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STATE REPRESENTATIVE • 59TH ASSEMBLY DISTRICT

AB 469

Public Hearing

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Assembly Committee on Education

Good morning Mr. Chairman and committee members,

When I was first elected to public office this past year, I had no intention to discuss, let alone write a bill, that addresses gender specific bathrooms and locker rooms in our K12 schools. However, I realized several months ago that the question of who is allowed to use bathrooms and locker rooms has been a growing concern for locally elected school boards in Wisconsin and across the nation.

During the past year, it has also become quite apparent that President Obama's Department of Justice (DOJ) and Department of Education (DOE) have taken it upon themselves to attempt to rewrite law by writing opinionated statements in an attempt impose their will by attacking and picking off individual schools around the country. Their ultimate goal? That anyone in a school setting should be allowed to use any bathroom, locker room or shower facility, no matter the sex. This argument is based on an assumption that schools are in violation of federal Title IX regulations that address discrimination on the basis of *sex*. They claim that Title IX also encompasses discrimination on the basis of *gender*.

Let me illustrate this point with a couple of recent stories. Both of these school districts, through local control, implemented very different policies; policies that schools in Wisconsin are operating under today, all of which are now under assault by the federal government:

Gloucester County, Virginia

Last December, the Gloucester County school board listened to an overwhelming number of complaints from parents when a biologically female student began to use the male facilities. The school board, on a 6-1 vote, implemented a policy that restricted girls' and boys' bathrooms to students of "the corresponding biological genders." What is not common knowledge in the print media is that following the policy vote, the school district also stated that they would be increasing privacy for all students by adding privacy strips to the stalls doors of stalls in all restrooms, adding dividers between urinals and begin designating single-stall, unisex bathrooms similar to those in many other public places, something that I might add, our model legislation would allow as a *reasonable alternative*. After the policy was enacted, the school implemented these changes. Gloucester High School installed three single-stall unisex bathrooms, and beefed up privacy around stalls and urinals. In July, however, this same student filed suit against the school district for discrimination under Title IX. Because a crisis should never go to waste, the federal Department of Justice leapt into action and stated in a letter to the school district that this student should be allowed to use the male restrooms at Gloucester High School as a matter of mental health. In the letter, the DOJ also stated that discriminating against



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transgender students *could be* a violation of the federal Title IX regulations that aim to prevent discrimination on the basis of gender. While not legally binding, this letter to the school district signaled that any other school boards that may be wrestling with accommodations for transgender students, while also addressing privacy concerns raised by classmates and parents, which side of the debate they should take if they want to avoid a federal investigation. In September a federal judge sided with the school board and dismissed the sex discrimination claim the ACLU had advanced and that the Obama administration had embraced.

Palatine, Illinois

Just within this past month Palatine, Illinois Township School District #211, was threatened with a lawsuit from the DOE. Under the premise of local control, this school district had a policy in place that allowed a student who identified as a different gender to use the restroom or locker room that they identified with. A suit was filed by a biological male student who identified as a female. Why? Because the policy does not go far enough. The school district policy states that even though this student was allowed to change inside the girls' locker room, there was discrimination because the student had to change behind a curtain.

I cannot be emphasize enough that we have school districts in Wisconsin that have enacted policies their electorate has decided are appropriate. In some instances, this has been to take what appears on its face to be the safe "middle ground". *Each and every one of these school districts are targets and will be singled out unless we have a statewide policy that can stand up in federal court.*

I feel that we, as a state, owe it to our school districts that are already living lean, to provide a policy that the state will be required to defend. Currently, if the federal government decides to send a shot across the bow with threat of a lawsuit in one of our own school districts, it could easily be too hefty a financial burden for the local taxpayers to defend in court.

AB___ simply reinforces societal norms that individuals who are born as biological males must use the male facilities and individuals born as a biological female must use the female facilities. Any student, *any student*, who is not comfortable using facilities under this premise has the ability to request a reasonable alternative from the school administration - quietly and privately, regardless of the reason. Some examples of this could include a student who identifies as the opposite sex or a child being bullied by his/her peers. This policy is all-inclusive.

