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Transgender Bathroom Rights in K–12 Public Education

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Candidacy for the Degree of

Doctor of Education

in

Department of Educational Leadership, Management, and Policy

Seton Hall University

Fall 2024

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Approval Page



COLLEGE OF HUMAN DEVELOPMENT, CULTURE, AND MEDIA
DEPARTMENT OF EDUCATION LEADERSHIP MANAGEMENT & POLICY

APPROVAL FOR SUCCESSFUL DEFENSE

Carrieann Olivero has successfully defended and made the required modifications to the text of the doctoral dissertation for the **Ed.D** during this Fall Semester.

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rights of others is an inspiration and a reminder of the importance of fighting for dignity and justice for all.

Dedication

I dedicate this dissertation to my two daughters, Aurora and Athena. You have been part of this journey even before you were born. Aurora, as I walked across the stage to accept my master's in educational leadership, I was five months pregnant with you. Athena, during the last year of coursework for my Doctorate in Education, I carried you and welcomed you into the world. You are both my constant motivation and driving force. My greatest hope for both of you is to grow into strong, independent women who navigate the world with confidence and grace. I never want you to settle or change yourself to satisfy someone else or follow societal norms. Embracing uniqueness and being an individual is far more commendable than conforming to what others expect you to be. I want you to believe in yourselves and your dreams, no matter how big they seem. You deserve to live in a world where your potential is recognized, and your opportunities are limitless. I hope you will one day inhabit a world where you can be who you want to be and love freely. Always remember that you can forge your own path and achieve anything you set your heart on, regardless of the challenges you may face. May you courageously confront every obstacle and never let anyone tell you something is unattainable. I love you both dearly.

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Abstract

The purpose of this study is to interpret the sex-based classifications in Title IX and the equal protection clause of the 14th Amendment. Between 2016 and 2022, circuit courts have interpreted the Equal Protection Clause of the 14th Amendment and the sex-based classifications of Title IX. The study attempted to answer the following research questions. First, does the Equal Protection Clause of the 14th Amendment relate to transgender bathroom rights? Second, do the sex-based classifications of Title IX (of ESSA) apply to transgender bathroom rights? And third, how do the 14th Amendment and Title IX apply to bathroom rights rulings in K–12 public schools? The public policy analysis reviews and examines the existing legislation, case law regarding bathroom rights in schools, and circuit court outcomes involving such rules with a *post hoc* analysis.

Chapter 1: Introduction

“Teacher, may I please use the bathroom?” Inquiring for permission to use the restroom is a question a child learns to ask early in their school career. But this question, driven by pure physiological need or serving as an excuse to get out of class, has become a political platform. Which bathroom should the child use? Should they use the female restroom or the male restroom? Many individuals take the right to use their desired bathroom for granted because they have never been denied such access. Some question whether this access is a Constitutional right. Schools are responsible for providing all students with a safe, nurturing, social, emotional, and learning environment.

Not all students feel their needs are being met or protected in schools. If Title IX bans sex discrimination and the 14th Amendment guarantees equal rights, are bathroom rights covered under the protections of Title IX? This policy analysis analyzes the legality of policies that limit transgender students’ bathroom rights in K–12 schools. While examining these policies, I look for patterns in circuit court decisions and states legislation that was passed in reference to bathroom rights from 2016 to 2022.

Background

In 1972, Congress enacted Title IX of the Education Amendments to the Civil Rights Act of 1964, which Richard Nixon later signed. Title IX mandated, “No person in the United States shall, based on 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” (U.S. Department of Education, 2021, para. 2). Originally, Title IX only was associated with athletics but later emendations expanded it to protect all students, faculty, and employees from sexual discrimination, assault, and harassment. On May 27, 1975, President Ford signed the

regulations to Title IX that would create checks and balances to ensure people and organizations followed Title IX. According to some of these regulations, most of the information must be made public and accessible to the student population, or the school will risk losing its federal funding (Valentin, 1997, p. 4).

Like Title IX, the 14th Amendment to the U.S. Constitution and its due process clause constantly evolve and are interpreted widely. The 14th Amendment to the American Constitution was passed on June 13, 1866 and ratified July 9, 1868. The 14th Amendment states,

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. (U.S. Const. amend. XIV, § 2)

Although education may not be a fundamental right under the U.S. Constitution, under the equal protection clause of the 14th Amendment, all children must be provided access to public education when available. Since the 14th Amendment was written into the U.S. Constitution, it constantly has been evolving through case law and various interpretations (Pruitt, 2020).

The Department of Justice occasionally passes down Dear Colleague Letters to districts to guide them on how they should proceed on a specific topic. The guidance passed down is not a law or directive; rather, it offers advice and information about how particular departments should operate to comply with specific guidelines (U.S. Department of Education, 2011). The 2016 Transgender Dear Colleague Letter explicitly says it is not a law but should serve as significant guidance to districts. The letter says:

As a condition of receiving Federal funds, a school agrees that it will not exclude, separate, deny benefits to, or otherwise treat differently based on sex any person in its

educational programs or activities unless expressly authorized to do so under Title IX or its implementing regulations. (34 C.F.R. §§ 106.4, 106.31[a])

As such, a school must not treat a transgender student differently from how it treats other students of the same gender.

The Dear Colleague Letter also provided language assistance and terminology to educate the district on new phrases to which they may not have become accustomed (U.S. Department of Education, 2011). The following sections of the letter covered a safe and nondiscriminatory environment, pronouns, sex-segregated facilities and activities, and privacy and education records. The section that received the most attention was the sex-segregated facilities. In Chapter 2, I will go into more depth about the 2016 Transgender Dear Colleague Letter and the 2017 Dear Colleague Letter that rescinded it.

Research Problem

For transgender students, which bathroom to use is not just a question of whether they should use the “boy” or “girl” restroom. Title IX and the 14th Amendment have not been changed, but the courts’ interpretation of them is evolving. The issue of transgender bathroom rights is questioned and evolving constantly (Pruitt, 2020). Students who have brought their cases to the appellate courts have found it challenging to have their issues resolved. Circuit courts have had varied responses in similar cases throughout the years, which has led the plaintiffs to file suit against the Department of Educations (Baum & Brudney, 2019). When one focuses on the problem, it could be said the nation’s legislative and judicial bodies are communicating inconsistencies.

Despite protections from Title IX and the 14th Amendment that prevent sex discrimination in federally funded institutions, court cases related to transgender student rights

violations continue to increase. Due to the uncertainty regarding the Biden administration's stand on students' rights under Title IX and the Supreme Court's unwillingness to rule in this manner, school administrators are uncertain about transgender students' rights under Title IX and the 14th Amendment. This study analyzes recent case law and legislation to assist administrators when making decisions related to this matter.

Research Purpose

This policy analysis explores how the transgender student population has or has not been protected under the sex-based classification of Title IX in federally funded institutions. It allows for analysis of the legality of policies that limit transgender students' bathroom rights in K–12 schools. While examining these policies, I look for patterns among states that passed state legislation regarding bathroom rights from 2016 to 2022.

Research Focus and Questions

Research Focus: This policy analysis focuses on transgender students in K–12 public education.

Research Questions: Between 2016 and 2022, how have circuit courts interpreted:

1. The Equal Protection Clause of the 14th Amendment as related to transgender bathroom rights;
2. The sex-based classifications of Title IX (of ESSA) as it is applied to transgender bathroom rights; and
3. Both the 14th Amendment and Title IX as applied to bathroom rights rulings in K–12 public schools?

Significance of the Study

The study's significance covers both the scholarly relevance of filling the gap in the literature and the practical significance of providing insight to administrators regarding school policies for the transgender population. Before 2016, bathroom rights concerned public buildings and the workplace. In recent years, this has shifted to transgender bathroom rights in K–12 public education. There have been contradictory views regarding students' right to use the bathroom of their choice. These contradictions leave students feeling unsupported, confused, and unsafe in their school environments.

Due to the recent pandemic, transgender students return to schools feeling confused and stuck in contradictory school experiences (Sparks, 2021). Some students felt relief since they did not need to report to a school where they encountered bullying or discrimination daily. Other students felt relieved since the only place they had ever felt accepted was in school. Teachers' and administrators' attitudes toward transgender students contribute to their feeling of safety and belonging at school (Sparks, 2021). "While more than 53 percent of transgender students with supportive school staff reported feeling they belonged in school, that was the case for only 18 percent of those without staff support" (Sparks, 2021, p. 4). As one can see from the report, more students with supportive administration and teachers feel safe and accepted in their school.

In conducting this policy analysis, this study can provide school staff with a better understanding of the policies and legislation surrounding their transgender students. This newfound knowledge will allow administrators to create or question new or existing board policies affecting transgender students. Educators can better understand the sex-based classification of Title IX and how it applies to their transgender students and their board of education policies. Evaluating these policies can help all students feel safe and included in their

school building, promoting a nurturing and productive learning environment to ensure academic success.

Research Approach

The present policy analysis first examines how appellate courts ruled regarding transgender students being denied access to the bathroom of the sex they identify as in relation to sex discrimination under Title IX. The analysis then explores the number of transgender bathroom cases since 2016, finding a violation of a student's Title IX rights. Third, this analysis evaluates transgender students' 14th Amendment Due Process.

Definition of Terms

- *Case Law*: According to Black's Law Dictionary (n.d.), case law is defined as a professional name for an aggregate of reported cases as a forming body of jurisprudence or for the law of a particular subject as evidenced or formed by the adjudged cases; in distinction to the statutes and other sources of law.
- *Dear Colleague Letter*: an official correspondence a member, committee, or officer of the United States House of Representatives or the United States Senate sends, which is distributed in bulk to other congressional offices (U.S. Department of Education, 2016, pp. 2–3).
- *Gender*: A cultural term that refers to the words “man” or “woman” (Stryker, 2008).
- *Gender Expression*: the physical and behavioral manifestations of one's gender identity (Merriam-Webster, n.d.-a)
- *Gender Identity*: a person's internal sense of being male, female, some combination of male and female, or neither male nor female (Merriam-Webster, n.d.-b)

- *Gender Nonconforming*: exhibiting behavioral, cultural, or psychological traits that do not correspond with the traits typically associated with one's sex; having a gender expression that does not conform to gender norms (Merriam-Webster, n.d.-c).
- *Gender transition*: refers to how transgender individuals begin asserting the gender that corresponds to their gender identity instead of the sex they were assigned at birth. During gender transition, individuals begin to live and identify as the sex consistent with their gender identity. They may dress differently, adopt a new name, and use pronouns consistent with their gender identity. Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly or over a long time (U.S. Department of Education, 2016, pp. 2–3).
- *Nonbinary*: relating to or being a person who identifies with or expresses a gender identity that is neither entirely male nor female (Merriam-Webster, n.d.-d).
- *Policy*: a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions (Merriam-Webster, n.d.-e).
- *Protected Class*: a class or group of people protected against discrimination due to being a protected class member. Federal law prohibits discriminatory conduct concerning the following protected categories: race, color, creed, religion, national origin, age (40 or over), gender, disability, and citizenship status. (Merriam-Webster, n.d.-f).
- *Sex*: Sex refers typically to the words “male” or “female.” Sex also refers to the reproductive ability or the potential to reproduce (Stryker, 2008).

- *Sex assigned at birth*: refers to the sex designation recorded on an infant's birth certificate should such a record be provided at delivery. Typically related to the gonads (U.S. Department of Education, 2016, pp. 2–3).
- *Student*: a person who attends a school, college, or university (Merriam-Webster, n.d.-g).
- *Transgender*: describes those individuals whose gender identity is different from the sex they were assigned at birth. A transgender male identifies as male but was assigned the sex of female at birth; a transgender female is someone who identifies as female but was given the sex of male at birth (U.S. Department of Education, 2016, pp. 2–3).

Summary

As I established in this chapter, transgender bathroom rights will be a booming topic in education in 2025. For the past decade, the media has followed the key terms transgender and bathroom rights in public education. Due to the pandemic, the controversial decisions have confused administrators and school board, who are unsure of what direction to take. This policy analysis intends to guide administrators and school boards when making those decisions. The remaining chapters give the decision-making bodies the information needed to make those controversial decisions. Chapter 2 is a literature review that expands on the literature I found using the key terms defined in Chapter 1. Chapter 2 also discusses a study that can illuminate a pattern later during the analysis chapters. In Chapter 3, I describe the methods of the analysis. Chapter 3 describes the research methods in detail and provides an outline of how the research questions are answered. I have detailed the purpose, assumptions, data collection,

trustworthiness, and positionality. The goal of Chapter 4 is to provide results and data that will illustrate that I followed the methodology of Chapter 3.

Chapter 2: Literature Review

Susan Stryker (2008) stated the following about the transgender population: “When people struggling against an injustice have no hope that anything will ever change, they use their strength to survive; when they think that their actions matter, that same strength becomes a force for positive change” (p. 5). Nearly a decade later, the transgender population finds itself at the political forefront of education. The transgender bathroom rights spotlight continues to grow, but there has been little movement.

This chapter begins with describing the history of Title IX and the 14th Amendment to the U.S. Constitution to help contextualize the role of transgender rights in circuit court decisions. Following this is a detailed discussion of the differentiation between sex and gender before I proceed into the history of the transgender population in the United States. This differentiation and history will allow readers to see society’s constant push and pull and how gender serves as a social construct. Social constructs can be different based on society and current events. People who create policies could be perceived to hold biases created through their prior life experiences or conditioning. These opinions and viewpoints of society are essential because they can influence the enforcement or implementation of new policies.

The upcoming sections explore different perspectives on the transgender population and transgender bathroom rights. The literature review looks at the history, legislation, psychological theories, and social constructs of gender and sex. Finally, I review the Dear Colleague Letter of 2016 and demonstrate how it provided a turning point for the transgender bathroom rights discussion.

Title IX and the 14th Amendment

On June 23, 1972, women won a significant victory when Congress passed Title IX as part of the Education Amendments to the Civil Rights Act of 1964. The first and original version of the bill sought to amend Title VII of the 1964 Civil Rights Act, “which prohibited discrimination in employment based on race, color, religion, sex, or national origin to cover employees in educational institutions” (Civil Rights Act of 1964 § 7, 42 U.S.C. § 2000e et seq, 1964). The bill also amended Title VI of the Civil Rights Act to cover sex discrimination and the Equal Pay Act to cover professionals and administrators. Title VI and Title VII of the 1964 Civil Rights Act critically influenced Title IX. Both laid the foundation of discrimination based on race, color, and national origin. All three are crucial when talking about a nonprotected class.

The 14th Amendment to the U.S. Constitution was passed on June 13, 1866, and ratified on July 9, 1868. It 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” (U.S. Const. amend. XIV, § 1.). *Brown v. The Board of Education of Topeka* was a class-action lawsuit that ultimately changed the education system and defined the 14th Amendment. The plaintiffs contended segregated public schools were not “equal” and could not be made “equal”; hence, students were deprived of equal protection of the laws (*Brown v. Board of Education of Topeka*, 347 U.S. 483, 1954). The majority decision of *Brown v. Board of Education* stated:

A sense of inferiority affects the motivation of a child to learn. Segregation ... tends to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system. (*Brown v. Board of Education*, 347 U.S. 483, 1954)

In the court's opinion, the Supreme Court Justice stated the detrimental effect the segregation of the learning spaces has on non-White children as opposed to White children. The segregation of the classes and all other areas was separate but not equal, and so it had to be overturned.

Interpretations of policies and the U.S. Constitution constantly are evolving. When the 14th Amendment of the U.S. Constitution was written in 1868, the current issues that call for interpretation might not have been considered; but with time comes change. With this change, policies need to adapt to current situations. Equal protection is a constitutional guarantee under the 14th Amendment, and the decision of *Brown v. Board of Education* highlighted this.

Title IX is an example of how the 14th Amendment has been interpreted. Title IX reads, "No person in the United States shall, based on 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" (U.S. Department of Education, 2015, para. 2). The original goal of Title IX was to ensure there was an equal number of male and female sports in college. Over the next 40 years, Title IX has evolved to cover many different topics, such as sexual harassment, assault, and gender equality.

Sex vs. Gender

To understand Title IX and bathroom rights, one must understand the difference between sex and gender. Sex usually is defined as biologically determined and gender as culturally determined (Stryker, 2008). "We often think of sex as biological and gender as social; both concepts are socially constructed and subject to change over time" (Johnson & Repta, 2011, p. 19). These categories include male, female, intersex, and others, and they are relative to place and time, not to biology (Johnson & Repta, 2011). Title IX explicitly states, "No person in the United States shall, based on sex, be excluded from participation" (U.S. Department of

Education, 2015, para. 2). Even though the conflict between sex and gender is relatively new, the authors of Title IX knew to state explicitly the word sex and not gender in their description.

Sex

A person's chromosomes genetically determine their sex. Sex is a biological construct encompassing "anatomical, physiological, genetic, and hormonal variation in species" (Johnson & Repta, 2011, p. 19). Currently, sex cannot be altered or changed based on genetic coding. Previously the genetic code of sex assumed the following arrangements XX and XY. We now understand that different variations of those chromosomal arrangements exist, such as XXX, XXY, XYY, and XO and XX males and XY females (De la Chapelle, 1981). Due to the possible variations, one cannot classify biology as "male" and "female," which is why it is more important to think of sex as binary terms (Johnson & Repta, 2011, p. 2).

