

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

B.E. and S.E., minor children by their)	
mother, legal guardian, and next friend, L.E.,)	
)	
Plaintiffs,)	
)	
v.)	No. 2:21-cv-415
)	
VIGO COUNTY SCHOOL CORPORATION;)	
PRINCIPAL, TERRE HAUTE NORTH VIGO)	
HIGH SCHOOL, in his official capacity,)	
)	
Defendants.)	

Complaint for Declaratory and Injunctive Relief and Damages

Introduction

1. B.E. and S.E. are transgender students attending Terre Haute North Vigo High School, one of the high schools within the Vigo County School Corporation. They have been diagnosed with gender dysphoria and are under the care of physicians. They have been prescribed hormones that they will begin taking this month. They have requested that they be able to use male restrooms and the male locker room in the school as they identify as male, even though their birth certificates note their gender at birth as female. Employees of defendant Vigo County School Corporation have denied this request. B.E. and S.E. have also asked to be addressed by the names they use that reflect their gender identity and with male pronouns. However, several substitute teachers refuse to use these names and pronouns, instead using the names that reflect their gender at birth and female

pronouns. The Principal of the High School has refused to direct the teachers to use these names and male pronouns. Additionally, the Principal has indicated that the plaintiffs must be listed by their birth names in the school yearbook. Defendants' failure to recognize the plaintiffs as male and to allow them to use male restrooms and the male locker room and to require that they be addressed by the names and pronouns consistent with their male gender 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). They are entitled to declaratory and injunctive relief, as well as their damages.

Jurisdiction, venue, and cause of action

2. This Court has jurisdiction of this case pursuant to 28 U.S.C. § 1331.
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. Plaintiffs bring their claims pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, 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. B.E. is a minor child who resides in Vigo County, Indiana.

7. S.E. is a minor child who resides in Vigo County, Indiana.
8. The Vigo County School Corporation is a public-school corporation providing educational services in Vigo County, Indiana.
9. The Principal of Terre Haute North Vigo High School is the duly appointed principal of the school and is sued in his official capacity.

Factual allegations

10. B.E. and S.E. are siblings who attend high school at Terre Haute North Vigo High School.
11. They are currently freshmen.
12. Although the gender assigned to both B.E. and S.E. at birth, and noted on their birth certificates, was female, they have long identified themselves as male.
13. Both plaintiffs, while they were in elementary school, identified themselves as male and started using male first names and some teachers and students began using these male names at their request and at the request of their mother.
14. For some time, the plaintiffs have made themselves masculine in appearance by wearing male clothing and wearing their hair in a masculine manner.
15. They have requested that they be referred to by their male first names and that male pronouns be used when school employees and students refer to them. Their mother has also made this request.

16. The plaintiffs are seen by health professionals at Riley Children's Hospital in Indianapolis.

17. The health professionals have diagnosed the plaintiffs as having gender dysphoria.

18. The health professionals have indicated that the plaintiffs should be able to use bathrooms and locker rooms that are congruent with their male gender.

19. The health professionals have prescribed male hormones for the plaintiffs, and the plaintiffs are to begin taking them on November 9, 2021.

20. L.E., the mother of the plaintiffs, has had telephonic and in-person meetings with administrators at Terre Haute North Vigo High School to request that the plaintiffs be allowed to use the restrooms and locker room congruent with their male genders.

21. Prior to the last meeting, in mid-October, L.E. sent the administrators information specifying that federal law and the Constitution require that transgender students be allowed to use bathrooms and locker rooms that are consistent with their gender identities.

22. Nevertheless, school administrators have specified that the plaintiffs cannot use the male restrooms and locker rooms.

23. Instead, school personnel indicated that the plaintiffs could use the female restrooms or the unisex bathroom in the health room at the high school.

24. At the last meeting between L.E. and the Principal and Vice-Principal, the Vice-Principal indicated that they had consulted with executive staff of the School Corporation and that the Corporation had consulted with its lawyer and that the plaintiffs would not be allowed to use the male facilities.

25. The defendants have refused to allow plaintiffs to use the restrooms and locker rooms consistent with their gender identities, even though defendants have been informed of the recommendations of the health professionals at Riley Hospital and despite being informed that the plaintiffs will begin hormone therapy on November 9 of this year.

26. The single restroom that is in the health office is not a viable substitute for the male restrooms at the High School for several reasons.

27. First, the health office is much further from plaintiffs' classes than the male restrooms used by their fellow students and there is insufficient time between classes to travel back and forth.

28. Moreover, both plaintiffs have had serious digestive and intestinal issues since their births, and they are prescribed and take powerful laxatives. Because of this, at times they simply are not able to travel the greater distance to the health center without the risk of bowel accidents.

29. Because of their medical issues, plaintiffs' medical professionals have informed the High School that plaintiffs should be excused from their classes as needed to use the

restroom. The High School has acceded to this request. However, due to the great distance between plaintiffs' classes and the health center, if either plaintiff goes to the restroom during class, he will miss more of the class than he would if he could use the male restrooms that are much closer.

30. Gender dysphoria is characterized by depression and anxiety because of the mismatch between a person's gender at birth and the person's gender identity. Being denied the ability to live one's gender identity to the greatest extent possible will heighten the depression and anxiety. And, being allowed to live one's life consistent with one's gender identity ameliorates the consequences of gender dysphoria.

31. Plaintiffs suffer depression and anxiety as a result of their gender dysphoria.

32. Using a female restroom at this point would undermine the need that plaintiffs have to live as males and would heighten their depression and anxiety and would cause them harm.

33. Using a female restroom would also subject them and other students to discomfort, as the plaintiffs are masculine in appearance, and will only become more so as their hormone therapy has its intended masculinizing effects.

