UNITED STATES DISTRICT COURT
Southern District of Indiana

Laura A. Briggs, Clerk of Court

Birch Bayh Federal Building
& U.S. Courthouse, Room 105
46 East Ohio Street
Indianapolis, IN 46204
(317) 229-3700

U.S. Courthouse, Room 104
921 Ohio Street
Terre Haute, IN 47807
(812) 231-1840

Winfield K. Denton Federal Building
& U. S. Courthouse, Room 304
101 NW Martin Luther King Blvd.
Evansville, IN 47708
(812) 434-6410

Lee H. Hamilton Federal Building
& U.S. Courthouse, Room 210
121 West Spring Street
New Albany, IN 47150
(812) 542-4510

August 8, 2018

Kenneth J. Falk
ACLU OF INDIANA
2457 E. Washington Street
Suite Z
Indianapolis, IN 46201

Patrick A. Shoulders
ZIEMER STAYMAN WEITZEL & SHOULDERS
PO Box 916
Evansville, IN 47706

RE: J.A.W. v. EVANSVILLE VANDERBURGH SCHOOL CORPORATION

CAUSE NO: 3:18-cv-00037-WTL-MPB

Dear Appellant and Appellee:

Please be advised that the Notice of Appeal filed in 3:18-cv-00037-WTL-MPB has been forwarded to the United States Court of Appeals for the Seventh Circuit. The Clerk of the Seventh Circuit will assign an appellate case number, docket the appeal, and notify case participants of the Seventh Circuit case number assigned to this matter.

Please review Seventh Circuit Rule 10 (enclosed) for guidance regarding record preparation.

Please contact the Clerk's office with any questions or concerns.

Sincerely,
Laura A. Briggs,
Clerk of Court

By Laura Townsend, Deputy Clerk
812-542-4511

Selected Rules for Reference

CIRCUIT RULE 10. Preparation and Accessibility of Record in District Court Appeals

(a) Record Preparation Duties.

(1) Within 14 days of filing the notice of appeal the district court must ensure the district court docket is complete and made available electronically to the court of appeals.

(2) The clerk of the district court must prepare and hold any confidential record or exhibit not available electronically on the district court docket until requested by the court of appeals.

(3) Counsel must ensure, within 21 days of filing the notice of appeal, that all electronic and non electronic documents necessary for review on appeal are on the district court docket.

(b) *Correction or Modification of Record.* A motion to correct or modify the record pursuant to Rule 10(e), Fed. R. App. P., or a motion to strike matter from the record on the ground that it is not properly a part thereof must be presented first to the district court. That court's order ruling on the motion must be included as part of the record and a notice of the order must be sent to the court of appeals.

(c) *Order or Certification with Regard to Transcript.* Counsel and court reporters are to utilize the form prescribed by this court when ordering transcripts or certifying that none will be ordered. For specific requirements, see Rules 10(b) and 11(b), Fed. R. App. P.

(d) *Ordering Transcripts in Criminal Cases.*

(1) *Transcripts in Criminal Justice Act Cases.* At the time of the return of a verdict of guilty or, in the case of a bench trial, an adjudication of guilt in a criminal case in which the defendant is represented by counsel appointed under the Criminal Justice Act (C.J.A.), counsel for the defendant must request a transcript of testimony and other relevant proceedings by completing a C.J.A. Form No. 24 and giving it to the district judge. If the district judge believes an appeal is probable, the judge must order transcribed so much of the proceedings as the judge believes necessary for an appeal. The transcript must be filed with the clerk of the district court within 40 days after the return of a verdict of guilty or, in the case of a bench trial, the adjudication of guilt or within seven days after sentencing, whichever occurs later. If the district judge decides not to order the transcript at that time, the judge must retain the C.J.A. Form No. 24 without ruling. If a notice of appeal is filed later, appointed counsel or counsel for a defendant allowed after trial to proceed on appeal in forma pauperis must immediately notify the district judge of the filing of a notice of appeal and file or renew the request made on C.J.A. Form No. 24 for a free transcript.

(2) *Transcripts in Other Criminal Cases.* Within 14 days after filing the notice of appeal in other criminal cases, the appellant or appellant's counsel must deposit with the court reporter the estimated cost of the transcript ordered pursuant to Rule 10(b), Fed. R. App. P., unless the district court orders that the transcript be paid for by the United States. A non-indigent appellant must pay a pro rata share of the cost of a transcript prepared at the request of an indigent co-defendant under the Criminal Justice Act unless the district court determines that fairness requires a different division of the cost. Failure to comply with this paragraph will be cause for dismissal of the appeal.

(e) *Indexing of Transcript.* The transcript of proceedings to be part of the record on appeal (and any copies prepared for the use of the court or counsel in the case on appeal) must be bound by the reporter, with the pages consecutively numbered throughout. The transcript of proceedings must contain a suitable index, as well as the following information:

(1) An alphabetical list of witnesses, giving the pages on which the direct and each other examination of each witness begins.

(2) A list of exhibits by number, with a brief description of each exhibit indicating the nature of its contents, and with a reference to the pages of the transcript where each exhibit has been identified, offered, and received or rejected.

(3) A list of other significant portions of the trial such as opening statements, arguments to the jury, and instructions, with a reference to the page where each begins.

When the record includes transcripts of more than one trial or other distinct proceeding, and it would be cumbersome to apply this paragraph to all the transcripts taken together as one, the rule may be applied separately to each transcript of one trial or other distinct proceeding.

(f) *Presentence Reports.* The presentence report is part of the record on appeal in every criminal case. The district court must maintain this report under seal, unless it has already been placed in the public record in the district court. If the report is under seal, the report may not be included in the appendix to the brief or the separate appendix under Fed. R. App. P. 30 and Circuit Rule 30. Counsel of record may review the presentence report but may not review the probation officer's written comments and any other portion submitted in camera to the trial judge.

(g) *Effect of Omissions from the Record on Appeal.* When a party's argument is countered by a contention of waiver for failure to raise the point in the trial court or before an agency, the party opposing the waiver contention must give the record cite where the point was asserted and also ensure that the record before the court of appeals contains the relevant document or transcript.

NOTE: The complete Federal Rules of Appellate Procedure & Rules of the 7th Circuit Court of Appeals are available at: http://www.ca7.uscourts.gov/Rules/Rules/rules.pdf

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August 8, 2018

RE: J.A.W. v. EVANSVILLE VANDERBURGH SCHOOL CORPORATION

CAUSE NO: 3:18-cv-00037-WTL-MPB

Dear Appellant:

A Notice of Appeal was filed in the above case on August 07, 2018. However, a "Docketing Statement" was not filed along with the Notice of Appeal, as required by Circuit Rule 3(c) of the U.S. Court of Appeals for the Seventh Circuit. A copy of the rule is attached for reference.

Pursuant to the Seventh Circuit Rule 3(c), the appellant must serve on all parties a docketing statement and file said statement with the Clerk of the Seventh Circuit within seven (7) days of the filing of the Notice of Appeal.

IMPORTANT: Please do not submit the docketing statement to the U.S. District Court. The docketing statement must be filed electronically with the Seventh Circuit pursuant to Circuit Rule 25. If the appellant is proceeding pro se, then the docketing statement should be filed on paper by mailing the same to the address below:

Gino Agnello, Clerk
United States Court of Appeals
219 South Dearborn Street, Suite 2722
Chicago, IL 60604

Please contact the Clerk's office with any questions or concerns.

Sincerely,
Laura A. Briggs,
Clerk of Court

By Laura Townsend, Deputy Clerk
812-542-4511

Selected Rules for Reference

CIRCUIT RULE 3. Notice of Appeal, Docketing Fee, Docketing Statement, and Designation of Counsel of Record

(a) *Forwarding Copy of Notice of Appeal.* When the clerk of the district court sends to the clerk of this court a copy of the notice of appeal, the district court clerk shall include any docketing statement. In civil cases the clerk of the district court shall include the judgments or orders under review, any transcribed oral statement of reasons, opinion, memorandum of decision, findings of fact, and conclusions of law. The clerk of the district court shall also complete and include the Seventh Circuit Appeal Information Sheet in the form prescribed by this court.

(b) *Dismissal of Appeal for Failure to Pay Docketing Fee.* If a proceeding is docketed without prepayment of the docketing fee, the appellant shall pay the fee within 14 days after docketing. If the appellant fails to do so, the clerk is authorized to dismiss the appeal.

(c)(1) *Docketing Statement.* The appellant must serve on all parties a docketing statement and file it with the clerk of the district court at the time of the filing of the notice of appeal or with the clerk of this court within seven days of filing the notice of appeal. The docketing statement must comply with the requirements of Circuit Rule 28(a). If there have been prior or related appellate proceedings in the case, or if the party believes that the earlier appellate proceedings are sufficiently related to the new appeal, the statement must identify these proceedings by caption and number. The statement also must describe any prior litigation in the district court that, although not appealed, (a) arises out of the same criminal conviction, or (b) has been designated by the district court as satisfying the criteria of 28 U.S.C. §1915(g). If any of the parties to the litigation appears in an official capacity, the statement must identify the current occupant of the office. The docketing statement in a collateral attack on a criminal conviction must identify the prisoner's current place of confinement and its current warden; if the prisoner has been released, the statement must describe the nature of any ongoing custody (such as supervised release) and identify the custodian. If the docketing statement is not complete and correct, the appellee must provide a complete one to the court of appeals clerk within 14 days after the date of the filing of the appellant's docketing statement.

