

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

**DREW ADAMS, a minor, by and through
his next friend and mother, ERICA
ADAMS KASPER,**

Plaintiff,

v.

Case No.: 3:17-cv-00739-TJC-JBT

**THE SCHOOL BOARD OF ST. JOHNS
COUNTY, FLORIDA,**

Defendants.

**DEFENDANT’S MOTION TO WITHDRAW AND AMEND
TWO RESPONSES TO PLAINTIFF’S REQUEST FOR ADMISSIONS**

Defendant, **THE SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA** (“Defendant”), through its undersigned counsel and pursuant to Federal Rule of Civil Procedure 36(b), moves to withdraw and amend two (2) of its 81 October 19, 2017, Responses to Plaintiff’s Requests for Admissions, and, in support, states as follows:

1. In this action, Plaintiff self-identifies as a transgender male and alleges Defendant is violating his rights under the Equal Protection Clause of the Fourteenth Amendment (Count I) and Title IX of the Educational Amendments of 1972 (“Title IX”)(Count II) by not allowing him to use the group or multi-user bathrooms designated for “male” occupants. [Doc. 60]. Plaintiff’s Amended Complaint seeks declaratory and injunctive relief, as well as compensatory damages.

2. Shortly after filing his original complaint, on July 19, 2017, Plaintiff filed a Motion for Preliminary Injunction [Doc. 22]. In that motion, and in oral argument related to the motion, Plaintiff asserted that discrimination on the basis of transgender status is entitled to strict scrutiny despite the lack of any supporting precedent. [Doc. 22 at 13-16].

3. From the beginning of this litigation, Defendant has consistently denied in its Answers to Plaintiff's Complaint and Amended Complaint that transgender people are a discrete and insular group. *See* (Doc. 1 at ¶72b and Doc. 56 at ¶72; Doc. 60 at ¶67b and Doc. 63 at ¶67).

4. On September 19, 2017, Plaintiff served Defendant with a First Set of Requests for Admissions containing 81 requests. Several of Plaintiff's Requests focused on criteria to establish transgender status as a suspect classification. Defendant denied each of these requests, except one, which it inadvertently admitted. Specifically, below are the Requests and Responses to the relevant Requests for Admissions:

43. Transgender people have suffered a long history of discrimination in the United States, and continue to suffer discrimination at present.

Response: Denied. Plaintiff has provided no facts or evidence to support this statement.

44. A person's gender identity or transgender status bears no relation to that person's ability to contribute to society.

Response: Denied. Plaintiff has provided no facts or evidence to support this statement.

45. Transgender people represent a small and discrete group of people within the United States, and generally.

Response: Admitted.

46. Transgender people lack the political power sufficient to protect their rights.

Response: Denied. Plaintiff has provided no facts or evidence to support this statement.

5. Defendant intended to respond to Request 45 in the same manner as it did to Requests 43, 44, and 46. Defendant inadvertently admitted Request 45, which it only recently discovered. Through this motion, Defendant requests that its response to Request 45 be amended to state “Denied. Plaintiff has provided no facts or evidence to support this statement.”

6. Much of this case centers on the District’s long-standing policy segregating bathrooms according to a student’s biological sex. In 2013 and 2014, with the emergence of issues related to transgender students nationwide, the District, using a task force, a focus group, and administrators and staff, researched, studied and ultimately drafted and implemented “Guidelines for LGBTQ students – Follow Best Practices” (“Best Practices”) for use in all of its schools. Exhibit 1.

7. Although this case centers on the “Restrooms” provision of the Best Practices, another section of the guidelines is relevant to this motion. In particular, under “Official Documents,” the Best Practices provide: “Schools will only modify student records to reflect a change in name or gender upon receipt of such documentation from a Florida court. While official student records must contain the student’s legal name, schools should permit the use of a “___” in unofficial student records to assist staff in calling the student by the preferred name.” Exhibit 1.

8. In 2015, Plaintiff began high school. This also marked the first time Plaintiff identified as a male in the District's system. In keeping with its Best Practices, the District made a notation in an unofficial record, informally known as a "pop-up" to its school records database, that Plaintiff identified as a male, should be called "Drew", and should be referred to with male pronouns.

9. When Plaintiff first transferred to the School District in 2010, his State of Florida Birth Registration Card reflected his sex as "Female." On or about September 25, 2017, Plaintiff presented a State of Florida birth certificate at his school that reflected his sex as "Male." Plaintiff did not, however, present a Court Order. Neither Mr. Adams' official records or unofficial "pop-up" was changed as a result.

10. Request 54 of Plaintiff's First Request for Admissions and the Defendant's response provided:

54. Plaintiff's school records have been updated to reflect a "male" gender marker.

Response: Admitted.

11. In making this admission, the Defendant interpreted the request to mean the unofficial records, not Plaintiff's official school record.

