

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

REIYN KEOHANE,

Plaintiff,

v.

JULIE JONES, in her official capacity
as Secretary, Florida Department of
Corrections, and

TERESITA DIEGUEZ, in her official
capacity as Medical Director of
Everglades Correctional Institution,

Defendants.

CASE NO. 4:16cv511-MW/CAS

**DEFENDANT, DOCTOR TERESITA DIEGUEZ'S, ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

Defendants, DOCTOR TERESITA DIEGUEZ, in her official capacity as Medical Director of Everglades Correctional Institution, files her Answer and Affirmative Defenses to Plaintiff's Complaint, and states as follows:

PREFACE

Plaintiff filed the instant complaint [DE #1] on August 15, 2016 against Dr. Dieguez and Dr. Le, the retired former Chief Health Officer of the DeSoto Annex. Since that time, the Court dismissed Dr. Le as a party. [DE #50]. Therefore, Dr. Le is not responding to the allegations against him. Moreover, Plaintiff's request for relief seeks hormone therapy, which is being provided to the Plaintiff and is expected to be

continuously provided so long as it is medically necessary to treat Plaintiff's gender dysphoria. Doctor Teresita Dieguez responds to Plaintiff's remaining allegations as follows:

ANSWER

INTRODUCTION

1. Dr. Dieguez admits that Plaintiff is currently in the custody of the Florida Department of Corrections and that Plaintiff identifies as a transgender woman. Otherwise, denied.
2. Denied.

JURISDICTION AND VENUE

3. Denied.
4. Dr. Dieguez admits the Court currently has subject matter jurisdiction over her so long as Plaintiff is incarcerated at Everglades Correctional Institution where Dr. Dieguez serves as the Medical Director. Otherwise, denied.
5. Admitted.

PARTIES

6. Admitted.
7. The allegations in paragraph this paragraph are not directed at Dr. Dieguez. Therefore, she is not required to respond to them.
8. Dr. Le has been dismissed as a party to this case. [DE #50].

9. Dr. Dieguez admits that she is being sued in her official capacity as the Medical Director of the Everglades Correctional Institution. Otherwise, denied.
10. Warden Acosta has been dismissed as a party to this case. [DE #50].

GENERAL ALLEGATIONS

11. The allegations in this paragraph are not directed at Dr. Dieguez. Therefore, she is not required to respond to them. Nonetheless, to the extent the allegations in this paragraph can be construed to allege wrongdoing against Dr. Dieguez, she denies the allegations.
12. The allegations in this paragraph are not directed at Dr. Dieguez. Therefore, she is not required to respond to them. Nonetheless, to the extent the allegations in this paragraph can be construed to allege wrongdoing against Dr. Dieguez, she denies the allegations.
13. The allegations in this paragraph are not directed at Dr. Dieguez. Therefore, she is not required to respond to them. Nonetheless, to the extent the allegations in this paragraph can be construed to allege wrongdoing against Dr. Dieguez, she denies the allegations.
14. The allegations in this paragraph are not directed at Dr. Dieguez. Therefore, she is not required to respond to them. Nonetheless, to the extent the allegations in this paragraph can be construed to allege wrongdoing against Dr. Dieguez, she denies the allegations.

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17.The allegations in this paragraph are not directed at Dr. Dieguez. Therefore, she is not required to respond to them. Nonetheless, to the extent the allegations in this paragraph can be construed to allege wrongdoing against Dr. Dieguez, she denies the allegations.

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23. The allegations in this paragraph are not directed at Dr. Dieguez. Therefore, she is not required to respond to them. Nonetheless, to the extent the allegations in this paragraph can be construed to allege wrongdoing against Dr. Dieguez, she denies the allegations.

24. The allegations in this paragraph are not directed at Dr. Dieguez. Therefore, she is not required to respond to them. Nonetheless, to the extent the allegations in this paragraph can be construed to allege wrongdoing against Dr. Dieguez, she denies the allegations.

25. Admitted that Plaintiff identifies as a transgender woman and that Plaintiff is 22 years old.

26. Dr. Dieguez is without knowledge as to the allegations in this paragraph.

27. Dr. Dieguez is without knowledge as to the allegations in this paragraph.

28. Dr. Dieguez is without knowledge as to the allegations in this paragraph.

29. Dr. Dieguez is without knowledge as to the allegations in this paragraph.

30. Dr. Dieguez is without knowledge as to the allegations in this paragraph.

31. Admitted.

32. Dr. Dieguez is without knowledge as to the allegations in this paragraph.

33. Dr. Dieguez is without knowledge as to the allegations in this paragraph.

34. Dr. Dieguez is without knowledge as to the allegations in this paragraph.

35. Dr. Dieguez admits that Plaintiff has been diagnosed with gender dysphoria, denies that Plaintiff has not been provided treatment for gender dysphoria, and is without knowledge as to which persons have or have not opined on Plaintiff's gender dysphoria diagnosis.

