

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

GAVIN GRIMM,

Plaintiff,

v.

Case No. 4:15-cv-54

GLOUCESTER COUNTY SCHOOL
BOARD,

Defendant.

**BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE
TO FILE SECOND AMENDED COMPLAINT**

Gloucester County School Board (“the School Board”), by counsel, does not consent to the Motion for Leave to File Second Amended Complaint filed by Plaintiff Gavin Grimm (“Grimm”) for the following reasons:

I. Introduction

Grimm has moved this Court for leave to file a Second Amended Complaint. This proposed pleading now alleges that the School Board violated Grimm’s rights under Title IX, 20 U.S.C. § 1681 et seq., and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, because the School Board has not changed the gender designation on Grimm’s transcript. In doing so, Grimm seeks to recover under a new set of factual allegations that differ from the facts relevant to this litigation’s central issue — whether or not the School Board’s resolution related to restroom use violated Grimm’s Title IX and Equal Protection rights. Grimm’s new factual allegations, however, do not establish a violation of Grimm’s rights under either of these provisions. This Court should deny Grimm’s Motion for Leave to Amend.

II. Factual Background

Grimm filed suit in June 2015 alleging the School Board violated his rights under Title IX and the Equal Protection Clause, because it adopted a resolution requiring students to use restroom facilities consistent with their biological sex or one of three single-stall restrooms. As this Court is aware, for over three years the parties have litigated the validity of Grimm's Title IX and Equal Protection Clause claims relating to this resolution in this Court, the Fourth Circuit, and the Supreme Court.

In December of 2016, while this case was pending before the United States Supreme Court, Grimm requested that the School Board change the gender designation on his transcript from female to male. The School Board, by counsel, denied Grimm's request in a letter to Grimm's counsel dated January 18, 2017. See Letter, attached as Ex. A. In that letter, the School Board informed Grimm that he had a right to a hearing related to the School Board's decision pursuant to School Board policy JO.

Grimm, however, did not request a hearing on the School Board's denial of his request to have his transcript changed, either while he was a student at Gloucester High School or after his graduation in the spring of 2017. Grimm now moves this Court to grant him leave to file a Second Amended Complaint, which alleges that the School Board violated his rights by declining his request to change the gender designation on his transcript. This Court should deny Grimm's Motion, because the School Board's decision does not constitute a violation of Grimm's rights under Title IX or the Equal Protection Clause.

III. Law and Argument

The School Board acknowledges that amendments under Fed. R. Civ. P 15 "shall be freely given when justice so requires" and that "leave to amend a pleading should be denied only

when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would have been futile.” Johnston v. Oroweat Foods Co., 785 F.2d 503, 509 (4th Cir. 1986). In this case, the allegations that the School Board denied Grimm’s request to amend his transcript do not constitute a violation of Title IX or the United States Constitution.

The School Board is required to include a student’s gender on the secondary school transcript. 8VAC20-160-30. The Virginia General Assembly has passed statutes and regulations regarding the manner in which an individual may change his or her vital records, including records related to a person’s gender. See, e.g., Va. Code Ann. § 32.1-269; 12 VAC 5-550-320; 12 VAC 5-550-460. As such, the new claims — whether Grimm properly changed his gender designation under Virginia law, and whether Grimm provided adequate evidence of that change of designation to the School Board — are matters of state law and are not properly considered under Title IX or the Equal Protection Clause of the Fourteenth Amendment.

Further, the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g; 34 CFR Part 99, provides a procedure by which a student may request an amendment to his school records. Under 34 C.F.R. § 99.20(a), “[i]f a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy, he or she may ask the educational agency or institution to amend the record.” Id. Then, “[t]he educational agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.” 34 C.F.R. § 99.20(b). “If the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under § 99.21.” 34 C.F.R. § 99.20(c). Finally, “[i]f, as a result of

the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.” 34 C.F.R. § 99.21(b)(1)(ii)(2).

FERPA provides the framework by which a student may request an amendment to that student’s education records; however, Grimm has not sought the administrative relief provided under that statute. Indeed, the *ACLU Guide for Transgender and Gender Nonconforming Students* supports the use of this framework. See, Ex. B. Further, it must be noted the School Board met the requirements set forth in FERPA by informing Grimm of his right to a hearing on the issue.

