches, intuitions, or rumors about matters remote from that experience." *Id.* Moreover, hearsay evidence must be disregarded. *Friedel v. City of Madison*, 832 F.2d 965, 970 (7th Cir.1987). *Eyler v. Babcox*, 582 F. Supp. 981, 986 (N.D. Ill. 1983) (preliminary injunction denied where allegations contained in the complaint were no more than hearsay).

The allegations from the Verified Complaint fail to meet these standards. First, as noted above the complaint is "verified" only by a few of the students' parents, not by any student who has "first-hand personal experience" of what actually has occurred in District locker rooms. Moreover, the allegations that generically refer to what unidentified students have experienced or observed in the school locker rooms or bathrooms lack even the minimal foundation required to render the allegations admissible in evidence. Finally, many of the assertions are exactly the sorts of "flights of fancy, speculations, and hunches" that are not admissible in evidence. *Visser* at 659. The Magistrate correctly held that such patently inadmissible allegations should be given no weight.[1]

As recounted by the Magistrate in his Report and Recommendation, Plaintiffs' belated attempt to rely on unsupported factual assertions in the Verified Complaint also expressly contradicts their prior representations to the court that they were not relying on any specific factual assertions regarding interactions in either restrooms or locker rooms between any Plaintiff and Student A. Doc. # 134 at 14. Based on these representations, the Magistrate denied

[1] Throughout their Response, Plaintiffs continue to rely on unsupported factual assertions that the Court should disregard. For example, they falsely assert that the District is "forcing" their school staff (who in turn often coerce students to follow suit) to use pronouns that are consistent with gender identity. Dkt # 146 at 12 of 39, n.7. Although District officials refer to Student A as she and her parents want her to be referred, there is absolutely no evidence of any "force" or "coercion." Also, such common courtesy in no way constitutes "compelled speech" in violation of the 1st Amendment. *See Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683, 106 S. Ct. 3159, 3164, 92 L. Ed. 2d 549 (1986) ("The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board.").

the District's motion for leave to take discovery as to the facts underlying Plaintiffs' "anonymous, general, and relatively conclusory allegations in their Complaint." *Id.* Plaintiffs cannot now reverse course and argue that the Magistrate erred in disregarding allegations on which Plaintiffs themselves specifically said they would not rely.

II. The Magistrate Correctly Finds that Plaintiffs Have Not Established A Likelihood of Success on Their Constitutional Privacy Claim

The Magistrate correctly found that Plaintiffs do not have a likelihood of success on their constitutional privacy claim against the District because: 1) there is no general constitutional right to privacy; 2) high school students do not have a constitutional right not to share restrooms or locker rooms with transgender students whose sex assigned at birth is different than theirs; 3) even under Plaintiffs' articulation of their rights, they have not established a constitutional violation because there is no assertion that Plaintiffs and transgender students were ever together in an unclothed state and because of the privacy protections in place; and 4) the District did not "shock the conscience" by allowing a transgender student restroom and locker room access. Doc. # 134 at 40-61. Plaintiffs' Response challenges whether there is a constitutional privacy right that applies and whether there was an actual infringement of the alleged privacy right. For all of the reasons given by the Report and Recommendation, this Court should deny Plaintiffs' motion for a preliminary injunction on their constitutional privacy claim.

A. Plaintiffs Fail to Identify an Applicable Constitutional Right to Privacy

The Magistrate undertook a careful review of Plaintiffs' filings, and based on Plaintiffs' own characterization of the issues, framed the constitutional right claimed by Plaintiffs as whether "high school students have a constitutional right not to share restrooms or locker rooms with transgender students whose sex assigned at birth is different than theirs?" *Id.* at 45. Plaintiffs take issue with this characterization and attempt to frame the issue as follows: "whether

adolescent students' constitutional right to privacy ensures that they may use sex-specific intimate facilities free of government-mandated use by a member of the opposite sex?" Doc. # 146 at 25 of 39.

Plaintiffs failed to establish an applicable constitutional privacy right, regardless of characterization. First, Plaintiffs argue that there exists a history of protecting bodily privacy that was not given sufficient regard by the Magistrate. To the contrary, the Magistrate thoroughly reviewed the legal authority relied on by Plaintiffs and explained why none of the cases cited supported the existence of the constitutionally protected right claimed by Plaintiffs. Plaintiffs assert that "[t]he right to bodily privacy is 'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty,'" citing *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). *Id.* at 27 of 39. *Glucksberg*, however, does not identify a general constitutional protection to "bodily privacy." Rather, *Glucksberg* held that the liberties protected by the 14th Amendment did not include a right to assisted suicide. *Id*. at 723, 735. Accordingly, Plaintiffs' interpretation of *Glucksberg* as recognizing an over-arching "right to bodily privacy" is expressly contradicted by the holding of the case and must be rejected.