Gender

According to Johnson and Repta (2011), "gender builds on biological sex to give meaning to sex differences, categorizing individuals with labels such as woman, man, transsexual These categories are socially constructed" (Johnson & Repta, 2011, p. 21). In the United States, we consider gender on a spectrum. Gender is something everyone thinks they may understand or have a grasp on (Johnson & Repta, 2011). This debate is political because society categorizes genders based on unchosen physical differences. This political influence has been seen before with feminism and gender oppression. Women's bodies have been used to exploit sex and promote promiscuity. The feminist movement has retaken this social construct to advocate for women. The transgender population does not conform to this political agenda. A society that alienated transgender people because of their inability to conform to the political and social constructs of gender could never be politically neutral (Stryker, 2008, p. 8).

Throughout the years, psychologists have studied various theories of gender and social constructs. Four theories that are critical to understanding this policy analysis are psychoanalytic theory (Freud, 1964), social learning theory (Bussey & Bandura, 1984), cognitive development theory (Kohlberg, 1966), and a relatively new theory called gender schema theory (Bem, 1981).

Psychoanalytic Theory

Psychoanalytic theory was first identified by Sigmund Freud (1964). Freud was the first psychologist who asked how males and females could transform into the masculine and the feminine. The psychoanalytic theory discusses the concept that a child will identify with their same-sex parent, which is how they ultimately become sex-typed. Sex typing is “the belief that men and women have characteristics and skills that make particular jobs suitable only for men and others suitable only for women” (Cambridge Dictionary, n.d.-b, Definition 1). From this theory, castration anxiety and penis envy evolved. Although this theory is not very popular anymore, mainly because it is hard to test within children, it laid the foundation for sex typing and gender constructs.

Social Learning Theory

Social learning theory focuses on the positive and negative reinforcement when one completes either sex-appropriate or sex-inappropriate behaviors (Bem, 1983). Social learning theory focuses on developing sex roles through social influences (Bussey & Bandura, 1984). Social theory elaborates on society and how it socializes children to fit stereotypical gender roles. Before a child is born, the parents already are prescribing the child and holding them in masculine or feminine categories when determining the sex on an ultrasound. The defined roles come from a specific color or items one may put on their baby registry. These gender roles are

buttressed with positive or negative reinforcements at a young age. As children get older, they begin to construct their gender roles and self-identify as masculine or feminine.

Cognitive Developmental Theory

Unlike social learning theory, cognitive developmental theory focuses on cognitive development and the ability to steer one's sex-typing. People are solely responsible for their own identity when they hit mental maturity. Based on Kohlberg's Stages of Moral Development (1966), "a child understands that a person's gender remains constant regardless of appearance changes" (Bussey & Bandura, 1984, p. 1293). As soon as a child can self-identify as a "boy" or a "girl," they continue trying to fit within the box society has created for them. Children start to engage in activities and behaviors appropriate to the gender with which they identify. This theory is not the sex-typing that determines or influences their gender role. The child's imitation of the sex type behavior is consistent with the sexual label with which they self-identify. "Basic self-categorizations determine basic values. Once the boy has stably identified himself as male, he values those objects positively and acts consistent with his gender identity" (Kohlberg, 1966, p. 89).

Gender Schema Theory

Psychologists saw the need to focus primarily on sex type and how gender acts as a social construct but were not satisfied with the three other theories and the inability to cover all concepts of sex typing. Gender schema theory "proposes that sex-typing results, in part, from the fact that the self-concept itself gets assimilated into the gender schema" (Bem, 1981, p. 355). Schema is "a conception of what is common to all class members; a general or essential type or form" (Cambridge Dictionary, n.d.-a). The schema triggers a child to search for and study information in schematic forms. As children get older, they start to follow society's gender

schema and then begin to realize what specific actions they need to complete to identify with a particular gender. Like social construct theory, this theory identifies gender roles as learned behavior.

The Impacts of Social Constructions

Gender constructs are highly individual and vary from person to person. They also evolve and are reconfigured over time. Gender becomes an integral piece of identity, a part of how people express themselves and experience others. One's sense of oneself is intimately attached to gender due to race, ethnicity, or other defining characteristics.

Masculinity and femininity are socially constructed components of gender typically associated with male and female characteristics (Johnson & Repta, 2011). Culture has defined certain activities as masculine and feminine. Children can identify these social constructs as early as three or four years of age (Bem, 1983). As a result of these social constructs and sex-typing, children who do not conform to their sex assigned at birth often exhibit feelings of isolation and loneliness (Bem, 1983). Children who do not conform to these social constructs are considered gender nonconforming. The typical sex-typing or gender constructs that society has placed on us leave society confused and biased toward individuals who do not conform. Transphobia is a term that describes extreme hatred or dislike toward individuals who do not accept the gender they were assigned at birth. Individuals who display transphobia may feel severe anxiety when in the presence of a transgender individual. The conformities of individuals to sex-typing, whether learned through society or had cognitive implications, cause individuals who will not conform to feel isolated and outcasted.

Transgender Identity and History

The word transgender refers to an individual who does not identify with their assigned sex at birth. For many transgender persons, there is a disconnect between “what one feels or knows they are rather than what the physical attributes of their body” are (Stieglitz, 2010, p. 192). One can trace the feeling of disconnectedness and confusion back to the social construct and gender schema theory that I discussed in the previous paragraphs, which describe how society has conditioned babies before they have a chance to pick their gender. The children feel disconnected because they feel as if they are not choosing the gender society is telling them they should be selecting, which ultimately makes them feel they are wrong and isolated.

In the 1850s, several U.S. cities passed ordinances that made it illegal for a man or woman to appear in public dressed in the opposite sex’s attire (Stryker, 2008). Some laws and ordinances trace back to colonial times, forbidding people from dressing or disguising themselves in the other sex’s clothing. The negative comments and perspectives on the gay and transgender communities brought solidarity among them. The police targeted the transgender community for their unconventional gender expression. The transgender community banded together and sought comfort within the LGBTQ community. Cooper’s Donuts was a Los Angeles coffeehouse where groups of drag queens and male hustlers gathered in the evening. In May 1959, the transgender customers decided to resist and caused a scene at the donut house. The incident started when they began throwing donuts at the coffee house, and the police officers showed up and started arresting people (Stryker, 2008). After this event at Cooper’s Donuts, the transgender and gay communities began to rally and protest together to protect their rights.

A similar incident occurred in Philadelphia in 1965 at Dewey’s, a late-night coffee house like Cooper’s. Dewey started refusing to serve young customers who wore “nonconformist

clothing,” claiming “gay kids” were driving away the other business. Customers rallied and protested the establishment. Three teenagers refused to leave after being denied service and were later arrested. The following week, the customers set up a picket in front of Dewey’s and handed out thousands of pieces of literature protesting the establishment’s treatment of non-gender-conforming individuals. The police were called again, but they made no arrests. Dewey eventually backed down and promised “an immediate cessation of all indiscriminate denials of service” (Stryker, 2008, p. 44).

In the book *Transgender History* (2008), Susan Stryker broke down the transgender civil rights era into three overarching periods: the 1960s, the 1970s and 1980s, and the 1990s and the early 21st century. The 1960s saw a significant gay liberation movement; the 1970s and 1980s saw a backlash toward the transgender population within the lesbian, gay, and feminist movements; and the 1990s and early years of the 21st century started to see the merge of forces within the LGBTQ movement and also for the transgender community to start to separate and establish themselves as their own movement (Stryker, 2008).

Transgender-related policy and legislation were rarely heard of before the early 1990s. In 1995, many gay and lesbian or gay, lesbian, and bisexual organizations were beginning to add the “T” to their names. This shift toward the “LGBT” community, rather than a “queer” one, marked the beginning of a new phase in the social history of sexual and gender identity politics in the United States (Stryker, 2008).

During Barack Obama’s second term as president, Congress passed multiple protections for people who identified as transgender. Obama developed policies that required healthcare companies to provide coverage for transgender care, created protections for transgender students in federally funded schools, and allowed the transgender military to serve openly in the armed

forces (Bowers & Whitley, 2020, p. 1). This was a significant leap for the transgender community. It was the first time the federal government acknowledged their rights and enacted national policy to protect them. While this recognition was a substantial move in the right direction, it also opened the door to debate and pushback. It has been unfortunate for the transgender community, but their rights and protections have become a political battle and stepstool for upcoming elections.

When Donald Trump came into office in 2016, he overturned the policies Barack Obama had put into place protecting the transgender community. Donald Trump

repealed Department of Education protections for students, banned most transgender individuals from the military service, delayed the rollout of the Department of Housing and Urban Development programs for homeless transgender individuals, instructed the Justice Department that federal anti-discrimination laws do not protect transgender workers, removed protections for transgender prisoners, created an avenue for healthcare professionals to deny services to transgender individuals, and has begun to roll back transgender anti-discrimination in the Affordable Care Act. (Bowers & Whitley, 2020, pp. 1–2)

One clear thing is the United States is divided regarding transgender rights.

Perspectives of Transgender Protections and Right

Theorist Andrew R. Flores believed mere exposure to someone from the transgender community would reduce the feeling of transphobia. The more someone is around people belonging to the transgender community, the more willing they will be to accept them and have positive feelings about their rights (Flores, 2015). One must look at recent studies to understand these attitudes' political and psychological connections or predictors. Norton and Herek (2013)

found survey respondents who held binary conceptions of gender, higher levels of authoritarianism, less egalitarian attitudes, more conservative ideologies, and greater religiosity all rated transgender people less favorably on feeling thermometers. The following section will evaluate a survey that illuminates the different variables contributing to the split regarding transgender protections.

General Rights and Protections Survey: “What Drives Support for Transgender Rights?”

On January 9, 2020, Bowers and Whitley published a study analyzing how an individuals’ beliefs about the biological origin of a person’s transgender status influence support for transgender rights, including employment, housing, healthcare, and bathroom protections. One thousand U.S. citizens took an online survey to evaluate their beliefs in this study. The survey asked 77 questions and took about 26 minutes to complete. Bowers and Whitley (2020) used qualtrics to ensure they met quotas using race, ethnicity, gender, and geographical measures. To “limit self-selection bias for participation based on survey topic,” they titled the survey “Let us Know About Your Attitudes on Various Social Issues” (Bowers & Whitley, 2020, p. 403).

There were four predicted variables for which they wanted results: employment discrimination, bathroom access, housing discrimination, and healthcare access. They also identified other variables, such as political party, education, and political ideology. I address these three variables in Chapter 5 when I refer to my results and return to the research questions. The survey asked the individuals to what extent they would support various rights for the transgender population. The respondents responded on a Likert scale from 1 (strongly opposed) to 7 (strongly support; Bowers & Whitley, 2020). Of the 1,000 respondents, 39% responded they believed being transgender is biological. For this policy analysis, out of the 1,000 respondents,

bathroom access for the transgender population scored an SD of 4.53 on the Likert Scale of 1–7. The study found a correlation between believing transgender is biological and increased support for transgender rights. It also found those who expressed political conservatism were less likely to believe in the physical connectedness to transgender. Although there is a slight chance political conservatism does believe in it, it seems to have a more dramatic impact on the support for transgender rights than would a liberal result (Bowers & Whitley, 2020, p. 399).

Bathroom Rights

In America, the first sex-segregated bathrooms date back to 1887, when Massachusetts brought forth a law mandating workplace bathroom facilities be separated by sex (Barnett et al., 2018). Legislative bodies were developing labor laws to protect women's rights. "The separation of restrooms was an extension of these special protections for women" (Barnett et al., 2018, p. 233). It was thought women needed protection from men because they were "weaker," and the separation was necessary because they needed a more sanitized location to use the facilities.

Historically, the transgender population has been expected to conform to their anatomical sex; however, that expectation is discriminatory. According to the 2015 U.S. Transgender Survey, more than half (59%) of respondents avoided using a public restroom in the past year because they were afraid of confrontations. Nearly one third of respondents limited the amount they ate and drank to avoid using the bathroom in the past year (U.S. Transgender Survey, 2015). Should a population be expected to conform out of the fear of being discriminated against?

Constitutional arguments have been made throughout recent years in support of and in opposition to transgender access to public school bathroom facilities. This chapter previously discussed these arguments regarding the Equal Protection and Due Process Clauses of the 14th Amendment. "Courts apply one of three standards to Equal Protection cases: rational-basis

review, intermediate scrutiny, or strict scrutiny” (Barnett et al., 2018, p. 238). Since gender does not classify as a suspect class, the courts have decided to use intermediate scrutiny because there is a “real danger that seemingly reasonable policies reflect archaic and overbroad generalizations or outdated misconceptions about gender” (Moffitt, 2015, p. 475).

The 2016 Dear Colleague Letter

In May 2016, officials from the Obama administration confirmed transgender students’ rights to use restrooms that correspond with their gender (Emma, 2016). This letter from 2016 was significantly controversial for its time. In two separate lawsuits, 20 states challenged the interpretation for various reasons.

To understand fully the implications of the Dear Colleague Letter, one must know about Title IX of the Education Amendments of 1972. Title IX states,

Title IX is a comprehensive federal law that prohibits discrimination based on sex in any federally funded education program or activity. The principal objective of Title IX is to avoid the use of federal money to support sex discrimination in education programs. (The Education Amendments of 1972, Title IX U.S.C. A§ 1681, 2015)

Additionally, Title IX regulations allow regulated entities to “provide separate toilet, locker room, and shower facilities based on sex,” so long as the facilities provided for “students of one sex” are “comparable” to the facilities provided for “students of the other sex” (The Education Amendments of 1972, Title IX U.S.C. A§ 1681, 2015). Interpretation of Title IX has been the primary focus for all transgender bathroom rights opinions.

In determining the outcome of these cases, the Supreme Court will have to decide if the federal government’s interpretation of the law is valid. If it is, does this mean bathrooms and locker rooms in a federally funded school are accessible to students based on their gender

identity? The opponents of the Dear Colleague Letter argue the letter coerces the state's ability to accept the terms of the funding because they are threatened to remove Title IX if they do not, and, for a majority of the schools, that is a significant source of their budget. Since public education facilities receive federal funding, the Dear Colleague Letter would take power away from the state's ability to govern. The opponents also argue they did not agree to these terms when they initially accepted Title IX funding (U.S. Department of Education, 2016, p. 2).

In 2017, President Donald Trump decided policies concerning transgender bathroom rights should be determined at the state level. The Department of Justice and the Department of Education released another Dear Colleague Letter in 2017, which rescinded the Dear Colleague Letter of 2016 on Transgender Bathroom Rights but did not offer a replacement. The White House stated it did not provide relief to give power back to the local government to create policies with input from parents, administrators, and teachers (de Vogue et al., 2017). Since 2017, states and local school districts have been given the ability to make decisions regarding policy on transgender bathroom rights. In this policy analysis, I determine what specific states or regions have made policies on transgender bathroom rights in public education.

Summary

School administrators must create an inclusive, safe, welcoming environment that promotes and fosters socio-emotional and academic success. With the recent rise of students who identify as transgender, it is more important than ever to ensure all students have a sense of belonging. To succeed in that endeavor, administrators must understand fully laws that protect students' due process and constitutional rights. I elaborate on the research methods used in this policy analysis in the next chapter. These methods outline how the administrator successfully can understand antidiscrimination laws nationwide and answer my research questions.

Chapter 3: Methods

This chapter begins with the study's research questions, ontology, epistemology, and axiology. Next, I outline the methods, including the research design and how I obtained and interpreted data. Finally, this chapter ends with a discussion of the limitations and delimitations, followed by a summary.

Research Design

To interpret the sex-based classifications in Title IX and the Equal Protection Clause of the 14th Amendment, this public policy analysis examines existing legislation and case law regarding bathroom rights in schools and other public places along with appellate court outcomes involving such rules with a *post hoc* analysis. By researching case law and legislation, this qualitative policy analysis can provide policymakers, school administrators, and other stakeholders with an analysis of the limitations of Title IX and the Equal Protection Clause of the 14th Amendment regarding students' bathroom rights. The study will provide readers with the knowledge to create and implement transgender bathroom policies in their district.

Research Questions

This study addresses the following research question. Between 2016 and 2022, how have circuit courts interpreted:

1. The Equal Protection Clause of the 14th Amendment as related to transgender bathroom rights;
2. The sex-based classifications of Title IX (of ESSA) as it is applied to transgender bathroom rights; and
3. Both the 14th Amendment and Title IX as applied to bathroom rights rulings in K–12 public schools?

The research questions allowed me to analyze the legality of policies that limit transgender students' bathroom rights in K–12 schools. While examining these policies, I looked for patterns among states that passed legislation regarding bathroom rights from 2016 to 2022.

Ontology

Ontology refers to “the nature of our beliefs about reality” (Richards, 2003, p. 33). Richards (2003) said ontology is an assumption we make about reality and its existence. In this policy analysis, I considered the constructivist approach when analyzing the data; it asserts analysis comprises “inventions of the human mind and hence [are] subject to human error” (Guba & Lincoln, 1994, p. 108). There are multiple realities, even if they are dependent on the groups holding the specific constructs. Guba and Lincoln (1994) would consider this intraparadigm analysis relativist constructivism. This approach would assume a researcher may be confronted with conflicting social realities during this policy analysis. Still, as the study progressed, the analysis and the answers to the research questions became more apparent.

The researcher must create the study's constraints to ensure the reader stays within this reality. In Guba and Lincoln's (1994) “Competing Paradigms in Qualitative Research,” inquiry paradigms can define these constraints for the reader. The ontological question I asked in this study is how policy is created in public education. The research questions in this study aimed to solve this question.