(2) Failure to file the docketing statement within 14 days of the filing of the notice of appeal will lead to the imposition of a $100 fine on counsel. Failure to file the statement within 28 days of the filing of the notice of appeal will be treated as abandonment of the appeal, and the appeal will be dismissed. When the appeal is docketed, the court will remind the litigants of these provisions.

(d) *Counsel of Record.* The attorney whose name appears on the docketing statement or other document first filed by that party in this court will be deemed counsel of record, and a separate notice of appearance need not be filed. If the name of more than one attorney is shown, the attorney who is counsel of record must be clearly identified. (There can be only one counsel of record.) If no attorney is so identified, the court will treat the first listed as counsel of record. The court will send documents only to the counsel of record for each party, who is responsible for transmitting them to other lawyers for the same party. The docketing statement or other document must provide the post office address and telephone number of counsel of record. The names of other members of the Bar of this Court and, if desired, their post office addresses, may be added but counsel of record must be clearly identified. An attorney representing a party who will not be filing a document shall enter a separate notice of appearance as counsel of record indicating the name of the party represented. Counsel of record may not withdraw, without consent of the court, unless another counsel of record is simultaneously substituted.

NOTE: The complete Federal Rules of Appellate Procedure & Rules of the 7th Circuit Court of Appeals are available at: http://www.ca7.uscourts.gov/Rules/Rules/rules.pdf

THE SETTLEMENT CONFERENCE PROGRAM
U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Pursuant to Rule 33 of the Federal Rules of Appellate Procedure[1] and Circuit Rule 33, the Court conducts conferences with counsel and clients to encourage and facilitate the settlement of civil appeals. Rule 33 conferences are conducted in all types of fully-counseled civil appeals except immigration, social security, habeas corpus, prisoners' civil rights, sentencing, and mandamus cases. The Court spontaneously notices most eligible appeals for Rule 33 conferences. Attorneys for one or more parties may also request that a conference be conducted in any eligible case.

Counsel and clients are well-advised to explore opportunities for settlement at the appellate level.Regardless of how unlikely it may seem, the fact is that many cases can be settled at this stage, substituting a certain and acceptable outcome for the risk and expense of further litigation. The Court's Settlement Conference Office has assisted counsel in settling many appeals without unduly delaying the progress of those appeals which do not yield to settlement efforts. The following information is intended to assist practitioners and their clients in understanding how the Seventh Circuit's settlement conference program works and how they can make the best use of it to achieve favorable results.

- **How do counsel learn that a Rule 33 conference will be conducted in their appeal?**
  A Notice of Rule 33 Settlement Conference is posted on the docket. The Notice is an order of the Court advising counsel of the date and time of the conference, whether it is to be in person or by telephone, and how they and their clients are expected to prepare.

- **How can a Rule 33 conference be requested?**
  Counsel are invited to request a Rule 33 conference by contacting the Settlement Conference Office, U.S. Court of Appeals for the Seventh Circuit, 219 S. Dearborn, Room 1120, Chicago, Illinois 60604-1705 (Tel. (312) 435-6883 / Fax (312) 435-6888 / E-mail: settlement@ca7.uscourts.gov). At the request of any party or parties in an eligible appeal, the Settlement Conference Office will schedule a Rule 33 conference if its calendar permits. Counsel are then advised by notice that a conference will be held.

- **Do other parties have to be informed that a conference was requested?**
  No. If a party prefers to keep its request confidential, the Settlement Conference Office will not disclose to other parties or to the Court that the conference was requested.

- **Is participation in Rule 33 conferences optional?**
  No. When a Rule 33 conference is scheduled, participation is mandatory.

- **Are clients required to attend?**
  Clients and insurance representatives are required to attend Rule 33 conferences whenever the Settlement Conference Office so directs. When clients or insurance representatives have not been directed to attend the initial conference, they must be available by phone – with full settlement authority – for the duration of the conference.

- **Is it mandatory to settle?**
  No. Whether to settle is ultimately for the parties and their counsel to decide. However, counsel and parties are required to participate with the utmost diligence and good faith. Experience shows that settlements can often be achieved when neither side thought it possible.

[1] FRAP Rule 33 provides: "Appeal Conferences. The Court may direct the attorneys, and in appropriate cases the parties, to participate in one or more conferences to address any matter that may aid in the disposition of the proceedings, including the simplification of the issues and the possibility of settlement. A conference may be conducted in person or by telephone and be presided over by a judge or other person designated by the court for that purpose. Before a settlement conference, attorneys must consult with their clients and obtain as much authority as feasible to settle the case. As a result of a conference, the court may enter an order controlling the course of the proceedings or implementing any settlement agreement."

- **Who conducts Rule 33 conferences?**
  The Court has delegated the responsibility for conducting Rule 33 conferences to three full-time conference attorneys: Joel N. Shapiro, Rocco J. Spagna, and Jillisa Brittan. All were civil litigators in private practice prior to their appointment by the Court.

- **Is there a fee for the services of the conference attorney?**
  No. The assistance of the Settlement Conference Office is available to appellate litigants at no charge.

- **Must each party's lead attorney attend the Rule 33 conference?**
  Yes. It is essential that each party be represented at the Rule 33 conference by an attorney who not only is conversant with the case but is the attorney on whose advice the party relies. If more than one attorney meets these criteria, either of them may represent the client in the Rule 33 conference.

- **How is it decided whether a Rule 33 conference will be conducted by telephone or in person?**
  When all participants reside in the Chicago metropolitan area, Rule 33 conferences are usually held in the Settlement Conference Office at the United States Courthouse. Otherwise, conferences are generally conducted by telephone. The telephone equipment used in these conferences can accommodate more than a dozen separate lines and enables the conference attorney to speak privately with any combination of participants. Experience indicates that telephone conferences are generally as effective as in-person conferences in fostering settlements.

- **Are in-person conferences ever held outside Chicago?**
  Because the resources of the settlement conference program are limited, in-person conferences cannot routinely be held throughout the Circuit. However, from time to time in-person conferences are conducted at locations other than Chicago. If the participants believe that an in-person conference outside Chicago would be more productive than a conference by telephone, they are welcome to suggest it.

- **Are Rule 33 conferences confidential?**
  Yes. The Court requires all participants to keep what is said in these conferences strictly confidential. Communications, oral and written, which take place in the course of Rule 33 proceedings may not be disclosed to anyone other than the litigants, their counsel, and the conference attorney.

- **Do judges of the Court of Appeals learn what has happened at a Rule 33 conference?**
  No. Participants in Rule 33 conferences, including the conference attorney, are forbidden to impart to any judge or other court personnel, in the Court of Appeals or elsewhere, what has been communicated in these conferences.

- **What occurs at a Rule 33 conference?**
  Rule 33 conferences are official proceedings of the Court but are off-the-record and relatively informal. Discussion is conversational rather than argumentative. The focus is on realistically assessing the prospects of the appeal, the risks and costs of further litigation, the interests of the parties, and the benefits each side can gain through settlement. The conference attorney ordinarily meets with counsel both together and separately. Settlement proposals are discussed. A resolution may or may not be reached during the initial conference. Often, follow-up conferences or shuttle negotiations are conducted. Letters or draft proposals may be exchanged. By the conclusion of the Rule 33 process, the parties will have either reached an agreement to settle or learned how far apart they are and what are the remaining obstacles to settlement.

- **Is discussion of settlement limited to the appeal itself?**
  Not necessarily. If settlement of the appeal will not dispose of the entire case, or if related litigation is pending in other forums, the parties are invited and encouraged to explore the possibility of a global settlement.

- **Is briefing deferred when a Notice of Rule 33 Conference is issued?**
  Briefing is usually postponed until after the initial conference. If further modification of the briefing schedule would be conducive to settlement, an order to that effect may later be entered. What preparation is required of

counsel? In preparation for the initial Rule 33 conference, attorneys are required to consult rigorously with their clients and obtain as much authority as feasible to settle the case. Counsel must also review their legal and factual contentions with a view to being able to discuss candidly the prospects of the appeal and the case as a whole. If the conference attorney requests copies of pleadings, hearing transcripts, or other material in anticipation of the conference, counsel are expected to provide it promptly.

- **What is the role of the conference attorney?**
  Because the format of Rule 33 conferences is flexible and each appeal is dealt with on its own terms, the conference attorney plays a variety of roles. He or she acts as moderator, facilitator, and intermediary. The conference attorney serves as a neutral evaluator and a reality check. He or she may suggest terms of settlement. Without being coercive, the conference attorney acts as a determined advocate for settlement.

