

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, and THE
STATE OF WEST VIRGINIA

Defendants,

and

LAINY ARMISTEAD

Defendant-Intervenor.

Case No. 2:21-cv-00316

Hon. Joseph R. Goodwin

**DEFENDANT-INTERVENOR'S RESPONSE TO PLAINTIFF'S MOTION IN LIMINE TO
EXCLUDE EVIDENCE AND/OR ARGUMENT REGARDING PLAINTIFF'S IRRELEVANT
MEDICAL RECORDS**

At this time, Defendant-Intervenor Lainey Armistead does not intend to affirmatively introduce medical records that are wholly unrelated to B.P.J.'s gender-dysphoria and related treatment. But it is unclear from B.P.J.'s motion what records B.P.J. believes fall into that category. Pls.' Mot. in Limine to Exclude Evid. and/or Argument Regarding Pls.' Irrelevant Med. Records and Supp. Mem. of Law 1–2 (Doc. 418). Accordingly, the motion is not drafted with enough specificity for Armistead to meaningfully respond, and the motion should be denied on that basis alone.

Even with respect to medical records related to B.P.J.'s gender dysphoria and related treatment, the limitation B.P.J. seeks is unclear. The motion seeks to limit the use of these records to "the historical fact that B.P.J. has been diagnosed with

gender dysphoria and is currently receiving puberty-delaying treatment.” *Id.* at 1–2. But B.P.J.’s medical records bear on relevant issues that may not fit within the limitation B.P.J. seeks. For example, part and parcel of B.P.J.’s diagnosis with gender dysphoria is that B.P.J., though identifying as female, is biologically male—a necessary factual predicate to this case. Accordingly, it would be inappropriate to preclude the use of B.P.J.’s medical records in presenting evidence of B.P.J.’s biological sex, and it is unclear if that is what B.P.J. seeks.

Further, Armistead reserves her right to introduce evidence about B.P.J.’s medical records or to use B.P.J.’s medical records related to gender-dysphoria diagnosis and related treatment for other purposes if B.P.J. opens the door to such evidence and such evidence is necessary to rebut evidence or impeach testimony offered in support of B.P.J. at trial. *See Tyree v. Bos. Sci. Corp.*, No. 2:12-CV-08633, 2014 WL 5445769, at *17–18 (S.D.W. Va. Oct. 22, 2014) (Goodwin, J.) (acknowledging reservation of rights and noting that objections to rebuttal or impeachment evidence would be ruled on at trial). For example, the medical records contain evidence of how B.P.J. understands B.P.J.’s gender identity, which should be available for use if B.P.J.’s counsel elicits testimony about B.P.J.’s gender identity.¹ As noted in Defendant-Intervenor and State of West Virginia’s Combined Response to Plaintiff’s Motions in Limine to Exclude Evidence of Gender Dysphoria and BP.J.’s Gender Identity, Armistead does not believe that B.P.J.’s gender identity is relevant to this case. But if B.P.J. is permitted to introduce evidence about B.P.J.’s gender identity,

¹ Notably, B.P.J.’s briefing in this case relies heavily on *Grimm v. Gloucester County School Board*, which made much of the fact that the biologically female plaintiff there “consistently and persistently identified as male.” 972 F.3d 586, 619 (4th Cir. 2020). While Armistead denies that *Grimm* is relevant to the disposition of this case as set forth in her summary-judgment briefing, B.P.J. cannot on the one hand rely on *Grimm* while on the other asking the Court to preclude the introduction of evidence relevant to whether B.P.J. exhibits a “consistent[] and persistent[]” identification with the opposite sex.

then it would be unfair and inappropriate to preclude Defendants from using B.P.J.'s medical records as needed to respond to that testimony.

Accordingly, Armistead respectfully requests that the motion be denied and that the Court reserve ruling on the use of any specific medical records for trial.

Respectfully submitted this 29th day of June, 2022.

Tyson C. Langhofer, VA Bar No. 95204*
Rachel A. Csutoros, MA Bar No.
706225*
Alliance Defending Freedom
44180 Riverside Parkway
Lansdowne, VA 20176
(571) 707-2119
(571) 707-4790 Fax
tlanghofer@adflegal.org
rcsutoros@adflegal.org

Travis C. Barham, GA Bar No. 753251*
Alliance Defending Freedom
1000 Hurricane Shoals Road NE, Ste D-
1100
Lawrenceville, GA 30043
(770) 339-0774
(770) 339-0774 Fax
tbarham@adflegal.org

Timothy D. Ducar, AZ Bar No. 015307*
Law Offices of Timothy D. Ducar, PLC
7430 E. Butherus Drive, Suite E
Scottsdale, AZ 85260
(480) 502-2119
(480) 452-0900 Fax
tducar@azlawyers.com

/s/ Brandon S. Steele

Brandon Steele, WV Bar No. 12423
Joshua D. Brown, WV Bar No. 12652
The Law Offices of Brandon S. Steele
3049 Robert C. Byrd Drive, Suite 100
Beckley, WV 25801
(304) 253-1230
(304) 255-1520 Fax
bstelelawoffice@gmail.com
joshua_brown05@hotmail.com

Jonathan Scruggs, AZ Bar No. 030505*
Roger G. Brooks, NC Bar No. 16317*
Henry W. Frampton, IV, SC Bar No.
75314*
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, AZ 85260
(480) 444-0020
(480) 444-0028 Fax
jscruggs@adflegal.org
rbrooks@adflegal.org
hframpton@adflegal.org

Christiana Holcomb, DC Bar No.
176922*
Alliance Defending Freedom
440 First Street NW, Suite 600
Washington, DC 20001
(202) 393-8690
(202) 347-3622 Fax
cholcomb@adflegal.org

**Visiting Attorneys
Attorneys for Defendant-Intervenor*

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, and THE
STATE OF WEST VIRGINIA

Defendants,

and

LAINY ARMISTEAD

Defendant-Intervenor.

Case No. 2:21-cv-00316

Hon. Joseph R. Goodwin

CERTIFICATE OF SERVICE

I, Brandon Steele, hereby certify that on June 29, 2022, I electronically filed a true and exact copy of ***Defendant-Intervenor's Response to Plaintiff's Motion In Limine to Exclude Evidence and/or Argument Regarding Plaintiff's Irrelevant Medical Records*** with the Clerk of Court and all parties using the CM/ECF system.

/s/ Brandon S. Steele

Brandon Steele, WV Bar No. 12423
The Law Offices of Brandon S. Steele
3049 Robert C. Byrd Drive, Suite 100
Beckley, WV 25801
(304) 253-1230
(304) 255-1520 Fax
bsteelelawoffice@gmail.com

Attorney for Defendant-Intervenor