Epistemology

I used the reality established by the ontological assumptions for epistemological inquiry as Guba and Lincoln (1994) described. The epistemological questions that needed to be answered were:

- What is the relationship between researchers and policymakers?

- What can be known about that relationship? (Guba & Lincoln, 1994, p. 108).

When conducting research for policy analysis, there is much uncertainty, known as “epistemic uncertainty” (Van Dorsser et al., 2020). One can overcome epistemic uncertainty by conducting more research or waiting for time to pass so one can know the facts (Van Dorsser et al., 2020). Table 1 demonstrates the progressive transition of levels of uncertainty the researcher can identify in policy analysis (Van Dorsser et al., 2010). “The location of uncertainty addresses where the various aspects of the policy domain are located and whether they are inside or outside the control of the policymaker” (Van Dorsser et al., 2020, p. 5). Some of these forces may include but are not limited to the policies themselves, opinions or viewpoints of the individuals responsible for creating policies, external and internal factors that rely on the policies, the views of the various stakeholders, and the outcomes of the legislation or case law surrounding bathroom rights for the transgender population (Van Dorsser et al., 2020).

To combat epistemic uncertainty, I examined laws and legislation passed or ruled on between giving the Dear Colleague Letter of 2016 on Transgender Bathroom Rights through December 30, 2022. To see if there was a notable change in the passing of state legislation and case law, I looked to see what was passed or decided on before the Dear Colleague Letter of 2016 was sent to the school districts to examine any specific changes or trends that may have occurred as a result once the letter was sent. The information obtained during the time elapsed and any additional research before the specified timeframe (2016–2022) solved the epistemic uncertainty. I completed an in-depth comparison of state transgender bathroom legislation to see which patterns may be present regarding why some states have either passed or failed to pass legislation. This research considers the various factors that lead to epistemic uncertainty.

Table 1*Progressive Transition: Levels of Uncertainty*

Level	Context	System model	System outcomes	Weights on outcomes
Complete determinism				
Level 1	Clear enough future	A single-system (deterministic) system model	A point estimate for each outcome	A single set of weights
Level 2	Alternate futures with possibilities	A single (stochastic) system model	A confidence interval for each model	Several sets of weights, with a probability attached to each set
Level 3	A limited, bounded set of plausible futures	Several system models with different structures	A known range of outcomes	A known range of weights
Level 4	An unlimited unbounded set of plausible futures	Unknown system model; now we do not know	Unknown outcomes: Know we do not know	Unknown weights: Now we do not know
Total ignorance				

Note.

“Adapted from Van Dorsser, C., Taneja, P., Walker, W., & Marchau, V. (2020). “An integrated framework for anticipating the future and dealing with uncertainty in policymaking.” *Futures*, vol 124, 4-5. <https://doi.org/10.1016/j.futures.2020.102594>

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Constructive Epistemology

According to Guba and Lincoln (1994), constructivist epistemology assumes the researcher and the research object are linked to create the findings as the policy analysis proceeds. While conducting research for this policy analysis, I examined bathroom laws and circuit court rulings related to bathroom rights in schools. The policy analysis occurred in the context of the constant debate around bathroom rights for the transgender community.

Axiology

The researcher “makes their values known in the study about the axiological assumption” (Creswell & Poth, 2018, p. 21). In this policy analysis, I hold that opinions and viewpoints are factors when the policy is created or modified. When a policy is created, specific stakeholders’ values and morals influence their decisions. The various stakeholders’ values and morals are sometimes seen during policy creation. I had to identify the patterns one may see when looking at states that have passed or failed to pass state legislation regarding transgender bathroom rights. The established patterns could have been attributed to the axiological assumption of specific states and the stakeholders who created policy in those states. Similarly to the various stakeholders that make policies, I could have imposed axiological assumptions while creating this policy analysis.

I note my values and opinions in Chapters 4 and 5. I insert my perspective and outline how it interacts with public opinion in creating and analyzing public policy regarding transgender bathroom rights. At a specific point in this analysis, I discuss researcher bias and how I addressed it during the study.

Data Collection

This *post hoc* policy analysis examines the interpretations of transgender bathroom rights in K–12 schools under Title IX and the Equal Protection Clause of the 14th Amendment. Data consists of circuit court decisions incorporating Title IX or the Equal Protection Clause in their choices and related state legislation. This section details the data delimitations and collection used in this state-by-state comparison of available transgender bathroom rights legislation and an in-depth review of the circuit courts’ rulings in bathroom rights decisions.

Delimitations

Data for this analysis were delimited using the Cronbach UTOS system for systematic review: (U) units, (T) treatments, (O) observations, and (S) settings (Albright & Malloy, 2000). Initially, I interpreted the UTOS criteria concerning the research questions and defined them as follows:

- Units: Transgender Students
- Treatment: Bathroom Rights
- Outcomes: Circuit Court Decisions and State Legislation
- Settings: K–12 Education.

I performed a pilot search of the legislation to assess the feasibility of these delimiters. During the pilot, I discovered the available information within the unit and setting delimiters of transgender students and K–12 Education was insufficient for study. As such, I expanded the UTOS criteria to

- Units: Transgender Population
- Treatment: Bathroom Rights
- Outcomes: Circuit Court Decisions and State Legislation
- Settings: United States.

These refined delimiters strictly adhere to the UTOS framework while aligning with a broadened interpretation of the research questions. While expanded beyond the K–12 context, the delimiters continue to reflect the policy to which K–12 schools must adhere.

To add a level of contextualization, I further delimited the setting chronologically by analyzing and comparing the quantity of related state legislation in place before the original Dear Colleague Letter of 2016 on Transgender Bathroom Rights, which gave transgender students

bathroom rights in public schools (U.S. Department of Education, 2016, pp. 2–3), with state legislation and circuit court cases ruled on between 2016 and 2022.

Data Sources

I conducted Internet searches to gather all relevant data defined by the UTOS delimiters. I further recorded circuit court cases using a data recording tool during data collection, as shown in Table 2.

Table 2

Case Breakdown: Equal Protection and Title IX

Case name	Circuit court number	Title IX	Equal protection	Sex-based class	Year
		Y/N	Y/N		

Under the UTOS-defined criteria, I conducted the Internet searches using search engines and keywords as described.

Google Scholar

I researched each research question using the following key terms:

- bathroom rights;
- transgender rights;
- transgender bathroom rights;
- school bathroom rights, protected class;
- student rights to bathrooms, bathroom policy in schools;
- Title IX;
- Equal Protection Clause;
- 14th Amendment.

Together, these terms provide the direction of what cases I used when discussing the bathroom laws for each specific state.

Individual State Statues

I searched state legislation as defined by the U.S. Congress (n.d.) to establish state legislation regarding transgender bathroom rights exists for each state in the United States. Subsequently, I explored state legislation websites using the following key terms:

- bathroom;
- bathroom rights;
- bathroom federally funded;
- bathroom public buildings;
- Title IX;
- sex-based classification;
- protected class.

This search helped establish the number of statutes that apply to bathroom rights within public education buildings.

Lexis Nexis

Lexis Nexis is a completer and more comprehensive search engine for legal cases. According to Lexisnexis.com, it offers “the largest collection of verdicts and settlements available. LexisNexis searches more than 22,000 news information sources, nearly five times more than Google” (LexisNexis.com, n.d.).

I researched the following terms:

- bathroom rights;
- transgender rights;

- transgender bathroom rights;
- school bathroom rights, protected class;
- student rights to bathrooms;
- bathroom policy in schools;
- Title IX;
- Equal Protection Clause;
- 14th Amendment.

I also researched the following terms:

- the United States Court of Appeals;
- first circuit court;
- second circuit court;
- third circuit court;
- fourth circuit court;
- fifth circuit court;
- sixth circuit court;
- seventh circuit court;
- eighth circuit court;
- ninth circuit court;
- tenth circuit court;
- eleventh circuit court.

I also searched these terms with the circuit courts to see if there were trends in the decisions made between 2016 and 2022. Once I researched those court cases, I narrowed them down to determine which suits directly connected to the policy analysis.

Education Resources Information Center (ERIC)

I researched terms using the following keywords:

- bathroom rights;
- transgender rights;
- transgender bathroom rights;
- school bathroom rights;
- protected class;
- student rights to bathrooms;
- bathroom policy in schools;
- Title IX;
- Equal Protection Clause;
- 14th Amendment;
- the United States Court of Appeals;
- First Circuit Court;
- Second Circuit Court;
- Third Circuit Court;
- Fourth Circuit Court;
- Fifth Circuit Court;
- Sixth Circuit Court;
- Seventh Circuit Court;
- Eighth Circuit Court;
- Ninth Circuit Court;
- Tenth Circuit Court;

- Eleventh Circuit Court.

These terms enabled me to narrow down the court cases for each state that supported the answers to the research questions. With the support of the court cases, I also identified trends among the states that have passed or failed to pass bathroom rights state legislation.

Policy Review and Analysis

To determine what policies would be included in this study, I decided to examine the laws and legislation passed or ruled on between the Dear Colleague Letter of 2016 on Transgender Bathroom Rights through December 30, 2022. To see if there was a notable change in the passing of state legislation and case law, I determined what was passed or decided on before the Dear Colleague Letter of 2016 was sent to the school districts to examine any specific changes or trends that may have occurred as a result once the letter was sent. The information obtained during the time elapsed and any additional research before the specified timeframe (2016–2022) solved the epistemic uncertainty. I completed an in-depth comparison of state transgender bathroom legislation to see which patterns may be present regarding why some states have either passed or failed to pass legislation. This research considers the various factors that lead to epistemic uncertainty. I conducted Internet searches to gather all relevant data defined by the UTOS delimiters, which I described in detail at the beginning of this chapter. I expanded the UTOS criteria to include:

- Units: Transgender Population
- Treatment: Bathroom Rights
- Outcomes: Circuit Court Decisions & State Legislation
- Settings: United States

This policy analysis aims to interpret the sex-based classifications in Title IX and the Equal Protection Clause of the 14th Amendment and to provide educational leaders with the information needed to guide their policy decisions. I completed a content or document analysis by focusing on specific words or text in documents (Cardno, 2018). These documents include circuit court case opinions, state bills, state board minutes, journals, and surveys. I organized the analysis and data collection in tables that are outlined later in this chapter. I later analyze these tables and compiled information to see if there are any trends in the states or circuit courts that have passed or denied bathroom legislation or laws based on sex-based classifications in Title IX or the Equal Protection Clause of the 14th Amendment.

The National Conference of State Legislatures (NCSL) tracked the Bathroom Bill Legislative Tracking on a state-by-state basis (NCSL, n.d.). I compared the key components of bathroom laws using a tool like that used in the NCSL study, as displayed in Table 3.

Complementary guiding questions include:

- What are the critical components of the bathroom bill law?
- Does state law require bathroom rights for transgender students?
- If not, does it require bathroom rights for transgender individuals in public places?
- Does the state give school boards authority to create bathroom policies or ban binary bathrooms in schools or public places?
- Does the state mandate nonbinary bathrooms?
- If not, does it require a private bathroom for transgender students?
- Do schools mandate students to use the restroom for their sex assigned at birth?

Table 3*United States Data*

State	Bathroom legislation passed	Private bathroom	Nonbinary bathroom	Bathroom of birth	Bathroom of chosen identity	Bathroom legislation specific to school	Bathroom legislation overturned
Name of state	Y/N	Y/N	Y/N	Y/N	Y/N	Y/N	Y/N

Coding

The graphic organizer in Table 3 and the prior categorical codes defined in the next section performed a trend analysis using unconditional coding *Handbook of Public Policy Analysis* (Fischer & Miller, 2017). Categorical coding is appropriate because it helps to identify trends across multiple cases (Fischer & Miller, 2017). In this way, similar response patterns across categorical codes on the graphic organizer for each state indicated trends among various states. This tool for conducting the trend analysis across numerous cases further categorizes trends by allowing for additional time, noting case patterns before and immediately following the Dear Colleague Letter of 2016 on Transgender Bathroom Rights.

Table 4*Comparison of 50 States Graphic Organizer*

2016–2022						<2016				
State	bath- room of choice	Bath- room of birth	Binary bathroom policy	No bath- room policy	State legislation passed in favor of trans bathroom policy	State legislation rejected trans bathroom policy	The policy was created from 2016 to 2022 and was changed during that time.	Case law was decided in favor of trans bathroom rights	Case law was decided against trans bathroom rights.	Policy before 2016 that was reversed from 2016– 2022

A priori categorical codes include:

- *Bathroom of choice*: States allow transgender students in K–8 education settings to choose bathrooms of the sex they identify with. I recorded Yes (Y) or No (N) depending on whether the states allow the bathroom of choice.
- *Bathroom of birth*: States that only allow students to use bathrooms that correspond to the gender they were assigned at birth. I recorded Yes (Y) or No (N) depending on whether the states allow birth bathrooms.
- *Binary bathroom policy*: States that explicitly have policies that require schools to have a binary bathroom established for transgender students. I recorded Yes (Y) or No (N) depending on whether the states allow binary bathrooms.
- *No bathroom policy*: States that do not have a bathroom policy explicitly stated. I recorded Yes (Y) or No (N) to indicate whether a bathroom policy existed.
- *State legislation passed in favor of trans bathroom policy*: States that have passed state legislation in favor of transgender bathroom rights from 2016 to 2022. I recorded Yes (Y) or No (N) to indicate whether the state has passed legislation favoring bathroom rights from 2016 to 2022.
- *State legislation passed in favor of trans bathroom policy*: States that have rejected state legislation in favor of transgender bathroom rights from 2016–2022. I recorded Yes (Y) or No (N) depending on whether the state had rejected state legislation favoring bathroom rights from 2016 to 2022.
- *The policy changed from 2016–2022*: States that have either passed or rejected policy around transgender bathroom rights, but for some reason or another, changed their

stance from 2016–2022 and reversed their policy or laws. I indicated Yes (Y) or No (N) depending on whether a state changed its stance from 2016 to 2022.

- *Case law was decided in favor of transgender bathroom rights:* States that have settled in the circuit courts in favor of transgender bathroom rights from 2016–2022. I recorded Yes (Y) or No (N) depending on whether a state decided in favor of transgender bathroom rights.
- *Case law was decided against transgender bathroom rights:* States that have settled in the circuit courts against transgender bathroom rights from 2016–2022. I recorded Yes (Y) or No (N) depending on if a state decided against transgender bathroom rights.
- *The policy established before 2016 reversed from 2016–2022:* States that might have had a bathroom rights policy before 2016 but reversed it from 2016–2022. I recorded Yes (Y) or No (N) depending on whether a state reversed its ruling during 2016–2022.

Trustworthiness

Trustworthiness includes the establishment of dependability, credibility, transferability, and confirmability (Guba & Lincoln, 1994). This study describes each of these elements.

Dependability

Dependability in qualitative research is similar to reliability in quantitative analysis and reflects elements that allow future researchers to repeat a study with similar findings (Shenton, 2004). Elo et al. (2014) established a three-phase process for establishing trustworthiness, in this way, as Table 5 shows. I used these phases to embed dependability in the study's design.

Table 5*Trustworthiness*

The phase of the context analysis study	Questions asked
Preparation phase	<ul style="list-style-type: none"> • How do I collect the most relevant data for my content analysis? • Is this method the best available to answer the target research question? • How do I pre-test my data collection method?
Organization phase	<ul style="list-style-type: none"> • Interpretation What is the degree of interpretation in the analysis?
Reporting phase	<ul style="list-style-type: none"> • Reporting analysis process: is there a complete description of the analysis process? • Is the trustworthiness of the content analysis discussed based on some criteria?

Note. Adapted from “Qualitative Content Analysis,” by S. Elo, M. Kääriäinen, O. Kanste, T.

Pölkki, K. Utriainen, and H. Kyngäs, 2014, Sage Open

(<https://doi.org/10.1177/2158244014522633>). Copyright 2014 by Elo et al.

During the preparation phase of this policy analysis, I formulated the research questions to guide the policy analysis and research. The subsections of the research question also assisted with the data collection. The subsections that can be answered and addressed in this policy analysis track back to Cronbach’s UTOS system (Units, Treatment, Observations, and Settings). I have outlined this system in detail in the methodology section.

Next was the organization phase, where I organized all the data collected so I could classify it for interpretation. I placed the researched states alphabetically to ensure the reader can find information quickly (Bardach & Patashnik, 2020). During this phase, I used the organizational charts I previously established in the methods section. Once again, the research questions guided the graphic organizers to ensure the data aligned with what is being questioned in the policy analysis. The trained graphic organizers also allowed me to search for relevant information for the study. The data obtained in the search engines had to answer the questions in the graphic organizer specifically.

Lastly, a detailed analysis must be outlined during the reporting phase to ensure trustworthiness. As Eugene Bardach and Eric Patashnik (2020) described in *A Practical Guide for Policy Analysis*, the analysis of innovative “practices are the tangible and visible behavior” (p. 134). The practice in this study is the transgender students’ use of bathrooms that correspond with their preferred gender. I then established how transgender bathroom rights can improve social improvement. Once social improvement could be established, I determined how the practice takes advantage of something. This ability “is a device for ensuring that, in analyzing how the practice works, we focus on how the practice aims to exploit or take advantage of some latent opportunity for creating value on the cheap” (Bardach & Patashnik, 2020, p. 137). An assumption can be made about how the policy takes advantage, but it can be confirmed only once the research is completed and analyzed. The coordinating of the data and then the analysis of the practice ensured the study’s trustworthiness.