- **What can counsel expect of the conference attorney**?
  Before the initial conference, the conference attorney will have familiarized him or herself with the history of the litigation, the posture of the case, and the issues on appeal. During the conference, the conference attorney will seek additional information about the background of the dispute and the parties' interests, claims and defenses in order to explore all possibilities for a voluntary resolution. The conference attorney is strictly impartial. He or she does not advocate for any party and avoids making comments that could advantage one side or another in arguing the issues on appeal. The conference attorney will disclose any affiliation or prior representation of which he or she is aware that could call his or her neutrality into question. The conference attorney does not force any party to settle or to accept terms it is not willing to accept. While he or she urges parties to take advantage of opportunities to settle favorably, the conference attorney recognizes that settlement is not always possible.

- **How can counsel make best use of the Rule 33 conference to benefit their clients?**
  Recognize that the Rule 33 conference is an opportunity to achieve a favorable outcome for your client. Without laying aside the advocate's responsibility, approach the conference as essentially cooperative rather than adversarial. Help your client make settlement decisions based not on overconfidence or wishful thinking, but on a realistic assessment of the case; not on emotion, however justified it may be, but on rational self-interest. Suggest terms of settlement that maximize the benefits of settlement for all parties. Take advantage of the opportunity to talk confidentially and constructively with counsel for the other parties and, if clients are present, to address them respectfully but convincingly. Let the conference attorney know how he or she can help you obtain a satisfactory resolution. Be candid. Don't posture. Listen closely to what other participants have to say. Give the process a chance to work.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

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

NOTICE OF APPEAL

Notice is hereby given that the Evansville Vanderburgh School Corporation, defendant in the above-named case, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the order granting Plaintiff J.A.W.'s motion for preliminary injunction, entered in this action on the 3rd day of August, 2018.

Respectfully submitted,

s/ Patrick A. Shoulders

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Robert L. Burkart #16664-82
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Attorneys for the Defendant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th day of August, 2018, a copy of the foregoing was filed electronically with the Clerk of this Court. A copy will be served by the Court's electronic filing system upon:

Kenneth J. Falk
kfalk@aclu-in.org

Gavin M. Rose
grose@aclu-in.org

Jan P. Mensz
jmensz@aclu-in.org

s/ Patrick A. Shoulders
Patrick A. Shoulders

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

J.A.W.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Cause No. 3:18-cv-37-WTL-MPB**
	)	
EVANSVILLE VANDERBURGH SCHOOL CORPORATION,	)	
	)	
Defendant.	)	

ENTRY ON MOTION FOR PRELIMINARY INJUNCTION

This cause is before the Court on the Plaintiff's motion for preliminary injunction (Dkt. No. 19). The motion is fully briefed, and the Court held a hearing on the motion on July 20, 2018, after which the parties submitted proposed findings of fact and conclusions of law. The Court, having considered all of the parties' filings and the testimony presented and evidence admitted at the hearing, and being duly advised, **GRANTS** the Plaintiff's motion for the reasons set forth below.

I. BACKGROUND

Plaintiff J.A.W. is a seventeen-year-old unemancipated minor; his mother is his sole legal and physical guardian.[1] J.A.W. is about to enter his senior year as a student at North High School in the Evansville Vanderburgh School Corporation ("EVSC"). He plans to graduate in December 2018.

J.A.W.'s assigned gender at birth is female. His birth certificate, which was obtained in Florida where he was born, identifies his sex as female, as does his Indiana driver's license,

[1]The Court already has addressed EVSC's arguments with regard to J.A.W.'s capacity to bring suit without his mother (or someone else) acting as his next friend. *See* Dkt. No. 33.

which he recently obtained. However, J.A.W. has long identified as male. When J.A.W. was 11 years old, he first encountered the term transgender and recognized that he was transgender.

J.A.W. began to feel uncomfortable using the girls' restrooms at school in sixth grade. In eighth grade he was assigned to a physical education class and felt uncomfortable using female locker rooms to change before and after class. He and his mother spoke to a social worker at school, and his schedule was changed so that he was no longer in a physical education class.

Beginning in eighth grade, J.A.W. began to present himself outwardly as a boy; he began sporting a male haircut and wearing masculine clothing. He also began to ask his teachers to address him by his chosen masculine name (J.A.W.) instead of the feminine name that was given to him at birth and to request that masculine pronouns be used to refer to him. J.A.W. was too intimidated at that time to seek permission to use the boys' restrooms at school.

During his freshman year, J.A.W. attended classes at both North High School and Central High School. As he entered puberty, he suffered increasing discomfort and distress relating to what he now knows to be gender dysphoria, which is defined in the Diagnostic and Statistical Manual of Mental Disorders ("DSM-V") as "[a] marked incongruence between one's experienced/expressed gender and assigned gender . . . ." Dkt. No. 50-6 at 4. At that point he became extremely uncomfortable using the female restrooms at school.

J.A.W. was required to take physical education at North High School during his freshman year. Because he did not feel comfortable using the girls' locker room to change before and after gym class, he and another transgender student began using a boys' restroom for that purpose. They did not seek permission to do so, and EVSC administrators learned of the situation when a parent called to complain that there were "two girls" using the boys' restroom. EVSC told J.A.W. not to use the boys' restroom anymore; as an alternative, the two transgender students

were told to use another girls' locker room that was not otherwise being used. For other restroom needs, EVSC told J.A.W. that he could use the girls' restrooms or a gender-neutral, single-occupancy restroom in the nurse's office at North High School. This restroom generally is not used by students unless they are visiting the nurse or the office or have been granted permission to use it on a regular basis after demonstrating that they have a reason to do so. The nurse's restroom was located far from J.A.W.'s classes and therefore was inconvenient. He tried using it a few times but found it locked, so he stopped trying to use it. J.A.W. did not make any specific request with regard to restroom use at Central High School.

During his sophomore year, J.A.W. attended classes at both North High School and Harrison High School. Per his request, his teachers continued to address him as J.A.W. and use masculine pronouns to refer to him. Early in that school year, J.A.W. approached the principal of North High School with the "Dear Colleague" letter that was jointly issued on May 13, 2016, by the U.S. Department of Justice, Civil Rights Division, and the U.S. Department of Education, Office for Civil Rights, which J.A.W. believed entitled him to use the boys' restrooms at school.[2] EVSC reviewed the letter, consulted with counsel, and ultimately denied J.A.W.'s request to use the boys' restrooms. J.A.W. was instructed either to use the girls' restrooms or the gender-neutral, single-occupancy restroom in the nurse's office at North High School. J.A.W. was not informed of the availability of a gender-neutral restroom at Harrison High School; students are also required to obtain permission to use that restroom. The arrangements for J.A.W. to change before and after physical education class remained the same as the previous year.

[2]The "Dear Colleague" letter was rescinded by the Department of Justice and the Department of Education on February 22, 2017. J.A.W. does not assert it as a basis of his claim.

J.A.W. began counseling in September 2016 because he wanted confirmation that he had gender dysphoria. J.A.W. has submitted the Declaration of James D. Fortenberry, M.D., M.S., the director and founder of the Gender Health Program at Riley Children's Health in Indianapolis, who explains that the standards of care for gender dysphoria "recognize . . . that the principal treatment of gender dysphoria is to allow the person full expression of his or her gender identity." Dkt. 50-6 at 6. This involves both "social role transition," a process in which "a person presents themselves in a manner consistent with their experienced gender, which includes name, dress, hair style, and other aspects of gender presentation," as well as hormone therapy to "initiate[] the physiologic changes in body contour and appearance to match the experienced gender." *Id.* at 7. The ability to use public restrooms consistent with one's gender identity "is a prime component of gender affirmation." *Id.*

In June 2017, J.A.W.'s counselor wrote to his medical doctor and opined that J.A.W. met the criteria for Gender Dysphoria of Adolescence and that he would benefit greatly both medically and psychologically from hormone therapy. Based upon a diagnosis of gender dysphoria, J.A.W. was prescribed testosterone in the fall of 2017. He has been taking testosterone injections regularly since then.

In November 2016, during his sophomore year, J.A.W. sent an email to Dr. Dionne Blue, EVSC's Chief Diversity Officer, informing Dr. Blue that he was a transgender student and asking about EVSC's policy with regard to transgender students accessing restrooms and locker rooms. Dr. Blue responded that EVSC did not have an official policy, but that transgender students could use the nurse's office or other gender-neutral restrooms depending on the facilities available in the building. Dr. Blue further stated that schools would address any other needs on a case-by-case basis. J.A.W. did not follow up with Dr. Blue or make any requests of

her. During his sophomore year, J.A.W. did not complain to anyone at EVSC that the gender-neutral restrooms made available to him were inaccessible or otherwise unsatisfactory.

