



WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.
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June 14, 2023

VIA EMAIL: OCR@ed.gov
United States Department of Education
Office for Civil Rights
400 Maryland Avenue, SW
Washington, DC 20202-1100

To Whom It May Concern:

This is a federal civil rights complaint made pursuant to the U.S. Department of Education's Office for Civil Rights' discrimination-complaint resolution procedures.

The Wisconsin Institute for Law & Liberty, Inc. (WILL) brings this complaint against the Sun Prairie Area School District (SPASD) in Sun Prairie, Wisconsin, for sex discrimination. SPASD is a public school district under the laws of the state of Wisconsin and receives federal financial assistance. As described in detail below, SPASD's policy governing the locker rooms violates Title IX of the Education Amendments of 1972 (Title IX).

WILL makes this complaint as an interested third-party organization with clients whose daughter was discriminated against on the basis of sex. She is one of four freshman girls who were discriminated against due to district policy, as described in this complaint, and the policy in effect continues to harm all girls in the school district.

On March 3, 2023, four freshman girls at SPASD participated in a swim unit as part of their gym class. After class, the girls entered the girls' athletic locker room to shower before their next class. Upon entering, they noticed an 18-year-old senior male student in the area of the lockers and benches. While the girls were shocked to see him in the locker room, they had a general idea that the student identifies as transgender. Even though they were uncomfortable, they proceeded to the shower area and began to rinse off with their swimsuits on, which was their usual practice.

As the girls began to shower, the male student approached them, entered the shower area, announced "I'm trans, by the way," and then fully undressed and showered next to the girls. He was initially turned towards the wall but turned and fully exposed his body to the four girls. He had not transitioned medically and had the physiological appearance of an adult male. Understandably, the girls closed their eyes and tried to hurry up and leave the showers.

Following the incident, one of the girls shared the story with another student, who subsequently informed student services about the incident. At that time, the assistant principal was required to inform the Title IX coordinator about this report of alleged sexual harassment. She did not. A few days later when the four girls gave the student permission to provide their names student services, the assistant principal told the student that the girls can instead approach her if they wanted. She admitted during a meeting with parents later on that she should have “dug deeper” at that time.

Our clients attempted to resolve their concerns with the district, but did not receive answers to their questions about what the locker room use policy was, how the school allowed this to happen, and what the policy would be going forward. While SPASD administrators repeatedly referenced a “policy” that they said addressed the situation, no one could identify what the policy was or produce a copy. Over a month after the incident, a principal emailed our client and apologized “for the incident that occurred” and attached a copy of a “Restroom and Locker Room Accessibility Guidance” document (Ex. A), which by all accounts was never adopted by the school board.

WILL sent a letter (Ex. B) to the SPASD School Board on April 19, 2023, calling on the district to address this incident immediately, clarify its locker-room use policy, and put policies in place that would protect the safety and privacy of all students. WILL also submitted a public-records request related to the incident. To date, the only response WILL has received included a request by SPASD for approximately \$11,000 in pre-payment of fees before fully responding to our public-records request (Ex. C).

SPASD identifies the Director of Student Policy & School Operations as its Title IX coordinator for the district, although not by employee name. Our clients had been corresponding with this employee since before WILL became involved. He did not once identify himself as the Title IX coordinator at that time. When they asked at a later date why he did not identify himself as such, he responded that “it would not be typical to introduce myself that way” because he has “several roles in the district.”

No one at SPASD contacted the girls to offer supportive measures or an opportunity to file a formal complaint of sexual harassment until after WILL became involved. When our clients continued to ask questions of the district, they received a response from the Title IX coordinator (Ex. D) who said that SPASD “does not condone any student of one sex being present in a state of undress in the presence of students of another sex, or a student of one sex showering in the presence of students of another sex.” But there remains a critical inconsistency.

Importantly, the SPASD Title IX coordinator also said that “transgender students will not be forced to continue using locker rooms corresponding to their sex at birth.” This conflicts with a recent statement by Secretary Cardona when he said, in response to [questioning](#) by Representative Mary Miller, “We absolutely—as a father and as an educator—absolutely support making sure that boys and girls use different showers. That’s common sense.” Secretary Cardona also recently [stated](#), in response to a question by Representative Erin Houchin about whether it constitutes sexual harassment to force women to undress in front of biological males, “I do believe forcing, uh, forcing women to undress in front of biological males is a concern and sexual . . . yes.”