Credibility

Credibility in qualitative research refers to whether data accurately reflects a phenomenon. I established credibility in this policy analysis by triangulating the data using the following sources: state and federal statutes, school policies, and case law (Patton, 1999). The triangulation of sources helped identify a deeper understanding of the legality of transgender bathroom rights. The triangulation of sources also helped confirm trends among the various states. I further determined credibility through the reliability among multiple comparable cases, rather than relying on a single source of data for this policy analysis (Creswell & Miller, 2000). For this reason, this policy analysis used data triangulation to research 50 different states regarding transgender bathroom policies in K–12 education.

Transferability

Transferability in qualitative research refers to whether a study can be generalized to other times and places. I established transferability through thick description. Thick description is when the researcher explains the data in detail, allowing the reader to draw a conclusion and see if that conclusion is transferable to different settings and times (Lincoln & Guba, 1985). This study does cover a specific time and location. The reader should apply this method to the data and draw any necessary conclusions that may or may not be transferred. While it is possible to use transferability, it may not be required for this policy analysis. The reader could draw their conclusions, but due to this policy analysis drawing on specific decisions and political trends of the United States, they would not be aligned with the purpose of this study. Since legislation is constant and fluid, transferability depends on future legislation, and the future cannot be predicted.

Confirmability

Confirmability in qualitative research refers to the researcher's objectivity and includes checking for biases, practicing reflexivity, and maintaining transparency about positionality.

Bias Checking

To ensure dependability, outside researchers peer-reviewed the study and its data to ensure the data supported the conclusions. Three readers will provide a dependable analysis during this study. Peer-reviewers confirmed no present biases, and the data answered the research questions (Lincoln & Guba, 1994). These peer-reviewers also provided extensive feedback during the creation and execution of the study to ensure the data were dependable.

Reflexivity

I identify my beliefs and morals throughout this study to establish reflexivity. “A researcher’s background and position will affect what they choose to investigate, the angle of investigation, the methods judged most adequate for this purpose, the findings considered most appropriate, and the framing and communication of conclusions” (Malterud, 2001, pp. 483–484). The preconceptions and values shed some light on why I selected this topic and how it has come into play during the research. As Lincoln and Guba (1994) suggested, I created a reflexive journal to self-assess. I wrote regular inserts that described my research process and analysis. This private journal described my thoughts, the reasons behind those decisions, and my reflections on specific topics.

Researcher Positionality

I currently hold an administrative position in a private school setting. At the start of this study, I was a school administrator in a public environment. My morals and beliefs from working with students firsthand came into play when conducting this research. I have experienced firsthand the need for a policy that will allow transgender students to use the bathroom corresponding with their gender identity. I also understand the fiscal implications of implementing binary bathrooms for students and staff as district administrators. Many school buildings are old and out of date. Bathrooms are limited as they are, and identifying binary bathrooms could interrupt the overall operations of the school building. Ultimately, I had to weigh the benefits and complications of implementing a law requiring schools to create a policy allowing transgender students to use a bathroom for the sex with which they identify. The data established in this study can influence the current debate in politics and the courts surrounding transgender bathroom rights. Ultimately, I side with the student’s ability to choose a bathroom

that aligns with their gender identity. Fiscal concerns and issues will always arise in public schools and should not be counted regarding our children's health, safety, and well-being.

Potential Limitations

At the time of the study, the Supreme Court had not heard any cases regarding transgender bathroom bills and legislation. I examined work within the delimitations noted previously. As the writing of this dissertation progressed, the COVID-19 pandemic affected the world in 2019. COVID-19 was an extremely contagious virus that caused the world to lock down. The lockdown caused many businesses and schools to go virtual or shut down completely. The courts were backlogged trying to keep up with their caseload virtually. Since schools were virtual, there was a pause on in-school issues such as bathroom rights. As things reopened in 2021, the bathroom rights issues and cases gained momentum.

Summary

The purpose of this chapter was to provide an outline of how I answered the research questions. I provided a detailed discussion of the intention of the research, assumptions, data collection, trustworthiness, and positionality. The data collection allowed for the data triangulation to establish trustworthiness. The research followed this chapter like a blueprint to provide a clear and concise analysis of transgender bathroom policy. The goal of the following chapter, Chapter 4, is to deliver results and data that illustrate the study followed the methodology of Chapter 3.

Chapter 4: Research Findings

The research was organized based on the following research questions: (a) how have the circuit courts interpreted the Equal Protection Clause of the 14th Amendment as related to transgender bathroom rights; (b) how have the circuit courts interpreted the sex-based classifications of Title IX (of ESSA) as it is applied to transgender bathroom rights; and (c) how have circuit courts interpreted both the 14th Amendment and Title IX as applied to bathroom rights rulings in K–12 public schools? The research used two data sets: circuit court decisions regarding transgender bathroom rights and state bathroom bill legislation.

The research concluded and focused on 50 states from 2016 to 2022. I created a spreadsheet to organize the data and separated them based on the following: keyword search on case law and how it pertained to categories derived from the research questions; case breakdown; a short synopsis of the case found regarding bathroom rights, state comparisons, and whether or not policy passed as per the categories that were derived from the research questions; and lastly a tab for the formal citations used.

The internet was the primary source for research sections, case law, and legislation across all 50 states. The researched case law resulted in the following: 14 out of 50 states, 28%, have seen bathroom rights cases progress to the circuit courts. Overall, 21 cases progressed to the circuit courts across the 14 states. The Third Circuit Court heard most cases regarding transgender bathroom rights. I examined each circuit court case involving transgender bathroom rights to determine how the circuit courts interpreted the Equal Protection Clause and the sex-based classifications of Title IX. I used the following UTOS delimiters:

- Units: Transgender Population
- Treatment: Bathroom Rights

- Outcomes: Circuit Court Decisions and State Legislation
- Settings: United States

Then, I created the following graphic organizer and used it to analyze the case law data.

Table 6

Case Law Data

State	Search engine	Case name	Circuit court number	Title IX protected	Equal protection protected	Sex-based class	Year
Connecticut	Google Scholar	<i>Soule v. Connecticut Association of Schools, Inc.</i>	2				2021
Connecticut	LexisNexis	<i>Soule v. Conn. Ass'n of Schs.</i> , 2021 U.S. Dist. LEXIS 78919	2				2021
Georgia	Google Scholar	<i>Bostock v. Clayton County, Georgia</i>					2019–2020
Indiana	Google Scholar	<i>Jaw v. Evansville Vanderburgh School</i>	7				
Indiana	Google Scholar	<i>Hively v. Ivy Tech Community College of Indiana</i>	7				2016–2017
Maryland	Google Scholar	<i>Stone v. Trump</i>					
Michigan	LexisNexis	<i>EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.</i> , 100 F. Supp. 3d 594	6				2015
Minnesota	LexisNexis	<i>N.H. v. Anoka-Hennepin Sch. Dist. No. 11</i> , 950 N.W.2d 553	8		Y		2020
Nevada	LexisNexis	<i>Roberts v. Clark County Sch. Dist.</i> , 215 F. Supp. 3d 1001	9				2016
Ohio	LexisNexis	<i>Bd. of Educ. v. U.S. Dep't of Educ.</i> , 208 F. Supp. 3d 850	6	Y	Y		2016
Ohio	Google Scholar	<i>Bd. of Educ. of Highland v. U.S. Dept. of Educ.</i>	6				2016
Oregon	Google Scholar	<i>Parents for Privacy v. Barr</i> , 949 F. 3d 1210 - Court of Appeals, 9th Circuit 2020	9	N	N		
Oregon	Google Scholar	<i>Karnoski v. Trump</i>	9				2019
Pennsylvania	Google Scholar	<i>A.H. v. Minersville Area School Dist.</i>	3				2017
Pennsylvania	LexisNexis	<i>A.H. v. Minersville Area Sch. Dist.</i> , 290 F. Supp. 3d 321	3				2017

Table 6, cont.

State	Search engine	Case name	Circuit court number	Title IX protected	Equal protection protected	Sex-based class	Year
Pennsylvania	LexisNexis	<i>A.H. v. Minersville Area Sch. Dist.</i> , 408 F. Supp. 3d 536	3	1/2	Y		2019
Pennsylvania	Google Scholar	<i>Doe By & Through Doe v. Boyertown Area School Dist.</i>	3	N			2018
Pennsylvania	Google Scholar	<i>Evancho v. Pine-Richland School Dist.</i>		Y	Y		
Pennsylvania	Google Scholar	<i>Johnston v. Univ. of Pittsburgh of Com. System</i>	3				
Tennessee	LexisNexis	<i>D.H. v. Williamson County. Bd. of Educ.</i> , 2022 U.S. Dist.	6			Not ruled whether suspect or quasi-suspect class.	
Texas	Google Scholar	<i>Texas v. U.S.</i>	5				
Virginia	Google Scholar	<i>Grimm v. Gloucester County</i>	4	Y	Y		
Virginia	LexisNexis	<i>Grimm v. Gloucester Cty. Sch. Bd.</i> , 976 F.3d 399	4				
Virginia	Google Scholar	<i>G.G. ex rel. Grimm v. Gloucester County School Bd.</i>	4				2016
Virginia	Google Scholar	<i>Grimm v. Gloucester County School Bd.</i>					2020
Wisconsin	Google Scholar	<i>Whittaker v. Kenosha</i>	7	Y	Y		2015–2016
Florida	Google Scholar	<i>Adams v. School Board of St. Johns County</i>	11				2020
Florida	LexisNexis	<i>Adams v. Sch. Bd. of St. Johns Cnty.</i> , 57 F.4th 791	11				2022

The second section of the research examined state legislation between 2016 and 2022 to identify whether bathroom bills were presented, established, rejected, or reversed. Thirty-six of fifty states had bathroom bill legislation presented in K–12 public education. Seventy-two percent of states have questioned the legality of transgender bathroom rights in K–12 public schools. Of the 72% of states that questioned the legality of a bathroom policy, only 15 states

had a bathroom policy, and 11 states had a binary one. Between the years of 2016–2022, only seven states had state legislation passed in favor of a transgender bathroom policy. Most of the legislation that was presented did not progress to make it law.

Table 7

Bathroom Bills

		2016–2022 (Y=1, N=0)								<2016	
State	Year	Bath- room of choice	Bath- room of birth	Binary bath- room policy	Bath- room policy	State legislation passed in favor of trans bathroom policy	State legislation rejected trans bathroom policy	Policy created from 2016 to 2022 and changed during that time	Case law was decided in favor of trans bath- room rights	Case law was decided against trans bath- room rights	Policy before 2016 that was reversed from 2016– 2022
Alabama	2017	0	0	0	0	0	0	0	0	0	0
	2022	0	1	0	1	0	0	0	0	0	0
Alaska	2018	N/A									
Arizona	2023	0	0	1	0	0	0	0	0	0	0
Arkansas	2017	0	0	0	1	0	0	0	0	0	0
	2023	0	1	0	0	0	0	0	0	0	0
California	2023	0	0	1							
California	2023	0	0	1	0	0	0	0	0	0	0
Colorado		N/A									
Connecticut	2019	0	0	1	1	0	0	0	0	0	0
Delaware		N/A									
Florida	2023	N/A									
Georgia		N/A									
Hawaii	2020	0	0	1	0	0	0	0	0	0	0
Idaho	2023	0	1	0	0	0	0	0	0	0	0
	2023	0	1	0	1	0	0	0	0	0	0

Table 7, cont.

		2016–2022 (Y=1, N=0)								<2016	
State	Year	Bath- room of choice	Bath- room of birth	Binary bath- room policy	Bath- room policy	State legislation passed in favor of trans bathroom policy	State legislation rejected trans bathroom policy	Policy created from 2016 to 2022 and changed during that time	Case law was decided in favor of trans bath- room rights	Case law was decided against trans bath- room rights	Policy before 2016 that was reversed from 2016– 2022
Idaho (cont.)	2016				0						
	2023	0	1	0	0	0	0	0	0	0	0
Indiana	2022	0	0	0	0	0	0	0	0	0	0
	2023	0	1	0	0	0	0	0	0	0	0
Iowa	2021 – 2023	0	1	0	0	0		0	0	0	0
Kansas	2023	0	1	0	0	0	0	0	0	0	0
Kentucky	2023	0	1	0	0	0	0	0	0	0	0
Louisiana											
Maine											
Maryland		N/A					0				
Massachusetts	2016	1	0	0	1	0	0	0	0	0	0
Michigan	2016	0	0	1	0	0	0	0	0	0	0
	2023	0	1	0	0	0	0	0	0	0	0
Minnesota	2017	0	1	0	0	0	Goven veto	0	0	0	0
Mississippi	2022	0	1	0	0	0	1	0	0	0	0
Missouri	2016	0	1	0	0	0	0	0	0	0	0
Montana											
Nebraska	2023	0	1	0	0	0	0	0	0	0	0
Nevada	2021	0	0	1	1	1	0	0	0	0	0
New Hampshire	2022	0	1	0	0	0	0	0	0	0	0
	2023	0	1	0	0	0	0	0	0	0	0
New Jersey											
New Mexico											

Table 7, cont.

		2016–2022 (Y=1, N=0)								<2016	
State	Year	Bath- room of choice	Bath- room of birth	Binary bath- room policy	Bath- room policy	State legislation passed in favor of trans bathroom policy	State legislation rejected trans bathroom policy	Policy created from 2016 to 2022 and changed during that time	Case law was decided in favor of trans bath- room rights	Case law was decided against trans bath- room rights	Policy before 2016 that was reversed from 2016– 2022
North Carolina	2016	0	1	0	1	0	0	0	0	0	0
	2017										
North Dakota	2023	0	1	0	0	0	0	0	0	0	0
Ohio											
Oklahoma	2022	0	1	0	1	0	0	0	0	0	0
Oregon											
Pennsylvania	2019	1	0	0	1	1	0	0	1	0	0
Rhode Island	2021	0	0	1	1	1	0	0	0	0	0
South Carolina	2016	0	1	0	0	0	0	0	0	0	0
South Dakota	2022	0	1	0							
Tennessee	2021	0	1	0	1	0	0	0\	0	0	0
Texas	2017	0	1	0	0	0	0	0	0	0	0
Utah											
Vermont	2018	0	0	1	1	1	0	0	0	0	0
	2017	0	1	0	0	0	0	0	0	0	0
Virginia	2020	0	1	0	1	1	0	0	0	0	0
Washington	2015	1	0	0	1	1	0	0	0	0	0
West Virginia											
Wisconsin	2015	0	1	0	0	0	0	0	0	0	0
Wyoming											

State-by-State Comparison: Case Law and State Legislation

For this section, I only elaborate on states that have data established, whether it is case law or state legislation. I do not analyze states that do not have either for this study. This chapter has two distinct data sets: transgender bathroom case law and/or state legislation. Some states may have one data set rather than the other. I describe those findings in Chapter 5 if they are significant.

Alabama

At the time of this study, there was no case law on transgender bathroom rights from Alabama. Although no case law was established in Alabama, state legislation was presented to the legislature. In 2017 the SB1, House of Representatives, and 2017RS, Senate were presented. This bill would establish that requirements would be imposed on anyone to uphold individuals' privacy in a public restroom under the Alabama Privacy Act. In order to uphold their privacy, the public restrooms must be gender appropriate as per the Privacy Act. The bill went on to establish specific punishments for any person who violated it: a fine of no less than \$2,000 for the first violation and a fine of not less than \$3,500 for each subsequent violation (SB1,2017). This bill is still pending and has not progressed since 2017. 2022 HB322 was passed in both the Senate and House of Representatives. HB322 was delivered to the governor's desk on April 7, 2022, where it still resides. HB322 proposes that, in public schools, restrooms or changing areas must be used based on an individual's biological sex (HB322, 2022). The bill also limited classroom instruction from kindergarten to fifth grade regarding gender identity or sexual orientation. While the second piece of the bill is outside the scope of this study, I thought it might shed some light on the views of the elected officials who represent the state of Alabama. This is the only update about this bill from when this study was conducted, as it remains on the governor's desk.

Arizona

At the time of this study, there was no case law involving transgender bathroom rights in Arizona. The Arizona Senate and House of Representatives passed state legislation called SB1040 in April 2023. SB1040 proposed a public school shall provide reasonable accommodations to any person who is unwilling or unable to use a multioccupancy restroom or changing facility that is determined to be used by one sex in a public school or request a reasonable accommodation in writing (SB1040, 2023). Their interpretation of reasonable accommodation was a single occupancy bathroom or changing room and a faculty restroom. A reasonable accommodation could not be that the person uses the bathroom that corresponds to their gender identity. The governor vetoed this bill on June 8, 2023. The Arizona state legislature has seen a rise in antitransgender legislation in the past year and a half (AP News, 2023).

Arkansas

At the time of this study, Arkansas has not established any case law surrounding transgender bathroom rights. In 2017, the State Senate introduced Bill SB346 involving gender identity and bathroom privileges. The bill died in the senate committee in May of 2017. Due to its introduction in the previous legislative season, a copy of the bill is unavailable to the public to provide additional details.

