

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

B.E. and S.E., minor children by their)	
mother, legal guardian, and next friend, L.E.,)	
)	
Plaintiffs,)	
)	
v.)	CASE NO. 2:21-cv-00415-JRS-MG
)	
VIGO COUNTY SCHOOL CORPORATION;)	
PRINCIPAL, TERRE HAUTE NORTH VIGO)	
HIGH SCHOOL, in his official capacity,)	
)	
Defendants.)	

**DEFENDANTS’ MOTION FOR ORAL ARGUMENT ON
PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION AND
REQUEST FOR OPPORTUNITY TO SUPPLEMENT RECORD**

Defendant, Vigo County School Corporation¹ (the “School Corporation”), by counsel, hereby respectfully requests that the Court set the Plaintiffs’ motion for preliminary injunction for oral argument and states:

1. On November 10, 2021, Plaintiffs filed their motion for preliminary injunction. (ECF No. 12.) On November 24, 2021, Plaintiffs filed their memorandum in support of their motion for preliminary injunction. (ECF No. 22.)
2. On January 11, 2021, Defendant filed its response in opposition to the motion for preliminary injunction (ECF No. 30.)
3. That same day, the States of Indiana, Alabama, Alaska, Arkansas, Georgia, Idaho, Kentucky, Mississippi, Montana, Nebraska, South Carolina, South Dakota, Tennessee, and West

¹ Since Plaintiffs have redundantly sued the School Corporation and an employee in his official capacity for the same claims, the School Corporation is the proper and only party.

Virginia sought leave to file an amicus brief in opposition to Plaintiffs' motion for preliminary injunction (ECF Nos. 34, 35), which was granted the next day on January 12, 2021. (ECF No. 38.)

4. On January 25, 2022, the Court issued a minute order from an initial pretrial conference stating that "[s]hould either party feel the need to request a hearing on Plaintiffs' motion for injunctive relief, either may do so by filing a motion with the Court no later than 10 days after briefing has closed on the matter." (ECF No. 41.)

5. On February 1, 2022, Plaintiffs filed their reply memorandum in support of their motion for preliminary injunction. (ECF No. 44.) In addition, Plaintiffs filed several supplemental declarations, including one for Dr. James Fortenberry, who purports to offer expert testimony on behalf of Plaintiffs. (*See* ECF No. 43-6.)

6. Dr. Fortenberry's deposition has been scheduled in this matter to occur on March 1, 2021.

7. Pursuant to the Court's January 25, 2022 minute order, and S.D. Ind. L.R. 7-5(c), Defendant requests that the Court set a hearing to receive oral argument on Plaintiffs' motion for preliminary injunction.

8. Oral argument will facilitate the Court's disposition of the motion for preliminary injunction. The legal issues involved touch on issues relating to the interpretation and application of Title IX and its implementing regulations, the Equal Protection Clause of the Fourteenth Amendment, and privacy issues pertaining to access to restrooms on the basis of sex. Given this novel and developing area of the law, the facts presented in this case, and the privacy interests implicated here, oral argument will allow the Court to fully appreciate the parties' respective legal positions.

9. The lengthy briefing by the parties, including the submission of an amicus brief by more than a dozen states, illustrate the importance of allowing such an oral argument.

10. Defendant requests that oral argument be scheduled for one hour, with time split evenly between Plaintiffs and Defendant.

11. Additionally, because Plaintiffs have submitted a supplemental declaration from Dr. Fortenberry, Defendant respectfully requests an opportunity to supplement the record in response following the deposition of Dr. Fortenberry scheduled to occur on March 1, 2022.

WHEREFORE, Defendant, Vigo County School Corporation, by counsel, respectfully requests that the Court: (1) set a hearing to receive oral argument on the Plaintiffs' motion for preliminary injunction, and (2) allow Defendant an opportunity to supplement the record following the deposition of Dr. Fortenberry scheduled to occur on March 1, 2022.

Respectfully submitted,

/s/ Philip R. Zimmerly

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CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2022, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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/s/ Philip R. Zimmerly

Philip R. Zimmerly