Additionally, the SPASD Title IX Coordinator claimed that the district “interviewed students and reached conclusions as to what occurred,” but the daughter of our clients was never interviewed. SPASD claimed that “the investigation proceeded without interviewing her” because by the time the district learned their daughter was involved, “the investigation had already established the facts of what occurred.”

Sexual harassment under Title IX includes “unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access” to an education program or activity. 34 C.F.R. § 106.30. SPASD claims that its administrators “monitored indications that students may be impacted, including a review of attendance, grades, and behavioral incidents.” Without interviewing our client’s daughter, as required by the regulations implementing Title IX, the district could not know whether she was effectively denied equal access to educational programs or activities.

Denial of equal access to educational programs goes well beyond the standard the district described. In fact, no concrete injury is required at all, and effective denial of equal access can include things like difficulty concentrating in class or changes in behavior at home. Significantly, a complainant does not need to have “already suffered loss of education before being able to report sexual harassment,” so the determination by the district that our client’s daughter was not denied equal access is completely inappropriate and not in accordance with federal regulations. The federal regulations implementing Title IX indicate that school officials turning away a complainant by deciding the complaint was “not traumatized enough” would be impermissible.

Following the letter from WILL, parents and community members spoke at board meetings expressing their frustration and confusion about how, when, and where boys and girls will be allowed to use single-sex spaces such as locker rooms. The Department has issued [guidance](#) stating that “OCR encourages schools to undertake prevention efforts that best serve the needs, values, and environment of

their own educational communities.” A lack of clarity about the policy in SPASD persists. SPASD has not taken adequate actions to prevent sexual harassment.

Instead, SPASD emailed its parent email list to provide an update about its [website](#) (Ex. E). On a new webpage, the district indicates that SPASD “does not condone any student of one sex being present in a state of undress in the presence of students of another sex.” It is not clear here what the district means by “state of undress” and whether “sex” means biological sex or gender identity.

Ultimately, discrimination on the basis of sex at SPASD raises concerns that the district received federal funds in violation of Title IX, which declares 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.” 20 U.S.C. § 1681(a).

Accordingly, we ask that the Department promptly investigate the allegations in this complaint, act swiftly to remedy unlawful policies and practices, and order appropriate relief. Thank you for your prompt attention to this request for investigation and resolution. Please contact us for further information.

Sincerely,

WISCONSIN INSTITUTE FOR LAW & LIBERTY, INC.



Daniel P. Lennington
Deputy Counsel



Cory Brewer
Associate Counsel

Enc. Exhibits A-E

cc: Lori Lubinsky (llubinsky@axley.com)

From: Renee Coleman <rcolem@sunprairieschools.org>

Date: April 10, 2023 at 2:39:54 PM CDT

To: [REDACTED]

Subject: Locker and Restroom Practices

Good afternoon [REDACTED],

First, let me apologize again for the incident that occurred with your daughter, [REDACTED]. I have spoken at length with our Director of Student Policy and School Operations, Nick Reichloff and he clarified that our policy language is based on current legal understandings around the need to individually review situations with each student and their family. Attached to this email, you will find the SPASD practice around locker and restroom usage for transgender scholars. If you need further information about how our practices play out in the day-to-day operations of the district, you are more than welcome to reach out to Mr. Nick Reichloff. Let me reiterate that the situation your daughter was in should not have happened, and we will continue to work to ensure no one has a similar experience.

Regards,

--

Renee Coleman

Principal

Sun Prairie East High School

(608) 834-6701 or rcolem@sunprairieschools.org

888 Grove St., Sun Prairie, WI 53590

Pronouns: She/Her/Hers/Elle

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

This is an email from Sun Prairie Area School District and may contain information which is privileged and confidential. Any unauthorized disclosure, copying, distribution, or use of the contents is prohibited. If you have received this email in error, please immediately notify the sender and destroy the message.





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.



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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

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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.

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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.

May 10, 2023

VIA EMAIL – Dan@will-law.org
Wisconsin Institute For Law & Liberty, Inc.
Attn: Daniel Lennington
330 E. Kilbourn Avenue, Suite 725
Milwaukee, WI 53202

RE: Your Open Records Request dated 4/19/23
Our File: 22637.82227

Dear Mr. Lennington:

As you know, I am general counsel for the Sun Prairie Area School District (“District”). The District is in receipt of your open records request dated April 19, 2023. Please direct all further communications relating to this open records request and all other future open records requests that WILL makes to the District to my attention.

Your April 19, 2023 request was for the following documents:

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 Reichhoff 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.

