

**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.

THE SCHOOL BOARD OF ST. JOHNS
COUNTY, FLORIDA,

Defendant.

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

**PLAINTIFF’S MOTION *IN LIMINE* TO EXCLUDE EVIDENCE AND
ARGUMENT REGARDING PLAINTIFF’S ACADEMIC RECORDS AND
SUPPORTING MEMORANDUM OF LAW**

Pursuant to Federal Rules of Evidence 401, 402, 403 and 404, Plaintiff Drew Adams (“Drew”), a minor, by and through his next friend and mother, Erica Adams Kasper (collectively, “Plaintiff”), and by and through their undersigned counsel, respectfully moves the Court to exclude evidence and argument related to Plaintiff’s academic records because such information is irrelevant to the claims or defenses in this case, confuses issues, and is a waste of this Court’s judicial resources. As detailed below, such information such be excluded from this trial so that the Court can focus on the evidence and argument that actually has relevance to the issues to be presented.

INTRODUCTION

The issue in this case is narrow, limited solely to whether Defendant’s policy prohibiting transgender students—in this case a transgender boy—from using the restroom

consistent with their gender identity is discriminatory and violates Title IX and Title XIV of the US Constitution. There is no dispute that Drew is transgender and Defendant certainly has not and cannot introduce evidence to dispute this fact. Indeed, neither of Defendant's experts or other witnesses has disputed this fact. There is likewise no dispute that Drew is a student at Nease High School and is prohibited from using the boy's bathroom, while non-transgender boys are free to use the boys' restroom.

And, while Plaintiff has alleged that this discriminatory policy has required him to miss valuable class time, he has not claimed that his grades have suffered as a result, because Plaintiff has had to work harder and spend extra time studying or catching up on any missed lessons that he otherwise would have in order to remain an honors student. For this reason, his academic records—records filled with all manner of extraneous information having no relationship to the issues presented in this case—should be excluded unless they bear directly on Plaintiff's right to use the restroom consistent with his male gender identity at Nease High School. This is a short three-day trial, the focus of which is whether Defendant's policy violates the Equal Protection Clause or Title IX. Given the limited issues to be tried and the fact that there is no credible dispute that Drew attends Nease High School (which makes the records unnecessary to establish this fact), his academic records are entirely irrelevant. To the extent they bear any relevance to any issue this case, any relevance is substantially outweighed by the confusion of issues they may sow, and the time they will waste.

ARGUMENT

The purpose of a motion *in limine* is “to exclude anticipated prejudicial evidence before the evidence is actually offered.” *Luce v. United States*, 469 U.S. 38, 40 n. 2 (1984). In doing

so, it “narrow[s] the evidentiary issues for trial and . . . eliminate[s] unnecessary trial interruptions.” *Bradley v. Pittsburgh Board of Education*, 913 F. 2d 1064, 1069 (3d Cir. 1990). All evidence must be relevant to be admissible. Evidence is relevant if it “has any tendency to make a fact more or less probable than it would be without the evidence,” and that fact “is of consequence in determining the action.” Fed. R. Evid. 401. In other words, “[t]he evidence must be probative of the proposition it is offered to prove, and the proposition must be one that is of consequence to the determination of the action.” *United States v. Troya*, 733 F. 3d 1125, 1131 (11th Cir. 2013) (quoting *United States v. Glasser*, 773 F. 2d 1553, 1559 n. 4 (11th Cir. 1985)). Evidence which is not relevant is inadmissible. Fed. R. Evid. 402. “[T]he party introducing evidence carries the burden of demonstrating the evidence’s relevance.” *Dowling v. United States*, 493 U.S. 342, 351 n. 3 (1990). Relevant evidence should nevertheless be excluded if its introduction will result in “unfair prejudice, confus[ion of] the issues, [or] misleading the jury.” Fed. R. Evid. 403. This includes prohibiting irrelevant and prejudicial arguments or references at trial. Fed. R. Evid. 403. It cannot be questioned that this Court has the authority to exclude evidence and, for the reasons discussed herein, the Court should exercise that discretion here as the academic records at issue have no relationship to the merits of this case.

There is no dispute in this case that Drew is a transgender boy who has been banned from using the boy’s bathroom at Nease High School. What Drew’s grades are, other unrelated experiences at the school, and information unrelated to Drew’s transgender status or the prohibition on his sex-segregated restroom use have no relationship to the claims or defenses presented here. Although Plaintiff attempted to obtain Defendant’s agreement to this motion,

it refused, claiming that it is possible that certain records may be relevant, but that is simply not the case. On the contrary, the use of such records and materials will only serve to waste the limited time that as has been set aside for this three-day bench trial on extraneous information that will not aid in this Court's understanding of the issues or otherwise aid in help establish any of the facts or issues in this case.

