

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JANE DOE H.,)	
)	
Plaintiff,)	
v.)	Case No. 16-2727-JTM-KGG
)	
HASKELL INDIAN NATIONS)	
UNIVERSITY, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

**MEMORANDUM & ORDER ON
DEFENDANTS' MOTION TO STAY DISCOVERY**

Now before the Court is Defendants' Motion to Stay Discovery. (Doc. 50.)

For the reasons set forth below, the undersigned Magistrate Judge **GRANTS**
Defendants' motion.

BACKGROUND

Plaintiff is a former student at Defendant Haskell Indian Nations University. She alleges various violations of her federal rights, including pursuant to Title IX of the Education Amendments of 1972 and the Fifth Amendment of the United States Constitution, as a result of a sexual assault she allegedly experienced on Defendant's campus in the fall of 2014. (*See generally* Doc. 1.)

Currently pending before the District Court in this matter are dispositive motions filed by the individually named Defendants as well as Defendant United

States of America. (Docs. 29, 31, 33, 35.) Defendants have filed the present motion (Doc. 50), seeking an Order staying discovery pending a ruling by the District Court on the pending dispositive motions.

DISCUSSION

It is the general policy of this District not to stay discovery, notwithstanding the existence of pending dispositive motions. *Wolf v. United States*, 157 F.R.D. 494, 495 (D.Kan.1994). Four exceptions to this policy have been recognized:

(1) the case is likely to be finally concluded via the dispositive motion; (2) the facts sought through discovery would not affect the resolution of the dispositive motion; (3) discovery on all issues posed by the complaint would be wasteful and burdensome; or (4) the dispositive motion raises issues as to the defendant's immunity from suit.

Citizens for Objective Public Educ. Inc. v. Kansas State Bd. of Educ., No. 1304119–KHV, 2013 WL 6728323, *1 (D. Kan. Dec.19, 2013); *see also Kutilek v. Gannon*, 132 F.R.D. 296, 297–98 (D. Kan. 1990). The decision whether to stay discovery rests in the sound discretion of the Court. *Clinton v. Jones*, 520 U.S. 681, 706, 117 S.Ct. 1636, 137 L.Ed.2d 945 (1997); *see also Kutilek*, 132 F.R.D. at 297; *American Maplan. Corp. v. Heilmayr*, 203 F.R.D. 499, 501 (D.Kan.2001) (stating that a magistrate's non-dispositive pretrial orders are subject to a deferential, “clearly erroneous” standard).

As discussed above, there currently are motions pending before the District Court in which Defendant United States has asserted its sovereign immunity and the individual Defendants have asserted the defense of qualified immunity. (*See* Docs. 29, 31, 33, 35.) “[W]hen immunity is asserted by dispositive motion, a stay of discovery is appropriate pending a ruling on the immunity issue.” *Garrett’s Worldwide Enterprises, LLC, et al. v. U.S.*, No. 14-2281-JTM, 2014 WL 7071713, at *1 (D. Kan. Dec. 12, 2014). Defendant also argues that the stay is appropriate because the pending dispositive motions “could finally conclude the litigation . . . and discovery would not affect the resolution of that motion, or discovery would be wasteful and unduly burdensome.” (Doc. 51, at 4.) The Court agrees. Defendants’ requested stay is **GRANTED**.

Plaintiff asks the Court for “permission to depose the Individual Defendants if the Court desires more factual allegations than what have been provided in the Complaint.” (Doc. 60, at 1.) The dispositive motions will be decided by the District Court, not the undersigned Magistrate Judge. As such, the undersigned has discussed this issue with the District Court. The District Court will take the issue of additional discovery under advisement and authorize such discovery, if any, as the Court deems necessary.

IT IS THEREFORE ORDERED that Defendants' Motion to Stay
Discovery (Doc. 50) is **GRANTED**.

IT IS SO ORDERED.

Dated at Wichita, Kansas, on this 7th day of June, 2017.

S/ KENNETH G. GALE
KENNETH G. GALE
United States Magistrate Judge