

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)**

M.A.B., a minor,
by and through his parents and next friends,
L.B. and L.B.,

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Plaintiff,

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v.

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Civil Action No.: 16-02622-GLR

**BOARD OF EDUCATION OF
TALBOT COUNTY, et al.**

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Defendants.

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ANSWER

Defendants, the Board of Education of Talbot County (the “Board”), Kelly L. Griffith, and Tracy Elzey (collectively, the “Defendants”), by and through their attorneys, Edmund J. O’Meally, Andrew G. Scott, and Pessin Katz Law, P.A., hereby file this Answer to the Complaint filed against them in the above-captioned case, and state as follows:

FIRST DEFENSE

Pursuant to Fed. R. Civ. P. 12(b) (6), the Complaint fails to state claims upon which relief may be granted.

SECOND DEFENSE

Responding to the specific allegations against the Defendants state as follows:

Nature of the Action

1. Paragraph 1 does not contain any factual allegations to which a response is required.
2. The Defendants deny the allegations in the first sentence of Paragraph 2. The Defendants admit that Plaintiff is a student at St. Michaels Middle-High School (the “school”) in

Talbot County and that Plaintiff began ninth grade in the fall of 2016 as alleged in the second sentence of Paragraph 2.

3. The Defendants admit that the Plaintiff self identifies as a transgender boy. The Defendants are without sufficient information to admit or deny the remaining allegations contained in Paragraph 3 and therefore deny same.

4. The Defendants deny the allegations in paragraph 4 to the extent that they imply, contrary to the allegations set forth in paragraphs 9 and 10 of the Complaint, that St. Michaels Middle-High School and the Talbot County Public Schools are legal entities. Subject to that clarification, the Defendants admit that they have taken certain steps to recognize Plaintiff as a boy. The Defendants further admit that Plaintiff has been granted access to the boys' restrooms since April of 2016 when Plaintiff was in eighth grade. The Defendants further admit that Plaintiff was not allowed to use the boys' locker room during the fall of 2016 when Plaintiff was on the coed soccer team but state affirmatively that Plaintiff has not had occasion to use school locker rooms since that time since Plaintiff was not enrolled in physical education or a participant in any extracurricular sports. The Defendants further state affirmatively that, on or about March 22, 2018, the Plaintiff was informed "from this point forward, [Plaintiff] will have access to all facilities, including locker rooms, that are designated for boys or men." The Defendants deny all other allegations contained in Paragraph 4, including but not limited to the allegation that they "treat[ed]" [Plaintiff] differently from other students with respect to his sex[.]"

Jurisdiction and Venue

5. Paragraph 5 does not contain any factual allegations to which a response is required.

6. Paragraph 6 does not contain any factual allegations to which a response is required.

Parties

7. The Defendants deny the allegations contained in the first and fourth sentences of Paragraph 7, but admit the allegations in the second and third sentences of Paragraph 7.

8. The Defendants admit the allegations contained in Paragraph 8.

9. The Defendants admit the allegations contained in the first and second sentences of Paragraph 9. The third and fourth sentences of Paragraph 9 do not contain any factual allegations to which a response is required.

10. The Defendants admit the allegations contained in the first and second sentences of Paragraph 10. The third and fourth sentences of Paragraph 10 do not contain any factual allegations to which a response is required.

11. The Defendants admit the allegations contained in the first, second, and third sentences of Paragraph 11. The fourth sentence of Paragraph 11 does not contain any factual allegations to which a response is required. The Defendants deny the allegations contained in the fifth sentence of Paragraph 11.

12. The Defendants admit the allegations contained in the first and second sentences of Paragraph 12. The third sentence of Paragraph 12 does not contain any factual allegations to which a response is required. The Defendants deny the allegations contained in the third sentence of Paragraph 12.

13. The Defendants deny the allegations contained in Paragraph 13.

Facts Giving Rise to This Action

14. The Defendants admit the allegations contained in Paragraph 14 except to the extent that Plaintiff is now in the Tenth Grade.

15. The Defendants admit that Plaintiff was a member of the coed soccer team during the fall of 2016 when Plaintiff was in Ninth Grade. The Defendants are without sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 15 and thus deny same.

16. The Defendants deny the allegations contained in Paragraph 16.

17. The Defendants deny the allegations contained in Paragraph 17.

18. The Defendants admit the allegations contained in Paragraph 18.

19. The Defendants deny the allegations contained in Paragraph 19.

20. The Defendants admit that the Plaintiff self identifies as a transgender boy but are without sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 20 and thus deny same.

21. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 21 and thus deny same.

