

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

**JOHN DOE, a minor, by his parents and
Next friends, SUSAN AND JACK DOE,**

Plaintiffs,

vs.

Case No.: 6:18-cv-00102-RBD-GJK

VOLUSIA COUNTY SCHOOL BOARD,

Defendant.

_____ /

ANSWER AND DEFENSES

The Defendant, The School Board of Volusia County, Florida,¹ (“Defendant” or “School Board”), answers and files its defenses to the “complaint for declaratory and injunctive relief and for damages,” (“complaint”), (Doc. 1), filed by John Doe, a minor, by his parents and next friends, Susan and Jack Doe, (“Plaintiff”), and says:

1. The Defendant admits that the Plaintiff is a sophomore in a high school in the School Board’s district located in Volusia County, Florida. The Defendant is without knowledge of the remaining allegations contained in paragraph 1 of the complaint.

2. The Defendant is without knowledge of the allegations contained in paragraph 2 of the complaint.

3. The Defendant is without knowledge of the allegations contained in paragraph 3 of the complaint.

4. The Defendant is without knowledge of the allegations contained in paragraph

¹ The correct name for the Defendant is The School Board of Volusia County, Florida. § 1001.40, Fla. Stat. (2017).

4 of the complaint.

5. The Defendant is without knowledge of the allegations contained in paragraph 5 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in that paragraph.

6. The Defendant denies the allegations contained in paragraph 6 of the complaint.

7. The Defendant denies the allegations contained in paragraph 7 of the complaint.

8. The School Board's policies 509 and 525 speak for themselves. The Defendant denies the remaining allegations contained in paragraph 8 of the complaint.

9. The Defendant denies the allegations contained in paragraph 9 of the complaint.

10. The Defendant denies the allegations contained in the first and second sentences of paragraph 10 of the complaint. The Defendant is without knowledge of the allegations contained in the third sentence of paragraph 10 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in that paragraph. The Defendant denies that the Plaintiff is "forced" to use any restroom. The Defendant is without knowledge of the remaining allegations contained in the fourth sentence of paragraph 10 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in that sentence.

11. The Defendant admits the subject matter jurisdiction of this Court, but denies any allegation of wrongdoing by the Defendant pled or implied in paragraph 11 of the complaint.

12. The Defendant admits that the Plaintiff is a student in a public high school in the School Board's district. The Defendant is without knowledge of the remaining allegations contained in the first sentence of paragraph 12 of the complaint. The Defendant admits the

allegations contained in the second sentence of paragraph 12 of the complaint. The Defendant admits that as a student enrolled in a high school in the School Board's district the Plaintiff is subject to the School Board's policies, but denies the remaining allegations contained in the third sentence of paragraph 12 of the complaint including any allegation of wrongdoing by the Defendant pled or implied.

13. The Defendant is without knowledge of the allegations contained in paragraph 13 of the complaint.

14. The Defendant admits the allegations contained in the first sentence of paragraph 14 of the complaint. The Defendant admits that it is empowered to determine the policies necessary for the effective operation of the School Board's district, but denies the remaining allegations contained in the second sentence of paragraph 14 including any allegation of wrongdoing by the Defendant pled or implied. The Defendant admits the allegations contained in the third sentence of paragraph 14.

15. The Defendant admits the subject matter jurisdiction of this Court, but denies any allegation of wrongdoing by the Defendant pled or implied in paragraph 15 of the complaint.

16. The Defendant admits the subject matter jurisdiction of this Court, but denies any allegation of wrongdoing by the Defendant pled or implied in paragraph 16 of the complaint.

17. The Defendant admits the propriety of venue, but denies any allegation of wrongdoing by the Defendant pled or implied in paragraph 17 of the complaint. The Defendant specifically denies that it has engaged in any "ongoing discriminatory conduct."

18. The Defendant admits the subject matter jurisdiction of this Court, but denies any allegation of wrongdoing by the Defendant pled or implied in paragraph 18 of the complaint.

19. The Defendant admits the subject matter jurisdiction of this Court, but denies any allegation of wrongdoing by the Defendant pled or implied in paragraph 19 of the complaint.

20. The Defendant is without knowledge of the allegations contained in paragraph 20 of the complaint.

21. The Defendant is without knowledge of the allegations contained in paragraph 21 of the complaint.

22. The Defendant is without knowledge of the allegations contained in paragraph 22 of the complaint.

23. The Defendant is without knowledge of the allegations contained in paragraph 23 of the complaint.

24. The Defendant is without knowledge of the allegations contained in paragraph 24 of the complaint.

25. The Defendant is without knowledge of the allegations contained in paragraph 25 of the complaint.

26. The Defendant is without knowledge of the allegations contained in paragraph 26 of the complaint.

27. The Defendant is without knowledge of the allegations contained in paragraph 27 of the complaint.

28. The Defendant is without knowledge of the allegations contained in paragraph 28 of the complaint.

29. The Defendant is without knowledge of the allegations contained in paragraph 29 of the complaint.

30. The Defendant is without knowledge of the allegations contained in paragraph 30 of the complaint.

31. The Defendant is without knowledge of the allegations contained in paragraph 31 of the complaint.

32. The Defendant is without knowledge of the allegations contained in paragraph 32 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in that paragraph.

