



March 17, 2023

*via email*

State Superintendent Ryan Walters  
c/o Bryan Cleveland, General Counsel  
Office of Legal Services  
State Department of Education  
Hodge Education Building  
2500 North Lincoln Boulevard  
Oklahoma City, Oklahoma 73105-4599  
rules@sde.ok.gov

Re: OAR Docket #23-102, 40 Okla. Reg. 563, 563–64 (Feb. 15, 2023) (to be codified at Okla. Admin. Code § 210:35-3-186(h))

Dear Superintendent Walters:

Alliance Defending Freedom (ADF) supports the Oklahoma Department of Education’s proposed rule on school restrooms and changing areas. *See* 40 Okla. Reg. 563, 563–64 (Feb. 15, 2023) (to be codified at Okla. Admin. Code § 210:35-3-186(h)). ADF is an alliance-building legal organization that advocates for the right of all people to freely live out their faith. It pursues its mission through litigation, training, strategy, and funding. Since its launch in 1994, ADF has handled many legal matters at both the state and federal levels involving student privacy, the First Amendment, and other legal principles, including several cases arising from rights violations by schools through facility policies.

The proposed rule preserves safe, intimate spaces for women and girls so that they can thrive at school. It also correctly affords compassion and respect to all students, regardless of their gender identity, through appropriate accommodations.

Restrooms and locker rooms are intimate spaces where people change, shower, and perform other private activities. They are spaces where people are vulnerable, especially young women. No person should be forced to disrobe or perform other private activities in the presence of members of the opposite sex. This basic and commonsense principle of human dignity is the reason for the “nearly universal . . . practice of separating school bathrooms” and other intimate spaces “based on biological sex.” *Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 796 (11th Cir. 2022) (en banc).

Under the proposed rule, multiple occupancy restrooms and changing areas must be designated for the exclusive use of either males or females and used by students based on sex. *See* Okla. Admin. Code § 210:35-3-186(h)(2), (4)(A) (proposed by 40 Okla. Reg. 563). And the proposed rule also requires that schools “provide access to a single-occupancy restroom or changing room” for any individual “who does not wish to utilize the multiple occupancy restroom or changing area designated for their Sex.” *See id.* § 210:35-3-186(h)(3).

Private spaces are separated by sex to promote critical objectives such as privacy, dignity, and an environment free of sexual harassment. The proposed rule respects students’ right to have their personal privacy protected, especially survivors of traumatic sexual harassment or assault.

Justice Ginsburg agreed that sex-separate spaces are not only constitutionally permissible, but also “in some situations required, by regard for individual privacy.” Ruth Bader Ginsburg, *The Fear of the Equal Rights Amendment*, THE WASH. POST, April 7, 1975, at A21. Such individual privacy is “a right of constitutional dimension” and runs in harmony with, not contradictory to, equality. *Id.* “It is no surprise, then, that the privacy afforded by sex-separated bathrooms has been widely recognized throughout American history and jurisprudence.” *Adams*, 57 F.4th at 805.

Female students deserve to know that their physical privacy will be protected. Being forced to expose one’s unclothed body to “people of the other sex may be especially demeaning and humiliating.” *Fortner v. Thomas*, 983 F.2d 1024, 1030 (11th Cir. 1993) (citation omitted). Those concerns are heightened for self-conscious teenagers going through puberty and girls who are facing new and varying feminine hygiene needs. Schools should be places where girls can learn and grow, not be subjected to “embarrassing, frightening, and humiliating” experiences. *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 374–75 (2009). Female athletes, forced to share locker rooms and private spaces with a male, described “extreme discomfort” because of his physical body, not his gender identity. Allie Griffin, *Lia Thomas competitor says she felt ‘extreme discomfort’ sharing locker room*, N.Y. POST (July 27, 2022), <https://nypost.com/2022/07/27/lia-thomas-competitor-riley-gaines-felt-extreme-discomfort-in-locker-room/>.

Being forced to undress alongside males can be traumatic for female sexual-assault survivors. Many of these women struggle to even enter public spaces where they will encounter men—the mere thought of encountering a male in private spaces where they undress or attend to private bodily needs only adds to their fear and trauma.

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The proposed rule preserves schools and extracurricular activities as safe spaces for learning and adolescent growth by maintaining sex-separate private spaces for women and girls while respecting the dignity of all Oklahoma's public-school students. Therefore, ADF encourages the State Board to adopt it.

Respectfully submitted,

A handwritten signature in black ink that reads "Katherine L. Anderson". The signature is written in a cursive, flowing style.

Katherine L. Anderson  
Senior Counsel  
Director of Center for Parental Rights