Next, Plaintiffs cite *State v. Lawson*, 340 P.3d 979, 982 (Wash. Ct. App. 2014), which addressed whether a state criminal statute was violated when a man was caught hiding in a female bathroom stall by a woman washing her hands. *Id.* at 981. Plaintiffs do not explain how a case interpreting a state criminal statute supports a federal constitutional right not to share restroom and bathroom facilities with a transgender female student.

Plaintiffs then cite two state cases that address whether sex is a *bona fide* occupational qualification (BFOQ) under state anti-discrimination laws for an employment position – *St. John's Home for Children v. W. Va. Human Rights Comm'n*, 375 S.E.2d 769, 771 (W. Va.

1988) and *City of Philadelphia v. Pennsylvania Human Relations Comm'n*, 300 A.2d 97, 98 (Pa. 1973). Likewise Plaintiffs rely on *Norwood v. Dale Maintenance System*, 590 F. Supp. 1410 (N.D. Ill. 1984), which addresses a BFOQ defense under Title VII for a restroom attendant. The cases do not address constitutional protections whatsoever. The Magistrate considered the relevance of BFOQ cases and explained that "[t]he burden on an employer to establish a BFOQ defense based on the level of privacy it wants to afford to its clientele is different, and substantially less demanding, than the burden on Plaintiffs here to establish the existence of a constitutionally protected right." Doc. # 134 at 55.

Plaintiffs argue that BFOQ cases are relevant because "only exceptionally strong interests permit an exception from sex discrimination laws," and argue that "the privacy interest is elevated in the school context, because the District Defendants owe a higher duty to the students over which they act *in loco parentis* than employers owe to employees." Doc. # 146 at 28 of 39. Once again, the case cited by Plaintiffs, *Mary M. v. N. Lawrence Cmty. Sch. Corp.*, 131 F.3d 1220, 1226–27 (7th Cir. 1997), does not support this assertion. Rather, *Mary M.* addressed whether the element of "welcomeness" as applied in Title VII sexual harassment cases applied to a Title IX case involving sexual contact between a school employee and a student who was below the age of consent. *Id.* Thus, *Mary M.* does not support the "privacy interest" asserted by Plaintiffs in this case, nor does it support Plaintiffs' assertion that the District's *in loco parentis* status results in a higher duty to protect privacy of students than what an employer would owe to an employee. In fact, in determining the degree of privacy protection afforded to students in a school setting, the Supreme Court has consistently held that a school's *in loco parentis* status justifies giving school officials greater deference than other governmental actors in balancing student privacy with other competing interests. *See T.L.O.*, 469 U.S. at 348, 105 S.Ct. 733

(Powell, J., concurring) ("In any realistic sense, students within the school environment have a lesser expectation of privacy than members of the population generally."). *See also Vernonia School Dist. 47 v. Acton*, 515 U.S. 646, 657 (1995) ("Public school locker rooms . . . are not notable for the privacy they afford."). The Magistrate's Report and Recommendation affords school officials the appropriate level of deference under these well established constitutional norms.

Lastly, Plaintiffs rely on *Kohler v. City of Wapakoneta*, 381 F. Supp. 2d 692 (N.D. Ohio 2005) to establish a constitutional privacy right. Doc. # 146 at 28 of 39. The Magistrate was "not persuaded by Plaintiffs' reliance on *Kohler*" (Doc. # 134 at 55), and Plaintiffs' Response provides no further authority that requires reconsideration of the Magistrate's conclusion. In *Kohler*, the court decided that the plaintiff's state law invasion of privacy claim survived a motion for summary judgment where a male defendant had surreptiously placed a tape recorder inside to a women's room toilet stall. *Kohler* at 704.[2] Again, this case provides no authority for recognizing the constitutional "privacy" right Plaintiffs seek in this case.

In sum, Plaintiffs fail to present any compelling legal authority that contradicts the Magistrate's conclusion that Plaintiffs failed to establish a constitutional right. This Court should similarly conclude that Plaintiffs' bodily privacy claim is without legal basis and reject their request for preliminary relief on that basis.