J.A.W. did not seek permission to use the boys' restrooms during the first semester of his junior year. On January 21, 2018, early in the second semester, J.A.W.'s attorney contacted EVSC on his behalf and informed EVSC that pursuant to the Seventh Circuit's decision in *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1044 (7th Cir. 2017), *cert. dismissed sub nom. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ. v. Whitaker ex rel. Whitaker*, 138 S. Ct. 1260 (2018), he believed that J.A.W. was entitled to use the boys' restrooms at school. The letter did not mention J.A.W.'s mother's position on the issue. EVSC's general counsel responded that *Whitaker* was distinguishable on its facts, that it did not appear to represent the state of the law across the United States, and that J.A.W. would not be permitted to use the boys' restrooms at school. This lawsuit ensued.

Prior to the institution of these proceedings, EVSC had never been made aware that J.A.W. had been diagnosed with gender dysphoria, that he was undergoing hormone therapy, or that he had any complaints regarding the proximity and accessibility of the gender-neutral restroom EVSC had made available to him. However, EVSC is now aware that J.A.W. has been diagnosed with gender dysphoria and that he has been undergoing hormone therapy for almost a year. Since beginning hormone therapy, his appearance and voice have become more masculine; he has developed a patchy beard, he has lost weight, and his abdomen has developed more of a male appearance. He no longer menstruates. At the hearing, he looked and sounded like a teenaged boy; he is very unlikely to be mistaken for a girl at this point. Given these facts, EVSC's position that J.A.W. "has merely announced to EVSC that he is male and demanded

access to facilities inconsistent with the gender marker appearing on the birth certificate his mother provided to EVSC at the time of his enrollment," Dkt. No. 65 at 22, is simply incorrect.

To avoid having to use restrooms at school, J.A.W. severely restricts his fluid intake in an attempt to prevent himself from having to go the bathroom while at school. This causes him pain and discomfort. On the few occasions in the past that J.A.W. could not wait, he used the girls' restrooms at school, as he did not want to be disciplined by EVSC.[3] Using the girls' restrooms is extremely upsetting to him and makes him feel ostracized from his peers because, as he testified, it "contradicts what I am projecting to the world of what I identify as." Dkt. No. 61 at 18-19. J.A.W. also testified that using the girls' restroom at school draws attention to the fact that he is transgender, and that female peers at school have expressed discomfort with him using the girls' restrooms because he appears male. *Id.* at 21.

EVSC has no written policy regarding transgender students' use of restrooms. While EVSC asserts in its surreply brief that its policy is "to make restroom assignments based on the sex listed on the student's birth certificate or other comparable government-issued identifying documents used to enroll the student, and to consider parental requests to deviate from that default position on a case-by-case basis," Dkt. No. 59 at 1, the evidence of record does not support that assertion. Dr. David Smith, EVSC's superintendent, testified that EVSC does not have a formal policy at all; it has a "practice." Dkt. No. 61 at 38. He further testified that EVSC's position is that J.A.W. may not use boys' restrooms because "biologically he is female." *Id.* at 39. However, he also testified that if J.A.W. were to legally have his birth certificate changed so that it indicated his sex was male, then under EVSC's current, unwritten practice,

[3]EVSC's superintendent, Dr. David Smith, testified that if J.A.W. were to use a boys' restroom at school, he would be subject to discipline for "defiance." Dkt. No. 61 at 37.

J.A.W. would be permitted to use the boys' restrooms at school, because a birth certificate would be an "objective standard" by which to determine that it was appropriate for him to do so. He also conceded that if J.A.W. were to have his birth certificate changed but his use of the boys' restrooms nonetheless caused a "disruption," EVSC could respond by again barring J.A.W. from the boys' restrooms. *Id.* at 54.[4]

II. DISCUSSION

The issue now before the Court is a narrow one: whether J.A.W. is entitled to the preliminary injunctive relief he seeks, which is that he be allowed to use the boys' restrooms within the schools and other buildings of EVSC. A preliminary injunction is "an extraordinary remedy" that "[i]s never awarded as a matter of right." *Whitaker*, 858 F.3d at 1044 (citations omitted).

> A two-step inquiry applies when determining whether such relief is required. First, the party seeking the preliminary injunction has the burden of making a threshold showing: (1) that he will suffer irreparable harm absent preliminary injunctive relief during the pendency of his action; (2) inadequate remedies at law exist; and (3) he has a reasonable likelihood of success on the merits. If the movant successfully makes this showing, the court must engage in a balancing analysis, to determine whether the balance of harm favors the moving party or whether the harm to other parties or the public sufficiently outweighs the movant's interests.

Id. (citations omitted).

[4]In fact, there does not appear to be any legal means for J.A.W. to have his birth certificate changed at this time; the provision of law cited by EVSC in support of its argument that J.A.W. could do so does not support that proposition, but rather supports the opposite conclusion. *See* Dkt. No. 41 at 21 n.8 (incorrectly citing Fla. Stat. Ann. § 382.016 and Fla. Admin. Code Ann. R. 64V-1.003 for the proposition that Florida "allows transgender individuals to have the gender marker on their birth certificate changed upon presentation of a physician letter confirming clinical treatment for gender transition").

A. Likelihood of Success

In order to demonstrate a likelihood of success on the merits in the context of seeking a preliminary injunction, a plaintiff "must only show that his chances to succeed on his claims are 'better than negligible.'" *Id.* at 1046 (quoting *Cooper v. Salazar*, 196 F.3d 809, 813 (7th Cir. 1999)). "This is a low threshold," *id.*, and one that, given the court's holding in *Whitaker*, J.A.W. easily meets.

1. Title IX

J.A.W. asserts in this case that EVSC's refusal to permit him to use boys' restrooms violates Title IX, 20 U.S.C. § 1681(a), which prohibits a covered institution[5] from discriminating on the basis of sex. In *Whitaker*, the Seventh Circuit held that a transgender high school student demonstrated a likelihood of success on his claim that his school's denying him access to the boys' restroom based on his transgender status violated Title IX:

> A policy that requires an individual to use a bathroom that does not conform with his or her gender identity punishes that individual for his or her gender non-conformance, which in turn violates Title IX. The School District's policy also subjects Ash, as a transgender student, to different rules, sanctions, and treatment than non-transgender students, in violation of Title IX. Providing a gender-neutral alternative is not sufficient to relieve the School District from liability, as it is the policy itself which violates the Act.

Whitaker, 858 F.3d at 1049-50. This is equally true of EVSC's policy in this case.

EVSC argues that *Whitaker* "was not . . . a mandate requiring school corporations to allow unemancipated minors who profess to be transgender access to the restrooms of their choosing on the strength of nothing more than their own demands," Dkt. No. 65 at 20, and asserts that *Whitaker* is distinguishable from this case in several respects. First, it points to the

[5]There is no dispute that EVSC is a covered institution under Title IX because it receives federal funds.

Seventh Circuit's observation in *Whitaker* that it was "'not a case where a student has merely announced that he is a different gender,'" *id.* (quoting *Whitaker*, 858 F.3d at 1050), and argues that this demonstrates that "some threshold showing is required to trigger the protections for transgender students discussed in *Whitaker*, and a mere 'announcement' of one's transgender status is insufficient," *id.* at 20-21. Thus, it argues, *Whitaker* did not hold that "schools are prohibited from requiring a parental request prior to allowing transgender students to access restrooms in alignment with their gender identity" or that "schools are prohibited from requiring some evidence that access to such facilities is medically, psychologically, and developmentally necessary and appropriate for the individual student." Dkt. No. 65 at 21. That is true—*Whitaker* did not specifically hold either of those things. But that is irrelevant to the issue now before the Court, because EVSC has made it clear, through the testimony of Dr. Smith, that its decision to prohibit J.A.W. from using boys' restrooms was not based on either a requirement that there be a parental request or a requirement of any sort of evidence regarding what is necessary and appropriate for J.A.W. Rather, EVSC's position unequivocally is that unless and until J.A.W. obtains a birth certificate that states that his sex is male—something that appears to be legally impossible for him to do at this point in time—he will not be permitted to use the boys' restrooms. And in that fundamental sense, this case is indistinguishable from *Whitaker*. In other words, there likely is a line to be drawn with regard to when Title IX requires a school to permit a transgender student to use the restrooms that coincide with his gender identity, but in this case EVSC has drawn that line in a place that the Seventh Circuit has already indicated is likely unacceptable. Therefore, the Court finds that J.AW. has sufficiently established a reasonable likelihood of success on the merits of his claim under Title IX.

2. Equal Protection

The court in *Whitaker* further held that the plaintiff also had a likelihood of success on the merits of his Equal Protection claim, a claim also asserted by J.A.W. As the Seventh Circuit noted:

> The Equal Protection Clause of the Fourteenth Amendment is essentially a direction that all persons similarly situated should be treated alike. It therefore, protects against intentional and arbitrary discrimination. Generally, state action is presumed to be lawful and will be upheld if the classification drawn by the statute is rationally related to a legitimate state interest.
>
> The rational basis test, however, does not apply when a classification is based upon sex. Rather, a sex-based classification is subject to heightened scrutiny, as sex frequently bears no relation to the ability to perform or contribute to society. When a sex-based classification is used, the burden rests with the state to demonstrate that its proffered justification is exceedingly persuasive. This requires the state to show that the classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives. It is not sufficient to provide a hypothesized or *post hoc* justification created in response to litigation. Nor may the justification be based upon overbroad generalizations about sex. Instead, the justification must be genuine.

