

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

J.A.W., a minor child, by his next	)	
friend, Wyatt Squires,	)	
	)	No. 3:18-v-00037-WTL-MPB
Plaintiff,	)	
	)	
v.	)	
	)	
EVANSVILLE VANDERBURGH	)	
SCHOOL CORPORATION,	)	
	)	
Defendant.	)	

ORDER ON CASE MANAGEMENT PLAN

I. Parties and Representatives

Plaintiff

- A. J.A.W.
- B. Kenneth J. Falk, Gavin M. Rose, Jan P. Mensz, ACLU of Indiana, 2451 E. Washington St., Suite Z, Indianapolis, IN 46201, 317-635-4059, fax: 317/635-4105, kfalk@aclu-in.org, grose@aclu-in.org, jmensz@aclu-in.org

Defendant

- A. Evansville Vanderburgh School Corporation
- B. Patrick A. Shoulders, Robert L. Burkart, Jean M. Blanton, ZIEMER STAYMAN WEITZEL & SHOULDERS, LLP, 20 N.W. First St., PO Box 916, Evansville, IN 47706, 812/424-7575, fax: 812/421-5089, pshoulders@zsws.com, rburkart@zsws.com, jblanton@zsws.com

Counsel shall promptly file a notice with the Clerk if there is any change in this information.

II. Jurisdiction and Statement of Claims

- A. Plaintiff asserts that this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 as plaintiff alleges a violation of federal law and the United States Constitution.

- B. Plaintiff claims that the refusal of Defendant to allow J.A.W., a transgender male high school student, to use male restrooms violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1681(a).
- C. Defendant claims that Wyatt Squires is not an authorized “next friend” and that the case should be dismissed. Subject to the Motion to Dismiss, Defendant denies Plaintiff’s claims and believes its policy does not violate Title IX or the Equal Protection Clause.

III. Pretrial Pleadings and Disclosures

- A. The parties shall serve their Fed. R. Civ. P. 26 initial disclosures on or before June 22, 2018. Subject to the Motion to Dismiss and per the deadlines and discovery agreement between the parties relative to Plaintiff’s Motion for Preliminary Injunction, discovery may commence immediately.
- B. Plaintiff(s) shall file preliminary witness and exhibit lists on or before June 29, 2018.
- C. Defendant(s) shall file preliminary witness and exhibit lists on or before July 6, 2018.
- D. All motions for leave to amend the pleadings and/or to join additional parties shall be filed on or before July 23, 2018.
- E. Plaintiff(s) shall serve Defendant(s) (but not file with the Court) a statement of special damages, if any, and make a settlement demand, on or before July 23, 2018. Defendant(s) shall serve on the Plaintiff(s) (but not file with the Court) a response thereto within 30 days after receipt of the demand.
- F. Except where governed by paragraph (G) below, expert witness disclosure deadlines shall conform to the following schedule: Plaintiff(s) shall disclose the name, address, and vita of any expert witness, and shall serve the report required by Fed. R. Civ. P. 26(a)(2) on or before [February 22, 2019]. Defendant(s) shall disclose the name, address, and vita of any expert witness, and shall serve the report required by Fed. R. Civ. P. 26(a)(2) on or before 30 days after Plaintiff(s) serves its expert witness disclosure; or if Plaintiff has disclosed no experts, Defendant(s) shall make its expert disclosure on or before March 22, 2019.
- G. Notwithstanding the provisions of paragraph (F), above, if a party intends to use expert testimony in connection with a motion for summary judgment to be filed by that party, such expert disclosures must be served on opposing counsel no later than 90 days prior to the dispositive motion deadline. If such expert disclosures

are served the parties shall confer within 7 days to stipulate to a date for responsive disclosures (if any) and completion of expert discovery necessary for efficient resolution of the anticipated motion for summary judgment. The parties shall make good faith efforts to avoid requesting enlargements of the dispositive motions deadline and related briefing deadlines. Any proposed modifications of the CMP deadlines or briefing schedule must be approved by the Court.

- H. Any party who wishes to limit or preclude expert testimony at trial shall file any such objections on or before June 1, 2019. Any party who wishes to preclude expert witness testimony at the summary judgment stage shall file any such objections with their responsive brief within the briefing schedule established by S.D. Ind. L.R. 56-1.
- I. All parties shall file and serve their final witness and exhibit lists on or before April 22, 2019. This list should reflect the specific potential witnesses the party may call at trial. It is not sufficient for a party to simply incorporate by reference “any witness listed in discovery” or such general statements. The list of final witnesses shall include a brief synopsis of the expected testimony.
- J. Any party who believes that bifurcation of discovery and/or trial is appropriate with respect to any issue or claim shall notify the Court as soon as practicable.
- K. Discovery of electronically stored information (“ESI”). The parties do not believe that there is a substantial amount of ESI in this case. Unless otherwise agreed by the parties or ordered by the Court, all ESI will be produced in its native format.

Plaintiff intends to see discovery in this case as to the policy of Defendant concerning transgender students using the restrooms of their identified gender and the reasons for the policy.

