

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

J.A.W., a minor child, by his next)	
friend Wyatt Squires,)	
)	
Plaintiff,)	
)	
v.)	No. 3:18-cv-37
)	
EVANSVILLE VANDERBURGH SCHOOL)	
CORPORATION,)	
)	
Defendant.)	

Complaint for Declaratory and Injunctive Relief and Damages

Introductory statement

1. J.A.W. is a transgender high school student attending schools within the Evansville Vanderburgh School Corporation. He has been diagnosed with gender dysphoria, is under a physician’s care, and is taking hormone therapy. He has requested permission to use the male restrooms in the schools as he identifies as male, even though his birth certificate notes his gender at birth as female. He has been informed that he may not use the male restrooms and if he does so he risks discipline. The denial of his ability to use the male restrooms violates both the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1681(a). He is entitled to declaratory and injunctive relief, as well as his damages.

Jurisdiction, venue, and cause of action

2. This Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331 and § 1343.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391.
4. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201 and 2202.
5. Plaintiff brings his claim pursuant to 42 U.S.C. § 1983 to redress the deprivation of rights secured by the United States Constitution and as a private cause of action directly pursuant to Title IX as authorized by *Cannon v University of Chicago*, 441 U.S. 677, 717 (1979).

Parties

6. J.A.W. is a minor child who resides in Evansville, Indiana.
7. The Evansville Vanderburgh School Corporation (“EVSC”) is the entity that provides public school services in the Evansville, Vanderburgh County area.

Factual allegations

8. J.A.W. is currently a junior attending a program that is in two high schools in the EVSC.
9. Wyatt Squires is an adult resident of Indiana who is a transgender advocate who is a friend and mentor to J.A.W.
10. Although the gender assigned to J.A.W at birth, and noted on his birth certificate, is female, he has long identified himself as male.
11. By the time he was 12 he had informed his family that he identified himself as male and he began to make himself masculine in appearance including wearing male clothing and cutting his hair in a masculine manner.

12. At that time he also asked his family, teachers and friends to refer to him by a male first name and to use male pronouns when referring to him.

13. When he was a freshman, attending one EVSC high school, he began to use the male restrooms.

14. However, he was instructed by a school administrator that he was not allowed to use the male restrooms.

15. He was told that he would have to use the women's restrooms in the school or use the restroom in the school nurse's office.

16. However, the school nurse's office was not a viable option as it was very far from his classes and was frequently locked as the nurse was frequently not in the office.

17. Moreover, he did not wish to use the female restrooms as he did not identify as female.

18. It made him extremely uncomfortable to use female restrooms and was emotionally and psychologically difficult as it prevented him from presenting himself as a male.

19. When he was a freshman he was required to take gym. He and another transgender student were required to change in an upstairs portion of the girls' locker room, away from other students.

20. When he was a sophomore he asked the school's principal if he could use the male restrooms given that J.A.W. believed that the position of the United States Department of Education at that time was that transgender students could use the restrooms of their identified gender.

21. However, J.A.W. was again informed that he could not use the male facilities.

22. In his sophomore year he took a semester of gym and was again required to change in an upstairs portion of the girls' locker room with another transgender student.

23. J.A.W. is currently under a physician's care and has been diagnosed as having gender dysphoria.

24. J.A.W. has received counseling in the past to assist him with dealing with his identity and the emotional problems occasioned by the gender dysphoria and the reaction of the world – including the school – to his male identity.

25. For the past seven months J.A.W. has been prescribed, and has been taking, male hormones.

26. This hormone therapy has accelerated the development of his male characteristics.

27. J.A.W. does not identify himself as female and does not appear to be female.

28. Using a female restroom at this point would undermine his transition and would be wrong as he is not female.

29. As noted above, use of the nurse's restroom, which was offered in one of the two EVSC schools he is now attending, is not a viable option. Not only is it distant and not readily available, use of it would emphasize to both him and to the school community that he is "different" than everyone else and would undermine his transition.

30. Because of his experience as a freshman and sophomore he simply has attempted to cease using any restrooms while at school. Instead, he restricts his fluid intake so that he will not need to relieve himself while at school.

31. This has caused him pain and distress.

32. On a few occasions when he simply had to use the restroom during the time he is at school he has been forced to use female restrooms as he does not want to risk discipline by EVSC. This has made him feel extremely uncomfortable and has caused him depression and other emotional difficulties.

33. In late January of 2018 his attorney contacted counsel for the EVSC and requested that J.A.W. be able to use the male restrooms at the school.

34. The attorney responded on February 5, 2018, noting that the school would continue to make a private bathroom available to J.A.W.—presumably the nurse’s bathroom—but that EVSC was unwilling to allow J.A.W. to use the male restrooms.

35. The letter indicates that J.A.W. “cannot use male restrooms without risk of punishment.” (emphasis in original).

36. J.A.W. is being caused irreparable harm for which there is no remedy at law.

37. EVSC is a recipient of federal funding and is an entity covered by Title IX.

38. At all times EVSC has acted and has failed to act under color of state law.

39. The actions and inactions of EVSC represent intentional discrimination and have damaged J.A.W.

Legal claims

40. The failure of EVSC to allow J.A.W. to use male restrooms in its schools represents unlawful discrimination on the grounds of sex in violation of Title IX, 20 U.S.C. § 1681(a).

41. The failure of EVSC to allow J.A.W. to use male restrooms in its schools represents intentional discrimination predicated on sex-based classifications and violates the Equal Protection Clause of the Fourteenth Amendment.

WHEREFORE, J.A.W. requests that this Court:

- a. Accept jurisdiction of this case and set it for a prompt hearing.
- b. Declare that defendant has violated plaintiff's rights for the reasons noted above.
- c. Enter a preliminary injunction, later to be made permanent, requiring EVSC to allow J.A.W. to use the male restrooms and similar facilities in its schools without penalty.
- d. Award plaintiff his damages.
- e. Award plaintiff his reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.
- f. Award all other proper relief.

s/ Kenneth J. Falk

Kenneth J. Falk
No. 6777-49

s/ Gavin M. Rose

Gavin M. Rose
No. 26565-53

s/ Jan P. Mensz

Jan P. Mensz
No. 33798-49
ACLU of Indiana
2457 E. Washington St. - Suite Z
Indianapolis, IN 46201
317/635-4059
fax: 317/635-4105
kfalk@aclu-in.org
grose@aclu-in.org
jmensz@aclu-in.org

Attorneys for Plaintiff