[2] Also, the reasoning of *Kohler* expressly rejects Plaintiffs' assertion that "privacy" begins at the locker room or restroom door. The *Kohler* court cited several cases holding that a criminal suspect's reasonable privacy expectation for Fourth Amendment purposes, was limited to what could be seen and heard inside a bathroom stall, and did not extend to observations that could be made from within the restroom but outside of a stall. *Id.* 703. The *Kohler* court held that these cases were distinguishable from the situation in *Kohler* because, among other reasons, the tape recorder was surreptiously hidden inside of a stall. *Id.* In this case, there is no allegation that Student A or anyone else is secretly viewing or listening to other students inside of the stalls or curtained changing areas that the District provides as privacy options.

B. Plaintiffs Fail to Establish an Infringement of Their Constitutional Rights

Not only have Plaintiffs failed to establish a constitutional right, but they have also failed to establish that any such purported right was infringed. Plaintiffs cite what they refer to as "uncontroverted testimony" including:

- The locker room has minimal privacy safeguards;
- The Plaintiffs are required to change clothing for PE;
- The Plaintiffs change undergarments for PE;
- The Plaintiffs are in Student A's PE class;
- The changing stalls do not provide privacy;
- Student A is not required to change privately; and
- Student A will see Plaintiffs in a state of undress.

Doc. # 146 at 29-30 of 39.

As explained in Section I above, none of these assertions are supported by admissible evidence. The "Verified" Complaint is not verified by any student with personal knowledge of any of these factual assertions, and many of these assertions are expressly contradicted by sworn affidavits submitted by the District and other Defendants. *See* Doc. # 78-1. Furthermore, Plaintiffs offer no admissible evidence or argument to contradict the Magistrate's findings that "[i]f the privacy stalls and protections the District provides in restrooms and locker rooms are not sufficient for the comfort of any student…he or she can use an alternative facility that satisfies his or her privacy needs" and "any Student Plaintiff who does not want to risk exposure of his or her body to a transgender student has the ability to change clothes and shower in a private space." Doc. # 134 at 46. Because Plaintiffs have failed to establish legal or factual support for

their constitutional privacy claims, the Magistrate correctly recommended against entering the requested injunction.

III. The Magistrate Correctly Recommends Finding that Plaintiffs Have Not Established A Likelihood of Success on Title IX Claims

The Magistrate found that Plaintiffs do not have a likelihood of success on their Title IX hostile environment claim against the District because: 1) they could not establish that they were being discriminated on the basis of sex; 2) they have not shown that the alleged harassment is severe, pervasive or objectively offensive; 3) the mere presence of a transgender student in a female locker room was not objectively offensive; 4) any risk of unwanted exposure is mitigated effectively by the privacy protections and alternatives provided by District 211; and 5) there is no evidence that Girl Plaintiffs have been denied access to any educational opportunities or benefits. *See* Doc. # 134 at 61-71. Plaintiffs' motion for a preliminary injunction should and can be denied for any one of these five reasons. In their Response, however, Plaintiffs directly challenge only the Magistrate's finding that Plaintiffs were not subjected to discrimination "on the basis of sex."

As the Magistrate correctly found, in order to prevail on a claim under Title IX, Plaintiffs must establish that they are being subjected to discrimination because of their sex. Plaintiffs cannot meet this burden. The Girl Plaintiffs are not being targeted or singled out by the District because they are female – the District allows transgender boys to use the boy's facilities with cisgender boys just like transgender girls like Student A are being allowed to use the girls' facilities with cisgender girls. Thus, there is no differential treatment of girls and boys based on "sex," regardless of whether "sex" is defined as only "biological" sex as Plaintiffs assert, or also includes "gender identity" as the DOE and the intervening Defendants assert. Regardless of

which side ultimately prevails in this debate, the District did not discriminate against Plaintiffs' because of *their* sex because both males and females are being treated exactly the same.

Plaintiffs completely ignore the requirement that they must prove discrimination on the basis of their own sex, and instead focus exclusively and incorrectly on the "sex" of Student A. While the focus on the "sex" of Student A is relevant to the determination of whether the DOE correctly determined that excluding Student A from the female facilities discriminates against Student A on the basis of her sex in violation of Title IX, it has no bearing on whether the female Plaintiffs have been subjected to unlawful sex discrimination based on Student A's presence in female locker or restrooms. If, as Plaintiffs' assert, the Locker Room Agreement was reached "to serve but one interest: affirming the male students' subjective perception of his sexuality," (Doc. # 146 at 34 of 39) this actually conclusively disproves their claim that the Agreement discriminated in any way against the Girl Plaintiffs' because of *their* sex. Affirming Student A's perception of herself as female does not discriminate against Plaintiffs because *they* are female.