I will respond to your requests in the order in which the requests were made:

1. This request seeks documents that the District is prohibited from disclosing pursuant to Wisconsin's Pupil Records Statute, Wis. Stat. § 119.125. That statute defines a pupil record as "records relating to individual pupils maintained by a school. . . ." To the extent any records that fall within your request meet the definition of a pupil record, the District is prohibited by law from providing those records to you.

With respect to any records responsive to this request that do not meet the definition of a pupil record under Wis. Stat. § 119.125, to locate records responsive to this request, all of the identified individuals (5 District employees) will need to review their emails (this would be done by District IT staff), text messages, voicemails and other communications for any records responsive to your request. The following chart includes the hourly rate plus benefits for these employees who will need to search the requested records, as well as the estimated amount of time it will take to locate records responsive to your request.

<u>NAME</u>	<u>HOURLY RATE</u>	<u>ESTIMATED # OF HRS</u>	<u>TOTALS</u>
Brad Saron	\$131.27	1.5	\$196.91
Renee Coleman	\$85.66	1.5	\$128.49
Heidi Walter	\$66.20	1.5	\$99.30
Christine Deutscher	\$60.36	1.5	\$90.54
Nicholas Reichhoff	\$85.36	1.5	\$128.04
IT search for emails	\$83.36	2.5	\$208.40
Review of Emails for responsive documents	\$45.88	2.0	\$91.76
TOTAL			\$943.44

Accordingly, the District requires prepayment from you in the amount of \$943.44 for the estimated location costs for these records pursuant to Wis. Stat. § 19.35(3)(c). Until this estimate is paid, the District will not proceed to locate any responsive records to this request.

2. This request also seeks documents that the District is prohibited from disclosing pursuant to Wisconsin's Pupil Records Statute, Wis. Stat. § 119.125. That statute defines a pupil record as "records relating to individual pupils maintained by a school. . . ." To the extent any records that fall within your request fall meet the definition of a pupil record, the District is prohibited by law from providing those records to you.

With respect to any records responsive to this request that do not meet the definition of a pupil record under Wis. Stat. § 119.125, to locate records responsive to this request, the District's IT staff will need to search the individual email accounts of all certified staff at EHS. IT estimates it will take 30 minutes per staff member to run the searches of these individual email accounts for any responsive emails. There are 118 certified staff at EHS, so the estimated time to search for responsive emails is 59 hours. IT's hourly rate is \$83.36, and so the total estimated location cost of the email search alone is \$4,918.24. In addition, those emails would then need to be reviewed to locate responsive emails. That review would be conducted by an assistant whose hourly rate is \$45.88. While it is difficult to estimate the time it will take to review the emails to locate responsive records, our best guess is that it will take about 10 hours to review the emails. The estimated

location costs for that review is \$458.80. In total, the estimated location cost for emails (and only emails) responsive to this request is \$5,377.04. Accordingly, the District requires prepayment from you in the amount of \$5,377.04 for the estimated location costs for emails responsive to this request pursuant to Wis. Stat. § 19.35(3)(c). Until this estimate is paid, the District will not proceed to locate any responsive records to this request.

In addition, your request for texts, messages, voicemails and other communications for all certified staff at EHS would require all 118 employees to search to locate any responsive documents. This is an overly broad request, but we are willing to have this search conducted. We estimate, however, that the location costs of performing this search will exceed \$5,000.00. Until this estimate is paid, the District will not proceed to locate any responsive records to this request.

3. Your request for meeting invitations or calendar invites with pupils and/or parents of pupils seeks documents that the District is prohibited from disclosing pursuant to Wisconsin's Pupil Records Statute, Wis. Stat. § 119.125. That statute defines a pupil record as "records relating to individual pupils maintained by a school. . . ." To the extent any records that fall within your request fall within the definition of a pupil record, the District is prohibited by law from providing those records to you.

With respect to non-pupil records, no responsive documents exist.

4. The District's Guidelines to Support Transgender, Non-Binary and Gender-Expansive Students can be found on the following District website:
<https://www.sunprairieschools.org/district/equity/supporting-all-students>

Also, the District's policy addressing locker rooms can be found here:
<https://go.boarddocs.com/wi/spasd/Board.nsf/goto?open&id=85UBBB033B46>

5. See Response to Request 4. In addition, the specific document you attached to your letter dated April 19, 2023, is an excerpt from the Guidelines which excerpt was created after the incident of March 3, 2023.
6. Attached is a picture of the posting you requested.