Whitaker, 858 F.3d at 1050 (citations and internal quotation marks omitted). The court then found that "the School District's policy cannot be stated without referencing sex, as the School District decides which bathroom a student may use based upon the sex listed on the student's birth certificate" and thus the "policy is inherently based upon a sex-classification and heightened review applies." *Id.* at 1051. Finally, the court held that the school district had not met its burden of demonstrating that its justification for its restroom policy was "not only genuine, but also exceedingly persuasive." *Id.* at 1051-52 (citation and internal quotation marks omitted).

In *Whitaker*, the asserted justification for the restroom policy was the need to protect the privacy rights of all of the students in the district. The Seventh Circuit found that privacy

argument to be "based on sheer conjecture and abstraction." *Id.* at 1052. The same is true of EVSC's stated justification for its practice in this case: "preventing disruption and protecting the safety of all of its students, both transgender and cisgender." Dkt. No. 41 at 19.

With regard to the prevention of "disruption," EVSC has presented no evidence to support this justification beyond Dr. Smith's testimony that he believes there would be "substantial disruption" if "children were allowed simply to choose bathrooms based upon their subjective gender identity" and that "the parent body would object." Dkt. No. 61 at 33-34. But as the Court has already noted, at this point[6] J.A.W. is not asking to simply choose a restroom based on his subjective gender identity. He has been diagnosed with gender dysphoria and has been taking male hormones—which have altered his appearance and his voice—for almost a year. Further, EVSC has not described what form this "disruption" would take beyond complaints from parents, which the court found insufficient in *Whitaker*. *See Whitaker*, 858 F.3d at 1052 (finding that the receipt of one complaint from a parent and the fact that some parents and other community residents had spoken out in opposition—including at a school board meeting—to the plaintiff using the boys' restrooms insufficient to support the school district's position). In fact, when asked whether there had been any complaints from parents or students "as it relates to bathroom usage in transgender," Dr. Smith related the following:

> Well, as recently as last month, in speaking to an administrator at—the day after the Monday after I was deposed, she referenced two situations that had occurred in the building where she is principal; had a parent, a mother, that called that was extremely upset because the daughter had been exposed to a transgender man that had gone into the restroom and she felt very—I think the words were scared, vulnerable and terrified.

[6]Whether that may have been the case at some point—e.g., when J.A.W. first raised the issue several years ago—is irrelevant to whether J.A.W. is entitled to the prospective injunctive relief he seeks now.

Dkt. No. 61 at 33. But that anecdote supports J.A.W.'s position. Under EVSC's policy, J.A.W.—a transgender male—is supposed to use the girls' restrooms. Thus EVSC's own policy has apparently caused the sort of "disruption" that EVSC is trying to avoid.

In any event, the practice identified by EVSC—determining which restroom a student may use based upon the student's birth certificate—is inconsistent with the articulated reason for the policy. As Dr. Smith conceded at the hearing, whatever hypothetical disruption that might occur if J.A.W. were to use the boys' restrooms at school would not be caused by what J.A.W.'s birth certificate says; it is unlikely that those causing the disruption would be aware of the content of his birth certificate or that their opinion that J.A.W. should not be using the boys' restrooms would change simply because a different box was checked on that document.

With regard to the need to protect its students' safety, EVSC points to J.A.W.'s testimony that "transgender people sometimes face safety issues in public restrooms and that he feels safer using single-occupancy restrooms." Dkt. No. 65 at 13 (citing Dkt. No. 61 at 17-18). However, on cross-examination, J.A.W. further testified that now that his outward appearance is masculine, there are safety issues associated with using the girls' restrooms at school. Dkt. No. 61 at 21. The record before the Court does not support a finding that either student safety or the need to prevent "disruption" is an exceedingly persuasive justification for EVSC's transgender restroom policy. Accordingly, the Court finds that J.A.W. has met the "low threshold" of demonstrating a probability of success on his Equal Protection Claim.

B. Inadequate Remedy and Irreparable Harm

A plaintiff seeking preliminary injunction "must show that [he] has no adequate remedy at law and, as a result, that [he] will suffer irreparable harm if the injunction is not issued."

Foodcomm Int'l v. Barry, 328 F.3d 300, 304 (7th Cir. 2003) (citing *Roland Machinery Co. v. Dresser Industries*, 749 F.2d 380, 386 (7th Cir. 1984)).

> This requires more than a mere possibility of harm. It does not, however, require that the harm actually occur before injunctive relief is warranted. Nor does it require that the harm be certain to occur before a court may grant relief on the merits. Rather, harm is considered irreparable if it cannot be prevented or fully rectified by the final judgment after trial.

Whitaker, 858 F.3d at 1045 (citations and internal quotation marks omitted).

J.A.W.'s testimony, which the Court finds to be credible, establishes that he experiences discomfort, distress, and anxiety when he is forced to use a girls' restroom because it is inconsistent with his male identity. In addition, using the girls' restrooms at school causes him distress because it draws attention to the fact that he is transgender, and he is aware that female students at school have expressed discomfort with him using the girls' restrooms because he appears male. In addition, using the nurse's restroom is not a satisfactory option, both for practical reasons—i.e., its location—and because it forces him to have different restroom arrangements than his peers, undermining his social role transition. The Court finds that the likely negative emotional consequences of being denied access to the boys' restrooms at school would constitute irreparable harm to J.A.W. because it would be "difficult—if not impossible—to reverse." *Michigan v. U.S. Army Corps of Engineers*, 667 F.3d 765, 788 (7th Cir. 2011) (citing *Hollingsworth v. Perry*, 558 U.S. 183 (2010) (per curiam)).

EVSC argues that J.A.W. could be compensated by monetary damages for the emotional distress he alleges and therefore he has not demonstrated that he has no adequate remedy at law. However, as the court noted in *Whitaker*, "[w]hile monetary damages are used to compensate plaintiffs in tort actions, in those situations the damages relate to a past event, where the harm was inflicted on the plaintiff through negligence or something comparable. But this case is not

the typical tort action, as [the plaintiff] has alleged *prospective* harm." *Whitaker*, 858 F.3d at 1054. And while EVSC argues, correctly, that the harm identified by J.A.W. is not as severe as the harm identified by the plaintiff in *Whitaker*, who asserted that his school's restroom policy had caused him to contemplate suicide, that does not mean that the less severe harm identified by J.A.W. could be fully rectified by an award of money damages. The Court finds that a monetary award would be an inadequate remedy for the type of stress and anxiety J.A.W. likely would experience for the remainder of his time in high school if an injunction were not granted.

In addition,

> for some kinds of constitutional violations, irreparable harm is presumed. *See* 11A Charles Alan Wright et al., Federal Practice & Procedure § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.").

Ezell v. City of Chicago, 651 F.3d 684, 699 (7th Cir. 2011). Those constitutional violations "cannot be compensated by damages." *Id.* The Seventh Circuit has held that First and Second Amendment violations fall into that category, because they both protect "intangible and unquantifiable interests." *Id.* By contrast, the Seventh Circuit has held that Fourth Amendment violations do not fall into that category because "[d]amages are a normal, and adequate, response to an improper search or seizure, which as a constitutional tort often is analogized to (other) personal-injury litigation." *Campbell v. Miller*, 373 F.3d 834, 835 (7th Cir. 2004) (citing *Wilson v. Garcia*, 471 U.S. 261 (1985)); *see also Ezell*, 651 F.3d at 699 n.10 (distinguishing *Campbell* based on different types of constitutional claims). The Court finds that Equal Protection claims are more closely analogous to claims under the First and Second Amendments than to those brought under the Fourth Amendment, and therefore it is appropriate to presume irreparable harm with regard to J.A.W.'s Equal Protection claim. *Accord Exodus Refugee Immigration, Inc. v. Pence*, 165 F. Supp. 3d 718, 738-39 (S.D. Ind. 2016), *aff'd*, 838 F.3d 902 (7th Cir. 2016)).

Finally, EVSC argues that J.A.W.'s "delay in filing suit and seeking injunctive relief belies any claim that EVSC's bathroom policy may cause him irreparable harm." Dkt. No. 41 at 23 (citing *Ty, Inc. v. Jones Group, Inc.*, 237 F.3d 891, 903 (7th Cir. 2001)). The Court disagrees that the circumstances of this case warrant such a finding, as demonstrated by the case cited by EVSC in support of its argument:

> Delay in pursuing a preliminary injunction may raise questions regarding the plaintiff's claim that he or she will face irreparable harm if a preliminary injunction is not entered. *See Ideal Industries, Inc. v. Gardner Bender, Inc.*, 612 F.2d 1018, 1025 (7th Cir. 1979). Whether the defendant has been "lulled into a false sense of security or had acted in reliance on the plaintiff's delay" influences whether we will find that a plaintiff's decision to delay in moving for a preliminary injunction is acceptable or not. *Id.* Jones has not presented any affirmative evidence that Ty's delay in seeking a preliminary injunction caused Jones to be lulled into a false sense of security or that Jones in any way relied on Ty's delay. The magistrate judge therefore properly decided that the evidence of mere delay alone, without any explanation on Jones' part of why such a delay negatively affected them, would not lessen Ty's claim of irreparable injury.

