

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

A.C., a minor child by his next friend,)
mother and legal guardian, M.C.,)

Plaintiff,)

v.)

No. 1:21-cv-02965-TWP-MPB

METROPOLITAN SCHOOL DISTRICT)
OF MARTINSVILLE, *et al.*,)

Defendants.)

ORDER ON CASE MANAGEMENT PLAN

I. Parties and Representatives

A. Plaintiff: A.C., by his next friend and guardian, M.C.

Defendants: Metropolitan School District of Martinsville; Principal, John R.
Wooden Middle School

B. For Plaintiff:

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II. Jurisdiction and Statement of Claims

- A. This Court has subject-matter jurisdiction of this matter pursuant to 28 U.S.C. § 1331, as the plaintiff alleges violations of the United States Constitution and federal law.
- B. A.C. is a transgender boy who attends John R. Wooden Middle School, one of the schools within the Metropolitan School District of Martinsville. He was diagnosed with gender dysphoria and is receiving treatment aimed at alleviating the distress associated with the incongruence between his male gender identity and his birth-assigned sex. He has requested the ability to use the boys' restrooms at his school as well as asking to participate on the boys' soccer team as he is male, despite his birth certificate reflecting that his birth-assigned gender was female. Employees of the Metropolitan School District of Martinsville ("School District") have denied this request. He has also requested that he be addressed by the name that he uses to reflect his male gender identity and with male pronouns.

A number of staff persons refused to do so in the past, and the School District did not require it of the staff. (Plaintiff has, since the filing of this case, received a judicial order changing his name). Defendants' failure to recognize plaintiff as male, to allow him to use boys' restrooms and facilities at the school, failure to require that he be addressed by the name and pronouns consistent with his male gender, and to allow him to participate on the boys' soccer team, violates both Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1681(a) and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. He is entitled to declaratory and injunctive relief, as well as his damages.

- C. Plaintiff A.C. filed this action to force the Metropolitan School District of Martinsville (the "School District") to use A.C.'s chosen name and male gender pronouns, grant A.C. complete access to boys' restrooms, and allow A.C. to play on the boys' soccer team. The School District voluntarily complied with A.C.'s request regarding the use of A.C.'s chosen name and pronouns well before suit was filed. Administrators instructed staff to do so and staff has complied with that request. The School District has complied with Title IX and the Equal Protection Clause in relation to its middle school restrooms. Title IX's regulations expressly state that institutions "may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex." 34 C.F.R. § 106.33. Consistent with these regulations, the School District has asked that A.C. continue to utilize the restrooms consistent with A.C.'s sex until further steps are taken and additional information is gathered. In particular, while A.C. has filed a state court petition seeking to change A.C.'s legal gender marker, that request has been denied. In the interim, the School District has provided A.C. with the option of utilizing a unisex restroom in the health office, and has also provided passes to utilize the restroom during class whenever necessary. A.C.'s request to play on the boys' soccer team is not yet ripe; the School District anticipates making any such determination in accordance with IHSAA regulations.

III. Pretrial Pleadings and Disclosures

- A. The parties shall serve their Fed. R. Civ. P. 26 initial disclosures on or before June 10, 2022.
- B. Plaintiff shall file preliminary witness and exhibit lists on or before June 17, 2022.
- C. Defendants shall file preliminary witness and exhibit lists on or before June 24, 2022.
- D. All motions for leave to amend the pleadings and/or to join additional parties shall be filed on or before July 1, 2022.

- E. Plaintiffs shall serve Defendants (but not file with the Court) a statement of special damages, if any, and make a settlement proposal, on or before July 1, 2022. Defendants shall serve on the Plaintiffs (but not file with the Court) a response thereto within 30 days after receipt of the proposal.
- F. Except where governed by paragraph (G) below, expert witness disclosure deadlines shall conform to the following schedule: Plaintiffs 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 December 5, 2022. Defendants 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 serves its expert witness disclosure; or if Plaintiff has disclosed no experts, Defendants shall make their expert disclosure on or before January 5, 2023.
- 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 April 3, 2023. 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 February 3, 2023. 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”).

Plaintiff anticipate seeking discovery on the defendants’ policies and practices generally regarding transgender students, and specifically on the policies that have been applied to the plaintiff regarding: use of the plaintiff’s male name and pronouns; access to male facilities; and access to male sports programs.

