

**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 TO AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL**

Defendants, the Board of Education of Talbot County, 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 Amended 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 Amended Complaint fails to state claims upon which relief may be granted.

SECOND DEFENSE

Responding to the specific allegations against them, 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 admit that Plaintiff is sixteen years old and a student in the tenth grade at St. Michaels Middle-High School (“SMMHS”) in Talbot County, Maryland as alleged in Paragraph 2, but the Defendants are without sufficient information to admit or deny the remaining allegations contained in Paragraph 2 and therefore deny same.

3. The Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 3 and therefore deny same.

4. The Defendants admit that the Talbot County Public Schools has, as alleged in Paragraph 4: taken certain steps to recognize Plaintiff as a boy; barred Plaintiff from using the boys’ school restrooms for a time until the opinion in *G.G. v. Gloucester County School Board*, 822 F.3d 709 (4th Cir. 2016) was issued, after which time Plaintiff was permitted to use the boys’ restrooms; barred Plaintiff from using the boy’s locker room to change clothes before/after physical education classes and/or extracurricular athletic activities until on or about March 22, 2018, after which time he has been permitted to use the boys’ locker rooms as he desires for such purposes. The Defendants deny all other allegations contained in Paragraph 4, including but not limited to the allegation that they “required him to use separate single-user facilities that no other student was required to use because he is transgender.”

5. The Defendants admit that the Talbot County Public Schools barred Plaintiff from using the boys’ school restrooms for a time until the opinion in *G.G. v. Gloucester County School Board*, 822 F.3d 709 (4th Cir. 2016) was issued, after which time Plaintiff was permitted to use the boys’ restrooms, and that the Talbot County Public Schools barred Plaintiff from using the boy’s locker room to change clothes before/after physical education classes and/or extracurricular athletic activities until on or about March 22, 2018, after which time he has been permitted to use

the boys' locker rooms as he desires for such purposes. The Defendants deny all other allegations contained in Paragraph 5.

Jurisdiction and Venue

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

7. Paragraph 7 does not contain any factual allegations to which a response is required.

Parties

8. The Defendants admit that Plaintiff is sixteen years old as alleged in the first sentence of Paragraph 8 but are without sufficient information to admit or deny the remaining allegations contained in that sentence and thus deny same. The Defendants admit the allegations in the second and third sentences of Paragraph 8. The Defendants deny the allegations in the fourth sentence of Paragraph 8.

9. The Defendants admit the allegations contained in Paragraph 9.

10. The Defendants admit the allegations contained in the first sentence of Paragraph 10. The second, 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 sentence of Paragraph 11. The second, third, and fourth sentences of Paragraph 11 do not contain any factual allegations to which a response is required.

12. The Defendants admit the allegations contained in the first, second, and third sentences of Paragraph 12. The fourth and fifth sentences of Paragraph 12 do not contain any factual allegations to which a response is required.

13. The Defendants admit the allegations contained in the first sentence of Paragraph 13 but deny the allegations contained in the second sentence of Paragraph 13. The third and fourth sentences of Paragraph 13 do not contain any factual allegations to which a response is required.

14. The Defendants deny the allegations contained in Paragraph 14.

Facts Giving Rise to This Action

15. The Defendants admit the allegations contained in Paragraph 15.

16. The Defendants admit that Plaintiff, like every other student at SMMHS, must use toileting facilities during the school day as alleged in Paragraph 16, but the Defendants deny the remaining allegations contained in Paragraph 16.

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

18. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 18 and thus deny same.

19. The Defendants are without sufficient knowledge to admit or deny the allegations contained in Paragraph 19 and thus deny same.

20. The Defendants are without sufficient knowledge to admit or deny the 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 the allegations contained in Paragraph 22 and thus deny same.

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 admit that 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 26 and thus deny same.

27. The Defendants admit the allegations contained in Paragraph 27.

28. 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 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 deny the remaining allegations contained in Paragraph 28.

29. The Defendants deny the allegations contained in Paragraph 29.

30. The Defendants deny the allegations contained in Paragraph 30.

31. The Defendants deny the allegations contained in Paragraph 31.

32. The Defendants deny the allegations contained in Paragraph 32.

33. The Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 33 and thus deny same.

34. The Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 34 and thus deny same.

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

36. The Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 36 and thus deny same.

37. The Defendants deny that Plaintiff ever suffered a grade reduction but lack sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 37 and thus deny same.

38. The Defendants deny the allegations contained in Paragraph 38.

39. 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 39 and thus deny same.

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

41. The Defendants deny the allegations contained in Paragraph 41.

42. The Defendants deny the allegations contained in the first sentence of Paragraph 42. The Defendants admit the allegations contained in the second sentence of Paragraph 42 to the extent that the commodes, but not the urinals, have stalls with doors.

43. The Defendants lack sufficient knowledge to admit or deny the allegations contained in Paragraph 43 and thus deny same.

44. The Defendants admit the allegations contained in Paragraph 44.

45. The Defendants lack sufficient knowledge to admit or deny the allegations contained in the first sentence of Paragraph 45 and thus deny same. The Defendants lack sufficient knowledge to admit or deny the allegations contained in the second sentence of Paragraph 45 insofar as “TCPS’s computer system” and “male gender marker” are imprecise terms and thus deny same.

46. The Defendants admit the allegations contained in Paragraph 46.

47. The Defendants admit the allegations contained in Paragraph 47, but in further answering state that the Board’s March 22, 2018 letter speaks for itself.

Claims for Relief

Count I:

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

48. The Defendants incorporate by reference their responses to Paragraphs 1 through 47 of the Amended Complaint.

49. Paragraph 49 contains Plaintiff’s conclusions of law and does not contain any factual allegations to which a response is required.

50. Paragraph 50 contains Plaintiff’s conclusions of law and does not contain any factual allegations to which a response is required.

51. Paragraph 51 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.”

52. Paragraph 52 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**

53. The Defendants incorporate by reference their responses to Paragraphs 1 through 52 of the Complaint.

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.

56. Paragraph 56 contains Plaintiff’s conclusions of law and does not contain any factual allegations to which a response is required.

57. Paragraph 57 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.

58. Paragraph 58 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.

59. Paragraph 59 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..

60. Paragraph 60 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.

61. Paragraph 61 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required.

62. Paragraph 62 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**

63. The Defendants incorporate by reference their responses to Paragraphs 1 through 62 of the Amended Complaint.

64. Paragraph 64 contains Plaintiff's conclusions of law and does not contain any factual allegations to which a response is required.

65. Paragraph 65 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")**

66. The Defendants incorporate by reference their responses to Paragraphs 1 through 65 of the Complaint.

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, 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, 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 Amended 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 Amended Complaint;
- ii. Dismiss the Amended 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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ATTORNEYS FOR THE DEFENDANTS

DEMAND FOR JURY TRIAL

Defendants, the Board of Education of Talbot County, Kelly L. Griffith, and Tracy Elzey, by their undersigned counsel, pursuant to Fed. R. Civ. P. 38, hereby demand a jury trial in the above-captioned action.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of May, 2018, a copy of the foregoing Answer to Amended Complaint and Demand for Jury Trial 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)

Andrew G. Scott