22. The Defendants are without sufficient knowledge to admit or deny whether “gender identity is the primary determinant of someone’s gender” as alleged in Paragraph 22 and thus deny same. The remainder of Paragraph 22 does not contain any factual allegations to which a response is required.

23. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 23 and thus deny same.

24. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 24 and thus deny same.

25. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 25 and thus deny same.

26. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 26 and thus deny same.

27. The Defendants admit the allegations contained in Paragraph 27 except that the meeting occurred approximately mid-way through the 2014-2015 school year.

28. The Defendants admit the first sentence of Paragraph 28 but are without sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 28 and thus deny same.

29. The Defendants admit that the Plaintiff has been “generally accepted” and that Plaintiff is referred to in school with male pronouns and state affirmatively that school staff have taken positive steps to prevent and address bullying and harassment directed at all students but are without sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 29 and thus deny same.

30. The Defendants admit the allegations contained in Paragraph 30 but state affirmatively that the “steps” alleged in Paragraph 30 were not just actions by TCPS and the School but of the Defendants as well.

31. The Defendants admit that the school system restricted Plaintiff from using the boys’ restrooms until April of 2016. The Defendants further admit that Plaintiff was not allowed to use the boys’ locker room during the fall of 2016 when Plaintiff was on the coed soccer team but state affirmatively that Plaintiff has not had occasion to use school locker rooms since that time since Plaintiff was not enrolled in physical education or a participant in any extracurricular sports. The Defendants further state affirmatively that, on or about March 22, 2018, the Plaintiff was informed “from this point forward, [Plaintiff] will have access to all facilities, including locker rooms, that are designated for boys or men.”

32. The Defendants admit that, in addition to restrooms designated for boys and for girls, there are also single occupancy gender neutral restrooms at the school. The Defendants admit that the school system restricted Plaintiff from using the boys' restrooms until April of 2016. The Defendants further admit that Plaintiff was not allowed to use the boys' locker room during the fall of 2016 when Plaintiff was on the coed soccer team but state affirmatively that Plaintiff has not had occasion to use school locker rooms since that time since Plaintiff was not enrolled in physical education or a participant in any extracurricular sports. The Defendants further state affirmatively that, on or about March 22, 2018, the Plaintiff was informed "from this point forward, [Plaintiff] will have access to all facilities, including locker rooms, that are designated for boys or men." The Defendants deny the remaining allegations contained in Paragraph 32.

33. The Defendants admit that Plaintiff was permitted to use the girls' restrooms and locker room as alleged in Paragraph 33, but they deny the remaining allegations contained in Paragraph 33.

34. The Defendants deny the allegations contained in Paragraph 34.

35. The Defendants deny the allegations contained in Paragraph 35.

36. The Defendants deny the allegations contained in Paragraph 36.

37. The Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 37.

38. The Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 38 and thus deny same.

39. The Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 39 and thus deny same.

40. The Defendants deny the allegations contained in Paragraph 40.

41. The Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 41 and thus deny same.

42. The Defendants deny that Plaintiff ever suffered a grade reduction but lack sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 42 and thus deny same.

43. The Defendants deny the allegations contained in Paragraph 43.

44. The Defendants admit the allegations contained in the first sentence of Paragraph 44. The remaining sentences of Paragraph 44 do not contain any factual allegations to which a response is required.

45. The Defendants admit that counsel for the school system sent a letter to Plaintiff's counsel on or about April 25, 2016, but in further answering state that that letter speaks for itself. The Defendants lack sufficient knowledge to admit or deny the allegations contained in the fourth sentence of Paragraph 45 and thus deny same.

46. The Defendants admit that the United States Department of Education and Department of Justice jointly issued a "Dear Colleague" letter on May 13, 2016 as alleged in Paragraph 46, but the Defendants deny the remaining allegations contained in Paragraph 46 on the grounds that the aforementioned "Dear Colleague" letter speaks for itself. The Defendants state affirmatively that the "Dear Colleague" letter referenced in Paragraph 46 was subsequently withdrawn by the United States Department of Education and the United States Department of Justice on February 22, 2017.

47. The Defendants deny the allegations contained in Paragraph 47.

48. The Defendants deny the allegations contained in the first sentence of Paragraph 48. The Defendants admit the allegations contained in the second sentence of Paragraph 48 to the extent that the commodes, but not the urinals, have stalls with doors.

49. The Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 49 and thus deny same.

50. The Defendants deny the allegations contained in Paragraph 50.

Claims for Relief

Count I:

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*)

51. The Defendants incorporate by reference their responses to Paragraphs 1 through 50 of the Complaint.

52. Paragraph 52 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required.

53. Paragraph 53 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required.

54. Paragraph 54 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required.

55. Paragraph 55 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required. Further answering, the Defendants state the *G.G.* opinion was vacated and remanded and the "Dear Colleague" letter referenced in Paragraph 55 was subsequently withdrawn by the United States Department of Education and the United States Department of Justice on February 22, 2017.

