

**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,  
DORA STUTLER in her official capacity as  
Harrison County Superintendent, and THE  
STATE OF WEST VIRGINIA,**

**Defendants,**

**and**

**LAINY ARMISTEAD,**

**Defendant-Intervenor.**

**WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION'S  
MEMORANDUM OF LAW IN SUPPORT OF MOTION TO STAY EXECUTION OF  
PAYMENT OF MONETARY AWARD PENDING APPEAL AND TO WAIVE BOND**

Now comes West Virginia Secondary School Activities Commission (WVSSAC), by counsel, Roberta F. Green, Kimberly M. Bandy and Shuman McCuskey Slicer PLLC, and moves to stay execution of payment of the monetary award entered in the Court's Order of May 16, 2024, to the extent that it awards B.P.J. the amount of \$1.00 as nominal damages with respect to her Title IX claim, payable by the WVSSAC. WVSSAC seeks this relief pending resolution of Defendant's anticipated Petition for Writ of Certiorari in the Supreme Court of the United States relative to the Judgment of the United States Court of Appeals for the Fourth Circuit in case Nos. 23-1078 and

23-1130. Because of the nominal amount of damages awarded, WVSSAC further requests that the Court waive bond. WVSSAC is advised that Plaintiff does not oppose the motion to stay payment of monetary damages and to waive bond.

On May 21, 2024, the Defendants filed their Motion to Stay Proceedings Pending Resolution of Petition for Writ of Certiorari and a Memorandum in Support. [ECF Nos. 543 and 544]. WVSSAC incorporates and adopts that Motion and Memorandum here. In that Motion, the Defendants seek a stay of proceedings in this case pending resolution by the Supreme Court of the United States of the anticipated petition for writ of certiorari that will be filed regarding this case. WVSSAC submits this separate motion and memorandum specifically asking that the Court stay execution of payment of the money damages award in the amount of \$1.00 to B.P.J., pending appeal.

As the Supreme Court of the United States has explained, it “has always been held that as part of its traditional equipment for the administration of justice, a federal court can stay the enforcement of a judgment pending the outcome of an appeal.” *Nken v. Holder*, 556 U.S. 418, 421, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009) (internal citations omitted). A stay holds “a ruling in abeyance to allow an appellate court the time necessary to review it.” *Id.* This Court has recognized that “Federal Rule of Civil Procedure 62(b) governs the stay of a money judgment and provides, ‘[a]t any time after judgment is entered, a party may obtain a stay by providing a bond or other security.’” *Moses Enters., LLC v. Lexington Ins. Co.*, 2022 U.S. Dist. LEXIS 69907, at \*\*1-2, 2022 WL 1132165 (S.D.W. Va. April 15, 2022), quoting Fed. R. Civ. P. 62(b). However, a bond or other security is not necessary in every case. The Court has “discretion to grant a stay with a

reduced bond if appropriate,” or in some cases, no bond. *Daugherty v. Ocwen Loan Servicing, LLC*, 220 F. Supp. 3d 728, 730 (S.D.W. Va. 2016); *Alexander v. Chesapeake, Potomac & Tidewater Books, Inc.*, 190 F.R.D. 190, 192 (E.D. Va. 1999).

With respect to its request for a stay, WVSSAC incorporates the arguments set forth in the Memorandum of Law in Support of Defendants’ Motion to Stay Proceedings Pending Resolution of Petition for Writ of Certiorari [ECF No. 544]. Specific to the requested stay of payment of the monetary award of \$1.00 in nominal damages to B.P.J., to the extent that such constitutes a judgment, such a stay will not substantially injure B.P.J. due to the nominal nature of the monetary award. *See Daugherty v. Ocwen Loan Servicing, LLC*, 220 F. Supp. 3d 728, 730 (S.D.W. Va. 2016), quoting *Hilton v. Braunskill*, 481 U.S. 770, 776, 107 S. Ct. 2113, 95 L. Ed. 2d 724 (1987) (the factors to consider include “whether issuance of the stay will substantially injure the other parties interested in the proceeding”).

With respect to its request for waiver of a bond, WVSSAC submits that the administrative cost of securing the bond would far outweigh the \$1.00 it is intended to preserve. “The purpose of a supersedeas bond is to preserve the status quo while protecting the non-appealing party’s rights pending appeal.” *U.S. v. O’Shea*, 2015 U.S. Dist. LEXIS 52231, at \*5, 2015 WL 1822848, at \*2 (S.D.W. Va. April 21, 2015), quoting *Poplar Grove Planting & Ref. Co. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1190-91 (5th Cir. 1979) (additional citations omitted)). Where the defendant’s “ability to pay the judgment is so plain that the cost of bond would be a waste of money,” it is appropriate to waive the bond. *Moses Enters., LLC v. Lexington Ins. Co.*, 2022 U.S. Dist. LEXIS 69907, at \*3, 2022 WL 1132165 (S.D. W.Va. April 15, 2022), citing *Koger v. Norfolk S. Ry. Co.*, No. 1:08-0909, 2010 U.S. Dist. LEXIS 152433, 2010 WL 11561927, at \*1 (S.D.W. Va. May 6, 2010) (quoting *Olympia Equip. Leasing Co. v. W. Union Tel. Co.*, 786 F.2d 794, 796 (7th Cir.

1986)). Because the monetary damages awarded are in the nominal amount of \$1.00, it is plain that WVSSAC has sufficient assets to cover payment of the award if such payment is stayed pending an appeal of this matter. *See id.* (motion to stay execution of judgment pending appeal and waive bond granted where “[t]he Court is confident of Defendants’ ability to pay the judgment.”).

For the reasons set forth above, WVSSAC requests this Honorable Court for an order staying execution of the monetary award to B.P.J. in the amount of \$1.00 as nominal damages with respect to her Title IX claim, payable by the WVSSAC, pending appeal. WVSSAC further requests that the Court waive bond.

Respectfully submitted,

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

**/s/ Roberta F. Green**

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Harrison County Superintendent, and THE  
STATE OF WEST VIRGINIA,**

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**CERTIFICATE OF SERVICE**

I hereby certify that I, Roberta F. Green, have this day, the 22<sup>nd</sup> day of May, 2024, served a true and exact copy of the foregoing “**WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION’S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO STAY EXECUTION OF PAYMENT OF MONETARY AWARD PENDING APPEAL AND TO WAIVE BOND**” 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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