

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
NORTHERN DIVISION

MARY SMITH, *et al*,  
Plaintiffs,

Case No. 1:17-cv-02302-ELH

-v-

BOARD OF EDUCATION OF FREDERICK  
COUNTY, MARYLAND, *et al.*,

Defendants.

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**MOTION FOR LEAVE FOR VOLUNTARY DISMISSAL WITHOUT PREJUDICE**

COMES NOW THE PLAINTIFFS, minor Mary Smith and her mother Jane Doe, by and through their undersigned counsel, and move the Court pursuant to F.R.C.P. 41(a)(2) to grant an Order allowing Plaintiffs to voluntarily dismiss their case without prejudice and says as follows:

1. Plaintiff is a minor, 15-year-old girl, who is exposed to tremendous stress and potential humiliation for bringing and prosecuting this case in defense of her right to privacy.
2. Defendants have filed a motion to dismiss while another student in Frederick County has decided to seek intervention in this case, opposing Plaintiff.
3. Plaintiff minor came home from school in tears the day intervenor’s motion to intervene was in the newspaper because intervenor’s attorneys allegedly said intervenor was trying to “stop members of the community”, meaning minor Plaintiff, “from attempting to disrupt his and other trans students’ education by taking away their right to be treated with dignity...”. Frederick News Post, Oct. 20, 2017.
4. Plaintiff minor treats all people with dignity, and has never been and is in fact not discriminatory, and has instead sought to defend and protect her own privacy and speech

rights. However, she does not believe that she can continue to prosecute her case without an increase in anxiety and fear of loss of her privacy.

5. Plaintiff minor already has a school plan to manage her anxiety and continuing this cause of action at this time during her sophomore year in high school with the possibility of her being exposed by name at school and/or falsely maligned is of great concern.
6. In *Davis v. USX Corp.*, 819 F.2d 1270, 1273 (4th Cir.1987), the Fourth Circuit stated:

The purpose of Rule 41(a)(2) is freely to allow voluntary dismissals unless the parties will be unfairly prejudiced. To fulfill this purpose, Rule 41(a)(2) requires a court order as a prerequisite to dismissal and permits the district court to impose conditions on voluntary dismissal to obviate any prejudice to the defendants which may otherwise result from the dismissal without prejudice.

*Lang v. Manufacturers & Traders Tr. Co.*, 2011 WL 1195614 (D. Md. 2011).

7. No unfair prejudice will result in Plaintiffs' voluntary dismissal as Defendants have moved the court to dismiss, the stage of the case is early, and the interests of the parties are kept intact. *Id.* Opposing counsel's consent has been requested and he is checking with his client with an anticipated response tomorrow (Friday, November 3, 2017).

WHEREFORE, Plaintiffs ask the Court for an Order voluntarily dismissing their case.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of November, 2017, the foregoing Plaintiff's Motion for Leave for Voluntary Dismissal Without Prejudice and Proposed Order, was served via the ECF electronic filing system upon the following counsel of record for Defendants:

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/s/

\_\_\_\_\_  
Dan Cox

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ORDER GRANTING VOLUNTARY DISMISSAL WITHOUT PREJUDICE

Upon consideration of Plaintiffs' motion for leave for voluntary dismissal without prejudice of her case, and any opposition thereto, it is this \_\_\_\_\_ day of \_\_\_\_\_, 2017, hereby

ORDERED, that the case be and is Dismissed without prejudice.

\_\_\_\_\_  
Judge of the District Court for Maryland