



# **Recent Ruling on School's Transgender Bathroom Policy Leads to Divide Among Federal Appeals Courts: Will SCOTUS Weigh In?**

Insights

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A Florida public school's transgender bathroom ban was recently upheld by a federal appeals court, leading to a circuit split that may need to be resolved by the U.S. Supreme Court. Specifically, in a 7-4 ruling, the 11th U.S. Circuit Court of Appeals upheld a school policy requiring students to use only the bathroom that corresponds to their biological sex or a gender-neutral bathroom. The court said this policy comports with Title IX requirements and did not violate the U.S. Constitution. Notably, however, other circuits have found that public school districts violated transgender students' rights when requiring them to use the bathroom matching their biological sex, which could pave the way for SCOTUS to ultimately weigh in on this hot-button issue. What do you need to know about the 11th Circuit's decision in *Adams v. School Board of St. Johns County, Florida*, as well as the disagreement among federal appeals courts – and the impact on your school's policies?

## **School Policy Required Students to Use Bathroom Corresponding to Their Biological Sex**

When the plaintiff in the 11th Circuit case, Drew Adams, entered the public high school, students were provided female, male, and gender-neutral bathrooms. The public school had an unwritten policy that male students must use the male bathroom and female students must use the female bathroom. This policy distinguished students on the basis of biological sex, using various documents such as birth certificates. Additionally, the public school issued guidelines for LGBTQ students, which included that “transgender students will be given access to a gender-neutral restroom and will not be required to use the restroom corresponding to their biological sex.”

## **Transgender Boy Sought to Overturn Policy Under U.S. Constitution and Title IX**

Adams is a transgender boy, which means he identifies as a male but his sex based on chromosomal structure and anatomy at birth was female. When Adams first enrolled at the school, he had not started his transition and therefore enrolled as a biological female. Later, Adams began identifying and living as a boy, adopted the male pronouns “he” and “him,” and began using the male bathroom.

When Adams was observed using the male bathroom in violation of the policy, a complaint was filed with school officials and Adams was informed that he had to use the female bathrooms or the gender-neutral bathrooms. Adams petitioned to change the policy, and when that failed, filed suit

against the school alleging that the policy violated Title IX and the Constitution's Equal Protection Clause.

After a trial, the district court ruled in favor of Adams and granted an injunction requiring the School Board to let him use the male bathrooms. The school appealed.

Initially on appeal, a divided three-judge panel of the 11th Circuit affirmed the district court's decision. But the full court vacated that opinion and granted rehearing *en banc*, meaning that all the court's judges would review. On appeal, the full court held that the policy did not violate the Equal Protection Clause or Title IX.

### **Majority of Court Says That Separating Bathrooms Based on Biological Sex Does Not Violate Constitution**

First, the court held that the separation of bathrooms on the basis of biological sex does not necessarily discriminate against transgender students and does not violate the Equal Protection Clause. The court, in its analysis, referred to the great responsibilities that schools have with respect to managing discipline, health, and safety. The court noted that the school had gone to great lengths to accommodate LGBTQ students by providing the sex-neutral bathrooms and that the school believed its policy is necessary to ensure student privacy and overall welfare.

The court held that the school had an important governmental objective in protecting students' privacy interests and the policy is clearly related to that interest. Additionally, the court held that there was no evidence of purposeful discrimination against transgender students and that any disparate impact that the policy might have on those students does not violate the U.S. Constitution.

### **Bathroom Policy Does Not Violate Title IX**

Title IX provides the following rights: "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."

However, the statute provides a carve-out for living facilities and expressly provides that schools receiving federal funds can provide separation of housing on the basis of sex, as well as separate toilet, locker room, and shower facilities on the basis of sex, so long as the facilities for students of one sex are comparable to the facilities for the other sex.

The court held that given Title IX expressly permits schools to provide separate toilet facilities on the basis of sex, the School Board acted in accordance with Title IX's bathroom-specific regulation and is therefore permissible. The court also stated that the School Board's policy provided single-stall, sex-neutral bathrooms, which Title IX neither requires nor prohibits, and that the policy was not in violation of Title IX.

## 4 Key Takeaways For Schools

What does the most recent ruling mean for schools? Here are four key takeaways:

1. **Ruling applies only to certain locations.** The 11th Circuit is the federal appellate court for Alabama, Florida, and Georgia. So, the ruling in *Adams* in favor of the public school district allows for public schools in the jurisdiction to implement policies that prohibit a student from using the bathroom of the gender with which they identify, and not run afoul of the Constitution or Title IX.

Similarly, for those private schools receiving federal financial assistance in the 11th Circuit jurisdiction, this decision indicates that it is not a violation of the Constitution or Title IX to prohibit a student from using the bathroom for the gender with which they identify.

2. **Different rulings apply in other jurisdictions.** For public schools and those private schools accepting federal financial assistance in other jurisdictions, those schools should be aware of the laws and court decisions in their respective jurisdictions, as they may differ from the 11th Circuit decision.

For example, other circuits, including the 4th Circuit – which covers Maryland, North Carolina, South Carolina, Virginia, and West Virginia – have held that a public school board violated the constitutional rights of a transgender student by not permitting the student to use the bathroom that matched the gender with which the student identified.

3. **SCOTUS could weigh in.** Given that the 11th Circuit's decision in *Adams* stands in opposition to the 4th Circuit's decision, the circuit split may provide for the Supreme Court to opine on the issue. So, you should stay tuned for further updates on this matter.
4. **State and local rules may apply.** For all schools, there might also be local ordinances or state laws that apply to your school, which may require you to permit students to use the bathroom for the gender with which they identify. Schools might also opt to permit students to use the bathroom that matches the gender with which they identify.

### What's Next?

We will continue to monitor developments in this area and provide updates as warranted, so make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney on our Education Practice Group.

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