

# Legal Notes Two: Access to Restrooms and Sex-Segregated Facilities/Activities

Understanding how to support and affirm LGBTQ+ youth, and understanding the existing legal protection for these students, is paramount to ensuring all youth in Florida are able to have successful and fulfilling school experiences.

In tandem with Simone Chriss from Southern Legal Counsel ([simone.chriss@southernlegal.org](mailto:simone.chriss@southernlegal.org)), as well as members of our EQFL Florida School Board Attorney Advisory Group, we have created a series of "Legal Notes" to keep handy as you continue to move forward with ensuring the safety and wellbeing of LGBTQ+ students.

Thank you for your continued dedication to equity and support of all students.

*Every Florida School Board is responsible for providing "proper attention to [the] health, safety, and other matters relating to the welfare of students." Fla. Stat. § 1001.42(8)(a). When a school does not address a transgender student using their affirmed name and pronouns in the school setting, or discloses information about the student's gender identity through their education records, the school may be placing that student at risk of harm and failing to provide a safe learning environment.*

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## Experience and Findings of LGBTQ+ Youth

- All students should feel safe and affirmed in school so that they are able to succeed academically, socially, and emotionally. Unfortunately, due to the inherently sex-segregated nature of many aspects of the education system in this country, many LGBTQ+ youth (and particularly trans youth) do not feel safe and affirmed at school.
- Studies show that 75% of transgender students feel unsafe at school, 40% avoid gender-segregated spaces, 75.4% avoid school functions, and 70.5% avoid extracurricular activities. This can have life changing consequences on academic success, as well as social and emotional development.
- For trans youth, a safe and affirming learning environment requires access to the restrooms and sex-segregated facilities/activities that match their gender identity.
- No student should be forced to use a restroom that does not match their gender identity, subjecting them to humiliation and bullying, nor should any child be forced to use a single-stall restroom in isolation from their peers.

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## The Legal Landscape

Recent legal precedent in this jurisdiction (11th Circuit) has held unequivocally that a School Board policy that prohibited a transgender student from accessing the restroom in accordance with their gender identity constituted sex discrimination in violation of Title IX of the Educational Amendments of 1972 and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. The Court ruled that these laws prohibit bathroom use policies because they single out transgender students for differential treatment and also because they enforce gender-stereotypes by mandating compliance with a students' sex assigned at birth.

The most recent ruling on this issue by the 11th Circuit Court of Appeals in the *Adams v. Sch. Bd. Of St. Johns County* case, which aligns with other Courts of Appeal that have considered such bathroom policies, makes clear that public schools in Florida may not enforce restroom policies that discriminate against transgender students.

While many of these cases have involved a discriminatory bathroom policy, the rationale guiding the outcome of these decisions may also apply to all sex-segregated facilities and activities, as overwhelming evidence has demonstrated that there is no legitimate interest that justifies policies that classify students for differential treatment on the basis of sex.

Case Law: This jurisdiction: *Adams v. Sch. Bd. of St. Johns Cnty.*, No. 18-13592, 2020 WL 4561817 (11th Cir. Aug. 7, 2020) (relying on *Bostock v. Clayton Cty.*, Georgia, 140 S. Ct. 1731 (2020); *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011). Additional support: *Whitaker v. Kenosha Unified Sch. Dist.*, 858F.3d 1034 (7th Cir. 2017); *Grimm v. Gloucester Cty. Sch. Bd.*, 302 F.Supp.3d 730 (2018); *M.A.B. v. Bd. of Ed. of Talbot Cty.*, 286 F. Supp. 3d 704 (D. Md. March 12, 2018); *Bd. of Ed. of Highland Local Sch. Dist. v. U.S. Dep't of Educ.*, 208 F. Supp. 3d 850 (S.D. Ohio Sept. 26, 2016).

