

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

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

**PLAINTIFF’S MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANT’S MOTION TO STAY**

Plaintiff Gavin Grimm (“Gavin”) submits the following Memorandum of Law in Opposition to the Gloucester County School Board’s (the “Board’s”) Motion to Stay, ECF No. 221.

INTRODUCTION

Gavin filed his original Complaint four years ago, at the end of his sophomore year of high school when he was 16 years old. ECF No. 8. Gavin is now 20 years old and still waiting for a final judgment in his case. Although he graduated from high school two years ago, the Board continues to discriminate against him by disregarding his legal court order and birth certificate, and requiring him to use a high school transcript that identifies him as “female.” As Gavin testified:

I am currently attending community college at Berkley City College, but I plan to eventually transfer to a four-year school. Every time I have to provide a copy of my transcript to a new school or employer, I will have to show them a document that negates my male identity and marks me as different from other boys. I am still tethered to high school by this document, and I think it is unfair that a high school that put me through so much is able to wield that much negative influence over my adult life.

Grimm Decl. ¶ 69, ECF No. 186.

Gavin's case is now ready for final judgment. This Court has already concluded that Gavin has stated valid legal claims under both Title IX and the Equal Protection Clause. ECF No. 148 (denying motion to dismiss); ECF No. 176 (granting motion for leave to file second amended complaint). After four years of litigation, discovery has finely been completed and the parties have submitted cross motions for summary judgment. ECF Nos. 184, 191. This Court is scheduled to hold oral argument on those motions on July 23, 2019. ECF Nos. 218-20. The Board now asks this Court to cancel the motions hearing, stay proceedings, and allow it to continue wielding influence over Gavin's life for yet another year or more until the Supreme Court rules in *R.G. & G.R. Harris Funeral Homes v. EEOC*, No. 18–107, 2019 WL 1756679 (U.S. Apr. 22, 2019) (Mem) (granting certiorari).

The Board does not attempt to carry its burden to justify a stay at this late stage of the proceedings. Indeed, the Board fails to even identify the applicable legal standard for such requests: "A district court ordinarily has discretion to delay proceedings when a higher court will issue a decision that may affect the outcome of the pending case. However, proper use of this discretion 'calls for the exercise of judgment which must weigh competing interests and maintain an even balance.'" *White v. Ally Fin. Inc.*, 969 F. Supp. 2d 451, 461-62 (S.D.W. Va. 2013) (quoting *Williford v. Armstrong World Indus., Inc.*, 715 F.2d 124, 127 (4th Cir.1983) (citations omitted). Specifically, the district court should consider three factors: "(1) the interests of judicial economy; (2) hardship and equity to the moving party if the action is not stayed; and, (3) potential prejudice to the non-moving party." *Hooker v. Sirius XM Radio, Inc.*, No. 4:13-CV-3, 2015 WL 10937407, at *2 (E.D. Va. Sept. 25, 2015) (quoting *Buzzell v. JP Morgan Chase Bank*, No. 3:13-CV-668, 2015 WL 5254768, at *2 (E.D. Va. Sept. 9, 2015) (alterations incorporated)). The burden of persuasion lies with the party seeking the stay, who "must justify it by clear and convincing

circumstances outweighing potential harm to the party against whom it is operative.” *Gibbs v. Plain Green, LLC*, 331 F. Supp. 3d 518, 525 (E.D. Va. 2018), *appeal dismissed*, No. 18-1908, 2018 WL 7223994 (4th Cir. Sept. 13, 2018) (quoting *Williford*, 715 F.2d at 127). To satisfy that burden, “[t]he suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to someone else.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936).

As discussed below, all of the relevant factors weigh strongly against the Board’s request for a stay in this case: A stay would not conserve judicial resources because Gavin has independent claims under the Equal Protection Clause, which are based on the same set of facts as his Title IX claims; the Board would suffer no cognizable hardship from proceeding to a ruling on the merits; and a stay would severely prejudice Gavin’s interests as he continues to experience irreparable harm from the Board’s discrimination. Because the Board has failed to establish that clear and convincing circumstances outweigh the potential harm that the stay would cause to Gavin, the Board’s motion to stay should be denied.

ARGUMENT

I. A Stay Would Not Conserve Judicial Resources.

Staying proceedings until the Supreme Court rules in *Harris Funeral Homes* would not conserve any judicial resources because Gavin has brought claims under *both* Title IX and the Equal Protection Clause. Although the Supreme Court’s eventual ruling in *Harris Funeral Homes* may have an impact on Gavin’s Title IX claims, it will not affect Gavin’s equal protection claims, which will remain viable regardless of how the Supreme Court rules.¹ And because Gavin’s claims

¹ The Board asserts that “the Supreme Court’s decision in *Harris Funeral Home* concerning discrimination on the basis of transgender status and/or sex stereotyping will likely inform the Equal Protection analysis.” Def.’s Br. at 3, ECF No. 222. But this Court has already held that discrimination against transgender individuals is independently subject to heightened scrutiny

under Title IX and the Equal Protection Clause are both based on the same underlying facts, the ruling in *Harris Funeral Homes* will not have any impact on the scope of factual questions or evidentiary disputes at issue in the pending motions for summary judgment or at trial. The same factual and evidential question will have to be resolved regardless of how the Supreme Court rules.

