## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

ANDREW BRIDGE, et al.,	)
	)
Plaintiffs,	)
-VS-	)
	)
OKLAHOMA STATE DEPARTMENT	)
OF EDUCATION, et al.,	)
	)
Defendants.	)

Case No. CIV-22-787-JD

## SCHOOL DEFENDANTS' SUPPLEMENTAL RESPONSE TO PLAINTIFFS' MOTION FOR TEMPORARY INJUNCTION AND BRIEF IN SUPPORT

Pursuant to the Order of January 5, 2023 [Doc. 68], Harding Independence Charter District, Inc. ("HICD"), Noble Public Schools ("NPS") and Moore Public Schools ("MPS") (collectively "School Defendants") submit their Supplemental Response to Plaintiffs' Motion for Temporary Injunction.

# Proposition I: Unlike *Adams*, S.B. 615 mandates School Defendants' bathroom usage policy.

Since Plaintiffs filed of their lawsuit and the parties filed various responsive motions and briefs, the Eleventh Circuit revised its decision in *Adams v. Sch. Bd. of St. Johns Cnty.*, \_\_\_\_\_\_ F.4th \_\_\_, 2022 WL 18003879 (11<sup>th</sup> Cir. 2022). In *Adams*, the plaintiff, a transgender male, filed suit against the school district asserting that his rights under the Equal Protection Clause and Title IX were violated by the school district's bathroom usage policy. *Id*.

The school district's unwritten bathroom policy required students to use the bathroom

#### Case 5:22-cv-00787-JD Document 72 Filed 02/03/23 Page 2 of 5

according to their biological sex. As an accommodation, the school district offered single stall gender neutral bathrooms to any student, including transgender students. The school district referenced a student's sex according to the original enrollment documents first submitted by a student. The school district did not accept updates to a student's enrollment documents to conform with a student's gender identity. In 2017, the plaintiff, a transgender male, used the high school's male bathroom until a couple of students complained to administration. After receiving the student complaint, the school's administration directed the plaintiff to use a gender neutral bathroom.<sup>1</sup> *Id.* at 797.

Upon review, the Eleventh Circuit held that school district's bathroom policy did not violate the plaintiff's equal protection rights because it did not unlawfully discriminate on the basis of sex. *Id.* at 805. The Court reasoned that the school board has a governmental interest in protecting students' privacy interests in bathrooms and its bathroom policy was substantially related to the governmental objective. *Id.* The Court also found that, "[b]ecause the bathroom policy divides students into two groups, both of which include transgender students, there is a "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." *Id.* at 809. Additionally, the Eleventh Circuit held that the school's bathroom policy

<sup>&</sup>lt;sup>1</sup> After the plaintiff in *Adams* filed his lawsuit, the Florida legislators' subsequently passed the Parental Rights in Education bill and the Florida State Board of Education adopted regulations which required each school district to notify parents of its bathroom usage policy including identifying which bathrooms/locker rooms were not separated by biological sex in 2022.

#### Case 5:22-cv-00787-JD Document 72 Filed 02/03/23 Page 3 of 5

did not violate the plaintiff's rights under Title IX because sex-separated living facilities, including bathrooms based on biological sex, are allowed. *Id.* at 811.

The factual background in *Adams* as to policymaking process engaged in y th school district is nothing like that faced by public school districts in Oklahoma, including the Schol Defendants, under S.B. 615. In Adams, the school district implemented its own policies and procedures regarding bathroom usage for transgender students. Like the school policy at issue in Adams, Oklahoma's S.B. 615 requires usage of multi-occupancy bathrooms according to a student's biological sex assigned at birth and mandates school districts offer a reasonable accommodation of a single occupancy bathroom/locker room for transgender students. Unlike Adams, S.B. 615 deprives School Defendants of their discretionary policymaking authority regarding policies on bathroom usage for their students. Rather, School Defendants are faced with the untenable choice of either complying with the mandates of S.B. 615 and the administrative regulations of the Oklahoma State Board of Education or face reduction of five percent (5%) of their state funding, the possible loss of accreditation, and possible lawsuits from students for non-compliance. Although the policies in Adams and S.B. 615 are similar. School Defendants are not allowed to drive their own bus on bathroom usage policy. Instead, they must follow the mandates of state law without any discretionary input or face significant monetary penalty and possible loss of accreditation for noncompliance.

### **CONCLUSION**

For the reasons stated above, School Defendants take no position on the merits of Plaintiffs' requested relief as to S.B. 615 and OSDE Rules. Rather, School Defendants provide the Court with information regarding their inclusion in this litigation and the untenable burden placed on School Defendants because of S.B. 615. Unlike *Adams*, the Oklahoma Legislators and the Oklahoma Board of Education mandate School Defendants' multi-usage bathroom policy with significant monetary penalty for noncompliance.

Respectfully submitted,

The Center For Education Law, P.C.

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## **<u>Certificate of Service</u>**

I hereby certify that on February 3, 2023, I electronically transmitted the attached document to the Clerk of Court using the Electronic Case Filing System for filing. Based on the records currently on file in this case, the Clerk of Court will transmit a Notice of Electronic Filing to those registered participants of the ECF System: Jon W. Davidson, Taylor Brown, Megan Lambert, Paul D. Castillo, Mitchell A. Kamin, Isaac D. Chaput, Audrey Weaver.

<u>S/Laura L. Holmgren-Ganz</u> Laura L. Holmgren-Ganz