## Youth Rights, Safety and Self Advocacy

- All students have the right to a safe and affirming learning environment.
- All students have the right to access the restrooms and facilities that match their gender identity.
- Students can assert their right to be free from sex discrimination under Title IX of the Education Amendments Act of 1972 and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Schools cannot enforce different rules for transgender and cisgender (non-transgender) students.
- Under Title IX, schools must provide trans students equal access to educational programs and activities, even in circumstances where others (i.e. students, parents, or community) raise objections or concerns. Neither a school's interest in providing privacy for its students, nor another student or parent's discomfort with a transgender student in the restroom, relieves schools of the obligation to provide all students access to the restrooms and facilities that match their gender identity.
- Schools cannot force transgender students to use a stigmatizing, separate, single-stall restroom (such as a staff or nurse's restroom). If any student, transgender or cisgender, desires increased privacy and would like to use a separate single-stall restroom, they may do so. Schools may not, however, mandate that all transgender students use such restrooms.
- If a student experiences discrimination at school because they are LGBTQ+ they should contact their school's leadership, who will work with their school district attorney to remedy the issue. If further advocacy or guidance is needed, they should contact Simone Chriss at [simone.chriss@southernlegal.org](mailto:simone.chriss@southernlegal.org).

### QUESTIONS? REACH OUT TO US AT:

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**Members of the EQFL School Board Attorney Advisory Group**, reached via Ian or De

# Drew Adams Case Legal Analysis

In tandem with Simone Chriss from Southern Legal Counsel, ([simone.chriss@southernlegal.org](mailto:simone.chriss@southernlegal.org)), and under the review of members of our EOFL School Board Attorney Advisory Group, please find a legal analysis of the Drew Adams Case recently issued on August 7, 2020. This legal analysis, coupled with "Legal Notes 2," offers guidance regarding the clear legal protections for transgender and non-binary students with regard to equal access to bathrooms and facilities.

Thank you for your continued dedication to equity and to ensuring the success of all students.

On August 7, 2020, the 11th Circuit Court of Appeals affirmed the holding of the country's first trial involving a transgender student's equal access to restrooms. *Adams v. Sch. Bd. of St. Johns Cnty.*, No. 18-13592, 2020 WL 4561817 (11th Cir. Aug. 7, 2020). The 11th Circuit ruling, which applies to all public K-12 schools in Alabama, Florida, and Georgia, upheld the 2018 decision by the U.S. District Court for the Middle District of Florida, which found that a St. Johns County School Board policy prohibiting transgender students from accessing the restrooms in accordance with their gender identity constituted sex discrimination in violation of Title IX of the Educational Amendments of 1972 and the Equal Protection Clause of the United States Constitution.

The thorough factual record developed during the three-day bench trial in the District Court laid out the harms inflicted upon transgender youth through enforcement of these discriminatory school policies, and made clear that the purported interests advanced by the St. Johns County School Board in support of the discriminatory policy did not pass constitutional muster. For instance, the extensive evidence presented at trial made clear that Mr. Adams's presence in the boy's restroom did not jeopardize the privacy of his peers. Notably, the 11th Circuit explained that the School Board could not produce evidence of any incidents at Mr. Adams's school, nor could they point to any incidents **across the entire country**, which demonstrate that allowing transgender students to use the restrooms that match their gender identity compromises other students' privacy.

Importantly, the 11th Circuit extended the legal analysis in *Bostock v. Clayton Cnty., Ga.*, 140 S. Ct. 1731 (2020), to the Title IX framework. Earlier this year, the Supreme Court held that Title VII's prohibition on sex discrimination also forbids discrimination based on transgender status and sexual orientation. As Courts look to Title VII interpretations when analyzing Title IX discrimination, the 11th Circuit so too held that the reasoning imparted in *Bostock* applies with equal force to Title IX's broad prohibition on sex discrimination. "*Bostock* confirmed that workplace discrimination against transgender people is contrary to law. Neither should this discrimination be tolerated in schools." *Adams*, 2020 WL 4561817, at \*16.

While *Adams* dealt specifically with a discriminatory bathroom policy, the rationale guiding the outcome of this decision may also apply to challenges to other sex-segregated facilities and activities, as overwhelming evidence has demonstrated that there is no legitimate interest that justifies policies that discriminate against students on the basis of their transgender status or noncompliance with gender-stereotypes. The 11th Circuit ruling sends a message to Florida's public schools that the Fourteenth Amendment and Title IX's protections from discrimination on the basis of sex preclude arbitrary policies that stigmatize and harm transgender students. In the words of Drew Adams: "I hope this decision helps save other transgender students from having to go through that painful and humiliating experience."