56. Paragraph 56 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required. Further answering, the Defendants state the *G.G.* opinion was vacated and remanded and the "Dear Colleague" letter referenced in Paragraph 55 was subsequently withdrawn by the United States Department of Education and the United States Department of Justice on February 22, 2017.

57. Paragraph 57 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required.

58. Paragraph 58 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required.

59. Paragraph 59 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required. Further answering, the Defendants state that, on or about March 22, 2018, the Plaintiff was informed "from this point forward, [Plaintiff] will have access to all facilities, including locker rooms, that are designated for boys or men."

60. Paragraph 60 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required. Further answering, the Defendants state that, on or about March 22, 2018, the Plaintiff was informed "from this point forward, [Plaintiff] will have access to all facilities, including locker rooms, that are designated for boys or men."

**Count II:
Equal Protection Clause of the Fourteenth Amendment to the United States Constitution**

61. The Defendants incorporate by reference their responses to Paragraphs 1 through 60 of the Complaint.

62. Paragraph 62 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required.

63. Paragraph 63 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required, but to the extent it may be construed as doing so, the Defendants deny all such allegations.

64. Paragraph 64 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required, but to the extent it may be construed as doing so, the Defendants deny all such allegations.

65. Paragraph 65 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required, but to the extent it may be construed as doing so, the Defendants deny all such allegations..

66. Paragraph 66 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required, but to the extent it may be construed as doing so, the Defendants deny all such allegations.

67. Paragraph 67 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required.

68. Paragraph 68 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required.

**Count III:
Article 24 of the Maryland Declaration of Rights**

69. The Defendants incorporate by reference their responses to Paragraphs 1 through 68 of the Complaint.

70. Paragraph 70 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required.

71. Paragraph 71 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required.

**Count IV:
Article 46 of the Maryland Declaration of Rights
Equal Rights Amendment ("ERA")**

72. The Defendants incorporate by reference their responses to Paragraphs 1 through 71 of the Complaint.

73. Paragraph 73 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required.

74. Paragraph 74 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required, but to the extent it may be construed as doing so, the Defendants deny all such allegations.

75. Paragraph 75 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required, but to the extent it may be construed as doing so, the Defendants deny all such allegations.

Request for Relief

A. Paragraph A contains Plaintiff's prayers for relief and conclusions of law and does not contain any factual allegations to which a response is required.

B. Paragraph B contains Plaintiff's prayers for relief and conclusions of law and does not contain any factual allegations to which a response is required.

C. Paragraph C contains Plaintiff's prayers for relief and conclusions of law and does not contain any factual allegations to which a response is required.

D. Paragraph D contains Plaintiff's prayers for relief and conclusions of law and does not contain any factual allegations to which a response is required.

E. Paragraph E contains Plaintiff's prayers for relief and conclusions of law and does not contain any factual allegations to which a response is required.

THIRD DEFENSE

As an affirmative defense, the Defendants state that they did not commit the wrongs as alleged and that any and all actions taken by them were in accordance with applicable law.

FOURTH DEFENSE

As an affirmative defense, the Defendants are not “persons” susceptible to suit under 42 U.S.C. § 1983.

FIFTH DEFENSE

As an affirmative defense, neither Defendants Griffith nor Elzey are subject to liability under Title IX since they are not recipients of federal funds.

SIXTH DEFENSE

As an affirmative defense, the Plaintiff’s claims for declaratory and injunctive relief are moot.

SEVENTH DEFENSE

As an affirmative defense, the Defendants are entitled to sovereign immunity with regard to Plaintiff’s claims under the Maryland Declaration of Rights pursuant to Md. Code Ann., Educ. § 4-105; Md. Code Ann., Educ. § 4-106, and Md. Code Ann., Cts. & Jud. Proc. § 5-518 and the Eleventh Amendment to the United States Constitution.

WHEREFORE, having fully answered the Complaint, Defendants Board of Education of Talbot County, Kelly L. Griffith, and Tracy Elzey respectfully request that this Honorable Court:

- i. Enter a judgment in their favor on each and every count and/or cause of action set forth in the Complaint;
- ii. Dismiss the Complaint in its entirety, with prejudice;
- iii. Award the Defendants their costs and expenses, including attorneys’ fees incurred in this action; and
- iv. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ (filed electronically)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of March, 2018, a copy of the foregoing Answer was electronically filed in the U.S. District Court for the District of Maryland (Northern Division) and electronically served upon all counsel of record through the Court's CM/ECF system.

/s/ (filed electronically)

Edmund J. O'Meally