



Written by [Raven Clabough](#) on July 23, 2016

Transgender Student Sues Wisconsin School District for Discrimination

A transgender student at Tremper High School in the Kenosha, Wisconsin, has filed a federal lawsuit against the school district claiming discrimination because of not being permitted to use the boys' restroom and being repeatedly addressed by her female birth name.

Sixteen-year-old Ashton Whitaker was born a female but has been identifying as a boy since middle school. According to the lawsuit, the school continues to recognize her by her biological sex and, as such, denies her access to boys' restroom facilities and allegedly monitors Whitaker's restroom usage.



In a complaint initially filed with the U.S. Department of Education's Civil Rights Division last year, it was noted that Tremper High School allowed Whitaker the option to either use the girls' restroom or a single-occupant restroom in the school office — the latter an alternative that Whitaker complained was "far out of the way" from classes. Whitaker further stated that using the office restroom would "segregate" her from classmates and cause her to be "further stigmatized for being 'different.'"

Additionally, the lawsuit states that Whitaker and other transgender students were asked to wear green wristbands so that they are easily recognizable by school staff, a claim contested by the school district.

"Even a cursory review of the complaint shows that some of the factual allegations are patently false," the district said in a statement to Fox 6 Milwaukee. "The district does not have a practice or policy requiring any student to wear a wristband for monitoring any purpose or for any reason whatsoever. [It] has worked diligently with transgender students and their families to address their unique needs and accommodations, including the family named in the suit."

The lawsuit claims that as a result of these policies, Whitaker began drinking significantly less water, which aggravated a medical condition and resulted in fainting as well as stress migraines.

In addition to the school's bathroom policies, the lawsuit accuses school staff of discrimination against Whitaker because they have continued to call Whitaker by her given name, forced her to room with other females on a class trip to Europe, and initially denied her the ability to run for junior prom king, though school officials ultimately yielded on this after other students protested on Whitaker's behalf.

Regarding the field trip to Europe, it is reasonable to ask who else Whitaker should have roomed with, if not other girls. If she had roomed instead with boys, would that have been in her best interests, or in the boy's best interests, regardless of what she or the boys might think? And if she had been given her own private room, if that were practical, would she had viewed such a accommodation as discriminatory?



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According to Whitaker's attorney, Rock Pledl, the school's discriminatory treatment could psychologically scar transgender students. "Transgender youth are struggling with the issue of their identity, but if they're not received well by people around them, then they can have additional psychological problems and so this has been very stressful for him," Pledl said.

But according to a recently released position statement by the American College of Pediatricians (ACPeds), indulging beliefs that gender dysphoria is anything more than a psychological problem is in fact even more harmful. The authors of the statement wrote that human sexuality "is an objective biological binary trait," and that "conditioning children into believing a lifetime of chemical and surgical impersonation of the opposite sex is normal and healthful" should be classified as child abuse. However, the warnings of ACPeds have not been heeded.

Whitaker's lawsuit ultimately argues that the school district has violated Title IX in its treatment of Whitaker.

In April 2014, the Education Department's Office for Civil Rights indicated that transgender students were protected under Title IX, a 1972 law that prohibits discrimination on the basis of sex. On May 13 of this year, the Obama administration went a step further to clarify specifically how Title IX protects transgender students. Vanita Gupta, head of the Justice Department's Civil Rights Division, and Catherine Lhamon, assistant secretary of education for civil rights, issued a controversial directive asking schools to allow transgender students full access to bathrooms and locker rooms of the opposite sex. While the federal directive is said to be non-binding, districts that do not comply may lose education funding.

In response to the unconstitutional federal overreach, numerous states, including Wisconsin, have filed lawsuits against the federal government. However, rather than asking the judicial system to intervene, states can decide simply not to comply with the directive. As the U.S. Constitution does not allow a federal education department, the states can simply nullify directives such as this one that represent federal encroachments on education. In the same way states have refused to adhere to federal laws prohibiting marijuana, states can and should nullify this directive.

Kansas has already elected to disregard the directive after its Board of Education voted unanimously to ignore it. The board's resolution asserts that education should remain local.

"Just as every child is unique, so too is every school community," the Kansas resolution reads. "With that understanding, we are firm in our belief that decisions about the care, safety and well-being of all students are best made by the local school district based on the needs and desires of the students, parents and communities they serve."

However, it's likely that the U.S. Supreme Court will weigh in on the issue of transgender bathroom rights in the near future, after a Virginia school district appealed to the high court to block high school student Gavin Grimm, a female student who identifies as male, from using the boys' restroom.

CBS News reports that the Gloucester County School Board in Virginia filed an emergency appeal with Chief Justice John Roberts to stop Grimm from using the boys' restroom when school resumes this fall, asserting it will "put parents' constitutional rights in jeopardy."

"Depriving parents of any say over whether their children should be exposed to members of the opposite biological sex, possibly in a state of full or complete undress, in intimate settings deprives parents of their right to direct the education and upbringing of their children," attorneys for the school board wrote.



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