California

No case law or state legislation was decided on prior to 2023. In September 2023, the senate brought forth SB760. The bill required that all-gender bathrooms be available and easily accessible to all students. The governor approved this bill and filed it with the secretary of state on September 23, 2023. While this date is past the scope of this dissertation's research, I thought it was essential to state that it could be added to future research.

Connecticut

No case law was ruled on prior to 2023 regarding transgender bathroom rights. In 2019, the Connecticut House of Representatives brought forth Bill 6219, which was an act concerning safe bathroom facilities at schools for gender nonconforming students. The bill ensured middle and high school students had equal access to gender-neutral bathroom facilities (6219, 2019). Six Democrats in the House sponsored the bill. On January 25, 2019, the bill was referred to the Joint Committee on Education. The bill died in committee, and another bill has yet to be presented.

Florida

In 2023, the House and Senate presented bills centered on facility requirements based on sex. House Bill 1521 and Senate Bill 1674 were presented in March of 2023. For purposes of this research, these bills are out of this study's scope but could be used for future research. Prior to 2023, no legislation had been presented or passed.

On December 30, 2022, the Eleventh Circuit Court of Appeals filed its decision in *Adams Kasper v. School Board of St. Johns County*. Drew Adams is a transgender boy. Adams entered the St. Johns County School district in fourth grade as a biological female. In eighth grade, Adams started identifying as a boy and dressing as such. St. Johns County School District did not have a written bathroom policy, but students must use the bathroom that corresponds to their biological sex. In ninth grade, Adams started using the boys' bathroom. Two students witnessed this at some point and informed Adams that he would need to use the gender-neutral bathrooms instead. He started to petition the school to change the policy. He failed to change the school policy and filed suit against the school board in June 2017. Adams claimed the school district bathroom policy violated his Title IX rights and the Equal Protection Clause under the 14th

Amendment. The district court ruled in Adams’ favor. The school board appealed the district court’s decision. The three-judge panel of the Eleventh Court of Appeals affirmed the district court order (*Adams ex rel. Kasper v. School Board of St. Johns County*, 2020). The court withdrew its opinion and issued a revised opinion that affirmed the district court’s opinion on grounds not initially discussed (*Adams ex rel. Kasper v. School Board of St. Johns County*, 2021). The school board then submitted a petition for a rehearing. The Eleventh Court of Appeals granted this request en banc.

During the appeal, only two questions were before the Court: “1) Does the School District’s policy of assigning bathrooms based on sex violate the Equal Protection Clause of the Constitution? Moreover, 2) Does the School District’s policy of assigning bathrooms based on sex violate Title IX?” (*Adams ex rel. Kasper v. School Board of St. Johns County*, 2022). To satisfy intermediate scrutiny,

the government must show that the classification serves “important governmental objectives and that the discriminatory means employed” are substantially related to achieving those objectives. *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 724, 102 S.Ct. 3331, 73 L.Ed.2d 1090 (1982)’ (quoting *Wengler v. Druggists Mut. Ins. Co.*, 446 U.S. 142, 150, 100 S.Ct. 1540, 64 L.Ed.2d 107 (1980)). (*Adams ex rel. Kasper v. School Board of St. Johns County*, 2022).

Adams claimed the school district policy discriminated based on sex and transgender status. The court of appeals addressed both claims separately but found no unlawful discrimination.

In *Vernonia School District v. Acton*, the Supreme Court stated, “Fourteenth Amendment rights are different in public schools than elsewhere” because of “the schools’ custodial and tutelary responsibility for children” (*Adams ex rel. Kasper v. School Board of St. Johns County*,

2022, p. 52). The state is ultimately responsible for discipline, health, and safety (*Board of Education v. Earls*, 2002). The court of appeals commended the “great lengths” to which the school district went to research LGBTQ rights and policies for three years. As a result of the research, the school district decided to keep the original bathroom policy. The court of appeals assigned intermediate scrutiny to the constitutional question.

To satisfy intermediate scrutiny, the bathroom policy must (1) advance an important governmental objective and (2) be substantially related to that objective. *Miss. Univ. for Women*, 458 U.S. at 724, 102 S.Ct. 3331. The bathroom policy clears both hurdles because the policy advances the important governmental objective of protecting students’ Privacy in school bathrooms and does so in a manner substantially related to that objective. (*Adams ex rel. Kasper v. School Board of St. Johns County*, 2022).

The court of appeals did not think the district court took into consideration the privacy of cisgender students. The state has a responsibility to protect all students’ right to privacy. The parents and students within the St. Johns County school district did not want a co-mingled bathroom policy out of privacy concerns for everyone. For these reasons, the court of appeals stated that the school district’s bathroom policy did not discriminate based on sex. Whether the bathroom policy discriminated against transgender students was another issue. Previous Circuit Court opinions cited *Bostock v. Clayton County* on the discrimination of transgender people. The Eleventh Circuit Court of Appeals called this “faulty reasoning” in their majority opinion (*Adams ex rel. Kasper v. School Board of St. Johns County*, 2022). *Bostock v. Clayton* was regarding labor laws and the workplace; *Adams ex rel. Kasper v. School Board of St. Johns County* was about school children and did not apply.

While *Bostock* held that “discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex,” that statement is not in question in this appeal. This appeal centers on the converse of that statement—whether discrimination based on biological sex necessarily entails discrimination based on transgender status. It does not—a policy can lawfully classify based on biological sex without unlawfully discriminating based on transgender status. (*Adams ex rel. Kasper v. School Board of St. Johns County*, 2022, p. 57)

The court of appeals then cited *Geduldig v. Aiello*, stating there is “lack of identity” between the policy and transgender status, as the bathroom options are “equivalent to th[ose] provided [to] all” students of the same biological sex; “the School Board’s bathroom policy does not classify students based on transgender status because a ‘lack of identity’ exists between transgender status and a policy that divides students into biological male and biological female groups” (*Adams ex rel. Kasper v. School Board of St. Johns County*, 2022, p.56). The court of appeals also stated the school district’s bathroom policy did not rely on stereotypes. For these reasons, the Eleventh Court of Appeals ruled that the bathroom policy did not discriminate based on transgender status and did not violate the Constitution.

The appeal required the Eleventh Circuit Court of Appeals to interpret the word “sex” and how it applies to Title IX. The court of appeals again stated their dissent for *Bostock v. Clayton* by stating they could not, as the Supreme Court, “decide only whether discrimination based on transgender status necessarily equates to discrimination based on sex” (*Adams ex rel. Kasper v. School Board of St. Johns County*, 2022, p. 31). The court of appeals stated, Title IX includes regulatory blueprints for differentiating between the sexes when it pertains to separate bathroom facilities. If the school board’s bathroom policy could fit within that blueprint, then it

does not violate Title IX. For those reasons, the Eleventh Circuit Court of Appeals reversed and remanded the district court's order.

Hawaii

At the time of this study, there was no case law surrounding transgender bathroom rights. On October 10, 2019, the 26th Annual Children and Youth Summer was held at the state capital. The summit had identified gender-neutral bathrooms as the topic of discussion. The bill was presented because the summit ensured that, at each public school, there would be at least one gender-neutral bathroom (SB2347, 2020). The bill was referred to E.D.U. on January 23, 2020, and it died in Committee. In 2020, the governor of Hawaii signed three bills protecting transgender rights but did not address transgender bathroom rights (Migdon, 2022).

Illinois

At the time of this study, there was no case law surrounding transgender bathroom rights. On April 14, 2016, the Illinois Senate brought forth a nonbinding Senate Resolution that condemned legislation passed in North Carolina and Mississippi that upheld the usage of men's and women's multi-use bathrooms according to biological sex. The Public Facilities Privacy and Security Act (Mississippi, HB1523) and the Protecting Freedom of Conscience From Government Discrimination Act (North Carolina, HB2) established new statewide standards for what constitutes "discriminatory practice in employment and public accommodations by establishing new statewide requirements for bathrooms and changing facilities" (Illinois SR1752, 2016, p. 1). I describe those two state legislative acts further in upcoming sections. Senate Resolution 1752 affirmed Illinois's support for protecting the constitutional rights of all residents (Illinois SR1752, 2016, p. 3). In the Senate Resolution, the senate urged North Carolina and Mississippi to repeal the Public Facilities Privacy and Security Act (Mississippi, HB1523) and

the Protecting Freedom of Conscience From Government Discrimination Act (North Carolina, HB2). Before the resolution concluded, the senate asked the current governor to ban nonessential state travel to Mississippi and North Carolina until they repealed those laws. The resolution was adopted on May 31, 2016.

On January 25, 2017, the House of Representatives first read HB0664. House Bill 0664 intended to amend the school code to require the following:

A school board must designate each pupil restroom, changing room, or overnight facility accessible by multiple pupils simultaneously, whether located in a public school building or located in a facility utilized by the school for a school-sponsored activity, for the exclusive use of pupils of only one sex. The Bill defined sex as the physical condition of being male or female, as determined by the individual's chromosomes and identified at birth by that individual's anatomy. (Illinois HB0664, 2017, p. 1)

A school board would be allowed to make "reasonable" accommodations if one of the following conditions are met:

1. Accommodations are requested by a guardian, parent, or self if they are emancipated.
2. One of the following applies:
 - a. A student is born male but does not identify as male.
 - b. A student is born female but does not identify as female.

If the school board received a written complaint that violated this law, the school board would have 30 days to investigate the claim. The act gave the complainant authority to bring the written complaint to the county circuit court to recoup the following.

1. Declaratory relief
2. Injunctive Relief

3. Damages, including reimbursement of reasonable attorney's fees (Illinois HB0664, 2017).

HB0664 was referred to the Rules Committee, Human Services Committee, and Facilities Committee. The bill had yet to move after the Rules Committee reviewed it on March 31, 2017. It was declared "Session Sine Die" on January 8, 2019. According to Merriam-Webster (n.d.-f), Sine Die means the bill was adjourned without any future date being designated for further review. For future research, the Senate also brought forth SB1659 in February of 2023. SB1659 has the same language as HB0664 and has stayed the same since February 8, 2023.

Indiana

On July 18, 2018, the State District Court Southern District of Indiana ruled in the case of *J.A.W. v. Evansville Vanderburgh School Corporation* (2018). J.A.W. was a seventeen-year-old student at North High School in the Evansville Vanderburgh School Corporation (EVSC). J.A.W.'s assigned gender at birth is female, but he had identified as male since he was 11 years old. In sixth grade, J.A.W. started to feel uncomfortable using the girls' restroom. The school attempted to accommodate the student by removing physical education from his schedule since he felt uncomfortable changing in the girls' bathroom. J.A.W. started to attend North High School during his sophomore year. He brought the "Dear Colleague" letter to his principal to get approval to use the men's bathroom. The principal denied this request and informed him to use the girls' restroom or the gender-neutral bathroom in the nurse's office. In 2017, J.A.W. was diagnosed with gender dysphoria. On January 21, 2018, J.A.W. had his lawyer contact EVSC on his behalf and informed

EVSC that under the Seventh Circuit's decision in *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1044 (7th Cir. 2017), cert. He

dismissed sub-nom. *Kenosha Unified Sch. Dist. No. 1 Bd. of Educ. v. Whitaker ex rel. Whitaker*, 138 S. Ct. 1260 (2018), believed that J.A.W. was entitled to use the boys' restrooms at school. (*J.A.W. v. Evansville Vanderburgh School Corporation*, 2018, p. #) The school district denied this request. EVSC had no written school policy about transgender students' use of the bathroom.

The issue before the court is "whether J.A.W. is entitled to the preliminary injunctive relief he seeks, which is that he be allowed to use the boys' restrooms within the schools and other buildings of EVSC" (*J.A.W. v. Evansville Vanderburgh School Corporation*, 2018, p. 1037). The following thresholds must be met during a preliminary injunction. The burden of the threshold lies on the party seeking the preliminary injunction, showing the following: (a) that the student will suffer irreparable harm without the preliminary injunction; (b) inadequate remedies exist at the legal level; and (c) the student has a reasonable chance to succeed with the claim (*J.A.W. v. Evansville Vanderburgh School Corporation*, 2018, p. 7).

J.A.W. claimed Title IX was violated when the school district did not allow him to use the boys' restroom. J.A.W.'s Title IX defense referred to *Whitaker* several times.

In *Whitaker*, the Seventh Circuit held that a transgender high school student demonstrated a likelihood of success on his claim that his school's denying him access to the boys' restroom based on his transgender status violated Title IX:

A policy that requires an individual to use a bathroom that does not conform with his or her gender identity punishes that individual for his or her gender non-conformance, which in turn violates Title IX. The School District's policy also subjects Ash, as a transgender student, to different rules, sanctions, and treatment than non-transgender students, in violation of Title IX. Providing a gender-neutral alternative is insufficient to

relieve the School District from liability, as the policy violates the Act (Whitaker, 858 F.3d at 1049-50). The Court found that J.A.W. has proven a reasonable likelihood of success on the merits of his claim under Title IX. (*J.A.W. v. Evansville Vanderburgh School Corporation*, 2018, p. 9)

As per *Whitaker*, a sex-based classification must be analyzed with heightened scrutiny. When sex is used, the burden normally resides with the State. In *Whitaker*, the justification for the bathroom policy was to protect all students' right to privacy. For this case, the 7th Circuit Court has established the EVSC had not presented any evidence that there would have been a substantial disruption or harm to the student's privacy. The 7th Circuit Court found J.A.W. met the "low threshold" of demonstrating a probability of success on J.A.W.'s Equal Protection Claim (*J.A.W. v. Evansville Vanderburgh School Corporation*, 2018, p. 10). The order was signed on August 3, 2018, stating that EVSC shall allow J.A.W. to use the boys' bathroom within the school and other buildings in the district. The case was appealed to the U.S. Court of Appeals for the 7th Circuit. A Joint Motion for Voluntary Dismissal of Appeal was processed on September 13, 2018. The U.S. Court of Appeals for the 7th Circuit dismissed the case.

In 2022, the House of Representatives presented HB1348. HB1348 established a class B Misdemeanor if one was to enter a bathroom that did not correspond to their sex assigned at birth. The last movement on this bill was on January 11, 2022.

Michigan

At the time of this study, no circuit court decisions were made from 2016–2022 about transgender bathroom rights. On May 25, 2016, SB993 was introduced. The bill stated that, if a student claims they are transgender, and the parent or the guardian submits it in writing, then the district must make reasonable accommodations (SB993, 2016). If the student is over 18, they

must submit their request in writing. The senate defined a reasonable accommodation as an accommodation that does not impose an undue hardship on the district. The reasonable accommodation will not include the student's preferred bathroom or locker room use. They defined a reasonable accommodation as a single-use bathroom, a faculty bathroom, or a unisex bathroom. SB993 was referred to the Committee on Government Operations and has not had any movement since.

Minnesota

At the time of this study, no circuit court decisions were made from 2016–2022 about transgender bathroom rights. In 2016, Republicans introduced SF3002 and HF3396. The bills prohibited all public schools from permitting access to restrooms or changing facilities on anything other than biological sex. HF3396 was stricken a month later, and SF3002 was referred to the Judiciary and has not seen any other movement. In January of 2017, the House introduced HF41. HF41 was introduced to

protect and provide for the Privacy and safety of all students enrolled in public schools and to maintain order and dignity ... in restrooms, locker rooms, changing rooms, showers, and other facilities where students ... may be in various states of undress in the presence of other students. Protect and provide safety for all students. (Minnesota HF41, 2017, p. 1)

This bill prohibited all public schools from permitting access to restrooms or changing facilities based on anything other than biological sex. This bill had yet to move after its introduction.

Mississippi

At the time of this study, no circuit court decisions were made from 2016–2022 about transgender bathroom rights. Senate Bill 2679 was introduced in 2022. The bill was titled the

Transparency in Education Act. This bill was created to establish certain parental rights in public schools. Section 7, titled Student Privacy, stated the following:

Any student whose bodily privacy is violated, including encountering a person of the opposite sex in a bathroom, locker room or other facility traditionally designated for the exclusive use of members of one sex, by any action, policy or practice of a primary or secondary school or institution of higher education shall have a private cause of action for injunctive relief, damages and any other relief available under law against the school or institution. (Mississippi SB2679, 2022, p. 10)

SB2679 was referred to the education committee on January 17, 2022 and denied on February 1, 2022.

Missouri

At the time of this study, no circuit court decisions were made from 2016–2022 about transgender bathroom rights. On December 1, 2016, Senate Bill 98 was introduced. The purpose of SB98 was to add a new section to Chapter 171, Missouri School Operations, which would not include “Student Privacy.” The bill stated every public restroom or changing space must be designated for and used by students of the same biological sex (Missouri SB98, 2016, p. 1). Transgender students would be provided with an alternative bathroom or locker room. A parent or legal guardian would have to submit the request in writing. The bill still needs to be passed by the committee.

New Hampshire

At the time of this study, no circuit court decisions were made regarding transgender bathroom rights from 2016 to 2022. On December 23, 2022, House Bill 104 was introduced and referred to the education committee. This bill required all public schools’ multistall bathrooms

and locker rooms to be same-sex. House Bill 104 was laid on the table, and the motion was adopted on March 16, 2023 (HB104, 2023).

New York

At the time of this study, no circuit court decisions were made from 2016–2022 about transgender bathroom rights. On February 7, 2019, Assembly Bill A5240A was introduced. A5240A would amend the Civil Rights Law and Education Law about single-occupancy bathroom facilities (A5240A, 2019). The amendment stated all single-occupancy bathroom facilities should be designated as gender-neutral. Clear signage should indicate the bathroom is single occupancy and gender-neutral. Bill A5240A passed the Assembly Senate and was later signed by the governor in December 2020.

