

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

**MINOR I. DOE, through parent
PARENT I. DOE; MINOR II. DOE,
through parent PARENT II. DOE,**

Plaintiffs,

Case No.: 3:08-cv-361-MCR-EMT

v.

**SCHOOL BOARD FOR SANTA
ROSA COUNTY, FLORIDA; JOHN
ROGERS, in his official capacity as
Superintendent of the School District of
Santa Rosa County, Florida; H. FRANK
LAY, in his official capacity as
Principal of Pace High School,**

Defendants.

**DEFENDANTS' NOTICE OF ADMISSION OF LIABILITY,
UNOPPOSED MOTION FOR SCHEDULING CONFERENCE
AND UNOPPOSED MOTION TO STAY DISCOVERY**

Defendants, **SCHOOL BOARD FOR SANTA ROSA COUNTY, FLORIDA** (“School Board”), **JOHN ROGERS, in his official capacity as Superintendent of the School District of Santa Rosa County, Florida** (“Superintendent”) and **H. FRANK LAY, in his official capacity as Principal of Pace High School** (“Principal”) (collectively, the “Defendants”), by and through the undersigned counsel, hereby provide notice of Defendants’ admission of liability, and pursuant to Rules 16 and 26 of the Federal Rules of Civil Procedure, hereby request an order setting a scheduling conference and staying all discovery, and in support advise the Court and the Parties as follows:

1. Prior to the lawsuit filed by Plaintiffs, Defendants School Board and Superintendent were in the process of developing and advertising policies to address the issues raised in this lawsuit, as well as other issues relating to religious matters.

2. The School Board's counsel provided a draft of a new School Board policy to Plaintiffs' counsel and requested his review and input. In addition to the new, proposed policy, Plaintiffs' counsel was advised that a detailed, operational administrative directive would be created and placed in effect by the Superintendent of schools so that all school personnel would be aware of how to comply with the new school board policy.

3. The School Board's counsel verbally notified Plaintiffs' attorney that the policy would be discussed by the Board at their August 28, 2007 meeting and invited him and representatives of the ACLU to appear and address the Board. If the policy was adopted by the Board for advertisement, pursuant to Chapter 120, Florida Statutes, it would have been considered for final adoption at a subsequent School Board meeting in accordance with Florida Law.

4. On Monday, August 27, 2008, the day before the School Board meeting in which the proposed policy was scheduled to be presented, Plaintiffs' counsel notified the Defendants that this lawsuit had been filed.

5. As a result of the Plaintiffs' filing this action on the day before the school board meeting, as more particularly set forth above, the School Board took no action to discuss or approve the policy for advertisement at the August 28, 2008 meeting.

6. Defendants hereby provide notice that they admit liability in this action and

acknowledge that Plaintiffs are entitled to certain relief.

7. Accordingly, pursuant to Rule 16(c) of the Federal Rules of Civil Procedure, Defendants respectfully request that a scheduling conference be set to discuss what relief should be afforded Plaintiffs based upon the practices they have alleged to be unconstitutional. In addition, in order to arrive at a just result for all Parties, and to expedite procedures for fashioning relief, Defendants request that the Presiding Judge or, in the alternative, the Presiding Magistrate Judge set conferences to oversee the fashioning of a Consent Decree or such other order to address the issues in this action.

8. Further, in order to conserve resources in light of the dire financial circumstances affecting the Defendant School Board, so that its diminishing funds may be utilized in the classroom for the benefit of the students rather than in these proceedings and to promote the just, speedy and inexpensive disposition of the action, pursuant to *Fed. R. Civ. P.* 26 (b)(2)(C), Defendants, without opposition from the Plaintiffs, move for the entry of an order staying all discovery to allow the Parties the opportunity to work with the Court to effectuate relief for the claims brought in this case.

WHEREFORE, Defendants, SCHOOL BOARD FOR SANTA ROSA COUNTY, FLORIDA, JOHN ROGERS, in his official capacity as Superintendent of the School District of Santa Rosa County, Florida and H. FRANK LAY, in his official capacity as Principal of Pace High School,¹ notifies the Court that they admit liability in this action, acknowledge

¹ Nothing herein is intended to or should be construed as an admission of liability of any party in their individual capacity.

that Plaintiffs are entitled to certain relief and hereby request an order setting a scheduling conference and staying all discovery.

