

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Newport News Division

GAVIN GRIMM,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Case No. 4:15-cv-54
	)	
GLOUCESTER COUNTY SCHOOL	)	
BOARD,	)	
	)	
Defendant.	)	
_____	)	

**MOTION TO VACATE ORDER FOR SUPPLEMENTAL BRIEFING**

Plaintiff Gavin Grimm respectfully submits this motion to vacate the Court’s October 26, 2017 order for supplemental briefing, ECF No. 123.

**BACKGROUND**

1. Plaintiff’s Amended Complaint alleges claims under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a), and the Equal Protection Clause of the Fourteenth Amendment. ECF No. 109-1.

2. The Amended Complaint seeks both retrospective and prospective relief. Requests for Relief (A) and (B) seek a retrospective declaratory judgment and nominal damages. Requests for Relief (C) and (D) seek a prospective declaratory judgment and permanent injunctive relief.

3. Defendant has filed a motion to dismiss the Amended Complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 118.

4. On October 26, 2017, this Court issued an order construing the Defendant’s motion as one brought pursuant to Rule 12(b)(1) to the extent it raises the question whether this

case presents a justiciable controversy. ECF No. 123 at 3. The Court explained that “[r]egardless of whether a controversy over the need for a preliminary injunction remains, the threshold jurisdictional question of whether Plaintiff’s graduation from high school mooted the entire case remains before this Court.” *Id.*

5. The Court thus deferred resolution of whether the Amended Complaint stated a claim for purposes of Rule 12(b)(6) and directed the parties to submit evidence and supplemental briefs regarding mootness. ECF No. 123 at 4. The Court directed Defendant to file its supplemental brief no later than December 18, 2017, which is 60 calendar days from the entry of the Court’s order. *Id.* at 6.

6. On November 2, 2017, Plaintiff filed a Notice of Consent to Dismissal of Requests for Relief (C) and (D), which seek a permanent injunction and prospective declaratory judgment. ECF No. 125.

### **ARGUMENT**

7. In light of Plaintiff’s Notice of Consent to Dismissal of Requests for Relief (C) and (D), Plaintiff respectfully requests that the Court vacate the October 26, 2017 order for supplemental briefing. Because Requests for Relief (A) and (B) seek retrospective relief, they do not raise any question about mootness and may be resolved pursuant to Rule 12(b)(6).

8. Although Plaintiff’s graduation from high school raises a threshold jurisdictional question with respect to Plaintiff’s requests for prospective relief, it does not raise any jurisdictional question with respect to Requests for Relief (A) and (B), which seek retrospective relief for conduct that occurred while he was still a student.

9. Plaintiff’s graduation cannot moot Plaintiff’s request for nominal damages (Request for Relief (B)). The Fourth Circuit has repeatedly held that “even if a plaintiff’s

injunctive relief claim has been mooted, the action is not moot if the plaintiff may be ‘entitled to at least nominal damages.’” *Rendelman v. Rouse*, 569 F.3d 182, 187 (4th Cir. 2009) (quoting *Covenant Media of S.C., LLC v. City of N. Charleston*, 493 F.3d 421, 429 n.4 (4th Cir. 2007)); *see also Cent. Radio Co., Inc. v. City of Norfolk, Va.*, No. 2:12-CV-247, 2016 WL 8199737, at \*1 (E.D. Va. Aug. 5, 2016) (awarding nominal damages based on unconstitutional sign ordinance that was subsequently repealed).

10. Plaintiff’s graduation also does not moot the request for a retrospective declaratory judgment (Request for Relief (A)) because the retrospective declaratory relief is intertwined with the damages claim. *See Lippoldt v. Cole*, 468 F.3d 1204, 1217 (10th Cir. 2006) (plaintiffs lacked standing to seek prospective relief but could pursue nominal damages and retrospective declaratory judgment); *Marks v. City Council of City of Chesapeake, Va.*, 723 F. Supp. 1155, 1160 (E.D. Va. 1988) (same), *aff’d*, 883 F.2d 308 (4th Cir. 1989).

11. Because Requests for Relief (A) and (B) may be resolved pursuant to Rule 12(b)(6), Plaintiff respectfully requests that the Court vacate its order for supplemental briefing with respect to those requests for retrospective relief.

### **CONCLUSION**

For these reasons, Plaintiff respectfully requests that this Court vacate the October 26, 2017 order for supplemental briefing.