Similarly, Plaintiffs' repeated reference to 34 C.F.R. § 106.33 which allows, but does not require, educational institutions to maintain separate sex facilities, does not support their Title IX argument against the District. This regulation does not grant Plaintiffs a right protected by Title IX to insist that the District exclude transgender students from communal bathrooms or locker rooms. It merely clarifies that a school does not discriminate "on the basis of sex" by maintaining separate facilities. Nor can this entirely permissive provision, which provides educational institutions with a "safe harbor" from Title IX liability, be interpreted to *require* a school to segregate facilities by "biological" sex only, as Plaintiffs suggest.

IV. The Magistrate Correctly Recommends Finding that Plaintiffs Have Not Satisfied Preliminary Injunction Requirements

In addition to correctly finding that Plaintiffs had not established a likelihood of success on the merits of their claims, the Magistrate also correctly found that Plaintiffs failed to show that they will suffer irreparable harm and that they lack an adequate remedy at law. Doc. # 134 at 16-17.

A. Plaintiffs Have Not Shown Irreparable Harm

Plaintiffs assert that they will suffer irreparable harm because they are being denied "truly private girls' locker rooms and bathrooms." Dkt. # 146 at 29 of 39. Plaintiffs' assertion is factually unsupported and legally wrong. As noted above, Plaintiffs are provided private bathroom stalls, private changing areas within the locker room and the use of separate, alternative facilities. Plaintiffs cite to *Doe v. Wood Cty. Bd. of Educ.*, 888 F. Supp. 2d 771(S.D.W. Va. 2012); *McCormick ex rel. McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 301–02 n. 25 (2d Cir.2004); and *Roberts v. Colo. State Bd. of Agric.*, 998 F.2d 824, 833 (10th Cir.1993). *Id.* None of these cases stand for the proposition that students are harmed by using locker room and restroom facilities with a transgender student when privacy options are available. In fact, none of these cases involve locker room or restroom access whatsoever. *Doe v. Wood County* addressed whether a school district met its obligations under federal regulations to provide completely voluntary single-sex classrooms. *McCormick* addressed whether a school district violated Title IX based on its scheduling of girls high school soccer; and *Roberts* addressed the elimination of women's fast pitch softball. The Magistrate's conclusion that "[t]here is no indication that anything has negatively impacted Girl Plaintiffs' education" stands unchallenged and should be affirmed. Plaintiffs' motion for a preliminary injunction should be denied for this additional basis.

Contrary to Plaintiffs' assertion, the Magistrate correctly found for purposes of determining whether preliminary injunctive relief was appropriate that Plaintiffs were dilatory in seeking relief and this delay suggested a lack of irreparable harm. Student A had been using female restrooms for two years before suit was filed, and the Locker Room Agreement had been in place for 5 months. This delay confirms the lack of any irreparable harm.

Plaintiffs' assertion that they filed suit within the same time frame as the plaintiffs in *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999) or much sooner than the plaintiff in *Franklin v. Gwinnett Cty. Pub. Sch*. 503 U.S. 690, 63 (1992) completely misses the mark because both of those cases were damage actions, and the propriety of injunctive relief was not at issue. Moreover, for all the reasons thoroughly explained by the Magistrate, Plaintiffs have utterly failed to meet the elements necessary for establishing the existence of a hostile educational environment as articulated by the Supreme Court in *Davis*. Because Plaintiffs do not directly challenge the Magistrate's findings on any of these points and there is no valid basis for challenging the Magistrate's thorough and well-reasoned decision, the Magistrate's Report and Recommendation should be adopted in full as to Plaintiffs' Title IX claims.

B. Plaintiffs Have Not Shown That Legal Remedies would be Inadequate

To obtain preliminary injunctive relief, Plaintiff must show that they do not have an adequate remedy at law. *Girl Scouts*, 549 F.3d at 1095. The Magistrate noted that Plaintiffs "do not address or even touch on this threshold requirement." Doc. # 134 at 81. The Magistrate also noted that any "emotional suffering" alleged by Plaintiffs could be adequately compensated by a monetary award. *Id.*