7. The District's organizational chart, which is attached, does not identify the SPASD's Title IX Coordinator. That information is located on the District's website at:
<https://www.sunprairieschools.org/title-ix-policies-on-sex-discrimination>
8. The only responsive document is attached, which is your email and letter dated April 19, 2023.

As noted above, the District will not locate records responsive to your Request Nos. 1 and 2 until you pre-pay the estimated location costs.

Under Wis. Stat. § 19.37, you have the right to commence a mandamus action to challenge this determination or you may request, in writing, that the District Attorney or Attorney General do so.

Please let me know if you have any questions.

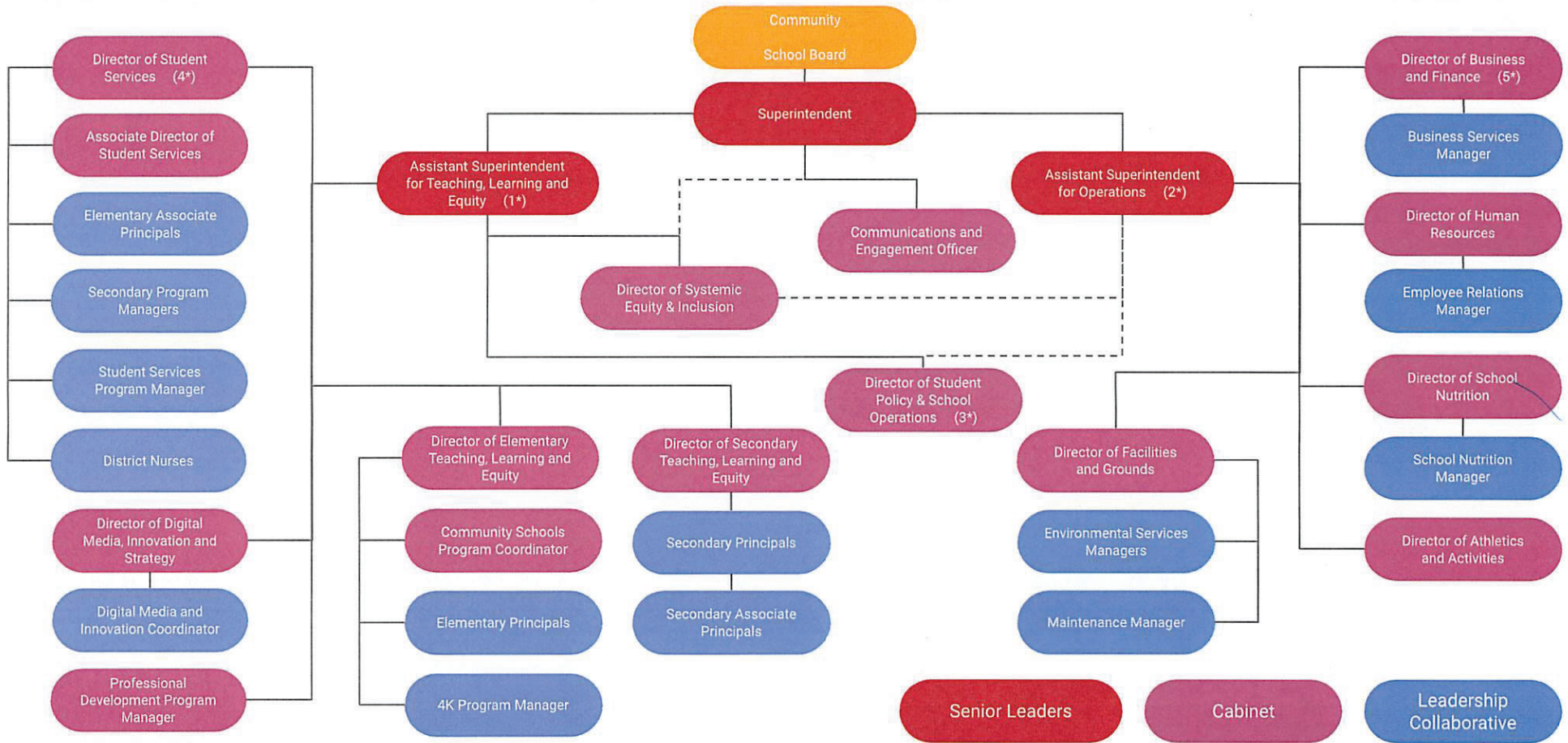
Sincerely,

AXLEY BRYNELSON, LLP



Lori M. Lubinsky

LML:kjb
Attachments



*Indicates the order of succession to acting superintendent as described in District Policy CI



The Use of Cellular Phones and
Other Electronic Devices Is **PROHIBITED**
In ALL Locker Rooms and Restrooms
to protect the privacy of our users.

