

FAMILY ISSUE FACT SHEET

NO. 8 2023 (FEBRUARY 2023)

SB 1040 PUBLIC SCHOOLS; RESTROOMS; REASONABLE ACCOMMODATIONS

EXECUTIVE SUMMARY

Only recently has there been a question as to which restroom or locker room a student should use on campus. Activist pressure on school districts to open private spaces to both sexes has led to the violation of girls' privacy, security, and decency. Denying the reality of physical differences between male and female has put girls in jeopardy, leading to the sexual assault of girls as young as five years old.

Students who say they identify as the opposite sex do not feel comfortable using the restroom or locker room coinciding with their biological sex.

[SB 1040](#) answers both concerns and accommodates all students by requiring single-use facilities on school campuses. It is a win-win for all involved.

BACKGROUND

When boys began to say they identified as girls and demanded access to girls' restrooms and locker rooms, girls were expected to forfeit their privacy and safety, as well as their views of objective physical reality. They have been forced to undress and shower under the eyes of boys, some who exploit the new rule for their own satisfaction.

In Vermont, a biological boy exploited the open restroom/locker room policy and was allowed in the girls' locker room where he engaged in voyeurism. Girls complained that he "was not changing and sat in the back and watched girls getting changed. That made girls feel uncomfortable, made girls feel violated and not protected."ⁱ

Pascha Thomas' 5-year-old daughter was sexually assaulted in the girls' restroom by a student who said he was "gender fluid" under a secret policy instituted by the superintendent.ⁱⁱ Alliance Defending Freedom (ADF) filed a complaint with the United States Department of Education Office of Civil Rights on her behalf.ⁱⁱⁱ

In Virginia, a biological boy in a skirt used the girls' restroom to sexually assault two girls in two different schools. A grand jury found the superintendent "failed at every juncture" to protect the girls. He was fired for, among other things, quietly transferring the boy to another school where he attacked again.^{iv}

WHAT THE BILL DOES

SB 1040 requires schools to supply reasonable accommodations for students who say they identify as other than their biological sex. It requires access to a single-occupancy restroom,

Contact: Cathi Herrod, President, Center for Arizona Policy, Inc. This Fact Sheet may be reproduced without change and in its entirety for non-commercial purposes without prior permission from Center for Arizona Policy, Inc. © 2023 CAP. All rights reserved.

employee restroom, or changing facility to anyone who is unwilling or unable to use the restroom or locker room of their biological sex.

It also allows a student who encounters a person of the opposite sex in these private areas a private cause of action against the public school.

WHAT THE COURTS SAY

Although the U.S. Supreme Court held that a federal employment non-discrimination law extends to claims based on gender identity in *Bostock v. Clayton County*, the Court anticipated the temptation by some to unjustly apply the ruling too broadly. The ruling clearly stated that sex-segregated facilities like bathrooms and locker rooms were not part of the *Bostock* decision: “None of these other laws are before us; we have not had the benefit of adversarial testing about the meaning of their terms, and do not prejudge any such question today. Under Title VII, too, we do not purport to address bathrooms, locker rooms, or anything else of the kind.”^v

In addition, two federal court decisions have upheld separate bathrooms based on biological sex. The 11th Circuit Court of Appeals, sitting en banc, upheld a school district’s policy in Florida and a federal court in Tennessee upheld a similar law there.^{vi}

Quotes from the 11th Circuit Court of Appeals ruling:

“It is well established that individuals enjoy protection of their privacy interests in the bathroom, so concerns about privacy in the bathroom are legitimate concerns.”^{vii}

“While *Bostock* held that “discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex,” 140 S. Ct. at 1747, that statement is not in question in this appeal. This appeal centers on the converse of that statement—whether discrimination based on biological sex necessarily entails discrimination based on transgender status. It does not—a policy can lawfully classify on the basis of biological sex without unlawfully discriminating on the basis of transgender status.”^{viii}

TALKING POINTS

- **When we refuse to recognize objective truth about biological realities, it is girls who are hurt the most. SB 1040 protects those girls while also accommodating biological boys who say they identify as girls.**
- **It is unhealthy and dangerous to tell girls their sensitivities in private spaces are wrong and should be ignored. The result has been the sexual assault of girls as young as 5 years old.**
- **It is decent and honest for girls to want privacy and protection from boys who exploit open-restroom or locker room policies to prey on vulnerable girls.**

- **Accommodating biological boys who say they are girls does not have to also put girls at risk. Girls should not be forced to forfeit their privacy and security, especially when a single-use stall can solve the problem.**

CONCLUSION

Schools should be protecting all students. SB 1040 ensures the privacy and safety of girls, while also accommodating students who say they identify as the opposite sex and are uncomfortable using the facilities that coincide with their biological sex. It is a win-win answer to a dangerous problem.

ⁱ Vermont High School Under Fire as Girls, Parents Push Back Against Biological Male Trans Student using Female Locker Room, October, 2022. <https://adflegal.org/sites/default/files/2022-07/Thomas-v-City-Schools-of-Decatur-2018-09-14-U-S-Department-of-Education-Ocr-Investigation-Letter-%282018-09-14%29.pdf>

ⁱⁱ Federal Investigation: Trans Bathroom Enabled Alleged Sexual Assault of Kindergartener, July, 2020 <https://thefederalist.com/2020/07/10/federal-investigation-trans-bathroom-enabled-alleged-sexual-assault-of-kindergartener/> and Alliance Defending Freedom <https://adflegal.org/case/thomas-v-city-schools-decatur>

ⁱⁱⁱ <https://adflegal.org/sites/default/files/2022-07/Thomas-v-City-Schools-of-Decatur-2018-09-14-U-S-Department-of-Education-Ocr-Investigation-Letter-%282018-09-14%29.pdf>

^{iv} Loudoun County Superintendent Scott Ziegler fired after grand jury report on handling of sexual assaults, December, 2022. <https://www.foxnews.com/us/loudoun-county-superintendent-scott-ziegler-fired-after-grand-jury-report-handling-sexual-assaults>

^v Supreme Court of the United States, *Bostock v. Clayton County, Georgia*, June 15, 2020 https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf

^{vi} D.H., a minor, A.H., mother, and E.H. father v. Williamson County Board of Education, November 2, 2022.

^{vii} United States Court of Appeals for the Eleventh Circuit, *Drew Adams v. School Board of St. Johns County, Florida*, December 30, 2022 <https://media.ca11.uscourts.gov/opinions/pub/files/201813592.2.pdf>

^{viii} Ibid