UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

DREW ADAMS, et al.,

Plaintiff,

v.

THE SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA,

Defendant.

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

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW AND AMEND TWO RESPONSES TO PLAINTIFF'S REQUESTS FOR ADMISSION

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 submits this memorandum of law in opposition to Defendant's *Motion to Withdraw and Amend Two Responses to Plaintiff's Requests for Admission* (the "Motion").

ARGUMENT

On the eve of trial, Defendant has requested to withdraw and provide alternative responses to two of Plaintiff's requests for admission. Defendant bases its motion on the assertions that it "inadvertently admitted" Request for Admission No. 45, and that it misinterpreted the term "school records" to mean "unofficial records" in responding to Request for Admission No. 54. Dkt. 103 at 4, 11. Defendant's motion fails for two reasons.

First, the deadline for discovery has passed and Defendant's witnesses have all been deposed. As such, withdrawal of the admissions at this late hour would prejudice Plaintiff. *Second*, Defendant's motion fails the *Perez* test for determining whether to grant or deny a motion to withdraw admissions under Federal Rule of Civil Procedure 36. Accordingly, the Motion should be denied.

I. Defendant's Motion is Untimely.

The deadline for discovery has passed, closing on November 22, 2017. Although the parties agreed to take a few depositions after that deadline, even those depositions occurred prior to the request by Defendant to withdraw its admissions and supplant them with denials. Permitting this last minute change would prejudice Plaintiff because all of the depositions have occurred, and the trial in this case starts in only a week's time. And, in this last week before trial, there are all manner of trial preparations that need to occur, so requiring Plaintiff to now re-take depositions would be equally as prejudicial given that his time should be spent preparing his own case for trial.

In support of its motion to withdraw and amend, the Defendant notes that, although the close of discovery was on November 22, 2017 per the Court's Scheduling Order, the parties have mutually agreed to conduct a deposition on November 30, and that Plaintiff knew of this matter and the relief sought as of November 27. Dkt. 103 at 14. Defendant failed to advise this Court that the sole remaining deposition was limited in nature to the identified 30(b)(6) topics. It likewise failed to advise this Court that Defendant never offered much less agreed to allow Plaintiff to question Defendant's corporate representative witnesses on the subjects of the two requests at issue. Moreover, the fact that the parties agreed, prior to the close of

discovery, to conduct a deposition after the discovery deadline does not leave the door open for Defendant to alter its discovery responses. On the contrary, numerous depositions occurred prior to November 27, 2017 and those depositions may have been handled differently had the responses to the Request for Admissions been different, meaning Plaintiff would have questioned many of these witnesses on the subjects covered by the admissions. Thus, allowing Defendant to change its responses at the eleventh hour prejudices Plaintiff. While Plaintiff appreciates that this trial was expedited, Defendant had ample opportunity to move to withdraw its responses much earlier so that its position would not prejudice Plaintiff, but it failed to act with any diligence in doing so.

II. Defendant's Motion Fails the Standard Espoused by *Perez v. Miami-Dade County*.

The *Perez* case, which Defendant cites, espouses a two-part test that courts must apply when making a determination on a motion to amend or withdraw responses to requests for admission: (1) "whether the withdrawal will subserve the presentation of the merits," and (2) "whether the withdrawal will prejudice the party who obtained the admissions in its presentation of the case." *See Perez v. Miami-Dade County*, 297 F.3d 1255, 1264 (11th Cir. 2002). Denying Defendant's motion would not inhibit a presentation on the merits of the case, and, as noted above, granting Defendants motion would prejudice Plaintiff. Accordingly, the Defendant's motion should be denied.

Under the first prong, granting the Defendant's motion would not "promote the presentation of the merits of the action." Fed. R. Civ. P. 36(b); *see also Perez*, 297 F.3d at 1264. In *Perez*, the court held that granting withdrawal of admissions was proper where the admissions "practically eliminate any presentation of the merits of the case." *Perez*, 297 F.3d

at 1266. The court noted that where the admissions "essentially admitted the elements [of the claims]," "conclusively established the liability of the defendants" and "effectively ended the litigation," the court should properly grant a motion to withdraw the admissions. *See id*. This is because, in those situations, denying the motion to withdraw the admissions would have inhibited a presentation of the case on the merits. That is not the case here.

In fact, the Defendant heartily notes in its motion that, even if both admissions are not withdrawn, they would do "little if anything to make any dent towards the presentation of the merits." Dkt. 103 at 6. Defendant also notes that Plaintiff has not,

> [P]ractically eliminate[d] any presentation of the merits of the case . . . [n]ot 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.

Id. All of this is true. If the Court denies Defendant's motion, Plaintiff will still have to establish a number of other factors to demonstrate that transgender status is a suspect classification. Because Defendant concedes that allowing the admissions to stand would not affect any presentation of the merits of the case, the Court has no reason to grant Defendant's motion. *See Perez*, 297 F.3d at 1266.

Under the second prong, there is no doubt that Plaintiff will be prejudiced by Defendant's withdrawal or amendment of its responses to Plaintiff's requests for admission. As *Perez* notes, and Defendant also cites, establishing prejudice under the second prong is 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. Whether Defendant consistently contested whether transgender people are a discrete and insular group

in other filings does not alter the fact that Defendant made the admission in its response to Plaintiff's requests, conclusively establishing the matter. *See* Fed. R. Civ. P. 36(b) ("A matter admitted under this rule is conclusively established").

Plaintiff relied on that response in determining whether it would need to present evidence to prove that fact. Plaintiff has similarly relied on the admission that the school's records acknowledge that Drew is a boy. At this stage of litigation, over a week after the close of discovery and approximately one week prior to trial, it is absurd that Defendant should assert that alterations to its admissions, and the resulting need for Plaintiff to collect and present additional evidence, would not prejudice Plaintiff – especially when the Defendant has no excuse for the supposed errors beyond "inadvertent" mistakes.

CONCLUSION

WHEREFORE, based on the foregoing, Plaintiff respectfully requests that the Court deny Defendant's Motion to Withdraw and Amend Two Responses to Plaintiff's Requests for Admission.

Dated this 1st of December, 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

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

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

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

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@pillsburylaw.com
shani.rivaux@pillsbury.com
aryeh.kaplan@pillsbury.com

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 December 1, 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