

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

JOHN DOE,

Plaintiff,

v.

Case No. 6:18-cv-102-Orl-37GJK

VOLUSIA COUNTY SCHOOL BOARD,

Defendant.

---

**ORDER**

This matter is before the Court on the following matters: (1) Plaintiff's Motion for Preliminary Injunction and Supporting Memorandum of Law (Doc. 24 ("**PI Motion**")); Defendant's Response in Opposition to Plaintiff's Motion for Preliminary Injunction (Doc. S-31); and (3) Reply in Support of Plaintiff's Motion for Preliminary Injunction (Doc. 43). In relation to these matters, the parties appeared for a hearing before the Court on **April 3, 2018** ("**Hearing**"). Under the Court's rulings from the bench during the Hearing, this Order is entered to establish an expedited case schedule and to vacate certain portions of the previously-entered Case Management and Scheduling Order (Doc. 41 ("**CMSO**")).

**DISCUSSION**

Represented by his parents Susan and Jack Doe ("**Parents**"), Plaintiff John Doe ("**Plaintiff**")—a transgender male, fifteen-year-old, sophomore student who attends a public high school ("**PHS**") in the Volusia County School District ("**District**")—sued The

School Board of Volusia County, Florida (“**VCSB**”).<sup>1</sup> (See Doc. 1; see also Doc. 31, p. 1 n.1.) Plaintiff’s twenty-one page Complaint includes one count under Title IX of the Education Amendments of 1972 (“**Title IX**”), and one count under 42 U.S.C. § 1983, for violations of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution (“**Equal Protection Clause**”). (See Doc. 1, ¶¶80–93.)

Both Counts concern VCSB’s undisputed denial – which at least dates to **2009** – of Plaintiff’s requests to use the restroom and locker room facilities that VCSB designates for use by “biological” males.<sup>2</sup> (See *id.* ¶¶56, 67, 83 (alleging that VCSB’s violations of Plaintiff’s rights started as early as 2009, and continue “to the present day”).) Plaintiff seeks damages, a declaratory judgment, and injunctive relief. (See *id.* ¶11 (requesting a declaratory judgment that VCSB’s unequal treatment of him, “including his exclusion from the boys’ restrooms and locker rooms,” violates Title IX and the EP Clause).)

On **February 23, 2018**, Plaintiff filed his PI Motion with a request to present “oral argument.” (Doc. 24, pp. 1–2.) Plaintiff also filed a “Proposed Order” granting his PI Motion by enjoining:

**VCSB, its employees, and its agents, from enforcing any policy or custom that denies Plaintiff access to and use of**

---

<sup>1</sup> Given the highly personal matters at issue in this litigation and Plaintiff’s age, the Court granted Plaintiff’s motions to seal certain filings (Doc. 39) and to proceed under pseudonyms (Doc. 2). (See Docs. 8, 40.)

<sup>2</sup> In its timely Answer, VCSB admitted many of Plaintiff’s factual allegations, but denied any wrongdoing. (See Doc. 16, ¶56 (“The Defendant admits that the Plaintiff’s request to use the restrooms designated for boys was denied.”); *id.* ¶67 (“Defendant admits that the Plaintiff is not permitted to change in the locker room designed for boys in high school.”).) For its affirmative defenses, VCSB alleged that: (1) Plaintiff failed to state a claim for relief under Title IX; and (2) any conduct after **January 19, 2014** is barred by the four-year statutes of limitation. (See *id.* ¶¶94–97.)

**boys' restrooms and locker rooms.**

(Doc. 24-5.)<sup>3</sup> VCSB responded (Doc. S-31 ("**Response**")), and Plaintiff replied (Doc. 43 ("**Reply**")).<sup>4</sup>

Under Federal Rule of Civil Procedure 16(b), the Court entered a CMSO on March 27, 2018. (Doc. 41.) The Court also held a preliminary injunction hearing on **April 3, 2018**, which the parties' counsel attended in person, and the Parents and Plaintiff attended telephonically. (*See* Doc. 45.) During the Hearing, counsel for both parties provided helpful information and argument about the facts and law, and they expressed no dispute about the elements that Plaintiff must establish to obtain the "extraordinary and drastic remedy" of injunctive relief:

- (1) a substantial likelihood of success on the merits of his claims;
- (2) a substantial threat of irreparable injury to Plaintiff if the injunction were not granted;
- (3) that the threatened injury to Plaintiff outweighs any threatened harm an injunction may cause VCSB; and
- (4) that granting the injunction will not disserve the public interest.