33. The Defendant is without knowledge of the allegations contained in paragraph 33 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in that paragraph.

34. The Defendant is without knowledge of the allegations contained in paragraph 34 of the complaint.

35. The Defendant is without knowledge of the allegations contained in paragraph 35 of the complaint.

36. The Defendant is without knowledge of the allegations contained in paragraph 36 of the complaint.

37. The Defendant is without knowledge of the allegations contained in paragraph 37 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied

in that paragraph.

38. The Defendant admits the first sentence of paragraph 38 of the complaint. The Defendant is without knowledge of the allegations contained in the second sentence of paragraph 38 of the complaint. The Defendant denies the allegations contained in the third sentence of paragraph 38 of the complaint.

39. The Defendant is without knowledge of the allegations contained in paragraph 39 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in that paragraph.

40. The Defendant is without knowledge of the allegations contained in paragraph 40 of the complaint.

41. The Defendant is without knowledge of the allegations contained in paragraph 41 of the complaint.

42. The Defendant is without knowledge of the allegations contained in paragraph 42 of the complaint.

43. The Defendant is without knowledge of the allegations contained in paragraph 43 of the complaint.

44. The Defendant denies that it has engaged in any “discriminatory treatment” of the Plaintiff. The Defendant is without knowledge of the remaining allegations contained in paragraph 44 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in that paragraph.

45. The Defendant admits the allegations contained in paragraph 45 of the complaint.

46. The Defendant admits the allegations contained in paragraph 46 of the complaint.

47. The Defendant admits that the School Board and its personnel agreed to refer to the Plaintiff by the Plaintiff's chosen name and with male pronouns. The Defendant admits that the Plaintiff was not permitted to use the restrooms at school designated for boys. The Defendant denies the remaining allegations contained in paragraph 47. Answering further, the Plaintiff's classrooms in elementary school were equipped with single-user unisex restrooms which the Plaintiff and all other students were permitted to use. The Plaintiff was also permitted to use the gang restrooms at school that corresponded to the Plaintiff's biological sex. The Plaintiff was treated the same as all other students at school based on their biological sex. The School Board also provided the Plaintiff access to unisex restrooms at school.

48. The Defendant admits that the Plaintiff's classrooms in elementary school were equipped with single-user restrooms which the Plaintiff was permitted to use. The Defendant is without knowledge of the remaining allegations contained in the first sentence of paragraph 48 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in that sentence. The Defendant denies the allegations contained in the second sentence of paragraph 48 of the complaint. The Defendant admits that it provided the Plaintiff access to a single-user unisex restroom in the school's nurse's office. The Defendant denies the remaining allegations contained in the third sentence of paragraph 48 of the complaint.

49. The Defendant is without knowledge of the allegations contained in paragraph 49 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in that paragraph.

50. The Defendant is without knowledge of the allegations contained in the first, second, and third sentences of paragraph 50 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in those sentences. The Defendant denies that it engaged in “daily stigmatiz[ation] and discriminatory treatment” toward the Plaintiff. The Defendant is without knowledge of the remaining allegations contained in the fourth sentence of paragraph 50 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in that sentence..

51. The Defendant is without knowledge of the allegations contained in paragraph 51 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in that sentence.

52. The Defendant admits the allegations contained in the first sentence of paragraph 52 of the complaint. The Defendant denies the remaining allegations contained in paragraph 52 of the complaint. Answering further, the Plaintiff was permitted to use the gang restrooms at school that corresponded to the Plaintiff’s biological sex. The Plaintiff was treated the same as all other students at school based on their biological sex. The School Board also provided the Plaintiff access to several single-use, unisex restrooms closely located near the Plaintiff’s classrooms and throughout the school campus. These single-use, unisex restrooms were accessible to all students on campus and no signs were on the restrooms indicating usage by any particular gender.

53. The Defendant denies the allegations contained in paragraph 53 of the complaint. Answering further, the Plaintiff was permitted to use the gang restrooms at school that corresponded to the Plaintiff’s biological sex. The Plaintiff was treated the same as all

other students at school based on their biological sex. The School Board also provided the Plaintiff access to several single-use, unisex restrooms closely located near the Plaintiff's classrooms and throughout the school campus. These single-use, unisex restrooms were accessible to all students on campus and no signs were on the restrooms indicating usage by any particular gender.