It appears that Defendant intends to try and use Plaintiff's academic records as improper character evidence under Federal Rule of Evidence 404, which is wholly improper. Such evidence tends to distract the trier of fact from the actual issues and creates the risk that any finding may be attributable to a person's character rather than an objective view of the facts or the evidence. While there is certainly less risk of that here, where there is a bench trial, the fact remains that such extraneous evidence should not be admitted in an effort to protect the integrity of the process and the record. While the majority of cases addressing this issue arise in the criminal context, the rule is no less potent when a Defendant is attempting to impugn a party's character by using other evidence or record, which information simply has no relevance to the issues here. By example, if Plaintiff had an issue with another student at the school unrelated to restroom use or his transgender status, such evidence should be inadmissible. The records at issue have nothing to do with either of those issues, or any claims or defenses in this case, and, accordingly, should be excluded.

CONCLUSION

For all the foregoing reasons, Plaintiff respectfully requests that the Court grant Plaintiff's motion *in limine* and preclude Defendant from offering any evidence or argument regarding Plaintiff's academic records.

CERTIFICATE OF CONFERENCE PURSUANT TO LOCAL RULE 3.01(g)

Pursuant to 3.01(g) of the Local Rules of the Middle District of Florida, the undersigned certifies that he has conferred with the attorneys representing Defendant regarding the relief requested in the motion. The parties were unable to reach a resolution and Defendant's counsel does not consent to the relief requested.

Dated this 29th of November, 2017

Respectfully submitted,

/s/ Omar Gonzalez-Pagan

Omar Gonzalez-Pagan
(*admitted pro hac vice*)
LAMBDA LEGAL DEFENSE
AND EDUCATION FUND, INC.
120 Wall Street, 19th Floor
New York, New York 10005-3919
Telephone: 212-809-8585
Facsimile: 212-809-0055
ogonzalez-pagan@lambdalegal.org

Natalie Nardecchia
(*admitted pro hac vice*)
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
4221 Wilshire Boulevard, Suite 280
Los Angeles, CA 90010-3512
Tel. 213-382-7600 | Fax: 213-351-6050
nnardecchia@lambdalegal.org

Tara L. Borelli (*admitted pro hac vice*)
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
730 Peachtree Street NE, Suite 640
Atlanta, GA 30308-1210
Telephone: 404-897-1880
Facsimile: 404-897-1884
tborelli@lambdalegal.org

Kirsten Doolittle, Trial Counsel
Florida Bar No. 942391
THE LAW OFFICE OF KIRSTEN DOOLITTLE, P.A.
The Elks Building
207 North Laura Street, Ste. 240
Jacksonville, FL 32202
Telephone: 904-551-7775
Facsimile: 904-513-9254
kd@kdlawoffice.com

Jennifer Altman
Florida Bar No: 881384
Markenzy Lapointe
Florida Bar No: 172601
Shani Rivaux
Florida Bar No: 42095
Aryeh Kaplan
Florida Bar No: 60558
PILLSBURY WINTHROP SHAW PITTMAN, LLP
600 Brickell Avenue Suite 3100
Miami, FL 33131
Telephone: 786-913-4900
Facsimile: 786-913-4901
jennifer.altman@pillsbury.com
markenzy.lapointe@pillsbury.com
shani.rivaux@pillsbury.com
aryeh.kaplan@pillsbury.com

Paul D. Castillo (*admitted pro hac vice*)
LAMBDA LEGAL DEFENSE
AND EDUCATION FUND, INC.
3500 Oak Lawn Avenue, Suite 500
Dallas, Texas 75219
Telephone: 214-219-8585
Facsimile: 214-219-4455
pcastillo@lambdalegal.org

Richard M. Segal (*admitted pro hac vice*)
Nathaniel R. Smith (*admitted pro hac vice*)
PILLSBURY WINTHROP SHAW PITTMAN LLP
501 W. Broadway, Suite 1100
San Diego, CA 92101
Telephone: 619-234-5000
Facsimile: 619-236-1995
richard.segal@pillsburylaw.com
nathaniel.smith@pillsburylaw.com

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2017, the foregoing motion was filed electronically using the Court's ECF system, which will provide electronic notice to all counsel of record, including:

Terry J. Harmon (tharmon@sniffenlaw.com)
Robert J. Sniffen (rsniffen@sniffenlaw.com)
Michael P. Spellman (mspellman@sniffenlaw.com)
Lisa B. Fountain (lfountain@sniffenlaw.com)
Kevin Kostelnik (kkostelnik@sniffenlaw.com)
SNIFFEN & SPELLMAN, P.A.
123 North Monroe Street
Tallahassee, Florida 32301

Robert Christopher Barden (rcbarden@mac.com)
RC Barden & Associates
5193 Black Oaks Court North
Plymouth, MN 55446-2603

Attorneys for Defendant, The School Board of St. Johns County, Florida

/s/ Omar Gonzalez-Pagan

Omar Gonzalez-Pagan

(admitted pro hac vice)

LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.

120 Wall Street, 19th Floor

New York, New York 10005-3919

Tel.: 212-809-8585 | Fax: 212-809-0055

ogonzalez-pagan@lambdalegal.org