---

<sup>3</sup> In support of the PI Motion, Plaintiff filed his own sworn declaration (Doc. 24-1), and the declarations of his mother (Doc. 24-2), his attorney Asaf Orr, Esq. (Doc. 24-4), and developmental and clinical psychologist Diane Ehrensaft, Ph.D (Doc. 24-3).

<sup>4</sup> In support of its Response, VCSB filed affidavits from: (1) Anne Marie Wrenn, PHR, SHRM-CP, the "Equity and Compliance Officer" for the District (Doc. S-32); (2) Carolyn Carbonell, the PHS's Principal (Doc. S-33); (3) Christine Ramer, PHS's Physical Education Department Chair (Doc. S-34); (4) Ky Cowan, who served as a Dean at the PHS for Plaintiff's ninth and tenth grade years (Doc. S-35); and (5) Lisette Nazario-Lamplugh, the School Counseling Director at the PHS (Doc. S-36). Plaintiff also filed additional evidence in support of his Reply, including the affidavit of his therapist, Cynthia Fisher. (Doc. 43-2; *see* Doc. 43-1.)

*See Church v. City of Huntsville*, 30 F.3d 1322, 1342 (11th Cir. 2010).

As discussed during the Hearing, Plaintiff failed to carry the burden of persuasion to establish irreparable harm because : (1) the policy and conduct Plaintiff complains of has not changed since 2013, if not earlier; (2) the current school year ends on May 30, 2018, and at least two school years remain before Plaintiff is due to graduate; (3) Plaintiff has fulfilled the minimum physical education requirements for graduation; and (4) Plaintiff cannot participate in extracurricular sports that might require use of the boys' locker room until his grades improve. (*See id.*) For these reasons and the additional reasons referenced, the Court finds that the PI Motion is due to be denied because Plaintiff has not met the high burden to establish a likelihood of irreparable harm. *See United States v. Jefferson Cty.*, 720 F.2d 1511, 1519 (11th Cir. 1983) (affirming order denying preliminary injunction where plaintiffs failed to establish irreparable harm).

#### CONCLUSION

Although Plaintiff may not have immediate injunctive relief, his claims require expedited review. Accordingly, it is **ORDERED AND ADJUDGED** that:

1. Plaintiff's Motion for Preliminary Injunction and Supporting Memorandum of Law (Doc. 24) is **DENIED**.
2. These portions of the CMSO (Doc. 40) are **VACATED**: Part I.D. Deadlines (*id.* at 2-3); Part III.E.1. Summary Judgment Motions (*id.* at 7); Part III.J. Motions for Summary Judgment (*id.* at 9-10); Part V.C.4. Jointly-Proposed Jury Instructions and Verdict Form (*id.* at 17); Part V.D. E-Mail to Chambers (*id.* at 18); and Part VII.A. Trial Materials (*id.* at 19).
3. For the convenience of the parties, this table provides the new deadlines that will control in this action:

| <u>Event</u>  | <u>Deadline</u>  |
|---|--|
| Mandatory Initial Disclosures   | Immediately if not previously completed                              |
| Motions to Add Parties or to Amend Pleadings  | April 27, 2018   |
| <p>Within <b>fourteen (14) days</b> of this CMSO, Designated Lead Counsel shall—after conferring with opposing counsel and the mediator—file a Notice with the Court advising of the date and location of the parties’ mediation, which shall occur by:</p> <p style="text-align: right;">Deadline:<br/>Mediator:</p> | <p style="text-align: center;">August 24, 2018<br/>Jill Schwartz</p> |
| <p>Expert Witness Disclosures and Reports</p> <p style="text-align: right;">Plaintiff:<br/>Defendant:</p>   | <p style="text-align: center;">July 20, 2018<br/>July 31, 2018</p>   |
| Completion of Discovery   | August 10, 2018  |
| <i>Daubert</i> Motions  | August 17, 2018  |
| Pre-Trial Meeting ( <i>In Person</i> )  | September 4, 2018  |
| <p>Joint Final Pretrial Statement (“<b>PTS</b>”) and Trial Briefs<br/><b>Case Prepared for Trial</b></p>  | September 13, 2018   |
| A Single Motion <i>In Limine</i> and any other Motions  | August 27, 2018  |
| Final Pretrial Conference   | September 20, 2018   |
| Trial Materials (including Deposition Designations and Revised Witness Lists and Exhibit Lists)   | September 27, 2018   |
| Commencement of three-day Bench Trial   | October 1, 2018  |

**DONE AND ORDERED** in Chambers in Orlando, Florida, on April 4, 2018.



  
ROY B. DALTON JR.  
United States District Judge

Copies to:

Counsel of Record