



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
330 E. Kilbourn Avenue, Suite 725, Milwaukee, WI 53202-3141
414-727-WILL (9455)
Fax 414-727-6385
www.will-law.org

April 19, 2023

VIA EMAIL:

Sun Prairie Area School District
Board of Education
District Support Center
501 South Bird Street
Sun Prairie, WI 53590
shschro@sunprairieschools.org

Re: Serious Violation of Girls' Privacy Rights in Sun Prairie East Locker Room

Dear Members of the Board of Education:

Our attorneys at the Wisconsin Institute for Law & Liberty (WILL) recently became aware of an alarming incident involving a violation of freshman girls' privacy while in a Sun Prairie East High School (EHS) locker room. Although the parent who reached out to WILL attempted to resolve this issue with Sun Prairie Area School District (SPASD or "District") administrators, the response by the District to date has been completely inadequate. We are calling on you to address this immediately and put policies in place that will protect the safety and privacy of all students (and provide public notice of what those policies are).

In the interests of privacy, we will not share student or parent names in this letter, but your employees at EHS are well-aware of all persons involved and your District's refusal to act.

March 3 Incident

On Friday, March 3, 2023, four freshman girls at EHS participated in a swim unit as part of their first-hour physical-education class. After the class, the girls entered the girls' athletic locker room to shower and change for class. Upon entering, they noticed a senior male student in the area containing lockers and benches. It is our understanding this male was 18 years old at the time of the incident. According to the girls, this student was not in the first-hour PE class they were participating in. While the girls were surprised to see him in the locker room, they had a general idea that this student identifies as transgender and has used girls' bathrooms before. While they were uncomfortable, they proceeded to the shower area without interacting with the student.

The girls entered the shower area with their swimsuits on, which was their common practice as they rinsed off. As they began to shower, the male student approached them, entered the shower area, announced “I’m trans, by the way,” and then undressed fully and showered completely naked right next to one of the girls. He was initially turned towards the wall but eventually turned and fully exposed his male genitalia to the four girls. Understandably, the girls were caught off guard and shocked, closed their eyes, and tried to hurry up and leave the showers as quickly as possible.

Events Following Incident and Inadequate Response by District

Uncomfortable and unsure of what to do, the girls did not immediately report this incident. But when one of the girls shared the story with another student, that student correctly told them that this incident should be reported as soon as possible.

On Monday, March 6, the other student (who was not involved in the incident) informed student services about the incident. Rather than informing the Title IX coordinator about this report of alleged sexual harassment, Associate Principal Heidi Walter asked for the names of the students involved, but the other student wanted to get permission from the girls first. There is no indication anyone at EHS took any action at that time.

On Friday, March 10, the other student attended a meeting and was ready to provide the girls’ names, but Assistant Principal Walter told her that instead the girls can approach her if they wanted. Assistant Principal Walter later admitted during a meeting with parents that she should have “dug deeper” at that time.

Under federal law, the incident should have been reported to the Title IX coordinator, who should have then contacted the girls, offered supportive measures, and provided them an opportunity to file a complaint. Supportive measures might have included accommodations to maintain their access to education and adequate privacy in the locker room at least while a Title IX investigation was pending. No one from the District contacted any of the girls’ parents at that time, and no one investigated. To be clear, that means that the District’s initial response to this incident violated Title IX.

Setting aside what your administrators did *not* do soon after learning of the incident, a mother of one of the freshman girls subsequently learned from her daughter about what happened. At that time, her daughter assumed her name had been given to school staff and that the school would be following up with her. On March 16, this mother emailed EHS Principal Renee Coleman and copied Superintendent Brad Saron to express concerns and request clarification about what the school was doing to address the situation. The principal called and apologized, but then obliquely reported that District policies address this situation and that she would have to speak with District staff who knew the details. No “policy” was identified, and no Title IX rights were mentioned.

On March 29, more than ten days after the mother’s email (and almost four weeks after the incident), the principal responded to another inquiry from a different parent but again did not identify any applicable policy, the Title IX procedures, or what EHS has done to address the situation. Despite repeated requests, an in-person meeting did not occur until April 5, 2023—over a month after the incident.

At this meeting, the girls’ parents asked what the policy was, how EHS allowed this to happen, and what the policy would be going forward. No one at this meeting provided answers to the parents’ questions, except for referencing a “policy” that they did not identify, describe, or bring to the meeting. Frankly, the District social worker at the meeting appeared to be the only individual who put any effort into resolving the issue. She expressed a desire to meet with the girls, apologize, and to solicit their feedback on how the District can improve. There was no indication that the District intends to address this matter in any way or change any policy.

Locker Room Accessibility “Guidance”

It was not until April 10 that anyone from SPASD was able to identify *any* applicable policy. On that date, the EHS principal emailed one parent a copy of a “Restroom and Locker Room Accessibility Guidance.” A copy of this one-page guidance document is attached. There is no indication that this policy has ever been in effect, was in effect on March 3, or was ever approved by the School Board.