North Carolina

At the time of this study, no circuit court decisions were made from 2016–2022 about transgender bathroom rights. On February 22, 2016, Charlotte, North Carolina, passed an ordinance expanding North Carolina’s antidiscrimination law to ensure LGBTQ+ people would have special protections in public restrooms. In response to that ordinance, a special meeting was set for March 23, 2016. North Carolina’s General Assembly proposed and ratified House Bill 2 on that date. Part I of HB2 was to establish single-sex multiple occupancy bathrooms/changing facilities in public schools. North Carolina defined single-sex as one’s biological sex, which would be stated on a student’s birth certificate. Part II of HB2 stated there would be statewide consistency in laws related to employment and contracting. Part III protected rights in employment and public accommodations (HB2, 2016). The bill was read in the General Assembly thrice and ratified on March 23, 2016. The governor signed the bill into law later that evening.

In 2017, House Bill 142 was signed into law. House Bill 142 repealed House Bill 2. The bill states,

state agencies, boards, offices, departments, institutions, branches of government, including the University of North Carolina and the North Carolina Community College System, and political subdivisions of the State, are preempted from regulation of access to multiple occupancy restrooms, showers, or changing facilities, except by an act of the General Assembly. (HB142, 2017, p. 1)

It also determined that no local government in this state may enact or amend an ordinance regulating private employment practices or public accommodations until December 1, 2020 (HB142, 2017). The General Assembly read the bill thrice and ratified it on March 30, 2017.

Ohio

On September 26, 2016, the U.S. District Court of Ohio signed the decision in the *Board of Education of the Highland Local School District v. United States Department of Education*. Algenon L. Marbley wrote the opinion and order. The case involved an eleven-year-old transgender girl, whom they called Jane Doe, who wanted to use the girls' restroom at Highland Elementary School. The elementary school would not allow her to use the girls' bathroom. The decision stated,

Highland's policy impermissibly discriminated against Jane based on her sex in violation of Title IX of the Education Amendments of 1972. Highland now asks this Court to enjoin D.O.E. and the Department of Justice ("D.O.J. ") from enforcing the anti-discrimination provisions of Title IX against Highland. (*Board of Education of Highland v. U.S. Department of Education*, 2016, p. 855).

Jane Doe asked the court to order the school district to let her use the girls' restroom. The court ultimately denied the school district's motion for preliminary injunction and granted Jane Doe's motion (*Board of Education of Highland v. U.S. Department of Education*, 2016).

On the same day the case was ruled on, the Highland Local School District Board of Education filed an appeal with the U.S. Court of Appeals for the Sixth Circuit. On December 15, 2016, the Sixth Circuit denied the Board's request. The Sixth Circuit Court affirmed the decision of the U.S. District Court for the Southern District of Ohio, which denied the school district's attempt to prevent Jane Doe from using the girls' bathroom. "The crux of this case is whether transgender students are entitled to access restrooms for their identified gender rather than their biological gender at birth" (*Board of Education of Highland v. U.S. Department of Education*, 2016). The Sixth Circuit Court referred to a law in that circuit that prohibits discrimination based solely on a person's transgender status. The appellate court stated the following:

We are not convinced that Highland has made its required showing of a likelihood of success on appeal. Under settled Law in this Circuit, gender nonconformity, as defined in *Smith v. City of Salem*, is an individual's "fail[ure] to act and identify with his or her gender.... Sex stereotyping based on a person's gender non-conforming behavior is impermissible discrimination." 378 F.3d 566, 575 (6th Cir. 2004)); see also *Glenn v. Brumley*, 663 F.3d 1312, 1316 ("A person is defined as transgender precisely because of the perception that his or her No. 16-4117 *Bd. of Educ. of Highland Sch. v. United States Dep't of Educ.*, et al. Page 4 behavior transgresses gender stereotypes."); *Gloucester County.*, 822 F.3d at 729 (Davis, J., concurring) ("[T]he weight of authority establishes that discrimination based on transgender status is already prohibited by the language of

federal civil rights statutes, as interpreted by the Supreme Court.”). (*Board of Education of Highland v. U.S. Department of Education*, 2016, p. 870)

When reviewing this case, the appellate court also reviewed the student’s age, mental health, and life circumstances. The appellate court has decided that if Jane Doe refused to use the girls’ bathroom, it would further confuse and cause the child “irreparable harm” (*Board of Education of Highland v. U.S. Department of Education*, 2016, p.861). The appellate court denied the motion for a stay for the reasons listed. At the time of this study, no state legislation about transgender bathroom rights was established from 2016–2022.

Oklahoma

On February 1, 2021, the Oklahoma Senate first read Senate Bill 615. Senate Bill 615 requires restrooms or changing rooms in Oklahoma public schools or charter schools to be used by students based on their biological sex. The bill defines sex as “the physical condition of being male or female based on genetics and physiology, as identified on the individual’s original birth certificate” (SB615, 2021). This bill also provided defining terms to ensure there was no room for interpretation. If there were students who wanted to refrain from complying with SB615, they would be able to use a single-occupancy restroom. The bill prohibited any school district or charter school from adopting a policy contradicting SB615. If a school did create a contradictory policy, they would experience a 5% decrease in state funding for the following fiscal year. The act also opened the noncompliant school district or charter school up to legal action from any parent who would find cause with their contradictory policy (SB615, 2021). The bill had 45 authors and 7 amendments. It was approved and signed by the governor on May 25, 2022.

At the time of this study, no circuit court decisions were made regarding transgender bathroom rights from 2016 to 2022.

Oregon

On July 11, 2019, Parents for Privacy submitted the appeal from the U.S. District Court for the District of Oregon decision of *Parents for Privacy v. Barr*. A group of parents brought forth the original case challenging Dallas School District No. 2's policy that accommodates transgender students' request to use sex-segregated bathrooms and changing rooms based on their gender identity. The suit claimed the Student Safety Plan violated students' civil rights, Title IX, and right to privacy by requiring them to share restrooms or changing areas with transgender students (*Parents for Privacy v. Barr*, 2020, p. 1215). The district court dismissed the parents' claims, which triggered the appeal.

On February 12, 2020, the Ninth Circuit Court of Appeals filed its opinion and decision on the appeal. The appellate court had to decide whether the school district's policy violated Title IX or the students' constitutional rights. The appellate court agreed with the district court:

There is no Fourteenth Amendment fundamental privacy right to avoid all risk of intimate exposure to or by a transgender person who was assigned the opposite biological sex at birth. We also hold that a policy that treats all students equally does not discriminate based on sex in violation of Title IX. (*Parents for Privacy v. Barr*, 2020, p. 1218).

Parents for Privacy challenged the dismissal of their 14th Amendment claim that, as parents, they have the right to decide how they bring up their children. In the appellate court's opinion, the justice explained the 14th Amendment does not create a fundamental right for parents to determine school policies. Circuit Judge Tashima acknowledged this case involved intense personal feelings and beliefs. It is not the court's position to pass judgment or comment on those beliefs.

In conclusion, the appellate court held that Dallas School District No. 2's Student Safety Plan was created to avoid bullying and discrimination. This plan was created to ensure all district students have a safe and inclusive learning environment. The plan that allows transgender students to use a bathroom or change areas that match their self-identified gender does not infringe on 14th Amendment privacy or parental rights. The Safety Plan also does not infringe on the First Amendment, nor does it create sexual harassment under Title IX. The judgment of the district court was affirmed (*Parents for Privacy v. Barr*, 2020). Parents for Privacy filed a petition for a writ of certiorari in the U.S. Supreme Court. In December of 2020, the Supreme Court denied this request. The prior decision stands. No legislation regarding bathroom rights was introduced between 2016 and 2022.

Pennsylvania

On July 26, 2018, the Third Circuit Court of Appeals filed their opinion on *Doe By & Through Doe v. Boyertown Area School District*. The plaintiffs in the case were a group of high school students who believed the school policy violated their constitutional right to bodily Privacy, Title IX, and Pennsylvania tort law (*Doe By & Through Doe v. Boyertown Area School District*, 2018). The Court further explained,

The presence of transgender students in the locker and restrooms is no more offensive to constitutional or Pennsylvania-law privacy interests than the presence of the other students who are not transgender. Nor does their presence infringe on the plaintiffs' rights under Title IX. (*Doe By & Through Doe v. Boyertown Area School District*, 2018, p. 522).

The plaintiffs in the case were unsuccessful in showing they would succeed on the merits, and they could have shown there would have been irreparable harm with the ruling. Before 2016–

2017, the school district had a policy prohibiting students from using bathrooms and lockers that corresponded to their gender identity. Boyertown Area School District changed this school policy in 2016 and allowed transgender students to use the facility that was consistent with their gender identity. The school went above and beyond to ensure this policy was not abused and was approved on a case-by-case basis. Four students sued the district in 2016 when the policy was changed.

The district court rejected the plaintiff's Title IX claims for two reasons. First, the court had decided the school district's policy did not discriminate based on sex. The policy included all students, whether cisgender or transgender. The district had also put in safeguards that would prohibit any potential wrongdoings. For these reasons, the district court denied the plaintiff's request for an injunction based on the Pennsylvania tort of intrusion upon seclusion. The district court also rejected the plaintiff's claim of irreparable harm based on the plaintiff being forced to give up "a constitutional right to use segregated locker rooms and bathrooms" (*Doe By & Through Doe v. Boyertown Area School District*, 2018). Any student who did not feel comfortable sharing a bathroom or locker room with a transgender student was given the option to use a single-stall bathroom. Once the district court found the plaintiffs had no case and could not prove irreparable harm, the order was given on August 25, 2017.

On October 2, 2019, *A.H. v. Minersville Area School District* was filed with the U.S. District Court of Pennsylvania. In this case, the Minersville Area School District prohibited a transgender girl from using the girls' bathroom. The plaintiffs claimed that the school district's policy prohibiting her restroom and locker room use violates her rights guaranteed under Title IX and the Equal Protection Clause of the 14th Amendment (*A.H. v. Minersville Area School District*, 2019).

In the opinion, Justice Mariani went into further detail on the Dear Colleague Letters as they impacted the ruling in this case. On May 13, 2016, the Department of Education issued a letter summarizing a school's Title IX obligations.

The 2016 Guidance specified that Title IX's prohibition on sex discrimination in educational programs and activities "encompasses discrimination based on a student's gender identity, including discrimination based on a student's transgender status," and that, under Title IX and 34 C.F.R. § 106.33, "[a] school may provide separate [restroom and locker room] facilities based on sex, but must allow transgender students access to such facilities consistent with their gender identity." (U.S. Department of Education, 2016, p. 2)

On February 22, 2017, the Department of Education issued another letter that withdrew the statements written in the one sent May 13, 2016. The 2017 letter cautioned, "This withdrawal of these guidance documents does not leave students without protection from discrimination, bullying, or harassment. All schools must ensure that all students, including LGBT students, can learn and thrive in a safe environment" (U.S. Department of Education, 2017, p. 2)

In *Doe By & Through Doe v. Boyertown Area School District* (2018), the Third Circuit explained:

The District Court rejected the appellants' Title IX claim because the School District's policy treated all students equally and therefore did not discriminate based on sex, and because the appellants had failed to meet the elements of a "hostile environment harassment" claim. We ... agree. We also agree with the School District's position that barring transgender students from restrooms that align with their gender identity would

itself pose a potential Title IX violation. (*A.H. v. Minersville Area School District*, 2019, p. 554)

When ruling on similar cases prior, the courts needed to look at Title VII for guidance when ruling on Title IX cases. In a Title VII action, a plaintiff must prove “that the conduct at issue was not merely tinged with offensive sexual connotations but constituted discrimination because of sex”; the “same requirement holds for Title IX claims” (*A.H. v. Minersville Area School District*, 2019, p. 554). One year prior to Boyertown, the Seventh District Court had decided on *Whitaker-by-Whitaker v. Kenosha Unified School District No. 1*, where the school’s policy prohibited a 17-year-old from using the boys’ bathroom. This paper states the state district court denied the district’s dismissal motion. The school district then appealed to the Seventh Circuit Court. In the opinion of the Seventh Circuit, Title VII was used again when deciding whether or not Title IX had been violated. The court decided the student could proceed with his Title IX sex discrimination claim.

In *Evancho v. Pine-Richland School District*, a board policy limited three transgender high school students to use a single-stall bathroom or a multistall bathroom that corresponded with the sex on their birth certificate. The court denied the school district’s motion to dismiss the student’s Title IX claim, stating the following:

the law surrounding [34 C.F.R. § 106.33] and its interpretation and application to Title IX claims relative to the use of common restrooms by transgender students, including the impact of the 2017 Guidance, is at this moment so clouded with the uncertainty that this Court is not in a position to conclude which party, in this case, has the likelihood of success on the merits of that statutory claim. (*Evancho v. Pine-Richland School District*, 2017, p. #)

The court ultimately denied the school district's motion to dismiss the student's Title IX claim.

For *A.H. v. Minersville Area School District*, the court found Title IX does indeed protect transgender students.

The Third Circuit has not definitively found that barring a transgender student from a restroom which aligns with his/her gender identity, by itself, constitutes a Title IX violation. Rather, the Circuit has explained that "barring transgender students from restrooms that align with their gender identity would itself pose a *potential* Title IX violation_Boyertown, 897 F.3d at 533." (*A.H. v. Minersville Area School District*)

The difference between Boyertown and A.H. Minersville, SD, is that Boyertown challenged the school district policy to include transgender students. *A.H. v. M.A.S.D.* was the exclusion of transgender students from restrooms or locker rooms that correspond to their gender identity.

The question in *A.H. v. M.A.S.D.* is not whether the student can use the restroom that corresponds with their gender identity but that no explicit written school policy allows a student to use a bathroom that corresponds with their gender identity. The student can use a restroom that corresponds to her gender identity. The only time the student was prohibited from using a bathroom of her choice was when the school went on school-sponsored field trips. The school district had stated that, if the transgender student were to attend the field trips, a parent or guardian would have to accompany her. This policy was not applied to other students, so the court decided the school district's actions were discriminatory. For these reasons, the plaintiff's motion for summary judgment on the Title IX claim was granted partially and denied (*A.H. v. Minersville Area School District*, 2019).

In response to the plaintiff's claim of a violation of the Equal Protection Clause of the 14th Amendment, the court decided that this claim, along with the violation of Title IX, could be grouped together.

Even where particular activities and particular defendants are subject to both Title IX and the Equal Protection Clause, the standards for establishing liability may not be wholly congruent. For example, a Title IX plaintiff can establish school district liability by showing that a single school administrator with the authority to take corrective action responded to harassment deliberately. A plaintiff stating a similar claim via § 1983 for violation of the Equal Protection Clause by a school district or other municipal entity must show that the harassment was the result of municipal custom, policy, or practice. (Fitzgerald, 555 U.S. at 258)

To be successful, the plaintiff must prove "purposeful discrimination. They must demonstrate that they received different treatment from similarly situated individuals" (*Chambers ex rel. Chambers v. School District of Philadelphia Board of Education*, 2009, p.197). A

[p]art[y] who seek[s] to defend gender-based government action must demonstrate an "exceedingly persuasive justification" for that action. The burden of justification is demanding and rests entirely on the State. The State must show at least that the challenged classification serves important governmental objectives and that the discriminatory means employed are substantially related to achieving those objectives. The justification must be genuine, not hypothesized or invented post hoc in response to litigation. Moreover, it must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females. (*United States v. Virginia*, 1996, p. 2264)

For this reason, the court decided in *A.H. v. Minersville Area School District* that the school district's bathroom policy did not violate the Equal Protection Clause. The plaintiff did not provide enough evidence to prove otherwise. The question then arises about the policy the school district enacted when the plaintiff attended school-sponsored events. As the court stated before, the policy for school-sponsored events is discriminatory. The summary judgment was granted to the plaintiff for her Equal Protection claim. At the time of this study, no state legislation about transgender bathroom rights was established from 2016–2022.

Rhode Island

At the time of this study, no circuit court decisions were made from 2016–2022 regarding transgender bathroom rights. In the general assembly during the January 2021 session, Governor Daniel McKee signed H5741 and S0755 into law. The bill makes single-user bathrooms in public places non-gender-specific. These two bills also require that all new construction after July 1 in state and municipal buildings provide a single-user, non-gender-specific bathroom. The two bills did not state explicitly whether or not they applied to public and charter schools.

Tennessee

At the time of this study, no circuit court decisions were made from 2016–2022 about transgender bathroom rights. *D.H. v. Williamson County Board of Education* was filed on November 2, 2022, in the Middle District Court of Tennessee. The details of this case were similar to those of the Board of Education of Highland Local School District, but the district court found that plaintiff did not meet her burden of proof to succeed on either claim, Title IX or Equal Protection Clause. The case was denied, and no appeal has been filed to date.

In May of 2021, SB1367 and HB1233 were both passed and the governor signed them into law. Both bills require public schools and charter schools to provide reasonable accommodations to students, teachers, or employees of the public school who:

(1) Desires greater Privacy when using a multioccupancy restroom or changing facility designated for the student's, teacher's, or employee's sex and located within a public school building or when using multioccupancy sleeping quarters designated for the student's, teacher's, or employee's sex while the HB1233 student, teacher, or employee is attending a public school-sponsored activity; and (2) Provides a written request for a reasonable accommodation to the school principal. If the student requesting reasonable accommodation is under eighteen (18) years of age, then the student's parent or legal guardian must provide the written request on the student's behalf. (HB1233, 2021–2022, p. 1)

The principal will review the request and provide reasonable accommodation. The bills define reasonable accommodation as “includes, but is not limited to, access to a single-occupancy restroom or changing facility or use of an employee restroom or changing facility.

