

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

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

DEFENDANT’S BRIEF IN SUPPORT OF SECOND MOTION TO DISMISS

The Evansville Vanderburgh School Corporation (“EVSC”), submits this Brief in Support of its Motion to Dismiss.

I. Introduction

On February 22, 2018, Plaintiff, a transgender male EVSC student, filed a Complaint asserting that EVSC was violating his statutory and constitutional rights by denying him access to restrooms consistent with his gender identity. Because Plaintiff has now graduated from high school, his claims against EVSC have been rendered moot. As a result, this Court has been deprived of subject matter jurisdiction and this action should be dismissed.

II. Standard of Review

The question of subject-matter jurisdiction may be raised at any stage of the proceedings, and if a court determines at any time that it lacks subject-matter jurisdiction, it must dismiss the action. Fed. R. Civ. P. 12(h)(3); *Minn-Chem, Inc. v. Agrium Inc.*, 683 F.3d 845, 853 (7th Cir. 2012) (en banc) (explaining that “subject-matter jurisdiction must be secure at all times, regardless of whether the parties raise the issue, and no matter how much has been invested in a case”); *A.M. v. Butler*, 360 F.3d 787, 790 (7th Cir. 2004) (“a federal court at any stage of the

proceedings must, on its own, dismiss a case as moot when it cannot give the petitioner any effective relief”).

“[A] plaintiff faced with a 12(b)(1) motion to dismiss bears the burden of establishing that the jurisdictional requirements have been met.” *Ctr. for Dermatology & Skin Cancer, Ltd. v. Burwell*, 770 F.3d 586, 588-89 (7th Cir. 2014). Furthermore, “a defendant challenging jurisdiction need not accept as true the allegations in the complaint and may ask the court to decide the jurisdictional issue by considering additional documents and affidavits . . . or by holding an evidentiary hearing and making factual findings.” *Chi. Joe's Tea Room, LLC v. Vill. of Broadview*, 894 F.3d 807, 814 (7th Cir. 2018).

It is well settled that “[m]ootness strips a federal court of subject-matter jurisdiction.” *Id.* at 815. See also *Pakovich v. Verizon Ltd. Plan*, 653 F.3d 488, 492 (7th Cir. 2011); *Nelson v. Welch (In re Repository Techs., Inc.)*, 601 F.3d 710, 716 (7th Cir. 2010); *Evers v. Astrue*, 536 F.3d 651, 662 (7th Cir. 2008); *Ali v. Gonzales*, 179 F. App'x 951, 953 (7th Cir. 2006). Because mootness is a jurisdictional issue, it is properly raised in a motion to dismiss under Rule 12(b)(1). *Chi. Joe's*, 894 F.3d at 815.

III. Mootness

Article III of the Constitution limits a federal court’s jurisdiction to “cases” and “controversies.” The concept of mootness “ensures that the federal courts remain faithful to the case or controversy limitation imposed by Article III of the Constitution by refraining from pronouncements on legal questions that do not affect existing controversies between parties before the court.” *Protestant Mem'l Med. Ctr., Inc. v. Maram*, 471 F.3d 724, 729 (7th Cir. 2006). “A case becomes moot when the dispute between the parties no longer rages, or when one of the parties loses his personal interest in the outcome of the suit.” *Thomas v. Law Firm of Simpson &*

Cybak, 244 F. App'x 741, 743 (7th Cir. 2007) (quoting *Holstein v. City of Chi.*, 29 F.3d 1145, 1147 (7th Cir. 1994)). “The test for mootness ‘is whether the relief sought would, if granted, make a difference to the legal interests of the parties (as distinct from their psyches, which might remain deeply engaged with the merits of the litigation).’” *Crane v. Ind. High Sch. Athletic Ass'n*, 975 F.2d 1315, 1318 (7th Cir. 1992) (quoting *Air Line Pilots Ass'n, Int'l v. UAL Corp.*, 897 F.2d 1394, 1396 (7th Cir. 1990)). *See also Ashcroft v. Mattis*, 431 U.S. 171, 173, 97 S. Ct. 1739, 1740 (1977) (“Emotional involvement in a lawsuit is not enough to meet the case-or-controversy requirement; were the rule otherwise, few cases could ever become moot.”).