The same day, the EHS principal apologized via email to a parent “for the incident that occurred” and reiterated that the situation the girls experienced “should not have happened.” The principal wrote that “we will continue to work to ensure no one has a similar experience,” but she did not articulate any steps the school or District is taking to ensure the privacy and safety of students. Apologizing does not satisfy your District’s Title IX obligations.

Overall, the District entirely dismissed the rights and concerns of the freshmen girls involved. The District only assured parents that the issue had been addressed *with the transgender student* by emphasizing the guidance referenced above. But simply offering that guidance did nothing to address the concerns of the parents of the girls involved, nor does it provide comfort to other parents of SPASD students or notify them of what procedure the District will even follow going forward when addressing the issue of single-sex spaces.

Under the guidance document, males may still use the girls’ locker room and may do so without any regard for the privacy or comfort of female students. The guidance only suggests that if a biological male “makes any request regarding the use of locker rooms,” then SPASD administrators will evaluate the request on a “case-by-case basis.” What if there is no such request? Is permission to use the girls’ locker room required? Who evaluates whether access will be permitted? The policy does not answer these questions.

It is quite telling that, according to the guidance document, if biological girls desire more privacy, it is *the girls* who must leave and use a separate bathroom or locker room. This is precisely backwards.¹

Of note, publicly available on its website, SPASD has a policy titled “[Locker Room Privacy](#).” This policy states that “[t]he District shall observe measures intended to protect the privacy rights of individuals using school locker rooms.” It goes on to require that the policy “shall be published annually in the student handbook and posted in each locker room in the District.” The [2022–23 SPASD High School Handbook](#) includes no mention of students’ privacy rights except for in the context of technology. The Board delegated the responsibility of enforcing the Locker Room Privacy policy to the building principal. Based on the delay by the District and the April 10 email from Principal Coleman, she apparently did not even know this Locker Room Privacy policy exists.

District Failure to Protect Students’ Rights

State and federal law mandates an appropriate response. Title IX prohibits discrimination on the basis of sex in education programs and activities. All public and private schools receiving any federal funds must comply with Title IX. Under the Title IX regulations, sex discrimination encompasses sexual harassment, which includes unwelcome conduct on the basis of sex that is so severe that it effectively denies a person equal access to the education program. Here, four freshman girls taking a shower in their swimsuits in what is supposed to be a private and safe space, were exposed to the male genitals of a senior student against their will. Considering student development, high school being a relatively new environment for freshman girls, the power dynamics between not only a biological male and female but between a senior and a freshman, and student safety, the age difference of the students here is relevant.

By failing to act promptly in response to becoming aware of the incident, SPASD did not follow its own policy in this instance regarding [District Response to Alleged Sexual Harassment](#). Title IX requires that all reports regarding student

¹ In fact, the District’s locker-room “guidance” is a misguided attempt to create a legal policy without support in law. Even though gender identity is not included within the definition of sex in Title IX (in fact the United States Department of Education is currently attempting to amend Title IX for it to be included), SPASD includes in its guidance document citations to Department of Education resources related to transgender students. As for the Notice of Interpretation document cited by SPASD, a federal court has [enjoined](#) the Department from implementing it against several states. *See State of Tenn., et al. v. U.S. Dep’t of Educ.*, No. 3:21-cv-308 (E.D. Tenn.) (July 15, 2022). Even though Wisconsin is not included in the lawsuit, the reasoning supporting the injunction is still relevant. Particularly, the Supreme Court of the United States in *Bostock* considered sex discrimination in the Title VII employment context and explicitly held that its decision did not “sweep beyond Title VII to other federal or state laws that prohibit sex discrimination.” *Bostock v. Clayton County*, 590 U.S. ___, 1742 (2020). Similarly, the *Bostock* decision did not “purport to address bathrooms, locker rooms or anything else of the kind.” *Id.* Ultimately, the resources cited by SPASD do not support the content of its guidance document.

harassment be taken seriously and treated fairly. SPASD cannot possibly know whether the girls experienced unwelcome conduct that negatively impacted their education because it has done nothing to investigate. Instead, the District acted (or failed to act) in a manner so that only the transgender student's interests were prioritized. This is a violation of law.

Other important legal obligations should also inform your response. If indeed the senior student was 18 years old at the time of this incident (a fact that EHS administrators would know), the incident involves the exposure of genitals by an adult to a child, and it could be a violation of the criminal statute Wis. Stat. § 948.10. This further demonstrates that the issue should have been properly responded to.

Related to this, EHS administrators should carefully consider their mandatory reporting duties. As you know, Wisconsin's mandatory reporting laws are broad, such laws applying to incidents that trigger "reasonable cause to suspect that a child" has been "abused or neglected," or threatened with "abuse or neglect." See Wis. Stat. § 48.981(2)(a). Reasonable cause to suspect "abuse" may be broad enough to include the events described above, but the District cannot possibly know given that its employees have done precious little to look into the incident.

SPASD should take immediate action to protect the federal rights of all students. Such action would include following appropriate Title IX processes in the future, offering victims of sexual harassment supportive measures and the opportunity to file a complaint, conduct investigations when required by Title IX, re-training District staff, disciplining staff that failed to protect students' rights, and adjusting District policies and guidance documents. Finally, the District should adopt and publish Title IX procedures—as is already required—to ensure that all students know their rights when confronted with sex discrimination or sexual harassment.