“Reasonable accommodation” does not mean the following: (A) Access to a restroom or changing facility that is designated for use by members of the opposite sex while members of the opposite sex are present or could be present; (B) Requesting that a school construct, remodel, or in any way perform physical or structural changes to a school facility; or (C) Requesting that a school limit access to a restroom or changing facility that is designated for use by members of the opposite sex, if limiting access results in a violation of State or local building codes or standards. (HB1233, 2021–2022, p. 1)

If the principal denies the request, the student or employee may appeal the decision to the school director. If the director of schools denies the request, the student or employee can appeal the decision within 15 days. The director of schools must then assign an impartial hearing officer within five days of receiving the request for a hearing.

Texas

At the time of this study, no circuit court decisions were made about transgender bathroom rights from 2016–2022. During the 2017 Legislature in Texas, SB6 was proposed in the Senate. SB6 required transgender people to use the bathroom that corresponded with their biological sex in schools, public universities, and public buildings (SB6, 2017). SB6 ultimately passed the Senate but was shot down in the House of Representatives.

Virginia

In 2017, HB1612 was proposed in the Virginia House of Representatives. HB1612 mandated transgender people use a restroom that corresponded to the sex defined on their birth certificate. The bill further mandated principals inform parents or guardians if a student requested to be recognized as the opposite sex (HB1612, 2017). The bill did not progress. While it is out of the scope of this study, I believe it is worth mentioning Virginia enacted Code 22.1–23.3 in 2020. Code 22.1–23.3 addresses common issues regarding transgender students and provides guidance.

In 2014, the American Civil Liberties Union (ACLU) filed a discrimination complaint against the Virginia School Board. Gavin Grimm, who was a transgender male, was seeking a preliminary injunction so that he could use the boys’ bathroom during his junior year. During his sophomore year, he legally had changed his name to Gavin. The principal allowed him to use the boys’ restroom for about seven weeks. Community members reached out to the school board,

concerned that a transgender student was using the boys' bathroom. At the board meeting, the school board enacted a new policy restricting Gavin's use of the boys' bathroom. The school policy only allowed students to use the bathroom according to the gender assigned at birth. Transgender students would have to use a single unisex bathroom.

The state district court dismissed Gavin's Title IX claim and denied Gavin's motion for preliminary injunction in 2015 (*G.G. v. Gloucester County School Board*, 2016). An appeal was filed in October 2015 asking the court to grant Gavin access to the boys' bathroom when classes started in the fall. The district court denied the injunction based on Title IX. This decision was appealed to the Fourth Circuit Court of Appeals, and the district court overturned the decision in August 2016. Gloucester County Board of Education petitioned for a writ of certiorari to the U.S. Supreme Court. The Fourth Circuit Court's decision would stand until the Supreme Court made its judgment. In 2017, the Supreme Court declared they were sending this case back to the Fourth Circuit Court of Appeals "to be reconsidered in light of the Department of Justice. The American Civil Liberties Union filed an appeal to the 4th Circuit Court of Appeals" (ACLU, n.d.). In April 2017, the Fourth Circuit Court of Appeals vacated the motion for preliminary injunction that the district court entered. Gavin Grimm and GCSB filed supplemental briefs, supplemental reply briefs, and a joint stipulation of voluntary dismissal in the summer of 2017. In August 2017, Gavin Grimm filed an amended complaint in the U.S. District Court. The Gloucester School Board filed a brief supporting the motion to dismiss the amended complaint. As a result, Gavin Grimm filed a memorandum in opposition to Gloucester School Board's motion to dismiss in September of 2017.

In May 2018, the U.S. District Court denied the motion to dismiss and confirmed that Title IX and the Due Process Clause protect transgender students from using the bathroom that

corresponds to their gender identity (ACLU, n.d.). The U.S. District Court granted Gavin Grimm’s motion for summary judgment in August 2019. The school board filed their appeal to this decision to the Fourth Circuit Court of Appeals in September 2019. In the appeal, Gavin Grimm was seeking nominal damages and declaratory relief as he already had graduated at the time of the appeal and using the boys’ bathroom was no longer an issue. For this study, I do not present findings on these topics but stick solely to the Equal Protection Clause of the 14th Amendment and Title IX. Gavin Grimm also had filed a second amended complaint, claiming the school board refused to update his school transcript. For this study, I focused on something other than this amended complaint as it falls outside the research questions.

The Equal Protection Clause of the 14th Amendment states, “[n]o State shall ... deny to any person within its jurisdiction the equal protection of the laws” (U.S. Const. amend. XIV, § 2.). When analyzing an equal protection claim, one must first decide what scrutiny to apply. The court of appeals had decided heightened scrutiny should be applied since the bathroom policy relied on sex-based classifications and transgender people are, at the most, a quasi-suspect class. “To withstand judicial scrutiny, the Board’s bathroom policy must be ‘substantially related to a sufficiently important governmental interest.’ *See* Cleburne, 473 U.S. at 441, 105 S.Ct. 3249” (*Grimm v. Gloucester County School Board*, 2020, p.603).

The district court held “Grimm was subjected to sex discrimination because he was viewed as failing to conform to the sex stereotype propagated by the Policy” (*Grimm v. Gloucester County School Board*, 2020, p. 717).

Many courts, including the Seventh and Eleventh Circuits, have held that various forms of discrimination against transgender people constitute sex-based discrimination for purposes of the Equal Protection Clause because such policies punish transgender

persons for gender nonconformity, thereby relying on sex stereotypes. (*Whitaker v. Kenosha Unified School District*, 2017, p. 1050)

The court of appeals held the board's policy constitutes sex-based discrimination and is subject to intermediate scrutiny (*Grimm v. Gloucester County School Board*, 2020). In deciding which suspect class to assign, the court considered four factors determining whether a group of people is a suspect or quasi-suspect class.

First, we consider whether the class has historically been subject to discrimination.

Bowen v. Gilliard, 483 U.S. 587, 602, 107 S.Ct. 3008, 97 L.Ed.2d 485 (1987). Second, we determine if the class has a defining characteristic related to its ability to perform or contribute to society. *Cleburne*, 473 U.S. at 440-41, 105 S.Ct. 3249. Third, we examine whether the class may be defined as a discrete group by obvious, immutable, or distinguishing characteristics. *Bowen*, 483 U.S. at 602, 107 S.Ct. 3008. Moreover, fourth, we consider whether the class is a minority lacking political power. (*Grimm v. Gloucester County School Board*, 2020, p. 612)

Based on these four factors, being transgender does constitute a quasi-suspect class. For the reasons stated above, the court of appeals held the Board's restroom policy "constitutes sex-based discrimination and, independently, that transgender persons constitute a quasi-suspect class" (*Grimm v. Gloucester County School Board*, 2020, p.612).

In order to be successful on Title IX discrimination claims, one must prove the following:

- (1) that he was excluded from participation in an education program because of his sex;
- (2) that the educational institution was receiving federal financial assistance at the time of his exclusion; and (3) that the improper discrimination caused G.G. harm. (*Preston v. Virginia ex rel. New River Community College*, 1994)

In *Bostock*, the Supreme Court held discrimination against a person for being transgender is discrimination “based on sex.” As the Supreme Court noted, “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex” (*Grimm v. Gloucester County School Board*, 2020, p.617). The board’s bathroom policy excluded Gavin Grimm from the boys’ bathroom based on sex. In the testimony in the district courts, Gavin Grimm displayed behavior and actions that showed the board’s bathroom policy did cause him harm. Since the court established harm was caused, they then needed to see if the school board’s policy discriminated against Gavin Grimm to succeed on their Title IX claims. The court’s decision refers to Title IX context: “discrimination means treating that individual worse than others who are similarly situated” (*Burlington N. & Santa Fe Ry. v. White*, 2006, p. 70). The court had established already that Gavin Grimm was treated worse than other students because he was not allowed to use the restroom because of his gender identity. The school board “emphasizes a Department of Education implementing regulation, 34 C.F.R. § 106.33, which interprets Title IX to allow for ‘separate toilet, locker room, and shower facilities based on sex,’ so long as they are ‘comparable’ to each other” (*Grimm v. Gloucester County School Board*, 2020, p. 619). The court of appeals decided this notion did not apply to this case because Gavin Grimm was not challenging sex-segregated bathrooms. A school’s policy restricted Gavin Grimm from using the bathroom that corresponded with his gender identity.

For this reason, the Fourth Circuit Court of Appeals held that the board’s application of its restroom policy against Gavin Grimm was, in fact, a violation of Title IX (*Grimm v. Gloucester County School Board*, 2020). The school board petitioned the U.S. Supreme Court for certiorari but was denied.

Wisconsin

Assembly Bill 469 was introduced on October 30, 2015. This bill would mandate that school boards assign each restroom and changing room to a single sex. The bill defined sex as “the physical condition of being male or female, as determined by an individual’s chromosomes and identified at birth by that individual’s anatomy” (Assembly Bill 469, 2015, p.1). The bill further required school boards

provide reasonable accommodations to a pupil to use a single-occupancy changing room when the following conditions are met: 1) the pupil identifies as a member of the male sex but is a member of the female sex, or the pupil identifies as a member of the female sex but is a member of the male sex, and 2) the pupil or the parent or guardian of the pupil submits a written request to the school board to receive the Accommodation.

(Assembly Bill 469, 2015, p. 1)

If this bill was violated, a parent could file a written complaint that the school board would investigate. On April 13, 2016, Bill 469 failed to pass the senate.

On March 29, 2017, *Whitaker by Whitaker v. Kenosha Unified School District* was argued before the Seventh Circuit Court of Appeals. Many previous circuit court of appeal decisions this analysis refers to had cited this landmark case. Ash Whitaker openly identified as a transgender male during the 2013–2014 school year. During the spring of his sophomore year, Ash and his mother met with the guidance officer to request that Ash be able to use the boys’ bathroom. The school informed Ash he could only use the girls’ bathroom or the gender-neutral bathroom in the main office. Ash felt isolated and alone, which ultimately impacted his transition. Due to this feeling, Ash restricted his water intake and avoided using the bathrooms for the rest of the year. Due to Ash’s previous diagnosis of vasovagal syncope, restricting water

was an issue and caused him to feel dizzy and faint. In the fall of 2015, Ash used the boys' bathroom for six months without an issue. A staff member reported him when they saw him in the boys' bathroom. Ash and his parents met with the assistant principal, who informed them Ash could not use the boys' bathroom because his school records stated he was female. In order to have the school records changed, the school needed legal or medical documentation. Ash submitted two letters from his doctor identifying him as a transgender male and recommending he be able to use the boys' bathroom. The school did not accept these letters. The school stated Ash would have to complete a surgical transition to be allowed to use the boys' bathroom. But this procedure is prohibited for anyone under the age of 18 (*Whitaker v. Kenosha Unified School District*, 2017). On August 15, 2016, Ash filed suit against the Kenosha Unified School District for violating his Title IX and the Equal Protection Clause of the 14th Amendment.

In September 2016, the U.S. District Court ruled the school must vacate its discriminatory policy that singled Ash out by not allowing him to use the boys' bathroom. The school district appealed the decision, and the Seventh Circuit Court of Appeals heard arguments in March 2017. In May 2017, the Seventh Circuit Court of Appeals ruled unanimously that the school board policy violated Ash's rights under Title IX and the Equal Protection Clause of the 14th Amendment.

The school board argued Ash could not be successful in his Title IX claim because the policy does not address how a student acts, which would be inconsistent with preconceived gender stereotypes.

By definition, a transgender individual does not conform to the sex-based stereotypes of the sex that he or she was assigned at birth. We are not alone in this belief. *See Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011). In *Glenn*, the Eleventh Circuit noted that “[a]

person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes.” *Id.* at 1316. The Eleventh Circuit reiterated this conclusion in a *per curiam* unpublished opinion, noting that “sex discrimination includes discrimination against a transgender person for gender nonconformity.” *Chavez v. Credit Nation Auto Sales, L.L.C.*, 641 Fed.Appx. 883, 884 (11th Cir. 2016) (unpub.). (*Whitaker v. Kenosha Unified School District*, 2017, p. 1049)

As this research has established, several district courts have adopted similar reasoning. Transgender plaintiffs can file a claim under Title VII for sex discrimination using the sex-stereotyping theory (*Whitaker v. Kenosha Unified School District*, 2017).

Ash was able to prove in court that he was denied access to the boys’ bathroom because he was transgender.

A policy that requires an individual to use a bathroom that does not conform with his or her gender identity punishes that individual for his or her gender non-conformance, which in turn violates Title IX. The School District’s policy also subjects Ash, as a transgender student, to different rules, sanctions, and treatment than non-transgender students, in violation of Title IX. Providing a gender-neutral alternative is insufficient to relieve the School District from liability, as the policy violates the Act. (*Whitaker v. Kenosha Unified School District*, 2017, p. 1050-1051)

The school district continued to treat Ash differently by providing access to a gender-neutral bathroom since he was the only student allowed to use it. Ash was given medical documentation and a diagnosis in support of his claims. For these reasons, the Seventh Court of Appeals found Ash was successful on the merits of his Title IX claim (*Whitaker v. Kenosha Unified School District*, 2017).

Ash Whitaker also presented a claim that the school district's bathroom policy violated his equal protection right. The district court found Ash had demonstrated a probability of success with this claim. The Equal Protection Clause of the 14th Amendment states all people should be treated equally. For a sex-based classification, heightened scrutiny must be used.

When a sex-based classification is used, the burden rests with the state to demonstrate that its proffered justification is "exceedingly persuasive." *United States v. Virginia*, 518 U.S. 515, 533, 116 S.Ct. 2264, 135 L.Ed.2d 735 (1996); *also* *Hayden ex rel. A.H. v. Greensburg Cmty. Sch. Corp.*, 743 F.3d 569, 577 (7th Cir. 2014). This requires the State to show that the "classification serves important governmental objectives and that the discriminatory means employed are substantially related to achieving those objectives." *Virginia*, 518 U.S. at 524, 116 S.Ct. 2264. (*Whitaker v. Kenosha Unified School District*, 2017, p. 1051)

The school board argued a rational basis test should be used since sex was not a protected class. Ash disagreed and quoted evidence that the transgender population has experienced discrimination and harassment for years. The court of appeals did not need to decide what level of scrutiny needed to be applied in this case. All Ash would have to show is the school board policy showed sex stereotyping. The school district's bathroom policy cannot be stated without referring to sex.

For this reason, the court of appeals decided heightened review applies. The school district claimed, since the policy treated boys and girls equally, it did not violate the Equal Protection Clause. The court of appeals disagreed with this claim. The bathroom policy only applied to transgender students who did not conform to gender stereotypes. The students were

disciplined if they did not use the bathroom that corresponded with the sex they were assigned at birth:

This places the burden on the School District to demonstrate that its justification for its bathroom policy is not only genuine but also “exceedingly persuasive.” *See* Virginia, 518 U.S. at 533, 116 S.Ct. 2264. This burden has not been met here. (*Whitaker v. Kenosha Unified School District*, 2017, p. 1040)

During oral arguments, the school district stated the only way Ash would be allowed to use the boys’ bathroom would be if he were able to present a birth certificate that assigned his sex as male. During the meeting Ash had with the vice principal, the administration told him the only way he would be allowed to use the boys’ restroom would be if he had sex reassignment surgery. The court of appeals questioned whether the sex marker on a birth certificate could be used as the deciding factor of one’s biological sex.

The marker does not consider an individual’s chromosomal makeup, which is also a key component of one’s biological sex.... It is also unclear what would happen if an individual is born with the external genitalia of two sexes or genitalia that are ambiguous in nature. In those cases, the marker on the birth certificate would not adequately account for or reflect one's biological sex. (*Whitaker v. Kenosha Unified School District*, 2017, p. 1054)

The school district requests either a birth certificate or a passport. “Therefore, the School District’s reliance upon a birth certificate’s sex marker demonstrates the arbitrary nature of the policy; so, Ash has met the low threshold of demonstrating a probability of success on his Equal Protection Claim” (*Whitaker v. Kenosha Unified School District*, 2017, p.1054).

Ash Whitaker was successful on both Title IX and the Equal Protection Claim of the 14th Amendment. The Seventh Circuit Court of Appeals denied the school district's motion to have the court assert pendent appellate jurisdiction over the state district court's denial. The district court's order that granted Ash Whitaker's motion for preliminary injunction was affirmed (*Whitaker v. Kenosha Unified School District*, 2017).

Findings and Results

This post hoc policy analysis examines the interpretations of transgender bathroom rights throughout the circuit courts and state legislature. K–12 schools under Title IX and the Equal Protection Clause of the 14th Amendment. Data consists of circuit court decisions incorporating Title IX or the Equal Protection Clause in their choices and related state legislation. I used refined delimiters reflecting strict adherence to the UTOS framework while aligning with a broadened interpretation of the research questions. I went a step further and delimited the setting chronologically by analyzing results from 2016–2022. Table 8 shows the chronological order of state legislation passed from 2016–2022. Table 9 below shows the chronological order of cases that the circuit appellate courts ruled on from 2016–2022.

