

**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.

**Civil Action No. 2:21-cv-00316
Honorable Joseph R. Goodwin, Judge**

**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, and
DORA STUTLER in her official capacity as
Harrison County Superintendent,
Defendants,**

And

**LAINIEY ARMISTEAD,
Defendant-Intervenor.**

**WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION'S
MOTION IN LIMINE TO PRECLUDE PLAINTIFF
FROM OFFERING AS EVIDENCE THE ASSERTIONS CONTAINED IN
PLAINTIFF'S STATEMENT OF UNDISPUTED FACTS**

Now comes West Virginia Secondary School Activities Commission (WVSSAC), by counsel, Roberta F. Green, Kimberly M. Bandy, Shannon M. Rogers and Shuman McCuskey Slicer PLLC, and moves the Court for an order in *limine* to preclude Plaintiff from characterizing any evidence as an “undisputed fact” absent a stipulation between the parties to that effect. Plaintiff filed “Plaintiff’s Statement of Undisputed Facts” (ECF No. 290) in support of Plaintiff’s Motion for Summary Judgment (ECF No. 289), providing a list of “facts” characterized as agreed-upon evidence. In light of Plaintiff’s representation of the evidence and mischaracterization and/or overstatement of these statements as being “undisputed,” the admission of this evidence presented

as undisputed would be extremely prejudicial and is not supported by the record. Additionally, the statements of “undisputed facts” create a risk of unfair prejudice, confusion, and waste of time such that they should not be admitted as evidence at trial or used for any other purpose.

Wherefore, for these reasons and those set out further in the Memorandum in support, WVSSAC moves this Court for an order *in limine* to preclude use of the alleged ‘undisputed facts’ at trial, absent a stipulation to that effect.

**WEST VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION,
By Counsel.**

/S/ Roberta F. Green

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CERTIFICATE OF SERVICE

I hereby certify that I, Roberta F. Green, have this day, the 22nd \ day of June, 2022, served a true and exact copy of the foregoing **“West Virginia Secondary School Activities Commission’s Motion in Limine to Preclude Plaintiff From Offering as Evidence The Assertions Contained in Plaintiff’s Statement of Undisputed Facts”** with the Clerk of Court using the CM/ECF System, which will send notification of such filing to the following counsel of record:

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DORA STUTLER in her official capacity as
Harrison County Superintendent,
Defendants.**

CERTIFICATE OF SERVICE

I hereby certify that I, Roberta F. Green, have this day, the 9th day of March, 2022, filed a true and exact copy of the Certificate of Service for “**WVSSAC’S RESPONSES TO SECOND SET OF REQUESTS FOR ADMISSION**” with the Clerk of Court using the CM/ECF System, and have served by electronic transmission the pleading upon the following counsel of record:

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THE STATE OF WEST VIRGINIA,
Defendants,**

and

**LAINY ARMISTEAD,
Intervenor Defendant.**

**WVSSAC'S RESPONSES TO SECOND SET
OF REQUESTS FOR ADMISSION**

Now comes West Virginia Secondary School Activities Commission (WVSSAC), by counsel, and responds to Plaintiff's Second Set of Requests for Admission, as follows. Defendant West Virginia Secondary School Activities Commission has not completed discovery in this civil action and has not completed its preparation for trial. For these reasons, the Defendant's responses are based upon only such information and documents as are presently available and known to WVSSAC. Further discovery and independent investigation may lead to other responsive information and/or documents. The following responses are given in good faith but without prejudice to the Defendant's right to produce evidence of subsequently discovered facts or documents.

REQUEST NO. 47: Admit that middle school students who participate in interscholastic athletics receive benefits regardless whether they win or lose.

RESPONSE:

Objection; form of the question – overly broad, vague (‘benefits’). However, on information and belief only, WVSSAC admits that, in general, participation in interscholastic athletics ‘benefits’ middle school students, win or lose, by providing provides an opportunity for leadership, personal health, camaraderie and cooperation.

REQUEST NO. 48: Admit that after H.B. 3293 was signed into law you decided that, for athletic eligibility purposes, a student athlete’s gender would be determined by referring to the gender identified in West Virginia Education Information System (“WVEIS”).

RESPONSE:

Denied. The extent to which WVSSAC relied upon WVEIS was not changed by H.B. 3293. However, of note, WVSSAC has no access to and therefore no direct reliance upon WVEIS.

REQUEST NO. 49: Admit that Plaintiff B.P.J.’s gender is identified in WVEIS as “male.”

RESPONSE:

WVSSAC has no independent knowledge of this assertion that would allow it to admit or deny same. Therefore, based upon that lack of knowledge, WVSSAC denies the assertion.

REQUEST NO. 50: Admit that, as long as H.B. 3293 is in effect, you will not permit a student designated as “male” in WVEIS to participate on Bridgeport Middle School’s girls’ cross-country team unless ordered to permit that student to participate by a court.

RESPONSE:

WVSSAC denies that H.B. 3293 includes express provisions, prescriptions, duties or other relative to WVSSAC, including, by example only, adopting or enforcing related policies. For these reasons and based upon the fact that WVSSAC has insufficient first-hand information on these issues and the underlying variables in WVEIS as relates to the referenced student, WVSSAC admits that it cannot adopt or enforce any policy that conflicts with state law.