

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

INSTITUTE FOR CREATION	§	
RESEARCH GRADUATE SCHOOL,	§	
Plaintiff,	§	
	§	
v.	§	CAUSE NO. A:09 CA 382
	§	
TEXAS HIGHER EDUCATION	§	
COORDINATING BOARD, a state	§	
agency; <i>et al</i>	§	

JOINT RULE 26(F) REPORT

TO THE HONORABLE SAM SPARKS:

Pursuant to the Court's May 19, 2009 order, the parties jointly file this report detailing the June 23, 2009 conference held between counsel for each party.

1. Possibility of Prompt Settlement

The parties discussed the possibility of settlement based on the legal question of whether the Texas Higher Education Coordinating Board is authorized to regulate the Institute for Creation Research Graduate School. The parties could not agree on that legal question, and Plaintiff has sought relief on that issue in its Rule 12(c) motion for judgment currently pending before the Court.

2. Exchange of Initial Disclosures

The parties will exchange initial disclosures under Rule 26(f) by August 28, 2009.

3. Preserving Discoverable Information

The parties agreed to make efforts to preserve all discoverable information.

4. Proposed Discovery Plan

- (A) what changes should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement of when initial disclosures were made or will be made;

No changes to Rule 26(a) disclosures. The parties will exchange initial disclosures under Rule 26(f) by August 28, 2009.

- (B) The subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;

The parties discussed the need for discovery and agreed, preliminarily, that discovery would likely not extend beyond the record that was before the Texas Higher Education Coordinating Board in reviewing the Institute for Creation Research Graduate School's application for a Certificate of Authority to offer a Master of Science degree in science education in Texas. The parties recognized however, that discovery could potentially extend beyond the scope of their initial agreement and, thus, have allowed time in their proposed scheduling order to account for any need for additional information. Specifically, the parties have proposed March 8, 2010 as the discovery deadline.

- (C) Any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

The parties discussed the need for disclosure of any electronically stored information, and agreed that it is unlikely that discovery will include any electronically stored information. The parties however acknowledged the possibility that such documents might be sought and thus, agreed to provide those documents in paper format to the requesting party.

- (D) Any issues about claims of privilege or of protection as trial-preparation materials, including-if the parties agree on a procedure to assert these claims after production-whether to ask the court to include their agreement in an order;

None. See response to 4(B) above, regarding the parties' expectations about the relevant scope of discovery. Obviously, attorney-client emails and the like are claimed as privileged by the respective parties.

- (E) What changes should be made in the limitations on discovery imposed under these rules or by local rule, and what other limitations should be imposed; and

None.

- (F) Any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c).

None.

Respectfully submitted,

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