Table 8*Bathroom State Legislation*

State name	Legislation introduced	Legislation passed	Bathroom of choice/nonbinary bathroom	Year
Michigan	Y	N	Y	2016
Minnesota	Y	N	N	2016
Missouri	Y	N	N	2016
North Carolina	Y	Y	N	2016
Wisconsin	Y	N	Y	2016
Alabama	Y	N	N	2017
Illinois	Y	N	N	2017
North Carolina	Y	Y	N	2017
Texas	Y	N	N	2017
Virginia	Y	N	N	2017
Arkansas	Y	N		2019
Connecticut	Y	N	Y	2019
New York	Y	Y	Y	2019
Hawaii	Y	N	N	2020
Oklahoma	Y	Y	N	2021
Rhode Island	Y	Y	Y	2021
Tennessee	Y	Y	Y	2021
Indiana	Y	N	N	2022
Mississippi	Y	N	N	2022
New Hampshire	Y	Y	N	2022
Arizona	Y	N	Y	2023
California	Y	Y	Y	2023

Table 9*Chronological Order of Case Law*

State	Case heard 2016–2022	Circuit court	Favor of student	14th Amend violated	Title IX violated	Case	Year
Ohio	Y	6	Y	Y	Y	<i>Bd. of Educ. of Highland v. US Dept. of Educ.</i>	2016
Virginia	Y	4	Y	Y	Y	<i>Grimm v. Gloucester County School Bd.</i>	2016
Wisconsin	Y	7	Y	Y	Y	<i>Whittaker v. Kenosha</i>	2017
Indiana	Y	7	N			<i>Jaw v. Evansville Vanderburgh School</i>	2018
Pennsylvania	Y	3		N	N	<i>Doe By & Through Doe v. Boyertown Area School Dist.</i>	2018
Oregon	Y	9	N	N	N	<i>Parents for Privacy v. Barr</i> , 949 F. 3d 1210 - Court of Appeals, 9th Circuit 2020	2019
Florida	Y	11	N	N	N	<i>Adams v. Sch. Bd. of St. Johns Cnty.</i> , 57 F.4th 791	2022

Epistemic Uncertainty: Chronological

In Chapter 3, I discussed how I would solve epistemic uncertainty. I examined the laws and legislation passed or ruled on between the Dear Colleague Letter of 2016 on Transgender Bathroom Rights and December 30, 2022. To see if there was a notable change in the passing of state legislation and case law, I looked to see what was passed or decided on before the Dear Colleague Letter of 2016 was sent to the school districts to examine any specific changes or trends that may have occurred as a result once the letter was sent. The table demonstrates that, out of the 22 states that introduced legislation, 22.7% was in 2016, 22.7% was in 2017, 13.6% was in 2019, 4.5% was in 2020, 13.6% was in 2021, 13.6% was in 2022, and 9.1% was in 2023. A downward trend occurs from 2016–2022. An outlier was the year 2020, which was the year of the pandemic and government shutdowns.

Figure 1

Bathroom Bill Legislation Introduced

Bathroom Bill Legislation Introduced

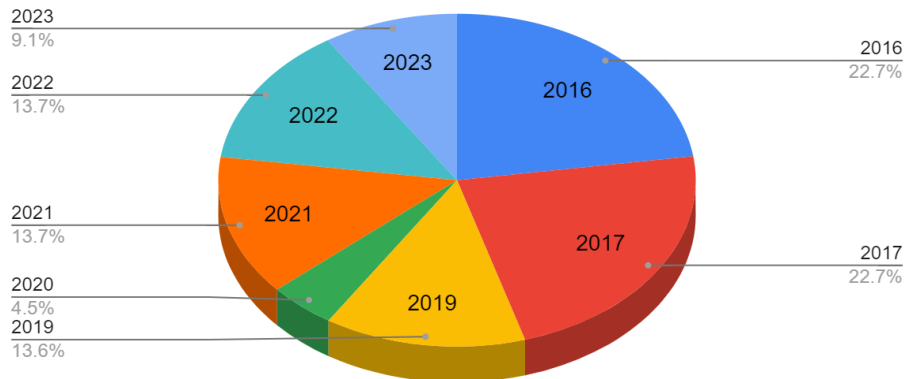
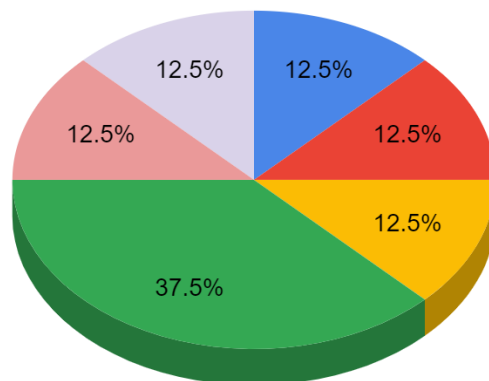


Figure 2

Chronological State Legislation Passed

Bathroom Legislation Passed

● 2016 ● 2017 ● 2019 ● 2021 ● 2022 ● 2023

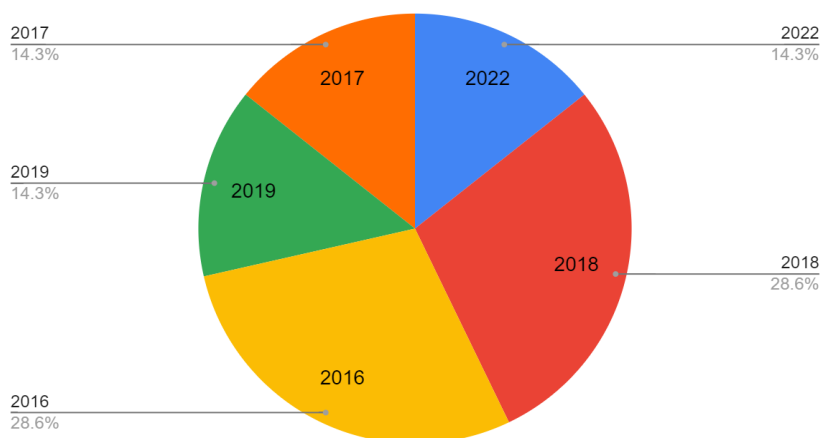


I did not see a trend across the cases regarding transgender bathroom rights heard from 2016 to 2022. Out of the seven cases heard at the Circuit Level, two were heard in 2016, one was heard in 2017, two were heard in 2018, one was heard in 2019, and one was heard in 2022. There was no significant trend to establish with this data.

Figure 3

Court Cases Heard

Table XXX Cases Heard: Bathroom Rights



Research Questions: Data Collection Results

When I established the research project, I had three questions I wanted to answer to guide school-based administrators. The research questions in Chapter 3 center on how the circuit court of appeals interpreted the Equal Protection Clause of the 14th Amendment, the sex-based classifications of Title IX, and how it is applied to transgender bathroom rights. The state legislation was used to establish patterns among the states that passed state legislation regarding bathroom rights.

During the research, it was established that only seven circuit courts heard cases involving transgender bathroom rights from 2016 to 2022. The circuit courts that heard cases during 2016 to 2022 were the Third, Sixth, Seventh, Ninth, Eleventh, and Fourteenth, as can be seen in Table 10.

Table 10

Circuit Courts

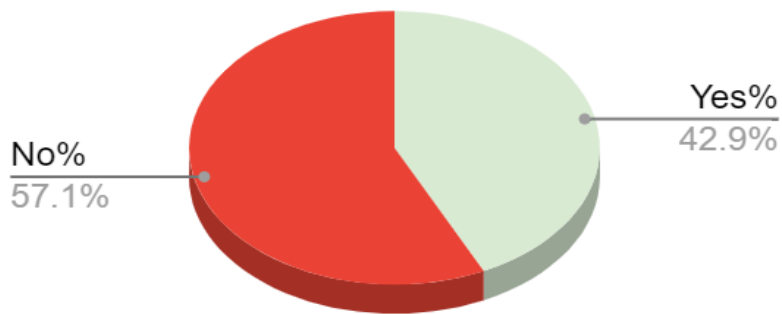
State name	Case heard 2016–2022	Circuit court	Favor of student	14th Amend violated	Title IX violated	Case	Year
Florida	Y	11	N	N	N	<i>Adams v. Sch. Bd. of St. Johns Cnty.</i> , 57 F.4th 791	2022
Indiana	Y	7	Dismissed by 7th Circuit			<i>Jaw v. Evansville Vanderburgh School Bd. of Educ. of Highland v. US Dept. of Educ.</i>	2018
Ohio	Y	6	Y	Y	Y	<i>Parents for Privacy v. Barr</i> , 949 F. 3d 1210 - Court of Appeals, 9th Circuit 2020	2016
Oregon	Y	9	N	N	N	<i>AH v. Minersville Area School Dist.</i>	2019
Pennsylvania	Y	3		N	Y	<i>Doe By & Through Doe v. Boyertown Area School Dist.</i>	2019
Pennsylvania	Y	3	N	N	N	<i>Grimm v. Gloucester County School Bd.</i>	2018
Virginia	Y	14	Y	Y	Y	<i>Whittaker v. Kenosha</i>	2016
Wisconsin	Y	7	Y	Y	Y		2017

Of the eight cases heard, one was dismissed, three (42.86%) were ruled in favor of the student, and four (57.14%) were ruled in favor of the school district. Of the eight cases heard, the circuit court ruled 42.9% violated Title IX rights. This information appears in Figure 4.

Figure 4

Title IX Violated

Circuit Court Ruled Title IX Violated

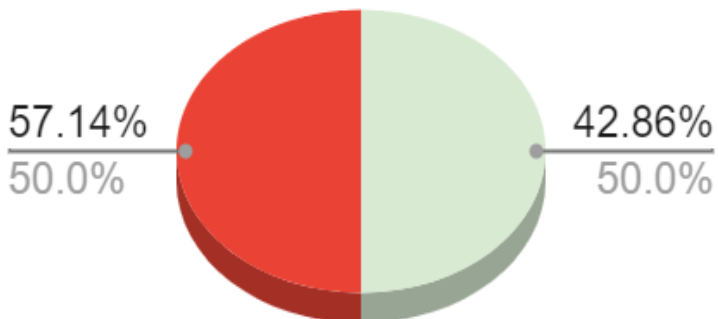


Of the seven cases heard, the circuit court ruled 42.86% of the cases they heard violated the Equal Protection Clause of the 14th Amendment. This information appears in Figure 5.

Figure 5

14th Amendment Violated

Circuit Court Ruled 14th Amend Violated



Out of the seven cases heard, only the Sixth, Seventh, and Fourth Circuit Courts ruled the plaintiffs' 14th Amendment and Title IX rights were violated. Those three circuit courts are in Ohio, Wisconsin, and Virginia. Out of the bathroom bill legislation 22 states introduced, eight bills were passed, and three of those passed bills offered a bathroom of choice or a nonbinary bathroom. The three states that passed state legislation are New York, Rhode Island, and California. There is no correlation between the states that ruled the Equal Protection Clause of the 14th Amendment and Title IX rights were violated and the state legislation that was passed allowing a bathroom of choice or a nonbinary bathroom. This information appears in Table 11 to show similarities. The highlighted columns passed or were ruled to meet the prior criteria.

Table 11

State Similarities

State name	Legislation introduced	Legislation passed	Bathroom of choice/nonbinary bathroom	Year	State name	Circuit court	Favor of student	14th Amend violated	Title IX violated	Year
Michigan	Y	N	Y	2016	Florida	11	N	N	N	2022
Wisconsin	Y	N	Y	2016	Indiana	7	N	N	N	2018
Arkansas	Y	N		2019	Ohio	6	Y	Y	Y	2016
Connecticut	Y	N	Y	2019	Oregon	9	N	N	N	2019
New York	Y	Y	Y	2019	Pennsylvania	3	N	N	N	2018
Rhode Island	Y	Y	Y	2021	Virginia	4	Y	Y	Y	2016
Tennessee	Y	Y	Y	2021	Wisconsin	7	Y	Y	Y	2017
Arizona	Y	N	Y	2023						
California	Y	Y	Y	2023						

Summary

These first four chapters have provided the reader with an overview of each state's bathroom bill legislation and bathroom bill case law from 2016–2022 and how it relates to the research questions. I established the significance of the study, presented a bathroom bill policy analysis, discussed the limitations and delimitations, and designed the study. Table 8 showed the chronological order of state legislation passed from 2016–2022. Table 9 showed the chronological order of cases that the circuit appellate courts ruled on from 2016–2022. In Chapter 5, I summarize the findings and how they relate back to the research questions. I also make recommendations for future research and policy.

Chapter 5: Conclusion and Recommendations

Introduction & Discussion

My purpose in conducting this study was to interpret the sex-based classifications in Title IX and the Equal Protection Clause of the 14th Amendment. The public policy analysis reviewed and examined the existing legislation, case law regarding bathroom rights in schools, and appellate court outcomes involving such rules with a *post hoc* analysis. By researching case law and legislation, this qualitative policy analysis will provide policymakers, school administrators, and other stakeholders with an analysis of the limitations of Title IX and the Equal Protection Clause of the 14th Amendment regarding students' bathroom rights. The purpose of the study was to provide readers with the knowledge to create and implement transgender bathroom policies in their district.

In Chapter 2, I discussed that school administrators must create an inclusive, safe, welcoming environment that promotes and fosters socio-emotional and academic success. Chapter 2's literature discussed the concept of sex versus gender. Psychoanalytic, social learning, cognitive, and gender schema theories provided insight into the meaning behind this policy analysis. Chapter 2 also discussed the impacts of social constructs and the history and perspectives of transgender protections and rights. Initially, after the conclusion of the literature review in Chapter 2, I was hopeful I would find a trend of approval and laws in the more liberal states and circuit courts. According to Andrew R. Flores (2015), mere exposure to someone from the transgender community theoretically would reduce feelings of transphobia. Unfortunately, I could not establish any significant trend during 2016–2022. My findings did not align with the research discussed in Chapter 2, but I also could not say definitively the findings differed. Perhaps the tiny sample size of cases regarding transgender bathroom rights was not ruled at the

circuit court level, nor did they pass legislative votes. I believe that perhaps this policy analysis does represent the uncertainty the transgender population faces daily. Although this policy analysis did not contribute a definitive trend in any specific direction, I believe it provides awareness and exposure to transgender bathroom rights.

Implications of the Study

The study's significance covers both scholarly relevance, that of filling the gap in the literature, and practical significance, that of providing insight to administrators regarding school policies for the transgender population. The research will help all school staff to understand the policies and legislation surrounding their transgender students better. This newfound knowledge will allow administrators to create or question new or existing board policies affecting transgender students. Administrators will have access to the state legislation and case law between 2016–2022. This information would give administrators insight into whether their policies would stay intact if a student or family tried to challenge them. The hope is this policy analysis will open administrators' viewpoints and allow them to understand all of the factors surrounding transgender bathroom rights in their district. Educators will better understand the sex-based classification of Title IX and how it applies to their transgender students and their board of education policies. Evaluating these policies will help all students feel safe and included in their school building to promote a nurturing and productive learning environment to ensure academic success.

After reading this policy analysis, a school administrator should do the following:

1. Create a Policy Review Committee in the district.
2. Review all relevant school policies that may or may not provide students with bathroom rights.

3. Create new or edit existing policies to reflect the laws established in the schools' state.
4. Evaluate those policies to protect all students' Title IX and Equal Protection Rights.
5. Meet with the school board of education to inform them of the laws and new or edited policies. Obtain their support.
6. Have an information session with parents and families before the board meeting where the policies will be passed.
7. Propose the new or revised policy for approval at the board meeting.

Recommendations for Future Research

My purpose in conducting this study was to analyze how the U.S. Circuit Court of Appeals interpreted the sex-based classifications of Title IX and the Equal Protection Clause of the 14th Amendment and how it relates to bathroom case law and legislation between 2016–2022. The driving force of this research was the Dear Colleague Letter of 2016. In addition to the time window of 2016–2022, I determined recommendations through the study's limitations and implications. I recommend the following for future research:

- Research bathroom bill cases that are heard and ruled on from the state district courts to the Supreme Court. One could research the number of cases appealed to the Supreme Court, if any. No Supreme Court bathroom bill cases had been ruled on at the time of this research.
- Research bathroom bill case law and legislation that happened outside the currently researched window. Has there been an increase in bathroom bill cases being ruled on from 2000 to the current year?

- Research transgender bathroom legislation in public entities and schools. Current research only focuses on schools.
- Research all transgender rights case law and state legislation. When current research was conducted, intercollegiate sports also appeared during the initial searches using transgender and school keywords.
- In 2024, the Biden administration put a block on blanket policies that would stop transgender students from using school bathrooms that align with their gender identity. Future research can focus on this new block and see the implications at the state level.

Conclusion

In conclusion, the research affirmed a chronological relationship between U.S. Circuit Court rulings and state legislation introduced and passed from 2016–2022, which could have resulted from the publicity of the passing of the Dear Colleague Letter of 2016. No direct trend was identified between the circuit courts that heard or ruled on transgender bathroom rights and the introduction or passing of state legislation. When I started this study, I assumed there would be an alignment between the circuit courts that ruled on bathroom rights and the state legislation passed, but this was not true for the parameters of this study. School districts have a responsibility to their students to ensure all feel welcome and safe in a school that promotes equality in the achievement of academic success.

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