54. The Defendant denies the allegations contained in paragraph 54 of the complaint.

55. The Defendant is without knowledge of any alleged distress and/or anxiety the Plaintiff experienced or actions he allegedly took as a result, but denies any allegation of wrongdoing by the Defendant pled or implied. The Defendant denies the remaining allegations contained in paragraph 55 of the complaint.

56. The Defendant admits the allegations contained in the first sentence of paragraph 56 of the complaint. The Defendant admits that the Plaintiff's request to use the restrooms designated for boys was denied. The Defendant denies the remaining allegations contained in paragraph 56 of the complaint. Answering further, the Plaintiff was permitted to use the gang restrooms at school that corresponded to the Plaintiff's biological sex. The Plaintiff was treated the same as all other students at school based on their biological sex. The School Board also provided the Plaintiff access to several unisex restrooms at school.

57. The Defendant admits that it has provided the Plaintiff access to a single-user restroom located in the school's media center. The Defendant denies the remaining allegations contained in paragraph 57 of the complaint. Answering further, the Plaintiff was permitted to use the gang restrooms at school that corresponded to the Plaintiff's biological sex. The

Plaintiff was treated the same as all other students at school based on their biological sex. The School Board also provided the Plaintiff access to several unisex restrooms at school.

58. The Defendant admits that it has provided the Plaintiff access to several single-user unisex restrooms located throughout the school's campus. The Defendant denies the remaining allegations contained in paragraph 58 of the complaint.

59. The Defendant denies the allegations contained in paragraph 59 of the complaint.

60. The Defendant denies the allegations contained in paragraph 60 of the complaint.

61. The Defendant denies the allegations contained in paragraph 61 of the complaint.

62. The Defendant denies that it has engaged in any "discriminatory treatment" related to the Plaintiff. The Defendant is without knowledge of the remaining allegations contained in paragraph 62 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in that paragraph.

63. The Defendant admits that physical education classes are available to student in sixth grade. The Defendant is without knowledge of the remaining allegations contained in paragraph 63 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in that paragraph.

64. The Defendant admits the allegations contained in paragraph 64. Answering further, the Plaintiff had access to the locker room that corresponded to the Plaintiff's biological sex which is the same treatment received by all other students at the school.

65. The Defendant admits that the Plaintiff elected to opt out of physical education classes for the Plaintiff's sixth grade year. The Defendant is without knowledge of the remaining allegations contained in paragraph 65 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in that paragraph.

66. The Defendant admits that while the Plaintiff was in seventh and eighth grade the Plaintiff took physical education classes. The Defendant admits that it provided the Plaintiff access to the coach's restroom located in the boy's locker room area to use to change. The Defendant denies the remaining allegations contained in the first sentence of paragraph 66 of the complaint. The Defendant is without knowledge of the allegations contained in the second sentence of paragraph 66 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in that paragraph. The Defendant denies that the Plaintiff was "singled out" by the Defendant. The Defendant is without knowledge of the remaining allegations contained in the third sentence of paragraph 66 of the complaint, but denies any allegation of wrongdoing pled or implied in that paragraph. Answering further, it was a mutual agreement between the Defendant and the Plaintiff's parents prior to the start of the Plaintiff's seventh grade year that the Plaintiff would have access to the coach's restroom located in the boy's locker room area for the Plaintiff to use to change. This area is available to all students, upon request. The Plaintiff also had access to the locker room that corresponded to the Plaintiff's biological sex which is the same treatment received by all other students at the school.

67. The Defendant admits that the Plaintiff is not permitted to change in the locker room designed for boys in high school. The Defendant is without knowledge of the remaining

allegations contained in paragraph 67 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in that paragraph. Answering further, the Plaintiff has access to the locker room that corresponded to the Plaintiff's biological sex which is the same treatment received by all other students at the school. The Defendant also provided the Plaintiff access to use the changing room in the coach's office located in the boys' locker room, the single user boys' restroom between the cafeteria and the gym, and the unisex restroom in the media center which is located in between the Plaintiff's prior class and physical education class.

68. The Defendant denies the allegations contained in the first and second sentences of paragraph 68 of the complaint. The Defendant is without knowledge of the allegations contained in the third and fourth sentences of paragraph 68 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in those sentences. Answering further, the Defendant provided the Plaintiff access to use the changing room in the coach's office located in the boys' locker room, the single user boys' restroom between the cafeteria and the gym, and the unisex restroom in the media center which is located in between the Plaintiff's prior class and physical education class. The Plaintiff also had access to the locker room that corresponded to the Plaintiff's biological sex which is the same treatment received by all other students at the school.