Defendants anticipate seeking discovery relating to Plaintiff's alleged damages, which may include discovery into text messages and electronic medical records.

The parties agree that all documents shall be exchanged in their native formats unless another format is agreed upon on a case-by-case basis.

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. Discovery¹ and Dispositive Motions

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

The plaintiff believes partial summary judgment on all issues except for damages will be appropriate in this case, as resolution appears to depend on questions of law as opposed to any disputed issues of fact, namely whether defendants' failure to allow plaintiff to use male restrooms and to participate as a member of male sports teams, and their failure to ensure that plaintiff be addressed by his male name and by male pronouns violates equal protection and Title IX.

Defendants also anticipate filing summary judgment on the underlying issues as a matter of law, as resolution appears to depend on questions of law.

- B. On or before October 12, 2022, 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

¹ 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.

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:

X Track 2: Dispositive motions are expected and shall be filed by December 5, 2022; non-expert witness discovery and discovery relating to liability issues shall be completed by October 5, 2022; expert witness discovery and discovery relating to damages shall be completed by March 3, 2023. All remaining discovery shall be completed by no later than April 3, 2023.

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. At this time, the parties believe that any settlement conference should be scheduled after the Seventh Circuit issues an opinion on the Defendants' pending appeal of the district court's grant of preliminary injunction. The briefing of that appeal has not yet begun, and it is not yet set for oral argument.

VI. Trial Date

The parties request a trial date in August 2023. The trial is by jury and is anticipated to take 3 days.

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 do not 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

The district court issued its order granting the plaintiff's motion for preliminary injunction, from which the defendants have filed a notice of appeal. The Seventh Circuit issued an order indicating that the district court order may not be "ready for appellate review" (as the district court did not enter the injunction as a separate document) and directing the parties to file a brief memorandum on whether the parties should return to the district court to seek an injunction as a separate document. The appellants and appellees have filed brief memoranda, as ordered. On May 19, 2022, the district court subsequently entered the injunction as a separate document and appellants are notifying the Seventh Circuit of the same.

Briefing on the appeal has not yet begun, and no oral argument has yet been set.

Since Plaintiffs have redundantly sued the School District and an employee in his official capacity for the same claims, Defendants assert that the School District is the proper and only party. *See Ball v. City of Muncie*, 28 F. Supp. 3d 797, 802 (S.D. Ind. 2014); *Shirley v. Marion Cty. Sheriff's Off.*, No. 119CV01032JPHTAB, 2020 WL 2113409, at *2 (S.D. Ind. May 4, 2020); *Tom Beu Xiong v. Fischer*, 787 F.3d 389, 398 (7th Cir. 2015).

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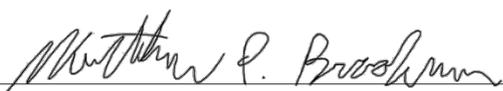
X	PARTIES APPEARED IN PERSON/BY COUNSEL ON MAY 27, 2022 FOR A PRETRIAL CONFERENCE.
X	APPROVED AS SUBMITTED.
	APPROVED AS AMENDED.
	APPROVED AS AMENDED PER SEPARATE ORDER.
	APPROVED, BUT ALL OF THE FOREGOING DEADLINES ARE SHORTENED/LENGTHENED BY _____ MONTHS.
	APPROVED, BUT THE DEADLINES SET IN SECTION(S) _____ OF THE PLAN IS/ARE SHORTENED/LENGTHENED BY _____ MONTHS.
X	DISCOVERY DEADLINE SHALL BE OCTOBER 5, 2022 .
	THIS MATTER IS SET FOR TRIAL BY _____ ON _____ . FINAL PRETRIAL CONFERENCE IS SCHEDULED FOR _____ AT ____ .M., ROOM__.
X	A TELEPHONIC STATUS CONFERENCE IS SET IN THIS CASE FOR AUGUST 4, 2022 AT 10:00 A.M. (EDT) . The information needed by counsel to participate in this telephonic conference will be provided by a separate notification.

	<p>A SETTLEMENT CONFERENCE IS SET IN THIS CASE FOR _____ AT _____ .M. PARTIES SHALL APPEAR:</p> <p>_____ IN PERSON IN ROOM 316 (<u>See attachment for particulars, including description of which client(s) must attend.</u>); 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 DECEMBER 5, 2022.</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 27, 2022



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

Served electronically on all ECF-registered counsel of record.