Ty, Inc., 237 F.3d at 903. Here, too, EVSC has not explained how any delay by J.A.W. in bringing suit negatively affected it; in the absence of such a showing, the delay does not lessen J.A.W.'s claim of irreparable injury.

C. Balance of Harms

Next, the Court must "look at whether granting preliminary injunctive relief will harm the School District and the public as a whole." *Whitaker*, 858 F.3d at 1054.

> Once a moving party has met its burden of establishing the threshold requirements for a preliminary injunction, the court must balance the harms faced by both parties and the public as a whole. This is done on a "sliding scale" measuring the balance of harms against the moving party's likelihood of success. The more likely he is to succeed on the merits, the less the scale must tip in his favor. The converse, however, also is true: the less likely he is to win, the more the balance of harms must weigh in his favor for an injunction to issue.

Id. (citations omitted).

EVSC argues that "[t]he potential harms to EVSC in terms of its operational efficiency and ability to maintain a safe and appropriate learning environment for all 23,000 of its students outweigh Plaintiff's claim of unquantified emotional distress." Dkt. No. 65 at 23. However, EVSC has not demonstrated that it would suffer any harm if an injunction were to issue. First, it argues that "[a] policy that would allow students to simply declare their gender regardless of the information their parents have provided to the school on that subject would be unworkable and could potentially place schools at cross-purposes with parents," Dkt. No. 65 at 23, but an injunction would not institute such a policy; rather, it would simply require EVSC to permit J.A.W. to use the boys' restrooms. *See* Dkt. No. 19 at 2. There is no evidence of record that this would conflict with J.A.W.'s mother's wishes; in fact, the record demonstrates that she is supportive of J.A.W.'s "efforts in this litigation to obtain access to male restrooms within his schools." Dkt. No. 50-4 (Declaration of J.A.W.'s mother). Next, EVSC points to its "concerns regarding the safety and privacy of all of its students, including Plaintiff, in locker rooms and restrooms." Dkt. No. 65 at 23. As discussed above, however, EVSC has not demonstrated that permitting J.A.W. to use the boys' restrooms would be less safe than his use of the girls' restrooms, and locker room use would not be implicated by the preliminary injunction sought by J.A.W. There is certainly no evidence that J.A.W. poses any threat to any other student, regardless of which restroom he uses. Finally, while EVSC mentions privacy in addition to safety, privacy was not mentioned in its brief, and the only testimony EVSC offered with regard to privacy is as follows:

> [T]here are privacy concerns. This is not just about restroom usage. This is locker room, who can undress around whom, who can shower with whom. . . . . Overnight field trips, sports . . . .

Dkt. No. 61 at 31. Thus EVSC has not articulated what its privacy concerns with regard to restroom usage are and has not demonstrated that those concerns outweigh the likely harm to J.A.W. discussed above. *See also Whitaker*, 858 F.3d at 1052 (noting that school's policy "does nothing to protect the privacy rights of each individual student vis-à -vis students who share similar anatomy and it ignores the practical reality of how . . . [the plaintiff], as a transgender boy, uses the bathroom: by entering a stall and closing the door").

With regard to the public interest, EVSC's arguments do not relate to any interest the public may have in preventing J.A.W. from using the boys' restrooms. Rather, EVSC argues that granting J.A.W. the injunction he seeks would "be a marked expansion of even the broadest interpretations of Title IX and the Equal Protection Clause to date" and would "complicate matters even further for school districts across the country already struggling with these complex and often highly divisive issues." Dkt. No. 65 at 24. In light of the fact that, as discussed above, the issuance of an injunction in this case would not require moving the applicable line from where the court in *Whitaker* has already drawn it, the Court finds that argument to be without merit.[7]

Because J.A.W. has demonstrated that he likely will suffer harm if an injunction is not granted, and EVSC has not articulated any harm that it or the public would suffer specifically

[7]The Court notes that J.A.W. has submitted evidence, in the form of declarations from various individuals, that demonstrates that other school districts have permitted transgender students to use the restrooms that are consistent with their gender identity, in some cases for many years, and that chaos and disruption have not resulted. *See* Dkt. Nos. 50-8 and 50-9; *see also Whitaker*, 858 F.3d at 1054-55 (citing similar statements made by *amici* in that case that "the frequently-raised and hypothetical concerns about a policy that permits a student to utilize a bathroom consistent with his or her gender identity have simply not materialized"). This evidence contradicts EVSC's assumption regarding the potential risk to schools around the country.

from the issuance of an injunction, the Court finds that the balance of harms weighs in favor of granting J.A.W.'s request.

III. CONCLUSION

For the reasons set forth above, J.A.W.'s motion for preliminary injunction (Dkt. No. 19) is **GRANTED**. EVSC shall permit J.A.W. to use the boys' restrooms within the schools and other buildings of EVSC. No bond will be required.

SO ORDERED: 8/3/18

Hon. William T. Lawrence, Judge
United States District Court
Southern District of Indiana

Copies to all counsel of record via electronic notification

*** PUBLIC DOCKET ***

APPEAL,CMP

U.S. District Court
Southern District of Indiana (Evansville)
CIVIL DOCKET FOR CASE #: 3:18-cv-00037-WTL-MPB

J.A.W. v. EVANSVILLE VANDERBURGH SCHOOL CORPORATION
Assigned to: Judge William T. Lawrence
Referred to: Magistrate Judge Matthew P. Brookman
Cause: 42:1983 Civil Rights Act

Date Filed: 02/22/2018
Jury Demand: Defendant
Nature of Suit: 448 Civil Rights: Education
Jurisdiction: Federal Question

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Date Filed	#	Docket Text

02/22/2018	1	COMPLAINT *for Declaratory and Injunctive Relief and Damages* against EVANSVILLE VANDERBURGH SCHOOL CORPORATION, filed by JAW. (Filing fee $400, receipt number 0756-4764675) (Attachments: # 1 Civil Cover Sheet, # 2 Proposed Summons)(Falk, Kenneth) (Entered: 02/22/2018)
02/22/2018	2	NOTICE of Appearance by Kenneth J. Falk on behalf of Plaintiff JAW. (Falk, Kenneth) (Entered: 02/22/2018)
02/22/2018	3	NOTICE of Appearance by Jan P. Mensz on behalf of Plaintiff JAW. (Mensz, Jan) (Entered: 02/22/2018)
02/22/2018	4	NOTICE of Appearance by Gavin Minor Rose on behalf of Plaintiff JAW. (Rose, Gavin) (Entered: 02/22/2018)
02/22/2018	5	Summons Issued as to EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (JRB) (Entered: 02/22/2018)
02/22/2018	6	MAGISTRATE JUDGE's NOTICE of Availability to Exercise Jurisdiction issued. (JRB) (Entered: 02/22/2018)
03/13/2018	7	NOTICE of Appearance by Patrick A. Shoulders on behalf of Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (Shoulders, Patrick) (Entered: 03/13/2018)
03/13/2018	8	NOTICE of Appearance by Robert L. Burkart on behalf of Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (Burkart, Robert) (Entered: 03/13/2018)
03/14/2018	9	ORDER OF RECUSAL. Clerk is directed to randomly reassign case and notify parties of newly assigned Judge. Signed by Judge Richard L. Young on 3/14/2018. (TMD) (Entered: 03/14/2018)
03/14/2018	10	NOTICE of Reassignment of Case to Judge William T. Lawrence. Judge Richard L. Young is no longer assigned to this case. Please include the new case number, **3:18-cv-37-WTL-MPB**, on all future filings in this matter. (JRB) (Entered: 03/14/2018)
03/20/2018	11	NOTICE of Appearance by Jean Marie Blanton on behalf of Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (Blanton, Jean) (Entered: 03/20/2018)
03/20/2018	12	MOTION to Dismiss , filed by Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (Attachments: # 1 Text of Proposed Order)(Shoulders, Patrick) (Entered: 03/20/2018)
03/20/2018	13	BRIEF/MEMORANDUM in Support re 12 MOTION to Dismiss , filed by Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (Shoulders, Patrick) (Entered: 03/20/2018)
03/20/2018	14	ORDER SETTING INITIAL PRE-TRIAL CONFERENCE - Initial Telephonic Pretrial Conference set for 5/16/2018 at 09:00 AM (Central Time) before Magistrate Judge Matthew P. Brookman. The information

