

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

GAVIN GRIMM,)	
)	
Plaintiff,)	
)	
v.)	Civil Case No. 4:15-cv-54
)	
GLOUCESTER COUNTY SCHOOL)	
BOARD,)	
)	
Defendant.)	
_____)	

**PLAINTIFF’S NOTICE OF CONSENT TO DISMISSAL OF
REQUESTS FOR RELIEF (C) AND (D)**

Plaintiff Gavin Grimm respectfully submits this notice of consent to Defendant’s Motion to Dismiss the Amended Complaint with respect to Requests for Relief (C) and (D) pursuant to Federal Rule of Civil Procedure 12(b)(1).

BACKGROUND

1. Plaintiff’s Amended Complaint alleges claims under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a), and the Equal Protection Clause of the Fourteenth Amendment. ECF No. 109-1.

2. The Amended Complaint seeks both retrospective and prospective relief. Requests for Relief (A) and (B) seek a retrospective declaratory judgment and nominal damages. Requests for Relief (C) and (D) seek a prospective declaratory judgment and permanent injunctive relief.

3. Defendant has filed a motion to dismiss the Amended Complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 118.

4. On October 26, 2017, this Court issued an order construing the Defendant's motion as one brought pursuant to Rule 12(b)(1) to the extent it raises the question whether this case presents a justiciable controversy. ECF No. 123 at 3. The Court explained that "[r]egardless of whether a controversy over the need for a preliminary injunction remains, the threshold jurisdictional question of whether Plaintiff's graduation from high school mooted the entire case remains before this Court." *Id.*

5. The Court thus deferred resolution of whether the Amended Complaint stated a claim for purposes of Rule 12(b)(6) and directed the parties to submit evidence and supplemental briefs regarding mootness. ECF No. 123 at 4. The Court directed Defendant to file its supplemental brief no later than December 18, 2017, which is 60 calendar days from the entry of the Court's order. *Id.* at 6.

CONSENT TO DISMISSAL OF REQUESTS FOR RELIEF (C) AND (D)

6. Continuing to pursue claims for prospective declaratory and injunctive relief would require the parties and the Court to expend time and resources resolving factual questions that would delay and distract from the central legal question of whether Defendant violated Gavin's rights under Title IX and the Fourteenth Amendment while he was a student at Gloucester High School.

7. Plaintiff therefore voluntarily consents to dismissal of Requests for Relief (C) and (D), which seek a permanent injunction and prospective declaratory judgment.

8. Counsel for Defendant has informed counsel for Plaintiff that Defendant consents to dismissal of Requests for Relief (C) and (D).

CONCLUSION

For these reasons, Plaintiff respectfully requests that this Court dismiss the Amended Complaint's Requests for Relief (C) and (D) pursuant to Federal Rule of Civil Procedure 12(b)(1).

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION
OF VIRGINIA FOUNDATION, INC.

/s/

Gail Deady (VSB No. 82035)
701 E. Franklin Street, Suite 1412
Richmond, Virginia 23219
Phone: (804) 644-8080
Fax: (804) 649-2733
gdeady@acluva.org

* Admitted pro hac vice.

Counsel for Plaintiff Gavin Grimm

Dated: November 2, 2017

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Joshua A. Block*

Leslie Cooper*

125 Broad Street, 18th Floor
New York, New York 10004

Phone: (212) 549-2500

Fax: (212) 549-2650

jblock@aclu.org

lcooper@aclu.org

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of November, 2017, I filed the foregoing notice with the Clerk of the Court using the CM/ECF system, which will automatically serve electronic copies upon all counsel of record.

/s/
Gail Deady (VSB No. 82035)
American Civil Liberties Union
Foundation of Virginia, Inc.
701 E. Franklin Street, Suite 1412
Richmond, Virginia 23219
Phone: (804) 644-8080
Fax: (804) 649-2733
gdeady@acluva.org