Thank you for your cooperation.

From: Nicholas Reichhoff <nfreich@sunprairieschools.org>

Date: May 10, 2023 at 2:58:46 PM CDT

To: [REDACTED]

Cc: "Lori M. Lubinsky" <LLubinsky@axley.com>

Subject: Follow Up

Hi [REDACTED] -

Thank you for your patience as I worked through the answers to your questions. I am hopeful that this provides some additional information. Since some of the questions relate to complex legal issues, our district's legal counsel, Lori Lubinsky, assisted with supplying some of the answers that are outside my area of expertise. I have copied her on this email.

I imagine you will have some follow up questions, and I look forward to meeting you to begin reshaping the relationship you have with the district. I understand that was not the way you thought [REDACTED] freshman year would play out, and I am hopeful that we can find a way to move forward together to ensure that she has a successful end to the year and a great high school career moving forward.

In terms of meeting, I am available on Friday afternoon (12:00-4:00) or Monday midday (10:00-2:00), and I have quite a bit of availability on Wednesday with the exception of a few short meetings I can't move. Please let me know what works best for you, and if we need to look further out, we can do that, too.

Sincerely,
Nick

1. What is the locker room use policy today? The district has a written policy that covers privacy in locker rooms - [District Policy ECAD](#). The locker room guidelines shared with you previously are an excerpt from the district's transgender guidelines document which addresses locker room use by transgender students. In addition, as a matter of practice, the Sun Prairie Area School District does not condone any student of one sex being present in a state of undress in the presence of students of another sex, or a student of one sex showering in the presence of students of another sex.
2. Whatever the policy is, can you please send us a copy? [See above](#).
3. On April 10, the district provided us with a locker room guidance document. Can you tell us when that guidance document was created, and whether it was actually in effect on the date of the incident? [The language in that document was in effect at the time of the incident. It is a part of the district's transgender guidelines document which dates to 2017.](#)
4. The guidance document says that "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.” Is this the current policy of the district and does it create a right – or reflect a policy – that transgender students will be permitted to use the segregated restrooms of the gender with which the student identifies? If not, why not? The district follows the established case law as specified by the Seventh Circuit Court that school policies prohibiting bathroom access consistent with a transgender student’s gender identity can violate both Title IX and the Fourteenth Amendment to the United States Constitution.

5. The document goes on to say that “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.” It also says that “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.” Does the policy mean that female students are not entitled use of “locker rooms or any similar type of changing areas” from which biologically male students, or as you put it, students “assigned” male at birth are excluded? If not, why not? No, this guideline is only referring to accommodations for transgender students. In the district, transgender students will not be forced to continue using locker rooms corresponding to their sex at birth, so alternate arrangements can be made at the request of the student to use other spaces. That does not include showering or undressing in the presence of students of a different biological sex.

6. What did the district do as part of its investigation? The district followed typical procedures as a part of any investigation working to determine facts and then respond. The district interviewed students and reached conclusions as to what occurred, and then took immediate steps to best ensure that the district’s expectations are followed going forward. Again, those expectations include not showering or undressing in the presence of students of a different biological sex.

7. Who conducted the investigation? Who was interviewed? The investigation was completed by East administrative staff in conjunction with district administrators, and reviewed by outside legal counsel.

8. Can you please send us a copy of the investigator’s full report? There is no report to release.

9. Why was [REDACTED] not included in the investigation? [REDACTED] was not initially identified as a student involved in this incident because she did not come forward to report the incident and no other student initially identified her. Thus, the investigation proceeded without interviewing her. At the time you came forward identifying [REDACTED] as one of the students involved, the investigation had already established the facts of what occurred. At that time, given the information you provided in your initial email, it seemed more appropriate to address your concerns and provide supports to [REDACTED] rather than question her about the incident. That said, if she wishes to participate in an investigatory

interview, we are more than happy to talk with her, and we reaffirm our commitment to provide her with any supports she may need.

10. Are there documents or information you can share about why you came to the conclusion that the incident did not effectively deny [REDACTED] equal access to educational programs or activities? The district is not aware of any allegations that met the definitions covered by Title IX within [Procedure AC-R\(1\)](#) (see pgs 21-22). In conjunction with East administrators, we monitored indications that students may be impacted, including a review of attendance, grades, and behavioral incidents. In addition, we were actively communicating with you, and your messages focused on policy questions, not information that indicated that [REDACTED] was unable to participate in school. As I said in my email, if you have new information to provide that suggests that [REDACTED] has been effectively denied equal access to the District's educational programs or activities, please let me know and then we will evaluate whether to proceed with a formal Title IX complaint.