		needed to participate in this telephonic conference will be provided by a separate notification. No fewer than seven (7) days before the IPTC, counsel must file a Proposed CMP. SEE ORDER. Signed by Magistrate Judge Matthew P. Brookman on 3/20/2018.(JRB) (Entered: 03/20/2018)
03/29/2018	15	MOTION for Extension of Time to File Response to April 10, 2018 re 12 MOTION to Dismiss *(UNOPPOSED)*, filed by Plaintiff J.A.W.. (Attachments: # 1 Text of Proposed Order)(Falk, Kenneth) (Entered: 03/29/2018)
04/06/2018	16	ORDER - granting 15 Motion for Extension of Time to File Response to 4/10/2018 re 12 MOTION to Dismiss . Signed by Judge William T. Lawrence on 4/6/2018. (RSF) (Entered: 04/06/2018)
04/10/2018	17	NOTICE of Filing *of Evidentiary Material* by J.A.W. (Attachments: # 1 Exhibit Declaration of JAW, # 2 Exhibit Declaration of Wyatt Squires) (Falk, Kenneth) (Entered: 04/10/2018)
04/10/2018	18	RESPONSE in Opposition re 12 MOTION to Dismiss , filed by Plaintiff J.A.W.. (Falk, Kenneth) (Entered: 04/10/2018)
04/10/2018	19	MOTION for Preliminary Injunction , filed by Plaintiff J.A.W.. (Attachments: # 1 Text of Proposed Order)(Falk, Kenneth) (Entered: 04/10/2018)
04/10/2018	20	BRIEF/MEMORANDUM in Support re 19 MOTION for Preliminary Injunction , filed by Plaintiff J.A.W.. (Falk, Kenneth) (Entered: 04/10/2018)
04/12/2018	21	SCHEDULING ORDER - TELEPHONIC INITIAL PRE-TRIAL CONFERENCE set for May 16, 2018, is hereby RESCHEDULED for APRIL 17, 2018 at 1:30 p.m., Evansville time (CST), before the Honorable Matthew P. Brookman, United States Magistrate Judge. The information needed by counsel to participate in this telephonic conference will be provided by a separate notification. Signed by Magistrate Judge Matthew P. Brookman on 4/12/2018.(JRB) (Entered: 04/12/2018)
04/17/2018	23	MINUTE ORDER for proceedings held before Magistrate Judge Matthew P. Brookman: Initial Pretrial Conference held on 4/17/2018. Defendant's Reply to Plaintiff's Response to Motion to Dismiss (Docket No. 12) shall be filed by May 1, 2018.] The briefing schedule for Plaintiff's Motion for Preliminary Injunction (Docket No. 19) shall be as follows: Defendant's Response shall be filed by July 2, 2018. Plaintiff's Reply shall be filed by July 16, 2018. Status Conference set for 7/9/2018 at 10:00 AM (Central Time) in Telephonic before Magistrate Judge Matthew P. Brookman. Signed by Magistrate Judge Matthew P. Brookman. (TMB) (Entered: 04/17/2018)
05/01/2018	24	REPLY in Support of Motion re 12 MOTION to Dismiss , filed by Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (Attachments: # 1 Exhibit A - Newsletter)(Shoulders, Patrick) (Entered: 05/01/2018)
05/01/2018	25	MOTION to Strike 17 NOTICE of Filing *Declarations of J.A.W. and Wyatt*

		Squires, filed by Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (Attachments: # 1 Text of Proposed Order)(Shoulders, Patrick) (Entered: 05/01/2018)
05/09/2018	26	CASE MANAGEMENT PLAN TENDERED, filed by Plaintiff J.A.W. . (Falk, Kenneth) (Entered: 05/09/2018)
05/10/2018	27	ORDER: CASE MANAGEMENT PLAN APPROVED AS SUBMITTED - Dispositive Motions due by 1/22/2019. Discovery due by 12/24/2018. SEE ORDER. Signed by Magistrate Judge Matthew P. Brookman on 5/10/2018. (JRB) (Entered: 05/10/2018)
05/10/2018	28	RESPONSE in Opposition re 25 MOTION to Strike 17 NOTICE of Filing *Declarations of J.A.W. and Wyatt Squires* , filed by Plaintiff J.A.W.. (Falk, Kenneth) (Entered: 05/10/2018)
05/15/2018	29	REPLY in Support of Motion re 25 MOTION to Strike 17 NOTICE of Filing *Declarations of J.A.W. and Wyatt Squires* , filed by Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (Shoulders, Patrick) (Entered: 05/15/2018)
05/31/2018	30	Joint MOTION for Protective Order , filed by Plaintiff J.A.W.. (Attachments: # 1 Text of Proposed Order)(Mensz, Jan) (Entered: 05/31/2018)
05/31/2018	31	MOTION *FOR ORAL ARGUMENT*, filed by Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (Attachments: # 1 Text of Proposed Order)(Shoulders, Patrick) (Entered: 05/31/2018)
06/01/2018	32	UNIFORM STIPULATED PROTECTIVE ORDER. Signed by Magistrate Judge Matthew P. Brookman on 6/1/2018.(JRB) (Entered: 06/01/2018)
06/05/2018	33	ENTRY ON DEFENDANT'S MOTION TO DISMISS - This cause is before the Court on the Defendant's 12 motion to dismiss. The motion is fully briefed and the Court, being duly advised, DENIES the motion for the reasons set forth below. The Court also DENIES the Defendant's 31 motion for oral argument. The Court also DENIES the Defendant's motion to strike 25 , as it serves no purpose for statements to be "stricken" from declarations on the ground that they are inadmissible hearsay. A.W.'s interests in this case at this time. The Clerk is directed to modify the docket to indicate that J.A.W. is the Plaintiff in this case. Because it is unnecessary for J.A.W. to have a next friend in order to pursue this case, Wyatt Squires will no longer be acting as J.A.W.'s next friend. The parties shall modify the caption accordingly in future filings.This cause is set for a preliminary injunction hearing on Friday, July 20, 2018, at 8:30 a.m. in Room 301, 101 Northwest MLK Jr. Blvd., Evansville, Indiana 47708. The Court has set aside one day for the hearing. The parties shall file a list of exhibits they intend to offer and witnesses they intend to call at the hearing by no later than July 6, 2018. Any objections to theother party's exhibits or witnesses shall be filed by no later than July 13, 2018. SEE ORDER. Signed by Judge William T. Lawrence on 6/5/2018.(JRB) (Entered: 06/05/2018)

06/13/2018	34	ANSWER to 1 Complaint */Demand for Jury Trial*, filed by EVANSVILLE VANDERBURGH SCHOOL CORPORATION.(Shoulders, Patrick) (Entered: 06/13/2018)
06/22/2018	35	SCHEDULING ORDER - TELEPHONIC STATUS CONFERENCE set for July 9, 2018, is hereby RESCHEDULED for JULY 12, 2018 at 11:00 a.m., Evansville time (CST), before the Honorable Matthew P. Brookman, United States Magistrate Judge. The information needed by counsel to participate in this telephonic conference will be provided by a separate notification. Signed by Magistrate Judge Matthew P. Brookman on 6/22/2018.(JRB) (Entered: 06/22/2018)
06/22/2018	36	NOTICE of Service of Initial Disclosures , filed by Plaintiff J.A.W.. (Falk, Kenneth) (Entered: 06/22/2018)
06/25/2018	37	Unopposed MOTION for Extension of Time to File Response to July 6, 2018 re 19 MOTION for Preliminary Injunction , filed by Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (Attachments: # 1 Text of Proposed Order)(Shoulders, Patrick) (Entered: 06/25/2018)
06/29/2018	38	Witness List *-Preliminary-*, filed by Plaintiff J.A.W., Exhibit List - *Preliminary-*, filed by Plaintiff J.A.W.. (Falk, Kenneth) (Entered: 06/29/2018)
06/29/2018	39	ORDER granting in part 37 Motion for Extension of Time to File Response to 19 MOTION for Preliminary Injunction to 7/3/18. Signed by Judge William T. Lawrence on 6/29/2018. (JRB) (Entered: 06/29/2018)
07/03/2018	41	RESPONSE in Opposition re 19 MOTION for Preliminary Injunction , filed by Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (Attachments: # 1 Exhibit 1 - Deposition pages of J.A.W.) (Shoulders, Patrick) (Entered: 07/03/2018)
07/03/2018	42	Appendix of Exhibits in Support of Response in Opposition to Motion re 19 MOTION for Preliminary Injunction *and Request to Take Judicial Notice*, filed by Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (Attachments: # 1 Exhibit A -Change in Birth Certificate, # 2 Exhibit B - 140 IAC - IN Driver's License, # 3 Exhibit C - Gender Designation Change on Passport, # 4 Exhibit D - Social Security, # 5 Exhibit E - Medicare-Nat'l Center for Transgender Equality, # 6 Exhibit F - IHSAA Ex Comm Meeting Minutes, # 7 Exhibit G - USCIS Documents, # 8 Exhibit H - Transgender Offender Manual-Change Notice, # 9 Exhibit I - Dod Instruction, # 10 Exhibit J - When Children Say They're Trans)(Shoulders, Patrick) (Entered: 07/03/2018)
07/06/2018	43	Witness List *and Exhibit List*, filed by Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (Shoulders, Patrick) (Entered: 07/06/2018)
07/06/2018	44	Witness List *(for Preliminary Injunction Hearing)*, filed by Plaintiff J.A.W.,