There has been some discussion about my comments regarding societal norms and the reasoning behind the policy that we chose to adopt as the model for this bill. *First and foremost, this legislation has the backing of federal court rulings.* Secondly, I personally believe that there will be a long-term effect on our society if we begin to indoctrinate students at a young age that it is OK for any gender to



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use any communal-style changing or restroom facility at any time. This may seem farfetched, but let me explain:

1. Schools, rather than parents, will now be deciding when their young child learn about anatomical differences of the opposite sex in restrooms and locker rooms. Many parents still believe that this information should be discussed at home, not ad-hoc in school restrooms.
2. There will no longer be an expectation of privacy, especially for females. Is it too far-fetched to assume that high school boys won't be jumping at the opportunity to claim that they identify as a female in an effort to begin showering and changing alongside your daughters?
3. Allowing communal restrooms and locker rooms that are gender neutral will not prevent any parent, teacher or additional school district personnel from utilizing the opposite sex restroom if they so desire.
4. If we reinforce that this is OK in our school system, how long will it be before it is mandatory that public, and for that matter, private businesses' sex specific communal bathrooms be declared all-inclusive facilities? I expect that a red flag is raised if one of my young daughters walks into a public restroom and a young man walks in behind them. They should not be expected to make assumptions as to whether or not this is an innocent transgender individual or a sexual predator or peeping tom.

AB___ is a straightforward bill that, if enacted, addresses the following:

1. If the federal Department of Education or Department of Justice decide to challenge this statewide policy, Wisconsin's DOJ is ready to defend this legislation that will contain a policy *that the federal courts have already ruled is anti-discriminatory*.
2. Provide a safe, private and dignified learning environment for all students, not just one segment of the student body.
3. Enable parents who may take issue with a violation of this policy to address that situation through private means.
4. Provide protections for school boards from frivolous suits by allowing them the flexibility to address a parent's concern appropriately and in a timely manner.

Finally, I would like to point out that the concerns of school districts and school boards throughout the state regarding the potential for allegations of discrimination under Title IX by the federal government are unfounded - at least for those who have enacted a policy similar to that which is being proposed in this bill.



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Title IX effectively states that, " 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..."

I will cite a couple of the *multiple court rulings* that will legitimately back up our proposed statewide policy of gender specific facilities.

US District Court for the Eastern District of Virginia

Many of the Title IX anti-discrimination cases make reference, and rely heavily on rulings from Title VII, the Civil Rights Act of 1964, which have clearly allowed for separate restroom facilities based on sex. There are examples, though, that complement each other within Title IX and the federal regulations regarding education that effectually nullify the Department of Education's opinionated assertions. Their premise has been that, "Under Title IX, a recipient must generally treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes."

The recent suit against the policy enacted by the Gloucester County, Virginia school district was dismissed by the US District Court for a number of reasons including:

1. A statement in Section 1686 of Title IX respecting *living facilities*, "Notwithstanding anything to the contrary contained in this chapter, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes." Although this does not specifically address bathrooms, it does discuss the ability to allow for clearly defined facilities.
2. 34 CFR §106.33, the Department of Education's own regulations which state that, " A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex."

The court went on to add that, "The Department of Education's interpretation does not stand up to scrutiny. Unlike regulations, interpretations in opinion letters, policy statements, agency manuals, and enforcement guidelines do not warrant Chevron style deference with regard to statutes."

Maricopa County Community College

If a recent US District Court ruling is not enough, the Ninth Circuit Court of Appeals affirmed a lower court ruling in 2009. This 2002 suit was brought against the Maricopa County Community College by a biologically male student who was also an instructor. The suit claimed discrimination under Title



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VII of the Civil Rights Act and Title IX because the college would not allow the student to continue to use the opposite female restroom. This suit was dismissed by the higher level court.

In closing, this bill is not meant to single out, demonize or stigmatize any individuals in society. This is not part of my character nor should it be a by-product of this legislation. Rather, I pray that this policy, a policy that has been tested in federal courts, become a means that not only protects our school districts and taxpayers from frivolous federal agency lawsuits, but one that will allow parents to address school boards quietly and without fear of retribution, prevent threat of a lawsuit from a parent without any window of opportunity for a school board to address a conflict, and most importantly, to continually foster an expectation of dignity, privacy and a safe learning environment for our students.