12. In a recent deposition of Defendant's Deputy Superintendent of Operations, Cathy Mittelstadt, Plaintiff's counsel represented that the school changed its records when Plaintiff presented his new birth certificate. Ms. Mittelstadt, however, confirmed that Plaintiff's student records show him as a "Female."

13. As a result, and through this motion, the Defendant seeks to amend its response to Request 54 as follows, “Admitted that Plaintiff’s unofficial records reflect him as identifying as a male; otherwise, denied.”

14. Although the discovery deadline ended on November 22, the parties have continued to work cooperatively with scheduling in this unique, expedited matter. In this regard, and pertinent to this motion, Plaintiff has noticed Defendant’s Rule 30(b)(6) representative(s) for deposition on Thursday, November 30, 2017, and have had knowledge of this matter and the relief sought herein since November 27, 2017.

MEMORANDUM OF LAW

Federal Rule of Civil Procedure 36(b), which governs requests for admissions, provides that “the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits.” District courts apply a two-part test when deciding whether to grant or deny a motion to amend responses to requests for admission. Perez v. Miami–Dade County, 297 F.3d 1255, 1264 (11th Cir. 2002). “First, the court should consider whether the withdrawal will subserve the presentation of the merits, and second, it must determine whether the withdrawal will prejudice the party who obtained the admissions in its presentation of the case.” Id. The district court abuses its discretion if it applies any other criterion beyond this two-part test. Essex Builders Group, Inc. v. Amerisure Ins. Co., 230 F.R.D. 682, 686 (M.D. Fla. 2005) (citing Perez at 1265).

The first prong—“whether the presentation of the merits will be subserved by allowing a withdrawal or amendment of the admissions”—“emphasizes the importance of having the

action resolved on the merits, and is satisfied when upholding the admissions would practically eliminate any presentation of the merits of the case.” Perez at 1266 (quotations and citation omitted). Here, the two admissions at issue do not rise to the level necessary to satisfy the first prong. For example, even if transgender people “represent a small and discrete group of people within the United States, and generally,” Plaintiff has not “practically eliminate[d] any presentation of the merits of the case.” Perez at 1266. Not by a long shot. Instead, Plaintiff still has to show the various other indicia, which Defendant denied, to attempt to establish transgender status as a suspect classification. The same is true for the admission regarding Plaintiff’s gender marker. Even if that fact is admitted, this does little if anything to make any dent towards the presentation of the merits of Plaintiff’s case.

“Rule 36(b)’s second prong requires the court to ascertain whether the non-moving party would be prejudiced by a withdrawal or amendment of admissions.” Perez, 297 F.3d at 1266. Such prejudice “is not simply that the party who initially obtained the admission will now have to convince the fact finder of its truth. Rather, it relates to the difficulty a party may face in proving its case.” *Id.* (quotation omitted). Establishing prejudice under this prong is often tied to the non-moving party’s reliance on the admissions and “the sudden need to obtain evidence with respect to the questions previously answered by the admissions.” Id. at 1266–67.

One factor precluding a finding of prejudice to Plaintiff from this amendment is the fact that from the beginning of this litigation, Defendant has consistently denied in its Answers to the Complaint and Amended Complaint that transgender people are a discrete and insular group. *See* (Doc. 1 at ¶72b and Doc. 56 at ¶72; Doc. 60 at ¶67b and Doc. 63 at ¶67). Thus,

like in Perez, Plaintiff was aware from the beginning that Defendant contested this material allegation. Id. at 1267-68.

With respect to any prejudice attendant to amending the admission regarding Plaintiff's school records, as stated above, Defendant's Rule 30(b)(6) representative(s) are set for deposition on Thursday, November 30, 2017. Certainly, Plaintiff can explore any concern related to this fact or the Defendant's amendment of its response in that forum.

Certificate of Conferral

In compliance with Local Rule 3.01(g), this certifies that the undersigned conferred with Plaintiff's counsel who does not agree with the relief sought herein.

WHEREFORE, for the foregoing reasons, Defendant, the School Board of St. Johns County, Florida, asserts that the two prongs of Federal Rule of Civil Procedure 36(b) favor allowing the Defendant to amend its two Responses cited above, and, as such, the Defendant respectfully requests this Court grant the instant motion, allow the two Responses to be amended as stated herein, and for such further relief as the Court deems proper.

Dated this 29th day of November 2017.

