



OFFICE OF THE ATTORNEY GENERAL
STATE OF OKLAHOMA

April 27, 2022

Dear Rep. Anthony Moore:

I am writing in response to your request for an expedited and official Attorney General Opinion in which you ask, in effect: (i) whether a school district's practice of allowing restroom usage based on self-identity rather than biological sex violates Oklahoma law, and (ii) whether a school district's prohibiting students from using a restroom based on their gender identity violates Oklahoma law.

I am responding to your request by letter rather than official Attorney General Opinion because this office does not formally opine on issues where legislation is pending, and it is our understanding that legislation is currently being considered on these topics. Regardless, to be helpful and prevent legislative delay on this issue, we have analyzed your questions and offer the following. This is not, however, an official Attorney General opinion.

Like many Oklahomans, the Attorney General is deeply concerned about the actions taken by certain officials in recent weeks regarding public school restroom policies. To eliminate objective biology in favor of subjective identity as the basis for restroom usage threatens the privacy and safety of countless students. *See, e.g.*, 21 O.S.2021, § 1171 (acknowledging that persons have a "right to a reasonable expectation of privacy" in "any locker room, dressing room, [and] restroom").

And yet, as to your first question, no current Oklahoma law *expressly* governs the practice of opening school restrooms to students based on their self-identity. This is likely no surprise to you given the important current efforts to pass legislation to address this issue. I do not with this letter foreclose any future legal arguments that other laws can be reasonably interpreted to cover this situation. Nevertheless, the Legislature has the authority to directly address this practice to remove any doubt or ambiguity and, in the Attorney General's view, it would be wise to do so expeditiously.

As to your second question, as the Attorney General advised Stillwater Public Schools' Interim Superintendent Gay Washington, State Superintendent Joy Hoffmeister, and Secretary of Education Ryan Walters, in the attached letter dated April 8, 2022, no law or legal precedent currently *requires* Oklahoma schools to open same-sex restrooms to individuals of the opposite



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biological sex. Oklahoma schools should feel confident in their current legal authority to protect the privacy and safety of students by ensuring that restrooms are designated based on sex alone

While this office does not preclude the possibility of an official opinion on these questions at a later date, the Attorney General would like to encourage you to act while there is still an opportunity during session. Please contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Zach West", written over a horizontal line.

Zach West

Deputy Solicitor General