In the event that a document protected by the attorney-client privilege, the attorney work product doctrine or other applicable privilege or protection is unintentionally produced by any party to this proceeding, the producing party may request that the document be returned. In the event that such a request is made, all parties to the litigation and their counsel shall promptly return all copies of the document in their possession, custody, or control to the producing party and shall not retain or make any copies of the document or any documents derived from such document. The producing party shall promptly identify the returned document on a privilege log. The unintentional disclosure of a privileged or otherwise protected document shall not constitute a waiver of the privilege or protection with respect to that document or any other documents involving the same or similar subject matter.

IV. Discovery<sup>1</sup> and Dispositive Motions

- A. Does any party believe that this case may be appropriate for summary judgment or other dispositive motion? Yes:

Plaintiff: Plaintiff believes that discovery will establish that defendant requires plaintiff to use the restrooms associated with his gender at birth and not his identified gender and that the law in the Seventh Circuit is clear that this violates both Title IX and equal protection.

Defendant: Defendant believes that the claims under Title IX and equal protection are appropriate for summary judgment because any policy of Defendant does not violate such law.

- B. On or before December 31, 2018, and consistent with the certification provisions of Fed. R. Civ. P. 11(b), the party with the burden of proof shall file a statement of the claims or defenses it intends to prove at trial, stating specifically the legal theories upon which the claims or defenses are based.

- C. Select the track that best suits this case:

\_\_\_\_\_Track 1: No dispositive motions are anticipated. All discovery shall be completed by \_\_\_\_\_ [no later than 16 months from Anchor Date]. [Note: Given that no dispositive motions are anticipated, the parties should consider accelerating discovery and other pretrial deadlines to the extent practicable and suggest a substantially earlier trial date (Section VI). The Court encourages a track faster than the standard track in all cases in which dispositive motions are not anticipated].

XTrack 2: Dispositive motions are expected and shall be filed by January 22, 2019; non-expert witness discovery and discovery relating to liability issues shall be completed by December 24, 2018; expert witness discovery and discovery relating to damages shall be completed by May 22, 2019. All remaining discovery shall be completed by June 22, 2019.

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<sup>1</sup> The term “completed,” as used in Section IV.C, means that counsel must serve their discovery requests in sufficient time to receive responses before this deadline. Counsel may not serve discovery requests within the 30-day period before this deadline unless they seek leave of Court to serve a belated request and show good cause for the same. In such event, the proposed belated discovery request shall be filed with the motion, and the opposing party will receive it with service of the motion but need not respond to the same until such time as the Court grants the motion.

\_\_\_\_\_Track 3: Dispositive motions shall be filed by \_\_\_\_\_ [not later than 13 months from the Anchor Date]; non-expert discovery shall be completed by \_\_\_\_\_; expert witness discovery shall be completed by \_\_\_\_\_.  
[Note: The Court provides Track 3 as an open option because it recognizes that there may be unusual cases for which special circumstances necessitate additional flexibility. However, the Court has found that Tracks 1 and 2 are appropriate in the large majority of cases, and therefore the parties must briefly state below the special circumstances justifying a departure from Tracks 1 and 2.]

Absent leave of Court, and for good cause shown, all issues raised on summary judgment under Fed. R. Civ. P. 56 must be raised by a party in a single motion.

V. Pre-Trial/Settlement Conferences

At any time, any party may call the Judge's Staff to request a conference, or the Court may sua sponte schedule a conference at any time. The presumptive time for a settlement conference is no later than 30 days before the close of non-expert discovery. The parties are encouraged to request an earlier date if they believe the assistance of the Magistrate Judge would be helpful in achieving settlement. The parties recommend a settlement conference in November of 2018.

VI. Trial Date

The parties request a trial date in October of 2019. The trial is by jury and is anticipated to take three days. Counsel should indicate here the reasons that a shorter or longer track is appropriate. While all dates herein must be initially scheduled to match the presumptive trial date, if the Court agrees that a different track is appropriate, the case management order approving the CMP plan will indicate the number of months by which all or certain deadlines will be extended to match the track approved by the Court.

VII. Referral to Magistrate Judge

- A. Case. At this time, all parties do not consent to refer this matter to the currently assigned Magistrate Judge pursuant to 28 U.S.C. 636(c) and Fed. R. Civ. P. 73 for all further proceedings including trial.
- B. Motions. The parties may also consent to having the assigned Magistrate Judge rule on motions ordinarily handled by the District Judge, such as motions to dismiss, for summary judgment, or for remand. If all parties consent, they should file a joint stipulation to that effect. Partial consents are subject to the approval of the presiding district judge.

