

FACT & FICTION

Stillwater Superintendent's response on transgender bathrooms

Parents and guardians are raising concerns about Stillwater schools allowing biological males into girls' locker rooms and bathrooms in the name of "transgender rights." Superintendent Gay Washington's response to parents is excerpted below along with the facts about what the law really does—and does not—require.

There is a rumor that a new bathroom policy allowing transgender individuals to use the restroom of their gender identity was instituted this year and not communicated to families. That is not true. District restroom protocols are guided by Stillwater Board of Education Policy DA, which, aside from a few minor verbiage changes in late 2020, was revised to its current form in August of 2015, including specific language clarifying that Title IX protections include gender identity. These revisions, like all policy revisions, were reviewed and approved at open Board meetings.

Currently, SPS sites have restrooms labeled for males and females along with at least one gender-neutral, individual-use restroom at each site. The Office of Civil Rights—the federal agency charged with safeguarding equal access to education, including enforcement actions over recipients of federal funds, such as Stillwater Public Schools—recognizes that Title IX protects all students, including students who are lesbian, gay, bisexual, and transgender, from harassment and other forms of sexual discrimination. These protections extend to use of school restrooms, allowing individuals to use the restroom corresponding to their gender identity. Any student uncomfortable using the traditional male/female restrooms at any site may utilize individual-use facilities. Another rumor that has circulated is that an incident of some sort has occurred involving a transgender child. SPS has not received any reports of any inappropriate restroom behavior related to a student's gender identity.

Current district restroom practices have been in place for more than six years, but recently several members of the community have spoken out against the district's practices at board meetings, on social media, and in conversation. Among these individuals are those with opinions, often tied to deeply held personal beliefs and convictions, that SPS should change its policy and force transgender students to use separate restroom facilities or the restroom of their birth certificate gender, counter to Title IX. The district does not seek to belittle any

FACTS

This is revealing. While the Obama Administration did claim Title IX requires allowing males in female facilities, the Trump Administration rescinded that decision. SPS continued to follow the Obama guidance after it was rescinded.

Our school board shouldn't wait until someone is victimized before taking common-sense steps to protect female students in locker rooms and bathrooms.

The "civil rights" of boys and men to access girls' locker rooms and bathrooms are not more important than girls' rights to safe and private bathrooms.

individual's beliefs, but it must act in fervent support of all individuals' civil rights and in accordance with the laws of the United States.

Central to some individuals' expressed concerns is a fear that allowing transgender individuals to use the restroom of their gender identity poses a danger to other students. Transgender individuals have been using the restroom of their gender identity in SPS for many years, and the district has received zero reports of any transgender individuals behaving inappropriately toward anyone else in a restroom. The notion that transgender individuals are more prone to inappropriate behavior is categorically false.

A further stated concern is a hypothetical example that a boy might claim to be a transgender girl in order to gain access to the girls restroom to behave inappropriately. Again, current district protocols have been in place for many years with no such incidents occurring. Studies of districts with inclusive restrooms policies, such as by Williams Institute at UCLA School of Law, refute such unsubstantiated fears, finding no higher incident of inappropriate restroom behavior.

Stillwater Public Schools is committed to ensuring all students are treated equally, and we take student safety, federal law, and expert legal guidance seriously. Below are several legal provisions and court decisions provided to the district by the Office of Legal Services at the Oklahoma State Department of Education that explain why all public school students are entitled to equal access to educational programs, which includes facilities.

As stated above, Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in publicly funded education programs.

Most relevant to this issue is a group of cases from the past decade that have directly addressed transgender students' access to public school restroom facilities. In *Grimm v. Gloucester County School Board* (4th Cir. 2020), the federal 4th Circuit Court of Appeals ruled: "At the heart of this appeal is whether equal protection and Title IX can protect transgender students from school bathroom policies that prohibit them from affirming their gender. We join a growing consensus of courts in holding that the answer is resoundingly yes." Further federal appeals court cases that affirm a transgender student's access to public school bathroom facilities appropriate to their gender identity include, among others, *Whitaker v. Kenosha Unified School District* (7th Cir. 2017) and *Doe v. Boyertown Area School District* (3rd Cir. 2018). In 2021 the U.S. Supreme Court declined to reconsider the 4th Circuit's decision in *Grimm*, leaving in place the appellate court's ruling that a

Parents and guardians should not have to wait until after someone is victimized to raise concerns about a policy that does, in fact, allow biological males into girls' bathrooms and locker rooms.

Regardless of what has happened so far, the School Board's policy creates new opportunities for dangerous behavior. In Loudoun County, Virginia, a girl was violently assaulted in a girls' bathroom by a male student dressed in a skirt.

Title IX prohibits discrimination on the bases of sex, not gender identity. The Obama Administration attempted to alter the fundamental and historical understanding of Title IX—which was written to protect biological women—to apply it to biological males who claim to be transgender.

Oklahoma is in the 10th Circuit and is not bound by decisions made in the 4th or 7th Circuit Courts.

public school policy prohibiting a transgender student from using the school bathroom appropriate to their gender identity is discrimination on the basis of sex under Title IX.

Additionally, in 2020, the U.S. Supreme Court explicitly ruled in *Bostock v. Clayton County, Georgia* that discrimination on the basis of sex legally includes discrimination based on sexual orientation or gender identity. The *Bostock* case was based on the federal anti-discrimination law that applies to employment, Title VII of the Civil Rights Act of 1964, that parallels Title IX's provisions for education programs. Beginning with the establishment of Title IX in the early 1970s, legal interpretation of Title IX has been closely linked to the courts' interpretation of Title VII. Legal authorities feel that in ruling that Title VII's protections against sex discrimination apply to transgender individuals, the Supreme Court effectively settled that question as to Title IX.

Following the Supreme Court's holding in *Bostock* that federal sex discrimination law protects individuals from discrimination based on gender identity or sexual orientation, the 10th Circuit—the federal appellate court with jurisdiction over Oklahoma—directly acknowledged that Title VII's sex discrimination provisions protect transgender individuals in the employment context in *Tudor v. Southeastern State University*.

Stillwater Public Schools' current practices are based on these precedents and the guidance of legal experts. The position the district has taken on this matter and the policy and practices that have been in place for years are supported by the U.S. Department of Education, National PTA, American School Counselor Association, National Association of Elementary School Principals, National Association of School Psychologists, National Association of Secondary School Principals, and National Task Force to End Sexual and Domestic Violence, to name a few.

The above text is excerpted from an email by Gay Washington, Interim Superintendent Stillwater Public Schools.

Bostock is a Title VII employment case—not a Title IX education case. Despite some similarities, these laws have different language, different exceptions, and different legislative authority. Title VII is a general prohibition on discrimination; Title IX's sole purpose is to protect biological females in education and athletics. Title IX regulations recognize differences between men and women and allow sex distinctions for sports teams, bathrooms and locker rooms. This is consistent with the original intent of Congress. Contrary to SPS's claims, the *Bostock* employment law decision does not apply to schools and explicitly does not apply to bathrooms or locker rooms.

SPS is caving to political threats by the Biden Administration instead of adopting policies to keep female students safe.

Stillwater Parents have every right to ask questions about how the latest political fads might put our daughters at risk. For decades everyone understood that Title IX protected women and girls—biological females—from being discriminated against or preyed on by men.

Visit www.stillwaterparents.com for more information.



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