Respectfully submitted,

/s/ Michael P. Spellman

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 29th day of November, 2017, a true and correct copy of the foregoing was electronically filed in the U.S. District Court, Middle District of Florida, using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/Michael P. Spellman

_____ **MICHAEL P. SPELLMAN**

**St Johns County School District
Guidelines for LGBTQ students-Follow Best Practices**

Florida Law	Best Practices
<p>Bullying/Harassment The Federal Law Title IX and F.S. 1006.147 prohibits bullying and harassment of all students.</p>	<p>Bullying/Harassment Schools will follow the district policy prohibiting bullying and harassment, addressing any incident against an LGBTQ student the same way they would address an incident against any other student, unless the bullying/harassment is based on a student's LGBTQ status, in which case the matter may need to be addressed through the District's anti-discriminatory policy. (contact Student Services or HR)</p>
<p>Official Documents Documentation from a Florida court is required to reflect a change in name and/or gender in a student's official school records.</p>	<p>Official Documents Schools will only modify student records to reflect a change in name or gender upon receipt of such documentation from a Florida court. While official student records must contain the student's legal name, schools should permit the use of "_____" in unofficial student records to assist staff in calling the student by the preferred name.</p>
<p>Names and Pronouns There is no federal or Florida state law that requires schools to call a student by a requested name or use gender pronouns consistent with their gender identity.</p>	<p>Names and Pronouns Schools will use the name and gender pronoun corresponding to his/her consistently asserted gender identity upon request of the parent or student.</p>
<p>GSA Clubs at School Under the Federal Equal Access Act, a public school permitting any non-curricular club must also allow students to form a GSA. The school must also treat the GSA the same as it does any other non-curricular club in terms of access to facilities, resources, and opportunities to advertise.</p>	<p>GSA Clubs at School Schools will permit students to form GSA clubs. The clubs will comply with S.B. Rule 4.06 "Student Clubs and Organizations".</p>
<p>Coming Out Federal courts have found students have a constitutional right to be "out" at school if they want to be. Although students have the First Amendment right to free speech, a school can restrict a student's free speech when it causes significant disruption in the classroom.</p>	<p>Coming Out Schools will not try to silence students who are open about their sexual orientation or transgender identity, or who question their orientation or gender identity. Restricting a student's free speech may occur if it: (1) causes, substantial disruption with the school's work or material interference with school activities; (2) impinges upon the rights of other students to be secure and let alone; or (3) the school reasonably forecasts it will cause a substantial disruption with the school's work or material interference with school activities.</p>
<p>Privacy The U.S. Supreme Court recognizes the federal constitutional right to privacy, which extends to students in a school setting.</p>	<p>Privacy School personnel will not unnecessarily disclose any information about a students' sexual orientation, transgender identity or questions they may have about their sexual orientation or gender identity to third parties.</p>
<p>Restrooms There is no specific federal or Florida state law that requires schools to allow a transgender student access to the restroom corresponding to their consistently asserted transgender identity.</p>	<p>Restrooms Transgender students will be given access to a gender-neutral restroom and will not be required to use the restroom corresponding to their biological sex.</p>

EXHIBIT 1

SJCSD-D.A. 000011

Florida Law	Best Practices
<p>Athletics The Federal law Title IX ensures the safety and inclusion of transgender students in all school-sponsored activities (Department of Education, 2014).</p> <p>No federal or Florida state law requires schools to allow a transgender student to play on a team consistent with their gender identity and expression.</p> <p>Florida High School Athletics Association (FHSAA) policy provides transgender students with the opportunity to seek review of his/her eligibility through the FHSAA Gender Identify Eligibility Review Process.</p>	<p>Athletics FHSAA policy was updated stating transgender students should have the opportunity to participate in athletics consistent with their gender identity and expression and a student may seek review of his/her eligibility through the FHSAA Gender Identify Eligibility Review Process.</p>
<p>Locker Rooms There is no specific federal or Florida state law that requires schools to allow a transgender student access to the locker room corresponding to their consistently asserted transgender identity.</p>	<p>Locker Rooms Schools will provide a transgender student with available accommodations that best meets the needs and privacy concerns of all students. Transgender students will not be forced to use the locker room corresponding to their biological sex.</p>
<p>Dress Gender expression is protected by the U.S. Constitution and Title IX. This right to free expression includes choice of clothes. As long as what is worn would be appropriate if worn by other students, then a student should be able to wear that clothing even if it isn't stereotypically associated with their biological gender.</p>	<p>Dress Schools will allow transgender students to wear clothing in accordance with their consistently asserted gender identity as long as what is worn is in accordance with dress code policy and gender standards.</p>
<p>Prom/Dances The Federal law Title IX and First Amendment Federal court cases prohibits excluding same-sex couples from school-sponsored proms and dances.</p>	<p>Prom/Dances Schools will allow same-sex couples to attend school sponsored proms and dances.</p> <p>Schools will not dictate that only biological males may wear tuxedos, and only biological females may wear dresses.</p> <p>Schools will review the request for transgender students running for Prom King/Queen, taking into consideration the safety of the student.</p>
<p>Gender Segregation There is no Federal or Florida state law on the issue of gender segregation for school activities (i.e. classroom activities, field trips, PE class, etc.)</p>	<p>Gender Segregation It is recommended that teachers separate students alphabetically rather than by sex for school activities. Note: This does not include gender specific curriculum such as puberty.</p>
<p>Overnight Field Trips There is no Federal or Florida state law requiring school personnel to adhere to the requests of an LGBTQ student.</p>	<p>Overnight Field Study Because of the complexity of field study issues, they will be handled on a case by case basis.</p>