MEMORANDUM OF LAW

It is well established that the Court has the inherent power to stay proceedings and manage the cases on its docket. *Landis v. North Am. Waterworks & El. Co., Inc.* is the seminal case establishing the Court's power to stay proceedings and authorizing the use of such power. 299 U.S. 248 (1936). In *Landis*, the Respondent brought suit in multiple jurisdictions to enjoin the enforcement of the Public Utility Holding Company Act of 1935 on the ground that the Act was unconstitutional. The District Court stayed the cases pending the disposition of another case that would narrow the issues in the pending issues and resolve certain questions of law. The Supreme Court held that the "power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel and for litigants." *Id.* at 254-255. A court must exercise judgment and weigh competing interests and maintain a balance. *Id.* Various factors should be considered in determining to grant a stay by weighing the competing interests of the parties, such as the possible damage that may result from the grant of a stay, the orderly course of justice, and the hardship a party may suffer by being required to go forward with a case. *Id.* Additionally, the Court noted that, especially in cases of "extraordinary public moment," a party might be required to submit to a reasonable delay if the public welfare or convenience will be promoted as a result. *Id.*

The principles in *Landis* are frequently cited to in support of a district court's inherent discretionary authority to stay proceedings before it. The district court has "broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681 (1997); *CTI-Container Leasing Corp. v. Uiterwyk Corp.*, 685 F.2d 1284, 1288 (11th Cir. 1982). The party moving for a stay bears the burden of demonstrating that it is appropriate. *Govt. of the Virgin Islands v. Neadle*, 861 F. Supp 1054, 1055 (M.D. Fla. 1994) (citing *Landis*, 299 U.S. at 254). A stay is appropriate where, as here, the defendant seeks to resolve the plaintiff's concerns. *EEOC v. Canadian Indemnity Co.*, 407 F. Supp. 1366, 1368 (C.D. Cal. 1976) (stay appropriate where defendant expressed willingness to accede to demands of the EEOC).

Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense and is reasonably calculated to lead to the discovery of admissible evidence. *Fed. R. Civ. P.* 26(b). However, the Court must limit the extent of discovery if it determines that:

1. The discovery sought is unreasonably cumulative or duplicative;
2. The burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case.

Fed. R. Civ. P. 26 (b)(2)(C) (emphasis added).

The Defendants here have admitted liability and have requested the Court's assistance in resolving the only remaining issue; Plaintiffs' entitlement to relief. There are no claims for monetary damages. Accordingly, any additional discovery in this matter is not reasonably calculated to lead to the discovery of admissible evidence as Defendants have admitted they

are liable for the allegations contained in Plaintiffs' Complaint. Moreover, in light of the Defendants' admission, the significant cost and expense of further discovery substantially outweighs any possible benefit. Accordingly, the Court should stay all discovery so the parties may, under the supervision of the Court, fashion a Consent Decree to address the issues in this action.

Conclusion

For the reasons more fully set forth above, the Court should set a case management conference and stay all discovery in this matter.

Certificate of Attorney Conference

Pursuant to N. D. Fla. Loc. R. 7.1, the undersigned has conferred with Benjamin Stevenson, counsel for the Plaintiffs, who does not oppose the setting of a case management conference and the staying of all discovery.

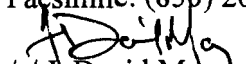
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Respectfully submitted this 15th day of December, 2008.

/s/ Robert J. Sniffen

ROBERT J. SNIFFEN

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/s/ J. David Marsey

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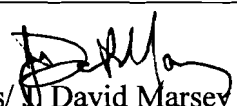
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**COUNSEL FOR DEFENDANTS
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COUNTY, FLORIDA, JOHN ROGERS,
IN HIS OFFICIAL CAPACITY AS
SUPERINTENDENT OF THE
SCHOOL DISTRICT OF SANTA
ROSA COUNTY, FLORIDA and H.
FRANK LAY, IN HIS OFFICIAL
CAPACITY AS THE PRINCIPAL OF
PACE HIGH SCHOOL**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of December, 2008, I electronically filed the above pleading in the United States District Court for the Northern District of Florida, Tallahassee Division, by using the CM/ECF system which will send a notice of electronic filing to the following counsel of record:

<p><u>Counsel For Plaintiffs:</u></p> <p>Benjamin James Stevenson American Civil Liberties Union Foundation of Florida Post Office Box 12723 Pensacola, Florida 32591-2723</p> <p>Glenn M. Katon American Civil Liberties Union Foundation of Florida Post Office Box 18245 Tampa, Florida 33679</p> <p>Randall C. Marshall Maria Kayanan American Civil Liberties Union Foundation of Florida 4500 Biscayne Boulevard, Suite 340 Miami, Florida 33137</p> <p>Daniel Mach Heather L. Weaver ACLU Program on Freedom of Religion and Belief 915 15th Street, NW Washington, DC 20005</p>	
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/s/ David Marsey
J. DAVID MARSEY