

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

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

DEFENDANT’S MOTION TO STRIKE

Comes now the Defendant, Evansville Vanderburgh School Corporation (“EVSC”), by counsel, pursuant to Rule 12(f) of the Federal Rules of Civil Procedure and Rule 802 of the Federal Rules of Evidence, and hereby moves the Court to strike portions of the Declaration of J.A.W. and the Declaration of Wyatt Squires (Dkt. 17) submitted as evidence supporting Plaintiff’s Response in Opposition to Motion to Dismiss (the “Response”). In support hereof, EVSC states:

1. It is well settled that a court may strike from an affidavit any statement that is inadmissible hearsay, speculation or unsupported argument. See *Pfeil v. Rogers*, 757 F.2d 850, 861-63 (7th Cir. 1985); see also *Keller v. Ind. Family & Soc. Servs. Admin.*, 639 F. Supp. 2d 928, 939 (S.D. Ind. 2009).

2. “Evidence is hearsay when its probative force depends on the competency and credibility of some person other than the witness.” *In re Sawyer’s Petition*, 229 F.2d 805, 809 (7th Cir. 1956).

3. Paragraph 36 of the Declaration of J.A.W. reads, “I have spoken with my mother about my efforts to use male restrooms within the schools I attend and she supports my efforts and in this case. However, she is involved in a dissolution of marriage case with her current

husband and does not want to be involved in any other court proceedings at this point. She did indicate that when her current divorce case is over she will be willing to serve as next friend in this case.”

4. Paragraph 41 of the Declaration of J.A.W. reads, “My mother specifically noted that she agreed that in her absence Mr. Squires should serve as my next friend in this litigation.”

5. Paragraph 8 of the Declaration of Wyatt Squires reads, “I understand that his mother is not willing at this point, due to her personal situation, to be his next friend although she may wish to be his next friend in the future.”

6. The foregoing paragraphs provide hearsay statements allegedly made by J.A.W.’s mother, not J.A.W. or Wyatt Squires.

7. As such, these statements are inadmissible hearsay, and Plaintiff’s reliance thereon for the Response is without legal basis.

8. Accordingly, paragraphs 36 and 41 of the Declaration of J.A.W. and paragraph 8 of the Declaration of Wyatt Squires should be stricken.

WHEREFORE, Defendant respectfully requests that this Court strike paragraphs 36 and 41 of the Declaration of J.A.W. and paragraph 8 of the Declaration of Wyatt Squires, and for all other relief just and proper in the premises.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 1st day of May, 2018, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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