36. Dr. Dieguez denies the allegations to the extent she is included within Plaintiff's definition of "DOC Officials." Otherwise, she is without knowledge as to the allegations in this paragraph.

37. Dr. Dieguez is without knowledge as to the allegations in this paragraph.

38. Dr. Dieguez is without knowledge as to the allegations in this paragraph.

39. Dr. Dieguez is without knowledge as to the allegations in this paragraph.

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68. Dr. Dieguez is without knowledge as to the allegations in this paragraph.

69. Dr. Dieguez is without knowledge as to the allegations in this paragraph.

70. Dr. Dieguez admits that Plaintiff arrived at Everglades Correctional Institution on or about February 18, 2016 and is currently incarcerated there. Dr. Dieguez is otherwise without knowledge as to the allegations in this paragraph.

71. Dr. Dieguez is without knowledge as to the allegations in this paragraph.

72. Dr. Dieguez admits that she met with the Plaintiff on February 29, 2016 at the request of the Health Services Administrator to determine Plaintiff's biological sex. Otherwise, denied as framed.

73. Dr. Dieguez is without knowledge as to the allegations in this paragraph.

74. Dr. Dieguez admits that she met with the Plaintiff on March 15, 2016 and admits that she referred Plaintiff to the mental health department. Dr. Dieguez otherwise denies the allegations in this paragraph.

75. Dr. Dieguez is without knowledge as to the allegations in this paragraph.

76. Dr. Dieguez admits that Plaintiff filed a formal grievance which appears to have been edited within the paragraph. Dr. Dieguez denies the substance of the grievance to the extent it alleges wrongdoing against her.

77. Dr. Dieguez admits the grievance was denied on or about May 18, 2016 for the reasons stated in the grievance.

78. Dr. Dieguez is without knowledge as to the allegations in this paragraph.

79. Dr. Dieguez is without knowledge as to the allegations in this paragraph.

80. Dr. Dieguez is without knowledge as to the allegations in this paragraph.

81. The allegations in this paragraph are not directed at Dr. Dieguez. Therefore, she is not required to respond to them. Nonetheless, to the extent the allegations in this paragraph can be construed to allege wrongdoing against Dr. Dieguez, she denies the allegations.

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85.Dr. Dieguez admits the DOC Procedure speaks for itself, but denies that she implemented that procedure, or plans to implement that procedure, as it relates to inmates with gender dysphoria, including Plaintiff.

86.Denied.

COUNT I

DENIAL OF MEDICALLY NECESSARY CARE IN VIOLATION OF THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION

87.Dr. Dieguez reasserts her responses to paragraphs 1 through 86 as if set forth herein.

88.Dr. Dieguez admits that Plaintiff self identifies as a transgender woman who has been diagnosed with gender dysphoria.

89.Dr. Dieguez admits that she is currently aware that Plaintiff has been diagnosed with gender dysphoria. Without knowledge as to the remainder of the allegations and as to allegations against “DOC Officials.”

90.Dr. Dieguez admits Plaintiff is currently receiving medically necessary hormone therapy as well as counseling for gender dysphoria. Otherwise, denied.

91. Denied as to Dr. Dieguez. Without knowledge as to “DOC Officials.”

92. Denied as to Dr. Dieguez. Without knowledge as to “DOC Officials.”

93. Denied as to Dr. Dieguez. Without knowledge as to “DOC Officials.”

94. Denied.

95. Denied.

96. Denied.

97. Objection, calls for a legal conclusion.

PRAYER FOR RELIEF

98.(a-f). Dr. Dieguez denies that Plaintiff is entitled to any of the requested relief.

GENERAL DENIAL

Dr. Dieguez denies any allegation against her not expressly admitted.

DEFENSES AND AFFIRMATIVE DEFENSES

In further response to Plaintiff’s Complaint, Dr. Dieguez, in her official capacity as Medical Director of Everglades Correctional Institution, pleads the following Defenses and Affirmative Defenses currently known to her.

1. While Plaintiff is entitled to medical treatment and counseling for gender dysphoria, which Plaintiff is receiving, Plaintiff is not entitled to the choice of a particular treatment plan.
2. Plaintiff is not at a serious risk of irreparable harm if the requested relief is not granted.
3. The balance of equities does not favor Plaintiff.

