

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

PRIVACY MATTERS, a voluntary unincorporated association, and **PARENT A**, president of Privacy Matters,

Plaintiffs,

vs.

UNITED STATES DEPARTMENT OF EDUCATION; JOHN B. KING, JR., in his official capacity as United States Secretary of Education; **UNITED STATES DEPARTMENT OF JUSTICE; LORETTA E. LYNCH**, in her official capacity as United States Attorney General; and **INDEPENDENT SCHOOL DISTRICT NUMBER 706, STATE OF MINNESOTA**.

Defendants.

Case No. 0:16-cv-03015-WMW-LIB

Judge Wilhelmina M. Wright
Magistrate Judge Leo I. Brisbois

**PLAINTIFFS' RESPONSE TO MOTION TO INTERVENE (DOC. 22) AND
INTERVENOR'S MOTION TO FILE DOCUMENTS UNDER SEAL (DOC. 32)**

Plaintiffs do not oppose the proposed Intervenor's Motion to Intervene (Doc. 22) or Intervenor's Motion to File Documents Under Seal (Doc. 32).

For clarity in respect to the Motion to Intervene, Plaintiffs acknowledge that Doe has reasonable arguments that the Federal Defendants would not adequately represent Doe's interests, given that Federal Defendants claim that their putative "guidance" documents have nothing to do with the challenged District 706 policies. (Fed. Dfs' Opp. to Plfs' Mot. for Prelim. Inj., Doc 37 at 1). Plaintiffs do not, however, concede that Doe would be treated differently than the general public should Plaintiffs prevail (Intervenor's

Mem. in Supp. of Mot. to Intervene, Doc. 24 at 12-13) as the injunctive relief Plaintiffs seek would result in Doe being treated consistently with his sex, which would be compliant with both Title IX and 34 CFR § 106.33 (allowing sex-specific intimate facilities). Of course, Defendants and the Intervenor take the contrary position that “sex” means “gender identity” (which is very different than sex) but that issue is already being briefed in the preliminary injunction motions.

As to Plaintiffs using male identifiers for Doe, Doe’s mother admits Doe was born a male (Doc. 24 at 3; Decl. of Sarah Doe in Supp. of Mot. to Intervene by Jane Doe, Doc. 26 at 1); admits that Doe is very aware that he has “parts of her anatomy that are different than those of her friends,” (Intervenor’s Proposed Memo. in Opp. to Plaintiffs’ Mot. for Prelim. Inj., Doc. 25-1 at 2) and that those parts “do not conform to her female gender identity,” (Doc. 26 at 3). Similarly, the Defendant District admits Doe’s “biological maleness.” (Defendant. Ind. Sch. Dist. No. 706’s Mem. in Opp. to Plaintiff’s Mot. for Prelim. Inj., Doc. 33 at 12). Accordingly, in Plaintiffs’ view it is a matter of accuracy and appropriate legal advocacy to identify Doe as male.

Nonetheless, to respond to Doe’s reported sensitivity to the issue, Plaintiffs adopt the convention of simply using “Doe” in lieu of pronouns when that convention does not result in ambiguity or clumsy sentence construction. And for consistency in the briefs going forward, Plaintiffs will use “Doe” in lieu of “Student X” to identify Doe. That term has served its purpose by allowing the case to be filed without prejudicing the ability of Doe to intervene and proceed anonymously if he so desired.

Respectfully submitted this the 18th day of October, 2016.

By: /s/ Jordan Lorence

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CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2016, I electronically filed the foregoing document entitled Plaintiffs' Response to Motion to Intervene (Doc 22) and Intervenor's Motion to File Documents Under Seal (Doc 32) with the Clerk of Court using the ECF system, which will effectuate service on all parties.

/s/ Jordan Lorence

Jordan Lorence