

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

B.P.J., by her next friend and mother, HEATHER JACKSON,

Plaintiff,

v.

WEST VIRGINIA STATE BOARD OF EDUCATION, HARRISON COUNTY BOARD OF EDUCATION, WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION, W. CLAYTON BURCH in his official capacity as State Superintendent, DORA STUTLER in her official capacity as Harrison County Superintendent, PATRICK MORRISEY in his official capacity as Attorney General, and THE STATE OF WEST VIRGINIA,

Defendants.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

**JOINT MOTION TO DISMISS EQUAL PROTECTION CLAIM AGAINST
DEFENDANT PATRICK MORRISEY IN HIS OFFICIAL CAPACITY
AS ATTORNEY GENERAL OF THE STATE OF WEST VIRGINIA**

Pursuant to Federal Rule of Civil Procedure 21, Plaintiff B.P.J. and Defendants, State of West Virginia (the “State”) and Patrick Morrissey, in his official capacity as Attorney General for the State of West Virginia (the “Attorney General”), jointly move this Court to dismiss B.P.J.’s Equal Protection Clause claim against the Attorney General.

As relevant to this motion, the State, by its Attorney General, moved to intervene in this matter to defend H.B. 3293. (Dkt. 41.) This Court granted the motion. (Dkt. 44.) B.P.J.’s amended complaint then added the State as a defendant relative to the Title IX claim but also added the Attorney General as a defendant relative to the Equal Protection Clause claim. (Dkt. 64 ¶¶ 88, 100.) The State answered B.P.J.’s First Amended Complaint and did not move to dismiss. (Dkt. 78.) The Attorney General sought dismissal as a party. (Dkt. 77.)

B.P.J. does not oppose dismissing without prejudice the Equal Protection claim against the Attorney General in the interest of streamlining the issues in this case. Accordingly, B.P.J., the State, and the Attorney General jointly move the Court to dismiss without prejudice B.P.J.'s claim in Count II (Equal Protection) against the Attorney General, thereby dismissing the Attorney General as a party. The parties agree that this motion does not affect any other claim or issue in the case, and that each side will bear its costs and fees as to this claim against the Attorney General as well as this motion and the Attorney General's previously-filed motion to dismiss (Dkt. 77).

The parties jointly request that the Court grant this motion by entering the concurrently submitted proposed order.

Dated: August 13, 2021

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Respectfully submitted,

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Defendants.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

CERTIFICATE OF SERVICE

I, Loree Stark, do hereby certify that on this 13th day of August 2021, I electronically filed a true and exact copy of *Joint Motion to Dismiss Equal Protection Claim Against Defendant Attorney General Patrick Morrisey* with the Clerk of Court and all parties using the CM/ECF System.

/s/ Loree Stark

West Virginia Bar No. 12936

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Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

[PROPOSED] ORDER DISMISSING EQUAL PROTECTION CLAIM AGAINST DEFENDANT PATRICK MORRISEY IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE STATE OF WEST VIRGINIA

This matter comes before the Court on the joint motion by Plaintiff B.P.J. and Defendants State of West Virginia and Patrick Morrissey, in his official capacity as Attorney General for the State of West Virginia (the “Attorney General”), to dismiss without prejudice B.P.J.’s Equal Protection claim in Count II of the First Amended Complaint against Defendant Morrissey.

IT IS HEREBY ORDERED THAT:

1. The claim by Plaintiff B.P.J. against the Attorney General in Count II of the First Amended Complaint, under the Equal Protection Clause, is dismissed without prejudice, and the Attorney General is dismissed as a party. This order does not affect any other claim or issue in the case.

2. Each side will bear its costs and fees as to this claim against the Attorney General as well as this motion and the Attorney General’s previously-filed motion to dismiss (Dkt. 77).

The Clerk is directed to send copies of this Order to counsel of record.

IT IS SO ORDERED.

Dated: _____

Honorable Joseph R. Goodwin
United States District Court Judge

AGREED TO BY:

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