4. Plaintiff has failed to allege a prima facie case that the requested injunction is in the public interest. Nonetheless, the requested injunction is not in the public interest.
5. The facts, as alleged, do not rise to a level of a constitutional violation of deliberate indifference to a serious medical need.
6. There was no objectively serious deprivation of any medical need of the Plaintiff.
7. Dr. Dieguez did not have a “subjective intent to punish” the Plaintiff as required to support a claim for deliberate indifference.
8. Dr. Dieguez did not have subjective knowledge of Plaintiff’s request for “access to female grooming standards,” as alleged in Plaintiff’s Complaint.
9. Dr. Dieguez did not have subjective knowledge of Plaintiff’s request for “access to female clothing standards,” as alleged in Plaintiff’s Complaint.
10. Dr. Dieguez does not enforce, or create exceptions to, Florida Department of Corrections’ policies or procedures. Therefore, Plaintiff is not entitled to relief against Dr. Dieguez for “access to female clothing standards.”
11. Dr. Dieguez does not enforce, or create exceptions to, Florida Department of Corrections’ policies or procedures. Therefore, Plaintiff is not entitled to relief against Dr. Dieguez for “access to female grooming standards.”
12. Plaintiff’s request to grow longer hair is based on seeking an exception to Florida Department of Corrections’ policies and procedures, which Dr.

Dieguez does not enforce. Such a request cannot be a basis for a deliberate indifference claim under the Eighth Amendment.

13. Plaintiff's request to access female clothing is based on seeking an exception to Florida Department of Corrections' policies and procedures, which Dr. Dieguez does not enforce. Such a request cannot be a basis for a deliberate indifference claim under the Eighth Amendment.

14. Dr. Dieguez is only responsible for the provision of medical care to the Plaintiff: (1) so long as she is the Medical Director at Everglades Correctional Institution and (2) so long as the Plaintiff is incarcerated at Everglades Correctional Institution.

15. Dr. Dieguez cannot be liable for any alleged constitutional violation which allegedly occurred before February 18, 2016 (the date Plaintiff arrived at Everglades Correctional Institution) and during any other time the Plaintiff was not at Everglades Correctional Institution, including dates in October of 2016 when Plaintiff was incarcerated at Jefferson Correctional Institution.

16. Plaintiff's Complaint makes various allegations against the "Defendants," which now include only Dr. Dieguez and Secretary Jones. When the Complaint was filed, two additional Defendants were in the Complaint. (Dr. Le and Warden Acosta.) Dr. Dieguez is not, and cannot be held, vicariously liable for any alleged wrongdoing of the Florida Department of Corrections, Dr. Le, or

Warden Acosta. Therefore, to the extent any alleged liability is founded on these grounds, Dr. Dieguez cannot be held liable.

17. Any declaratory or injunctive relief request seeking hormone therapy is moot because Plaintiff currently receives hormone therapy and is expected to continue to receive hormone therapy so long as it is medically necessary to treat Plaintiff's gender dysphoria.

18. Plaintiff is not entitled to injunctive relief against Dr. Dieguez for the relief sought in paragraph 98a because Plaintiff is not being denied any medically necessary treatment for gender dysphoria.

19. Plaintiff is not entitled to injunctive relief against Dr. Dieguez for the relief sought in paragraph 98c because Dr. Dieguez is not enforcing the "rule limiting treatment for Gender Dysphoria to treatment provided prior to incarceration."

20. No specific and plausible relief is sought against Dr. Dieguez. Therefore, Plaintiff fails to state a cause of action against her pursuant to Federal Rule of Civil Procedure 8 and *Ashcroft v. Iqbal*.

21. Plaintiff's remedies are limited by the Prison Litigation Reform Act, Title 42, Section 1997e of the United States Code.

22. Because Dr. Dieguez was not and is not responsible for any alleged violation of Plaintiff's constitutional rights, Plaintiff is not entitled to attorneys' fees, litigation expenses or costs. Nonetheless, should Plaintiff obtain the requested relief against Dr. Dieguez, Plaintiff's claim for attorneys' fees is limited to

\$1.50, (150% of the judgment damages sought in the amount of \$1) pursuant to the Prison Litigation Reform Act, Title 42 Section 1997e, of the United States Code.

23. Any claim for damages is precluded by the Eleventh Amendment and/or sovereign immunity.

Respectfully submitted,

By: s/Daniel R. Lazaro

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Attorneys for Defendant, Dr. Dieguez

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **2nd day of November, 2016**, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record, in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive Notices of Electronic Filing.

By: s/Daniel R. Lazaro

DANIEL R. LAZARO, ESQ.

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