Grimm’s claims, if any, related to the School Board’s denial of his request to change his transcript sound under state law and FERPA, not under Title IX and the Equal Protection of the Fourteenth Amendment. For these reasons, this Court should deny Grimm’s Motion for Leave to Amend.

IV. Conclusion

For the foregoing reasons, the Gloucester County School Board, by counsel, respectfully requests that this Court deny Grimm’s Motion for Leave to File Second Amended Complaint.

**GLOUCESTER COUNTY SCHOOL
BOARD**

By Counsel

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CERTIFICATE

I hereby certify that on the 21st day of December, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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January 18, 2017

VIA EMAIL

Joshua A. Block, Esq.
American Civil Liberties Union
125 Broad Street
18th Floor
New York, NY 10004

RE School Records for G.G.

Dear Josh:

I am writing in response to your December 23, 2016 letter with respect to school records for G.G. I apologize for taking so long to get back to you, but I was waiting for a School Board meeting, and one finally occurred on January 17, 2017. The previous meeting was snowed out.

In considering your request that "G.G.'s school records be updated so that any school records submitted in connection with G.G.'s college applications identify him as a male, in accordance with his amended birth certificate," the School Board considered the following:

- (1) The copy of the birth certificate that you provided, (attached);
- (2) The relevant school policy JO, (attached);
- (3) Virginia Code §32.1-269, (attached); and
- (4) Virginia Administrative Codes §12VAC5-550-320, §12VAC5-550-450 and §12VAC5-550-460, (attached).

Based on the School Board's review of these materials, the School Board declines to change the official school records.

Please feel free to submit additional materials, and, of course, your client has the right under school policy JO, see page 8 Correction of Education Records, to a hearing

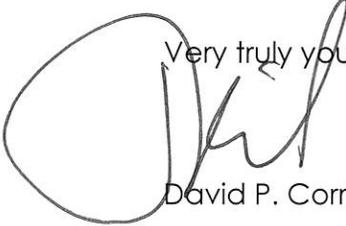
EXHIBIT

A

January 18, 2017
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to challenge the information believed to be "inaccurate, misleading or in violation of the student's rights."

I look forward to hearing further from you.

Very truly yours,

David P. Corrigan

DPC/kns
Enclosures



KNOW YOUR RIGHTS

CONTACT US



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KNOW YOUR RIGHTS
**A Guide for
Transgender
and Gender
Nonconforming
Students**



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Current as of July 2017



EXHIBIT
B

**KNOW YOUR RIGHTS: A GUIDE FOR TRANSGENDER AND
GENDER NONCONFORMING STUDENTS**

**You have the right to be safe and to
be yourself at school. That is why the
American Civil Liberties Union (ACLU)
and GLSEN have put together this
guide to inform you of your rights.**



THE DETAILS

Important Laws

There are federal and state laws that protect you from discrimination and harassment based on your gender identity and expression. This isn't a complete list—there might be other laws out there that also protect you—but it's a good start.

- **U.S. and State Constitutions:** The U.S. Constitution and most State Constitutions guarantee you equal protection under the law, the right to freedom of speech and expression, and the right to privacy.
- **Title IX of the Education Amendments of 1972:** This federal law bans sex discrimination in schools that receive federal funding: all public schools, and certain private schools (usually colleges). Title IX protects trans and gender nonconforming students from discrimination, harassment, and bullying.
- **Family Educational Rights and Privacy Act (FERPA):** This is a federal law that says your educational records must be kept private. If your official transcript lists your legal name when you use a chosen name, or if your gender is different from what's listed in your official records, the school can't reveal that information to anyone but your parents/guardians (if you're under 18) or you (if you're over 18 or are enrolled in college). FERPA also says that if you've had your name or gender marker legally changed, you have a right to ask your school to correct that information on your records, even after you've graduated. The school has to have a hearing to discuss your request, and if they turn you down you can have a note explaining your objection permanently added to your record.