69. The Defendant denies the allegations contained in paragraph 69 of the complaint.

70. The Defendant admits that the Plaintiff was provided access to use the unisex restroom in the media center to change. The Defendant denies the remaining allegations

contained in the first sentence of paragraph 70 of the complaint. The Defendant denies the allegations contained in the second sentence of paragraph 70 of the complaint. The Defendant denies the allegations contained in the third sentence of paragraph 70 of the complaint. Answering further, in addition to the unisex restroom in the media center, the Defendant provided the Plaintiff access to use the changing room in the coach's office located in the boys' locker room and the single user boys' restroom between the cafeteria and the gym. The Plaintiff also had access to the locker room that corresponded to the Plaintiff's biological sex which is the same treatment received by all other students at the school.

71. The Defendant is without knowledge of the allegations contained in paragraph 71 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in that paragraph.

72. The Defendant denies the allegations contained in paragraph 72 of the complaint.

73. The Defendant denies the allegations contained in paragraph 73 of the complaint.

74. The Defendant denies the allegations contained in paragraph 74 of the complaint.

75. The Defendant denies that it has "segregated" the Plaintiff or "treated [the Plaintiff] differently than" other students at the school. The Defendant is without knowledge of the remaining allegations contained in the first sentence of paragraph 75 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in that sentence. The Defendant is without knowledge of the Plaintiff's feelings, but denies any allegation of

wrongdoing by the Defendant pled or implied in that allegation. The Defendant denies the remaining allegations contained in the second sentence of paragraph 75 of the complaint.

76. The Defendant denies that it has engaged in any alleged “discriminatory actions” or “excluded” the Plaintiff “from equal participation in physical education classes.” The Defendant is without knowledge of the remaining allegations contained in paragraph 76 of the complaint, but denies any allegation of wrongdoing by the Defendant pled or implied in that paragraph.

77. The Defendant denies the allegations contained in paragraph 77 of the complaint.

78. The Defendant denies the allegations contained in paragraph 78 of the complaint.

79. The Defendant denies the allegations contained in paragraph 79 of the complaint.

80. In response paragraph 80 of the complaint, the Defendant realleges and reincorporates its responses to the allegations contained in paragraphs 1 through 79 as set forth above.

81. Paragraph 81 of the complaint does not allege ultimate fact but rather conclusions of law which are argumentative and pled devoid of context and therefore denied.

82. The Defendant admits the allegations contained in paragraph 82 of the complaint.

83. The Defendant denies the allegations contained in paragraph 83 of the complaint. Answering further, the Plaintiff is barred by the four-year statute of limitation for

any allegation of wrongful conduct which allegedly occurred prior to January 19, 2014.

84. The Defendant denies the allegations contained in paragraph 84 of the complaint.

85. The Defendant denies the allegations contained in paragraph 85 of the complaint.

86. The Defendant denies the allegations contained in paragraph 86 of the complaint.

87. In response paragraph 87 of the complaint, the Defendant realleges and reincorporates its responses to the allegations contained in paragraphs 1 through 79 as set forth above.

88. The Defendant admits the allegations contained in paragraph 88 of the complaint.

89. The Defendant admits the allegations contained in paragraph 89 of the complaint.

90. Paragraph 90 of the complaint does not allege ultimate fact but rather conclusions of law which are argumentative and pled devoid of context and therefore denied.

91. The Defendant denies the allegations contained in paragraph 91 of the complaint.

92. The Defendant denies the allegations contained in paragraph 92 of the complaint.

93. The Defendant denies the allegations contained in paragraph 93 of the complaint. The Defendant denies the prayer for relief contained in the unnumbered paragraphs

(a) through (e) which follow paragraph 93 of the complaint.

DEFENSES

94. First defense. As a defense to count I of the complaint, the Plaintiff is barred by the four-year statute of limitation for any allegation of wrongful conduct which allegedly occurred prior to January 19, 2014.

95. Second defense. As a defense to count I of the complaint, the Defendant says that the complaint fails to state a claim for relief for any violation of Title IX because school districts such as the Defendant are permitted to provide separate restrooms and locker rooms based on sex. Specifically, 34 C.F.R. § 106.33 provides that “[a] recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.” The Plaintiff always has been provided access to comparable facilities provided for students of the other sex.

96. Third defense. As a defense to count II of the complaint, the Plaintiff is barred by the four-year statute of limitation for any allegation wrongful conduct which allegedly occurred prior to January 19, 2014.

97. Fourth defense. As a defense to count II of the complaint, the Defendant says that as a matter of law the complaint fails to state a claim for relief for any violation of the Equal Protection Clause of the Fourteenth Amendment because the Plaintiff does not allege ultimate facts that show the Plaintiff was treated differently based on sex.

Respectfully submitted,

/s/ Thomas M. Gonzalez

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 12th day of February, 2018, by CM/ECF electronic filing to the Clerk of Court and to the following:

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