34. Similarly, the use of the restroom in the health office, even if it was physically close to where the students are located, and even if it was open, would emphasize to the plaintiffs and others that the plaintiffs are "different" and would undermine their need to live as males and would cause psychological distress and harm.

35. Plaintiffs currently attempt to use the restroom in the health office, and this increases the negative psychological consequences caused by their gender dysphoria. At times it has been locked and the plaintiffs had to uncomfortably wait.

36. Because they do not have permission to use the male restrooms, the plaintiffs frequently have to avoid using the bathroom at all, which causes them discomfort.

37. Substitute teachers insist on referring to plaintiffs by their female names given to them at birth and insist on referring to them using female pronouns.

38. This also causes plaintiffs psychological distress as it serves to reemphasize the disconnect between their gender at birth and their gender identity.

39. L.E. has requested that the Principal instruct teachers to refer to the plaintiffs by male pronouns and by the names that they are currently using that are consistent with their gender identities.

40. The Principal has refused to do this and has instead indicated that staff may refer to the plaintiffs by female pronouns and by the female names on their birth certificates.

41. The Principal has also indicated that the plaintiffs will have to be referred to by their birth names in the Terre Haute North Vigo High School's yearbook.

42. Plaintiffs are being caused continuing depression, anxiety, and mental distress, and other injuries, by the actions of defendants.

43. Plaintiffs are being caused irreparable harm for which there is no adequate remedy at law.

44. The Vigo County School Corporation is a recipient of federal funding and is an entity covered by Title IX.

45. At all times defendants have acted and have failed to act under color of state law.

46. The actions and inactions of defendants represent intentional discrimination and have caused damages to plaintiffs.

Legal claims

47. The failure of defendants to allow plaintiffs to use male restrooms and locker rooms at Terre Haute North Vigo High School and to require that plaintiffs be referred to as males, using the names consistent with their gender identities, represents unlawful discrimination because of sex in violation of Title IX, 20 U.S.C. § 1681(a).

48. The failure of defendants to allow plaintiffs to use male restrooms and locker rooms at Terre Haute North Vigo High School and to require that plaintiffs be referred to as males, using the names consistent with their gender identities, violates the Equal Protection Clause of the Fourteenth Amendment.

WHEREFORE, B.E. and S.E. request that this Court:

- a. Accept jurisdiction of this case and set it for prompt hearing.
- b. Declare that defendants have violated the plaintiffs' rights for the reasons noted above.
- c. Enter a preliminary injunction, later to be made permanent, requiring defendants to allow B.E. and S.E. to use male restrooms and the male locker room and further requiring that the plaintiffs be referred to by school personnel, and in school publications, as male, using the names associated with their gender identities.

- d. Award plaintiffs their damages.
- e. Award plaintiffs their reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988.
- f. Award all other proper relief.

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Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

B.E. and S.E., minor children by their mother, legal guardian and next friend L.F.

(b) County of Residence of First Listed Plaintiff Vigo (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Kenneth J. Falk, Stevie J. Pactor, ACLU of Indiana, 1031 E. Washington St., Indpls, IN 46202, 317/635-4059

DEFENDANTS

Vigo County School Corporation; Principal, Terre Haute North Vigo High School

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Real Property, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 USC 1983 and Title IC, 20 USC s. 1681(a)

Brief description of cause: Defendants'denial of plaintiffs' ability to use the bathrooms associated with their gender identityand to treat them as male is unlawful.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

11/8/2021 s/ Kenneth J. Falk

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

United States District Court
for the
Southern District of Indiana

B.E. and S.E., minor children by their
mother, legal guardian, and next friend,
L.E.,
Plaintiff,
v.
VIGO COUNTY SCHOOL
CORPORATION, et al.,
Defendants.

No. 2:21-cv-415

SUMMONS IN A CIVIL ACTION

TO: Vigo County School Corporation
PO Box 3703
Terre Haute, IN 47803

A lawsuit has been filed against you. Within 21 days after service of this summons on you (not counting the day you received it) or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kenneth J. Falk / Stevie J. Pactor
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202

Kathleen Bensberg
Indiana Legal Services, Inc.
1200 Madison Ave.
Indianapolis, IN 46225

Megan Stuart
Indiana Legal Services, Inc.
214 S. College Ave., 2nd Floor
Bloomington, IN 47404

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action Number: No. 2:21-cv-415

PROOF OF SERVICE

(this section should not be filed with the court unless required by Fed. R. Civ. P. 4(l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)*_____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual’s residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual’s last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server’s Signature

Printed name and title

Server’s address

Additional information regarding attempted service, etc.

United States District Court

for the
Southern District of Indiana

B.E. and S.E., minor children by their)
mother, legal guardian, and next friend,)
L.E.,)

Plaintiff,)

v.)

No. 2:21-cv-415

VIGO COUNTY SCHOOL)
CORPORATION, *et al.*,)

Defendants.)

SUMMONS IN A CIVIL ACTION

TO: Principal
Terre Haute North Vigo High School
3434 Maple Avenue
Terre Haute, IN 47804

A lawsuit has been filed against you. Within 21 days after service of this summons on you (not counting the day you received it) or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kenneth J. Falk / Stevie J. Pactor
ACLU of Indiana
1031 E. Washington St.
Indianapolis, IN 46202

Kathleen Bensberg
Indiana Legal Services, Inc.
1200 Madison Ave.
Indianapolis, IN 46225

Megan Stuart
Indiana Legal Services, Inc.
214 S. College Ave., 2nd Floor
Bloomington, IN 47404

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action Number: No. 2:21-cv-415

PROOF OF SERVICE

(this section should not be filed with the court unless required by Fed. R. Civ. P. 4(l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)*_____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's Signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.