		Exhibit List *(for Preliminary Injunction Hearing)*, filed by Plaintiff J.A.W.. (Rose, Gavin) (Entered: 07/06/2018)
07/06/2018	45	Witness List *for Preliminary Injunction Hearing*, filed by Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION, Exhibit List *for Preliminary Injunction Hearing*, filed by Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (Shoulders, Patrick) (Entered: 07/06/2018)
07/12/2018	46	MINUTE ORDER for proceedings held before Magistrate Judge Matthew P. Brookman: Status Conference held on 7/12/2018. Parties were represented by counsel. No further orders are entered at this time. Signed by Magistrate Judge Matthew P. Brookman. (TMB) (Entered: 07/12/2018)
07/13/2018	47	STIPULATION *to Authenticity of Documents*, filed by Plaintiff J.A.W.. (Falk, Kenneth) (Entered: 07/13/2018)
07/13/2018	48	OBJECTION *to Defendant's Witnesses and Exhibits for Prelim. Inj. Hearing* by J.A.W.. Related document: 45 Witness ListExhibit List filed by EVANSVILLE VANDERBURGH SCHOOL CORPORATION.(Rose, Gavin) (Entered: 07/13/2018)
07/13/2018	49	OBJECTION *to Plaintiff's Exhibit List for Preliminary Injunction Hearing* by EVANSVILLE VANDERBURGH SCHOOL CORPORATION. Related document: 44 Witness ListExhibit List filed by J.A.W..(Shoulders, Patrick) (Entered: 07/13/2018)
07/16/2018	50	Submission *of Supplemental Evidence in Support of 19 Motion for Preliminary Injunction*, filed by Plaintiff J.A.W.. (Attachments: # 1 Exhibit Deposition of JAW with selected exhibits, # 2 Exhibit Deposition of Sup't David Smith with selected exhibits, # 3 Exhibit Supplemental declaration of JAW, # 4 Exhibit Declaration of Tammy Work, # 5 Exhibit Declaration of Dr. Randi Ettner, # 6 Exhibit Declaration of Dr. James Fortenberry, # 7 Exhibit Declaration of Dr. Janine Fogel, # 8 Exhibit Declaration of Dr. Judy Chiasson, # 9 Exhibit Declaration of Zachary Mulholland, # 10 Exhibit Declaration of Aleczander Deam)(Falk, Kenneth) Modified on 7/17/2018 (JRB). (Entered: 07/16/2018)
07/16/2018	51	SEALED *(Notice of Filing Exhibits Under Seal)*, filed by Plaintiff J.A.W.. (Attachments: # 1 Exhibit 1 (Exh. 3 to Pltf's Dep. - Counseling Records), # 2 Exhibit 2 (Exh. 4 to Pltf's Dep. - Counseling Record), # 3 Exhibit 3 (Exh. 5 to Pltf's Dep. - Medical Records), # 4 Exhibit 4 (Exh. 6 to Pltf's Dep. & Dep. of David Smith - Photograph of Pltf.))(Rose, Gavin) (Entered: 07/16/2018)
07/16/2018	52	MOTION to Maintain Document Under Seal 51 SEALED Document (Case Participants - doc) , filed by Plaintiff J.A.W.. (Attachments: # 1 Text of Proposed Order)(Rose, Gavin) (Entered: 07/16/2018)
07/16/2018	53	BRIEF/MEMORANDUM in Support re 52 MOTION to Maintain Document Under Seal 51 SEALED Document (Case Participants - doc) , filed by Plaintiff J.A.W.. (Rose, Gavin) (Entered: 07/16/2018)

07/16/2018	54	REPLY in Support of Motion re 19 MOTION for Preliminary Injunction , filed by Plaintiff J.A.W.. (Attachments: # 1 Appendix A- bathroom policies in other, non-Indiana, jurisdictions, # 2 Appendix B-discrimination policies in other Indiana school districts)(Falk, Kenneth) (Entered: 07/16/2018)
07/18/2018	55	MOTION for Leave to File *Response to Deft.'s Objections to Pltf.'s Exhibits to be Presented at the Prelim. Inj. Hrg.*, filed by Plaintiff J.A.W.. (Attachments: # 1 Exhibit (Response to Deft.'s Objections to Pltf.'s Exhibits to be Presented at the Prelim. Inj. Hrg.), # 2 Text of Proposed Order)(Rose, Gavin) (Entered: 07/18/2018)
07/18/2018	56	MOTION for Leave to File *Sur-Reply in Opposition to Plaintiff's Motion for Preliminary Injunction*, filed by Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (Attachments: # 1 Text of Proposed Sur-Reply, # 2 Text of Proposed Order)(Shoulders, Patrick) (Entered: 07/18/2018)
07/19/2018	57	ENTRY FOR JULY 19, 2018 - First, the Defendant's motion to file a surreply in opposition to the motion for preliminary injunction 56 is GRANTED. The Clerk is directed to file the Defendant's surreply, which is found at Dkt. No. 56-1.Second, the Plaintiff's motion for leave to file a response to the Defendant's objections to his exhibits (55 is GRANTED. The Clerk is directed to file the Plaintiff's response, which is found at Dkt. No. 55-1. SEE ORDER. Signed by Judge William T. Lawrence on 7/19/2018. (JRB) (Entered: 07/19/2018)
07/19/2018	58	Response to 49 Defendant's Objections to Plaintiff's Exhibits to be Presentedat the Preliminary Injunction Hearing, filed by Plaintiff J.A.W.. (JRB) (Entered: 07/19/2018)
07/19/2018	59	Surreply in Opposition to 19 MOTION for Preliminary Injunction , filed by Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (JRB) (Entered: 07/19/2018)
07/23/2018	60	Minute Entry for proceedings held before Judge William T. Lawrence: Evidentiary Hearing held on 7/20/2018. Plaintiff appears in person and with counsel, defendant appears by its representative and with counsel, and the hearing begins. Pursuant to the motion of plaintiff, a separation of witnesses is ordered. Plaintiff presents documentary evidence. Plaintiff rests. Defendant presents the testimony of J.A.W. and Dr. David Smith and documentary evidence. Defendant rests. Court requests proposed Findings of Fact and Conclusions of Law be filed by July 27, 2018. Court is adjourned. (Court Reporter Maggie Techert.) (CMC) (Entered: 07/23/2018)
07/25/2018	61	TRANSCRIPT of Preliminary Injunction Hearing held on July 20, 2018 before Judge William T. Lawrence. (69 pages.) Court Reporter/Transcriber: Maggie Techert (Telephone: (812) 205-0682). Please review Local Rule 80-2 for more information on redaction procedures. Redaction Statement due 8/15/2018. Release of Transcript Restriction set for 10/23/2018. (Techert, Maggie) (Entered: 07/25/2018)

07/25/2018	62	NOTICE of FILING of OFFICIAL TRANSCRIPT of Preliminary Injunction Hearing held before Judge William T. Lawrence on July 20, 2018 (Techert, Maggie) (Entered: 07/25/2018)
07/25/2018		Remark Review of 61 TRANSCRIPT Completed. No items identified to redact. (JRB) (Entered: 07/25/2018)
07/27/2018	63	Findings of Fact & Conclusions of Law (proposed) *and Preliminary Injunction* by J.A.W.. (Falk, Kenneth) (Entered: 07/27/2018)
07/27/2018	64	ORDER granting 52 Motion to Maintain Document 51 Under Seal. Signed by Magistrate Judge Matthew P. Brookman on 7/27/2018. (JRB) (Entered: 07/27/2018)
07/27/2018	65	Proposed Findings of Fact by EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (Shoulders, Patrick) (Entered: 07/27/2018)
07/31/2018	66	NOTICE of Appearance by Laura Katherine Boren on behalf of Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (Boren, Laura) (Entered: 07/31/2018)
08/02/2018	67	NOTICE *of Updated Authority*, filed by Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION, re 41 Response in Opposition to Motion, 65 Proposed Findings of Fact. (Attachments: # 1 Supplement Supplemental - Revised Opinion, # 2 Supplement Supplemental - Dissenting Opinion from Denial) (Shoulders, Patrick) (Entered: 08/02/2018)
08/03/2018	68	ORDER granting 19 Motion for Preliminary Injunction - EVSC shall permit J.A.W. to use the boys' restrooms within the schools and other buildings of EVSC. No bond will be required. SEE ORDER. Signed by Judge William T. Lawrence on 8/3/2018. (JRB) (Entered: 08/03/2018)
08/06/2018	69	MOTION to Stay , filed by Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (Attachments: # 1 Text of Proposed Order) (Shoulders, Patrick) (Entered: 08/06/2018)
08/07/2018	70	NOTICE OF APPEAL as to 68 Order on Motion for Preliminary Injunction, filed by Defendant EVANSVILLE VANDERBURGH SCHOOL CORPORATION. (Filing fee $505, receipt number 0756-5005412) (Shoulders, Patrick) (Entered: 08/07/2018)

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