IV. Argument

At the conclusion of the Fall semester on December 20, 2018, J.A.W. completed all coursework and graduated from the EVSC. He will not return to EVSC for the semester which begins on January 2, 2019. Because Plaintiff has graduated from EVSC, this case no longer presents a live controversy. Federal courts have held on many occasions that students’ claims against schools and school administrators were mooted upon graduation. *See Bd. of Sch. Comm'rs v. Jacobs*, 420 U.S. 128, 129, 95 S. Ct. 848, 850 (1975) (finding constitutional claims brought by students relating to publication and distribution of a student newspaper were moot because “all of the named plaintiffs in the action had graduated”); *UWM Student Ass'n v. Lovell*, 888 F.3d 854, 862 (7th Cir. 2018) (finding claims of university students who had graduated moot because they had “no reasonable expectation of being governed by the defendant Student Association”); *Corder v. Lewis Palmer Sch. Dist. No. 38*, 566 F.3d 1219, 1225 (10th Cir. 2009) (finding student’s First Amendment and Equal Protection challenge to high school’s policy requiring prior approval of graduation speeches mooted by her graduation); *Stotts v. Cmty. Unit Sch. Dist. No. 1*, 230 F.3d 989, 991 (7th Cir. 2000) (finding high school student’s challenge to

tattoo rule moot because student no longer had “a reasonable expectation of being subjected to the Board’s appearance regulation”); *Cole v. Oroville Union High Sch.*, 228 F.3d 1092, 1098 (9th Cir. 2000) (“It is well-settled that once a student graduates, he no longer has a live case or controversy justifying declaratory and injunctive relief against a school’s action or policy.”). *See also Sinn v. Lemmon*, No. 1:15-cv-1394-WTL-DML, 2017 U.S. Dist. LEXIS 9446, at *6 (S.D. Ind. Jan. 24, 2017) (finding former inmate’s claim for declaratory judgment regarding the constitutionality of certain prison policies were mooted by the inmate’s release from prison).

Because Plaintiff is no longer an EVSC student, he no longer has any reasonable expectation of being affected by EVSC’s rules around restroom usage. Likewise, EVSC no longer has the power or opportunity to discipline or otherwise adversely affect Plaintiff’s asserted rights. Although Plaintiff may remain emotionally invested in obtaining a ruling on the merits of this suit, such interests are insufficient to satisfy the case-or-controversy requirement of Article III. Plaintiff’s claims are moot.

Nor do Plaintiff’s claims fall within the exception to mootness for disputes capable of repetition, yet evading review. That exception applies where (1) the action challenged is too short in duration to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will again be subject to the same action. *Davis v. FEC*, 554 U.S. 724, 735, 128 S. Ct. 2759, 2769 (2008).

Plaintiff’s claims satisfy neither prong of this test. Given that EVSC provides public school services to students from kindergarten through twelfth grade, a case challenging the application of EVSC’s restroom usage rules to transgender students will not necessarily evade review. *See Stotts*, 230 F.3d at 991 (finding that a challenge to a high school appearance regulation would not necessarily evade review because “[a] freshman who challenges the

regulation, for example, would have a four-year window within which to litigate the issue”). Furthermore, because Plaintiff has graduated, he will no longer be subjected to EVSC’s rules regarding restroom usage. *See Mellen v. Bunting*, 327 F.3d 355, 364 (4th Cir. 2003) (noting that the claims of students who have graduated generally will not fall within this exception to mootness because such students will no longer be subject to the school’s policies).

V. Conclusion

For the foregoing reasons, Plaintiff’s claims are moot. Consequently, this Court no longer has subject-matter jurisdiction and Plaintiff’s Complaint must be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 31st day of December, 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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