



OFFICE OF THE ATTORNEY GENERAL
STATE OF OKLAHOMA

Gay Washington
Interim Superintendent
Stillwater Public Schools
314 S. Lewis Street
Stillwater, OK 74074

Via email

April 8, 2022

Dear Superintendent Washington:

It has come to my attention that the Stillwater Public Schools has likely been informed by the State Department of Education that public schools are required to permit biological males into women's restrooms based on their gender identity, and vice versa. This is not accurate.

No legal precedent currently requires Oklahoma schools to open women's restrooms and locker rooms to biological males, or vice versa:

1. The U.S. Supreme Court's *Bostock* decision does not do so. There, the Court expressly stated that "we do not purport to address bathrooms, locker rooms, or anything else of the kind." 140 S. Ct. 1731, 1753 (2020);
2. The Fourth Circuit decision addressing these issues does not do so. Most significantly, Oklahoma is not in the Fourth Circuit. Also, the Fourth Circuit's decision is not consistent with the text and history of the relevant laws, and it is well known that the U.S. Supreme Court's denial of certiorari in any given case "does not constitute ... a decision on the merits." *Brown v. Texas*, 522 U.S. 940 (1997) (Stevens, J., joined by Souter, Ginsburg, and Breyer, JJ.); and
3. The Biden Administration's statements, guidance letters, and the like do not do so. The President can only enforce the law rather than create it, and my office (and many others) are pushing back against this attempted and lawless overreach.

Moreover, the prior federal administration took the opposite view. Just last year, the U.S. Department of Education's general counsel wrote that "we believe the plain ordinary public meaning of the controlling statutory and regulatory text requires a [Title IX] recipient providing 'separate toilet, locker room, and shower facilities on the basis of sex' to regulate access based on biological sex." The statutory text has not changed in the past year, nor has the Constitution.



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If you have any questions about this, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. O'Connor".

John M. O'Connor
Oklahoma Attorney General

CC:
Joy Hofmeister, State Superintendent of Public Instruction
Ryan Walters, Secretary of Education