

## WHAT IS TITLE IX

Title IX of the Education Amendment of 1972 “prohibits discrimination based on sex in education programs and activities that receive federal financial assistance.”<sup>1</sup> Title IX of the 1964 Civil Rights Act was signed into law by President Nixon in 1972. That same year, Representative of Hawaii, Patsy T. Mink, introduced Title IX of the Education Amendments of 1972 to Congress where it was passed.

Under the 14th Amendment, Title IX states: *“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.”*<sup>2</sup>

The United States Department of Education (DOE) “gives grants of financial assistance to [K-12] schools and colleges and to certain entities, including rehabilitation programs and libraries.” Any federal agency that receives financial grants is mandated to enforce nondiscrimination laws under Title IX. While Title IX was first directed towards academics, it is now predominantly associated with women’s athletics.

Title IX was originally intended to protect students from discrimination in school programs solely based on biological sex. Title IX now recognizes sexual harassment, sexual violence, and gender-based harassment on school campuses as sex discrimination. The federal government now requires schools to address these issues and enforce policies in response to these issues.

## TRANSGENDER BATHROOM POLICIES IN PUBLIC SCHOOLS

In June 2021, the Department of Education (DOE) confirmed that Title IX protects students from discrimination based on sexual orientation and gender identity. The DOE based its interpretation of Title IX on the landmark U.S. Supreme Court decision in *Bostock v. Clayton County, Georgia*, “in which SCOTUS recognized that it is impossible to discriminate against a person based on their sexual orientation or gender identity without discriminating against that person based on sex.”<sup>3</sup>

In August 2021, the U.S. Department of Education Office of Civil Rights (OCR) published a revised overview of Title IX. The “Scope of Title IX” now states: *“A recipient institution that receives Department funds must operate its education program or activity in a nondiscriminatory manner free of discrimination based on sex, including sexual orientation and gender identity.”* The list of key issues under Title IX now also includes *“treatment of LGBTQI+ students.”*<sup>4</sup>

In *Bostock v. Clayton County*, SCOTUS ruled against multiple employers who allegedly terminated employees who identified as members of the LGBTQ community. A sample of the case syllabus is featured below. Note: the ruling pertains to Title VII (7), not Title IX (9):

### ***Bostock v. Clayton County, Georgia***

***CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT  
No. 17–1618. Argued October 8, 2019—Decided June 15, 2020***

***In each of these cases, an employer allegedly fired a long-time employee simply for being homosexual or transgender.***

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<sup>1</sup>U.S. Department of Education, Sex Discrimination: Overview of the Law:

<sup>2</sup>The 14th Amendment and the Evolution of Title IX:

<sup>3</sup>U.S. Department of Education Confirms Title IX Protects Students from Discrimination Based on Sexual Orientation and Gender Identity:

<sup>4</sup>OCR Title IX and Sex Discrimination (Revised 2021):



*Clayton County, Georgia, fired Gerald Bostock for conduct "unbecoming" a county employee shortly after he began participating in a gay recreational softball league. Altitude Express fired Donald Zarda days after he mentioned being gay. And R. G. & G. R. Harris Funeral Home fired Aimee Stephens, who presented as a male when she was hired, after she informed her employer that she planned to "live and work full-time as a woman." Each employee sued, alleging sex discrimination under Title VII of the Civil Rights Act of 1964. The Eleventh Circuit held that Title VII does not prohibit employers from firing employees for being gay and so Mr. Bostock's suit could be dismissed as a matter of law. The Second and Sixth Circuits, however allowed the claims of Mr. Zarda and Ms. Stephens, respectively, to proceed.*

## TITLE VII

Passed in 1964, Title VII of the Civil Rights Act prohibits discrimination based on race, color, religion, sex and national origin in the workplace. Under "Unlawful Employment Practices," the law states: It shall be an unlawful employment practice for an employer—

**(1)** *to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because such individual's race, color, religion, sex, or national origin; or*

**(2)** *to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.*<sup>5</sup>

## GRIMM V. GLOUCESTER COUNTY SCHOOL BOARD

In the case of Grimm v. Gloucester County Public Schools, the United States Fourth Circuit Court of Appeals issued a 2-1 decision in favor of Gavin Grimm, a biological female who transitioned to identify as male. Grimm entered the district as a female, but was fully living as a boy upon entering high school. Rather than continuing to use faculty restrooms or single-stall restrooms on campus, Grimm sought the use of male facilities on campus.

According to the ACLU, the Grimm decision answers the question of whether a school's refusal to allow a transgender student to use the school bathroom that corresponds with their gender identity violates the U.S. Constitution's Equal Protection Clause, and whether it discriminates based on sex in violation of Title IX. The legal grounds for this case are found in the Equal Protection Clause of the Fourteenth Amendment.<sup>6</sup>

Section One of the Fourteenth Amendment includes the Equal Protection Clause: *All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*<sup>7</sup>

Ultimately, the Fourth Circuit Court of Appeals found that Gloucester County Public Schools violated Title IX when it recorded Gavin's gender as female on her high school transcripts. The decision "harmed Grimm" because her permanent K-12 records do not match other identification documents.

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<sup>5</sup>U.S. Equal Employment Opportunity Commission, Title VII of the Civil Rights Act of 1964:

<sup>6</sup>ACLU, Case: Grimm v. Gloucester County School Board:

<sup>7</sup>Fourteenth Amendment to the United States Constitution:





# SCHOOL BOARD WATCHLIST



On August 17, 2023, Arizona's Superintendent of Public Instruction, Tom Horne, released a statement encouraging school districts to enact policies that prohibit biological males from accessing female facilities.



**Arizona Department of Education**

@azedschools

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Superintendent Horne encourages all schools to enact policies that don't allow biological boys in girls' restrooms, locker rooms, or showers.



**ARIZONA DEPARTMENT OF  
EDUCATION**

**Horne addresses boys and girls restroom policies at schools**

## **Education Department has received concerns from parents**

PHOENIX – Recent questions raised about school policies for the usage of restrooms, locker rooms and shower areas has state schools chief Tom Horne responding to concerns he has received from parents and other interested citizens statewide.

Horne stated, "I have been contacted by a number of parents who are outraged by the idea that biological boys can use restrooms, locker rooms and shower facilities meant for girls, and they are considering removing their daughters from schools that allow this. In Arizona, they certainly have multiple school options from which to choose."

Some schools have cited federal Title IX as a basis for their guidance. Horne explained, "Under the current Title IX, there is no language that compels schools to permit biological boys to use girls' bathrooms, locker rooms or shower areas. The Biden administration has proposed changes to Title IX that might allow for this, but this proposal has no force of law until it is ruled on by the courts, which has not occurred.

Therefore, the Arizona Department of Education strongly advises that schools not initiate a policy that allows biological boys to use restrooms, locker rooms or shower facilities that are intended for girls. Biological boys who expose themselves to girls could be violating indecent exposure laws and subject to arrest. Schools can provide separate facilities – even small ones that are open to either gender - that meet the needs of transgender students without compromising the dignity of others."

He added, "The issue will ultimately be decided by the United States Supreme Court. I am defending the state law that prohibits biological boys from participating in girls' sports and the basic legal argument for that action is similar to the one that addresses the use of bathrooms, locker rooms and shower areas."