SPASD failed to think through what loosening boundaries for single-sex spaces could mean for girls. Provided the nature of the incident that occurred, we would ask that you be transparent and public in your response. Other SPASD parents may correctly question whether you are doing everything required to protect girls in District bathrooms and locker rooms. Other parents on Facebook have engaged in a vigorous discussion on a parent forum, and it is very clear that many parents are concerned with how you are (seemingly *not*) protecting the safety of their girls. We expect that you will act promptly.

Open Records Request

To aid in our investigation and to better inform our communications with the parents, please also consider this letter a Public Records Request under the Public Records Law for:

1. A copy of all emails, texts, messages, voicemails, or other communications sent or received by Superintendent Brad Saron, EHS Principal Renee Coleman, EHS Assistant Principal Heidi Walter, EHS Assistant Principal Christine Deutscher, or Director of Student Policy and School Operations Nick Reichloff between March 3, 2023, and the date of this request, related to the incident described above. Please redact any personally identifiable information as required by law.
2. A copy of all emails, texts, messages, voicemails, or other communications sent or received any EHS teacher or counselor between March 3, 2023, and the date of this request, related to the incident described above. Please redact any personally identifiable information as required by law.
3. A copy of any meeting invitations or calendar invitations reflecting any meetings occurring on March 3, 2023, or thereafter, related to the incident described above.
4. A copy of the restroom and locker room guidance that was in effect on March 3, 2023.
5. All records indicating the date on which SPASD's "Restroom and Locker Room Accessibility Guidance" was created.
6. A copy of any locker room privacy policy posted in the locker rooms at EHS.
7. A copy of SPASD's organizational chart or other document reflecting the name and title of SPASD's Title IX coordinator.
8. A copy of any text messages, social media messages, emails, or other communications, whether on official District accounts or not, sent to or received by any member of the SPASD Board of Education related to the incident from March 3, 2023 to the date of this request.

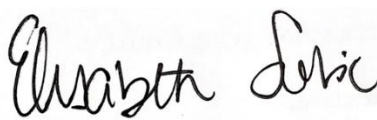
Thank you for your cooperation.

Sincerely,

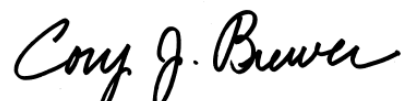
WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.



Daniel P. Lennington
Deputy Counsel



Elisabeth Sobic
Director of Education Policy



Cory J. Brewer
Associate Counsel



Sun Prairie Area School District

Futures depend on us...every child, every day.

Resources

All SPASD decisions are grounded in the school district's [Equity Framework](#)

[US Department of Education Guidelines for Supporting Transgender Youth in School](#)

Title IX of the Education Amendments of 1972 in its [entirety](#) reads:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

[U.S. Department of Education Confirms Title IX Protects Students from Discrimination Based on Sexual Orientation and Gender Identity](#)

Restroom and Locker Room Accessibility Guidance

A student who is transgender, nonbinary, or gender expansive will be permitted to access the men's/women's segregated restrooms in accordance with the student's gender identity that the student regularly asserts at school and in other social environments. Any student who has a need or desire for increased privacy, regardless of the underlying reason, may be provided with access to a single-access restroom where such a facility is reasonably available, but no student shall be required to use such a restroom because of the student's transgender, nonbinary, or gender expansive status.

If a transgender student makes any request regarding the use of locker rooms or any similar type of changing area, the request shall be assessed on a case-by-case basis with the goals of: (a) facilitating the transgender student's access to the District's physical education curriculum and other relevant programs; (b) ensuring adequate student privacy and safety; and (c) minimizing stigmatization of the transgender student. The physical layout of the facility and the degree of undress required when changing for the applicable activity are examples of factors that will be considered in making the arrangements. There is no absolute rule that, in all cases, will require a transgender student to access and use only the locker rooms and other changing areas that correspond to the biological sex the student was assigned at birth.

Any student who has a need or desire for increased privacy, regardless of the underlying reason, may be provided (to the extent reasonably available) with a reasonable alternative changing area (for example, a nearby restroom stall with a door, an area separated by a curtain, a physical education teacher's office in the locker room, or a nearby single-access restroom) or provided with an alternative changing schedule. Any alternative arrangement should be provided in a way that gives adequate consideration to relevant privacy concerns.

These guidelines related to restrooms and changing areas generally assume that a student has a special concern or is in some way uncomfortable with consistently using the facilities that correspond to the biological sex that the student was assigned at birth.

All students have the option of consistently accessing the facilities that correspond to the biological sex that the student was assigned at birth. Documentation and communication is required when supports or accommodations result in use of men's/women's segregated restrooms or locker rooms consistent with the student's gender identity rather than biological sex. This documentation can take the form of notes using the Gender Support Tool, email and/or verbal communication to those adults who have legitimate educational interests, including safety interests, in the information with the primary goal of being proactive to keep the student safe and comfortable.