11. What changes have been made as a result of the investigation to prevent a similar incident from happening again? Although the district has successfully navigated locker room accommodations for transgender students for years, the fact that this incident occurred indicates that something interrupted our policies from being implemented appropriately. The district has reiterated all expectations with staff members who work directly with our transgender students so clear guidelines are established for locker room and shower use. We are also reviewing our policies and guidelines with legal counsel to ensure that there is clarity and consistency across the district.

12. You never introduced yourself as a Title IX coordinator and no one at the district identified you as a Title IX coordinator. Why? In the email communication we had, it would not be typical to introduce myself that way. I have several roles in the district involving policy compliance, student behavior response, and complaint appeals, in addition to coordinating Title IX.

13. When were you appointed the Title IX coordinator and by whom were you appointed? I was appointed by the district as its Title IX coordinator in 2019.

14. As a Title IX coordinator, what are your responsibilities going forward with regard to this incident? My responsibilities are to ensure that all students, employees, and other persons are free from discrimination on the basis of sex in any education program or activity.

15. Recently, a board member said in a video that the district "brought in an external investigator to look at what happened and why this transpired." Can you expand upon this or clarify what he was talking about? Who was the outside investigator and what did s/he conclude? The District's legal counsel reviewed the District's investigation of the incident and presented an overview with findings to the School Board. That report was verbal, and is protected from disclosure pursuant to the attorney-client privilege.

16. Last, our understanding is that school personnel are mandatory reporters under Wisconsin

law. Since a crime might have occurred, could you tell me how the school complied with its mandatory reporting requirement? The school resource officer was involved in reviewing this incident. As you know, he attended the meeting with you and East administrators.

Nicholas Reichhoff, Ph.D.

Assistant Superintendent of Operations

Sun Prairie Area School District

501 South Bird Street, Sun Prairie, WI 53590

Office: 608/834-6683 | Mobile/Text: 608/318-3528

*Our Mission: Inspire and prepare every child, every day,
by providing relevant, engaging and innovative learning
experiences in and out of the classroom.*

This is an email from Sun Prairie Area School District and may contain information which is privileged and confidential. Any unauthorized disclosure, copying, distribution, or use of the contents is prohibited. If you have received this email in error, please immediately notify the sender and destroy the message.

From: Sun Prairie Area School District <donotreply@sunprairieschools.org>

Date: May 10, 2023 at 3:46:16 PM CDT

To: Sun Prairie Area SD Recipients <recipients@sunprairieschools.parentlink.net>

Subject: Further Follow-up on Locker Room Incident

Reply-To: Sun Prairie Area School District <donotreply@sunprairieschools.org>

Dear Sun Prairie Families:

The SPASD is committed to communicating with our staff, families, caregivers, and community as transparently and timely as possible.

As with all situations we deal with, the safety of all our students is our very first priority. School districts across the state and nation must balance the dual goals of supporting transitioning students (transgender, non-binary, and gender-expansive students) while also protecting the privacy interests of all students. The Sun Prairie Area School District is committed to doing so in a manner that is grounded in our [mission, vision, and equity statement](#). The District stands in support of all of its students and will continue to ensure that all students' rights are protected.

Recently, an event that happened at SP East High School in March has brought to our attention that more communication has been necessary to meet the needs of our community. The Board of Education has also asked the administrative team to develop an improved strategy to communicate about the event, and to help our community better understand how we support our LGBTQIA+ students, staff, and families, not only through our partnerships but also through our formal district documents, such as guidelines.

As such, we've worked hard to develop [this webpage, entitled Supporting All Students](#). This webpage includes two primary sections. First, there is a section that addresses the incident that occurred at Sun Prairie East High School and topics that have come up as a result of this incident, such as pupil confidentiality. Second, there is a section to better explain how we support our LGBTQIA+ students, family members, staff, and community. The Sun Prairie Area School District Board of Education proudly adopted and continues to stand behind the Board's Equity Statement (below) for the school district. We firmly support the District's mission to ensure ALL children are safe and loved in our schools.

Admittedly, our school district is not perfect. We want you to know that in instances when we get feedback from our community, we always take this feedback seriously, and we will always do our best to meet the needs of our students, families, and community members and to improve our practices.

Our best,

Brad Saron, Superintendent
Diana McFarland, Board President





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