VIII. Required Pre-Trial Preparation

- A. TWO WEEKS BEFORE THE FINAL PRETRIAL CONFERENCE, the parties shall:

1. File a list of trial witnesses, by name, who are actually expected to be called to testify at trial. This list may not include any witnesses not on a party's final witness list filed pursuant to Section III.I.
  2. Number in sequential order all exhibits, including graphs, charts and the like, that will be used during the trial. Provide the Court with a list of these exhibits, including a description of each exhibit and the identifying designation. Make the original exhibits available for inspection by opposing counsel. Stipulations as to the authenticity and admissibility of exhibits are encouraged to the greatest extent possible.
  3. Submit all stipulations of facts in writing to the Court. Stipulations are always encouraged so that at trial, counsel can concentrate on relevant contested facts.
  4. A party who intends to offer any depositions into evidence during the party's case in chief shall prepare and file with the Court and copy to all opposing parties either:
    - a. brief written summaries of the relevant facts in the depositions that will be offered. (Because such a summary will be used in lieu of the actual deposition testimony to eliminate time reading depositions in a question and answer format, this is strongly encouraged.); or
    - b. if a summary is inappropriate, a document which lists the portions of the deposition(s), including the specific page and line numbers, that will be read, or, in the event of a video-taped deposition, the portions of the deposition that will be played, designated specifically by counter-numbers.
  5. Provide all other parties and the Court with any trial briefs and motions in limine, along with all proposed jury instructions, voir dire questions, and areas of inquiry for voir dire (or, if the trial is to the Court, with proposed findings of fact and conclusions of law).
  6. Notify the Court and opposing counsel of the anticipated use of any evidence presentation equipment.
- B. ONE WEEK BEFORE THE FINAL PRETRIAL CONFERENCE, the parties shall:**
1. Notify opposing counsel in writing of any objections to the proposed exhibits. If the parties desire a ruling on the objection prior to trial, a motion should be filed noting the objection and a description and

designation of the exhibit, the basis of the objection, and the legal authorities supporting the objection.

2. If a party has an objection to the deposition summary or to a designated portion of a deposition that will be offered at trial, or if a party intends to offer additional portions at trial in response to the opponent's designation, and the parties desire a ruling on the objection prior to trial, the party shall submit the objections and counter summaries or designations to the Court in writing. Any objections shall be made in the same manner as for proposed exhibits. However, in the case of objections to video-taped depositions, the objections shall be brought to the Court's immediate attention to allow adequate time for editing of the deposition prior to trial.
3. File objections to any motions in limine, proposed instructions, and voir dire questions submitted by the opposing parties.
4. Notify the Court and opposing counsel of requests for separation of witnesses at trial.

IX. Other Matters

Defendant has filed a motion to dismiss (Dkt. 12), which is pending, and is fully briefed.

Plaintiff has recently filed a motion for preliminary injunction (Dkt. 19), which is subject to current deadlines set by the Court and the pending Motion to Dismiss.

This Case Management Plan may be modified or amended for good cause.

s/ Kenneth J. Falk

Kenneth J. Falk  
Attorney for Plaintiff

s/Robert L. Burkart

Patrick A. Shoulders  
Robert L. Burkart  
Jean M. Blanton  
Attorneys for Defendant

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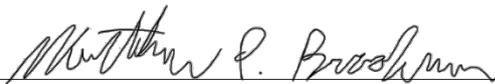
	PARTIES APPEARED IN PERSON/BY COUNSEL ON _____ FOR A PRETRIAL CONFERENCE.
X	APPROVED AS SUBMITTED.
	APPROVED AS AMENDED.
	APPROVED AS AMENDED PER SEPARATE ORDER.
	APPROVED, BUT ALL OF THE FOREGOING DEADLINES ARE SHORTENED/LENGTHENED BY _____ MONTHS.
	APPROVED, BUT THE DEADLINES SET IN SECTION(S) _____ OF THE PLAN IS/ARE SHORTENED/LENGTHENED BY _____ MONTHS.
X	DISCOVERY DEADLINE SHALL BE <b>DECEMBER 24, 2018</b> .
	THIS MATTER IS SET FOR TRIAL BY _____ ON _____ . FINAL PRETRIAL CONFERENCE IS SCHEDULED FOR _____ AT ____ .M., ROOM__.
	A TELEPHONIC STATUS CONFERENCE IS SET IN THIS CASE FOR _____. <b>The information needed by counsel to participate in this telephonic conference will be provided by a separate notification.</b>

	<p>A SETTLEMENT CONFERENCE IS SET IN THIS CASE FOR _____ AT _____ M. COUNSEL SHALL APPEAR:</p> <p>_____ IN PERSON IN ROOM <b>328</b> (<b><u>See attachment for particulars, including description of which client(s) must attend.</u></b>); OR</p> <p>_____ BY TELEPHONE, WITH COUNSEL FOR _____ INITIATING THE CALL TO ALL OTHER PARTIES AND ADDING THE COURT JUDGE AT (____) _____; OR</p> <p>_____ BY TELEPHONE, WITH COUNSEL CALLING THE JUDGE'S STAFF AT (____) _____;</p>
<p>X</p>	<p>DISPOSITIVE MOTIONS SHALL BE FILED NO LATER THAN <b>JANUARY 22, 2019.</b></p>

Upon approval, this Plan constitutes an Order of the Court. Failure to comply with an Order of the Court may result in sanctions for contempt, or as provided under Rule 16(f), to and including dismissal or default.

**Approved and So Ordered.**

Dated: May 10, 2018



Matthew P. Brookman  
 United States Magistrate Judge  
 Southern District of Indiana

**Served electronically on all ECF-registered counsel of record.**