Plaintiffs offer no compelling authority to contradict the Magistrate's findings. Contrary to Plaintiffs' assertions, the cases they cite in which injunctions have been upheld are not

comparable to the allegations in this case. In those cases, students were forced to participate in classes that violated Title IX requirements (*see Doe v. Wood Cty. Bd. Of Educ.* 888 F.Supp.2d 771 (S.D. W. Va. 2012), or prohibited from participating in athletic activities. *McCormick ex rel. McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 301–02 n. 25 (2d Cir.2004) (depriving players access to championship playoff was irreparable harm); *Roberts v. Colo. State Bd. of Agric.*, 998 F.2d 824, 833 (10th Cir.1993) (denial of access to play softball was irreparable harm). The deprivation of the opportunity of participating in educational or extracurricular activities is not comparable to Plaintiffs' assertions of emotional distress resulting from the alleged "hostile environment" and privacy intrusions, which as the Magistrate noted are customarily and routinely compensated through money damages. Accordingly, the Plaintiffs have not established that they lack an adequate remedy at law.

CONCLUSION

The Magistrate's 82 page Report and Recommendation thoroughly, thoughtfully and completely addressed all issues and arguments raised by Plaintiffs in support of their Motion for Preliminary Injunction. Plaintiffs have not articulated any valid reason why the Report and Recommendation should not be adopted. Accordingly, the District respectfully requests that the Court adopt the Magistrate's Report and Recommendation in its entirety and deny the Plaintiffs' motion for preliminary injunctive relief against the District.

Dated: November 18, 2016

Respectfully submitted,

BOARD OF EDUCATION OF TOWNSHIP HIGH SCHOOL DISTRICT 211

By: /s/Michael A. Warner, Jr.
One of Its Attorneys

Sally J. Scott
Michael A. Warner, Jr.
Jennifer A. Smith
Patrick M. DePoy
Erin Fowler
FRANCZEK RADELET P.C.
300 South Wacker Drive, Suite 3400
Chicago, IL 60606-6785
(312) 986-0300

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that she caused a true and correct copy of the foregoing **DEFENDANT TOWNSHIP HIGH SCHOOL DISTRICT 211'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' RESPONSE TO MAGISTRATE'S REPORT AND RECOMMENDATION t**o be filed with the Clerk of the Court using the CM/ECF system which will send notification to the following counsel of record this 18th day of November, 2016:

Thomas L. Brejcha
Peter Breen
Jocelyn Floyd
THOMAS MORE SOCIETY
19 S. LaSalle St., Suite 603
Chicago, IL 60603
Attorneys for Plaintiffs

Gary S. McCaleb
Jeana Hallock
Douglas G. Wardlow
ALLIANCE DEFENDING FREEDOM
15100 N. 90th St.
Scottsdale, AZ 85260
Attorneys for Plaintiffs

J. Matthew Sharp
ALLIANCE DEFENDING FREEDOM
1000 Hurricane Shoals Rd., NE
Suite D-1100
Lawrenceville, GA 30043
Attorneys for Plaintiffs

Megan A. Crowley
Shiela Lieber
U.S. DEPARTMENT OF JUSTICE,
CIVIL DIVISION, FEDERAL PROGRAMS BRANCH
20 Massachusetts Ave., N.W.
Washington, DC 20001
Attorneys for U.S. Department of Education; John B. King, Jr., United States Department of Justice and Loretta E. Lynch

Benjamin L. Berwick
U.S. Department of Justice
Civil Division, Federal Programs Branch
1 Courthouse Way, Suite 9200
Boston, MA 02210
Attorneys for U.S. Department of Education; John B. King, Jr., United States Department of Justice and Loretta E. Lynch

Britt M. Miller
Laura R. Hammargren
Linda X. Shi
Timothy S. Bishop
Madeleine Hogue
MAYER BROWN LLP
71 S. Wacker Dr.
Chicago, IL 60606
Attorneys for Students A, B, and C, by and through their parents and legal guardians, and the Illinois Safe Schools Alliance

Catherine A. Bernard
Madeleine L. Hogue
MAYER BROWN LLP
1999 K St., N.W.
Washington, DC 20006-1101
Attorneys for Students A, B, and C, by and through their parents and legal guardians, and the Illinois Safe Schools Alliance

John A. Knight
ROGER BALDWIN FOUNDATION AT ACLU, INC.
180 N. Michigan Ave., Suite 2300
Chicago, IL 60601
Attorney for Intervenor Illinois Safe Schools Alliance

Ria Tabacco Mar
American Civil Liberties Union Foundation
125 Broad Street
New York, NY 1004-2400
Attorneys for Students A, B, and C, by and through their parents and legal guardians, and the Illinois Safe Schools Alliance

/s/Michael A. Warner, Jr.
Michael A. Warner, Jr.