

# WILL: Urges Kiel schools to drop Title IX complaint, investigation of eighth graders for using “Incorrect Pronouns”

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The News: Attorneys with the Wisconsin Institute for Law & Liberty (WILL) issued a [letter](#) to administrators at the Kiel Area School District urging the district to drop a Title IX complaint and investigation against three eighth grade boys who are being accused of sexual harassment for using “incorrect pronouns” when referencing a classmate. WILL’s letter explains that the mere use of biologically correct pronouns not only does not constitute sexual harassment under Title IX or the District’s own policy, it is speech protected by the First Amendment.

The Quote: WILL Deputy Counsel, Luke Berg, said, “School administrators can’t force minor students to comply with their preferred mode of speaking. And they certainly shouldn’t be slapping eighth graders with Title IX investigations for what amounts to protected speech. This is a terrible precedent to set, with enormous ramifications.”

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 appears to be 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—is 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 has also 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.

What the District calls “mispronouncing” does not amount to sexual harassment under Title IX as a matter of law. And the District’s conduct infringes on the First Amendment and Due Process rights of the students.

WILL’s [letter](#) urges the District to immediately end its investigation, dismiss the complaints, and remove the complaints from the students’ records.