

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.

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by providing relevant, engaging and innovative learning
experiences in and out of the classroom.*

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