

WILL: Kiel drops Title IX complaint against middle schoolers after WILL defense

Posted on Friday, Jun 3, 2022

>> **WisPolitics is now on the State Affairs network. Get custom keyword notifications, bill tracking and all WisPolitics content. [Get the app or access via desktop.](#)**

The News: The Kiel Area School District “[closed](#)” a Title IX complaint and investigation against three middle school boys who were accused of sexual harassment for using “incorrect pronouns” when referencing a classmate. Attorneys at the Wisconsin Institute for Law & Liberty (WILL) issued a [letter](#) to Kiel, in May, explaining that the mere use of biologically correct pronouns not only does not constitute sexual harassment under Title IX or the District’s own policy, but is speech protected by the First Amendment.

In recent weeks, the District proposed various resolutions, but all within the Title IX framework. WILL and the families remained resolute in their position that the Title IX investigation was inappropriate and should be dismissed. WILL issued a [follow-up letter](#) to the District on June 2 making this clear. Hours later, the District relented and sent letters to the boys while announcing the investigation was “closed.” WILL intends to follow up with the District to ensure that the Title IX sexual harassment complaints are removed from the boys’ academic records.

The Quote: WILL Deputy Counsel, Luke Berg, said, “We are pleased that the Kiel Area School District has finally ended its misguided Title IX investigation. While the District’s statement attempts to reframe the investigation, it was always primarily about “mispronouncing.” The District may not be willing to admit it publicly, but it has recognized that it has no legal basis to demand that our clients refrain from “mispronouncing” other students.”

Rose Rabidoux, a parent of one of the Kiel students facing Title IX allegations, said, “While we are glad that the District has ended its investigation, this dispute should have never been escalated to this point. We expect the Kiel Area School District to ensure that this Title IX complaint is not on my son’s record. We are thankful to our friends, family, and community for their support.”

Background: Three eighth grade students in the Kiel Area School District were notified of a Title IX complaint and investigation for sexual harassment for using a biologically correct pronoun when referring to a classmate, instead of the student's preferred pronoun of "they/them." The District's position was that once a student informs others of alternate, preferred pronouns, any subsequent "mispronouncing" automatically constitutes punishable sexual harassment under Title IX.

Sexual harassment, as defined in both [Title IX](#) and the Kiel Area School District's policy, typically covers things like rape, sexual assault, dating violence, stalking, inappropriate touching, and quid pro quo sexual favors. None of that—or anything even close to it—was alleged in the complaint. While there is a catchall for "unwelcome conduct" that is "so severe, pervasive, and objectively offensive that it effectively denies a person equal access to education," the mere use of a biologically correct pronoun, without significantly more, does not count, and if it did, it would violate the First Amendment. Schools of course can and should deal with teasing and bullying but using so-called "incorrect pronouns" alone is not punishable, without more.

Further, the District failed to follow Title IX procedures and its own process. Both the District's policy and Title IX regulations require notice of the allegations before beginning any investigation so that the accused has "sufficient time to prepare a response before any initial interview." The District failed to provide a detailed notice of the allegations, instead providing only a generic letter, one day before the District sought to question the minor students, stating that the boys were accused of "using incorrect pronouns." The District initiated its investigation and conducted interviews without first providing additional details or giving the boys and their families time to prepare.

WILL made clear that what the District called "mispronouncing" does not amount to sexual harassment under Title IX as a matter of law. Further, the District's conduct infringed on the First Amendment and Due Process rights of the students.

On June 2, the District ended the investigation and dropped the complaint.

Read More:

- [Kiel Letter Announcing End of Title IX Investigation](#), June 2, 2022
- [WILL Response to Kiel](#), June 2, 2022
- [WILL Letter to Kiel Area School District](#), May 12, 2022
- [Kiel Letter Notifying Families of Title IX Complaint](#), April 2022
- [Formal Complaint of Sexual Harassment](#), March 29, 2022

Read and share this [press release](#) online.