The Board argues that a stay would conserve judicial resources with respect to deciding Gavin's Title IX claim, but this Court already expended significant judicial resources resolving those legal questions in its ruling on Defendant's Motion to Dismiss. ECF No. 148 at 12-23. The only remaining task is to apply those legal determinations to the facts, as determined by summary judgment or at trial. *See Haysbert v. Navient Sols., Inc.*, No. CV 15-4144 PSG (EX), 2016 WL 890297, at *5 (C.D. Cal. Mar. 8, 2016) (denying stay because "discovery is closed and all summary judgment motions have been fully briefed"); *Gibbs*, 331 F. Supp. 3d at 528 (explaining that "[w]hen courts *do* grant a stay, it is often early in litigation"). If the Supreme Court's decision in *Harris Funeral Homes* ultimately changes the legal landscape with respect to Title IX, the Fourth Circuit can simply apply the decision on appeal without remanding for additional fact finding.

Instead of providing any benefit to judicial economy, "granting the stay would likely be a greater waste of time." *Hooker*, 2015 WL 10937407, at *3; *see also Gibbs*, 331 F. Supp. 3d at 525; *White*, 969 F. Supp. 2d at 463. The parties have already expended a great deal of resources completing discovery and fully briefing cross-motions for summary judgment. The attorneys are steeped in the underlying factual record. The witnesses are all prepared to testify if necessary, and their memories are fresh. Staying proceedings at this late juncture and not resetting a motions

because "transgender individuals constitute at least a quasi-suspect class." ECF No. 148 at 25. And, regardless of what standard of scrutiny applies, the Board's discriminatory policy would fail even rational-basis review. Pl's Mem. in Supp. of Summ. J. at 39, 42, ECF No. 185.

hearing or trial date until some unspecified time in 2020 would require the attorneys, the witnesses, and the Court to expend additional resources to familiarize themselves with a stale record.²

II. The Board Would Suffer No Hardship From Proceeding With the Case.

The Board cannot identify any hardship or inequity it would suffer if the Court proceeds with the motions for summary judgment or an eventual trial. The Board alludes to “the interests of all parties and the Court in assuring this case will be correctly decided,” Def.’s Br. at 3, ECF No. 222, suggesting that it will be harmed if Gavin prevails on his Title IX claim in this Court and that decision is then reversed on appeal as a result of *Harris Funeral Homes*. But Gavin is seeking exactly the same relief under both Title IX and the Equal Protection Clause. If Gavin prevails on the equal protection claim, he will receive declaratory relief, nominal damages, and a permanent injunction requiring the Board to issue him an updated school transcript. The Board will not suffer any incremental hardship if this Court also awards the same relief under Title IX.

III. Granting a Stay Would Significantly Prejudice Gavin’s Interests.

Staying proceedings would impose severe hardship on Gavin. In addition to a declaratory judgment and nominal damages, Gavin also seeks injunctive relief requiring the Board to provide him with a transcript that reflects the male gender marker on his birth certificate. *See Gibbs*, 331 F. Supp. 3d at 528 (“A plaintiff’s plausible allegations of ongoing harm can weigh against granting a stay because of the potential for prejudice in such a circumstance.”). As explained in Gavin’s memorandum in support of his Motion for Summary Judgment, Gavin continues to experience irreparable harm every time he has to present his transcript to a college or potential employer. ECF No. 185 at 45-46. A stay would allow the Board to continue discriminating against Gavin, and

² The Supreme Court granted certiorari in *Harris Funeral Homes* over a month ago on April 22, 2019. Instead of seeking a stay at that time, the Board filed a Motion to Strike the Exhibits Filed with Gavin’s Mot. for Summ. Jud., ECF No. 213, prompting another round of briefing and forcing the parties and the Court to expend additional resources on that motion.

even interfere with his ability to transfer to a four-year school without a transcript identifying him as female. This irreparable harm weighs strongly against a stay. *See Yadkin Riverkeeper, Inc. v. Duke Energy Carolinas, LLC*, 141 F. Supp. 3d 428, 452 (M.D.N.C. 2015) (finding that the balance of factors weighed against a stay because a stay would allow the defendants to continue committing the alleged environmental violations that put the plaintiffs' health and safety at risk); *Aldapa v. Fowler Packing Co., Inc.*, No. 115CV00420DADSAB, 2016 WL 6124216, at *1 (E.D. Cal. Oct. 20, 2016) (“[S]taying a suit seeking injunctive relief against ongoing or future harm causes a more significant hardship against a plaintiff resisting a stay than a suit for damages.”).

A stay pending the ruling in *Harris Funeral Homes* would also delay proceedings for an inordinately long period of time. The Supreme Court has not yet scheduled a date for oral argument in *Harris Funeral Homes*, and it is unlikely that a decision will be issued until near the end of next year's term, in June 2020. Courts in this Circuit and elsewhere have repeatedly recognized that a year-long stay imposes significant hardship on Plaintiffs. *See White*, 969 F. Supp. 2d at 463 (denying motion to stay plaintiffs would “suffer a delay of potentially over a year while this case is stayed pending the Supreme Court's decision”); *Sehler v. Prospect Mortg., LLC*, No. 1:13CV473 JCC/TRJ, 2013 WL 5184216, at *3 (E.D. Va. Sept. 16, 2013) (denying stay because “[t]he delay anticipated here is four to six months,” which “is a significant period of delay”); *cf. Int'l Refugee Assistance Project v. Trump*, 323 F. Supp. 3d 726, 736 (D. Md. 2018) (granting a stay “based on the assumption that the Supreme Court will issue a decision by the end of June 2018, approximately two months from now”). If a stay is granted, the irreparable harm Gavin would experience during the rest of 2019 and most of 2020 would far exceed any illusory benefit to judicial economy.

CONCLUSION

Because all the relevant factors weigh against a stay of proceedings, the Board's Motion to Stay, ECF No. 221, should be denied.

Dated: May 31, 2019

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF VIRGINIA, INC.

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of May 2019, I filed the foregoing Memorandum of Law in Opposition to Defendant's Motion to Stay with the Clerk of the Court using the CM/ECF system, which will automatically serve electronic copies upon all counsel of record.

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