



**Defend My Privacy**

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# DEFEND *My* PRIVACY

*Protecting Student Privacy Toolkit*

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**A GUIDE TO NAVIGATE YOUR LOCAL SCHOOL DISTRICT AND CITY  
AND STATE OFFICIALS WITH REGARD TO PRIVACY RIGHTS AND  
THE SAFETY OF CHILDREN IN SCHOOL.**

*We must continue to respect the dignity of all people by providing space for girls and boys in those instances where privacy between the biological sexes is relevant, such as in restrooms, showers and locker rooms, and overnight accommodations.*



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# 01...

## **PRIVACY - A CIVIL RIGHT**

### **BIOLOGICAL SEX IS THE ONLY VALID REASON TO HAVE SEPARATE LOCKER ROOMS, SHOWERS AND RESTROOMS IN THE FIRST PLACE.**

It is precisely our anatomical differences, which are often revealed in these settings, that we wish to shield. If that didn't matter, we'd have one locker room, shower area and restroom for everyone. Maintaining separate spaces on any other basis than biological sex is arbitrary and irrational.

But our expectation of privacy from persons of the opposite sex is so profound as to be found all across our laws – including the laws pertaining to our schools – and in our court decisions describing our personal privacy as a constitutional right.

### **RESPECT EVERYONE WITHOUT TAKING PRIVACY AWAY FROM ANYONE.**

- Every student has full, 100% access to the shower, bathroom and locker room of their biological sex.
- Students who object to using facilities with other students of the same biological sex, or for any reason desire greater privacy can make use of a variety of reasonable accommodations, such as single-user facilities.

### **SCHOOLS VIOLATE PARENTS' AND STUDENTS' RIGHTS WHEN THEY FORCE BIOLOGICAL MALES TO SHOWER AND CHANGE WITH FEMALES AND VICE VERSA.**

Everyone should protect the bodily privacy of all by maintaining bathrooms, locker rooms and shower facilities on the basis of biological sex.

# 02...

## PRIVACY - THREATENED

### LOCAL SCHOOL DISTRICTS

There are some school districts, whether by written or unwritten policy, that decide to disregard privacy rights and open the girls locker rooms and bathrooms to boys and vice-versa. This also has applied to participation in sports teams and shared sleeping arrangements for overnight trips.

*President Obama's administration sent a letter suggesting school districts abandon biologically distinct bathrooms, showers and locker rooms. This letter never had the rule of law behind it, had a Texas Federal court place an injunction upon it and now has been rescinded by President Trump's administration. Even so, some school districts continue with policies that violate their students' rights to privacy.*

### LOCAL GOVERNMENT & STATE GOVERNMENT

Current state law prevents discrimination in employment, housing and public accommodations. Many municipalities are considering ordinances and our state legislature is considering a bill that would add the special statuses of "sexual orientation" and "gender identity" to these current laws.

And while we all want persons to be treated with respect, these proposals would have some surprising and adverse effects:

## Employment

All employers would be forced to open their **sex-specific locker rooms, showers, and restrooms to persons on the basis of their subjective identity rather than maintaining these facilities on the basis of a person's anatomical sex.**

There would be other problems apart from personal privacy as well. For instance, it would be illegal for religious schools and other religious organizations to only hire employees that agree with and live by the religious organization's teaching on sexuality, marriage and gender.

## Housing

Women would be forced to be paired with men who identify as women (and vice versa) in shared housing arrangements like **college dormitories, boarding schools, summer camps, women's shelters, homeless shelters, and retirement homes.**

All of the women-only facilities (**bathrooms and showers**) in those housing accommodations would be available to men and boys who identify as women and girls (and vice versa).

## Public Accomodations

All places held open to the public, including businesses, swimming pools, amusement parks, and even schools, would be forced to allow men into women-only bathrooms, locker rooms and showers (and vice versa).

So to be clear, what the Obama administration was trying to force on schools – and is now reversed by the Trump administration – could be forced on our schools through state law or even local ordinance.

# 03...

## PRIVACY - PROTECT IT

### SPEAK UP

If you or your children have been in a situation where your privacy rights have been violated, there is help. You can contact the Independence Law Center – free of charge - at 717-657-4990.

### SPEAK OUT

Find outlets to tell your story. Attend a school board meeting. Write a letter to your local newspaper. Contact your elected officials.

*Emma, a 17-year-old from Lancaster, has spoken out about the importance of her school policies protecting her privacy:*

*My story is the same as that of students across the United States. When I participate in my county wide orchestra and we have to change into our concert attire, I should not have to undress in front of a member of the opposite biological sex. On a school trip, such as the trip to Philadelphia we took this fall, I should not have to share sleeping areas with a boy. That's just common sense.*

*Before gym class, when I change into the required uniform, I have the right not to undress in front of a boy or see a male change. I would feel embarrassed and more than that, violated if a boy was present in these situations.*

*This movement directly affects my daily life and my classmates. My story is that every student has the right to mutual respect, dignity, and privacy.*

# 04...

## PRIVACY - WHAT TO SAY

### ELEVATOR SPEECH MESSAGING

(Name of School) should be a place that is welcoming to all students. This new bathroom, locker room and shower policy is not at all welcoming because it steals my right to privacy from viewing or being viewed by persons of the opposite sex. We must learn to respect every member in our school community without taking away personal privacy from anyone.

### COMMUNICATE YOUR MESSAGE

- It is right for schools to have policies that protect students' right to bodily privacy in places where they are most emotionally and physically vulnerable.  
  
A change in policy would force sex-specific locker rooms, showers and bathrooms to be open to anybody based on their identity rather than their anatomical sex. And this policy would apply to every grade, and visiting adults as well.
- No student should be put in a vulnerable setting. When students compete, stay in hotels or use bathrooms, locker rooms, or showers, they should have the confidence knowing their expectation of privacy from viewing or being viewed by members of the opposite sex is protected.
- Treating sex as meaningless hurts our children. We all want a civil, loving, and respectful community, but policies like this steal our children's privacy.  
  
Treating sex as meaningless erases protections meant for women, many of which Title IX was intended to preserve. Biological men have begun taking women's spots in competitions, women's scholarships, and reducing opportunities for women.
- Compromising the safety and privacy of students is not an option. Legally inviting boys into a girls' restroom or locker room is an invasion of privacy and a safety threat.
- Opening up these spaces based on internal beliefs rather than objective sex gives increased opportunity for bad people to access potential victims.
- A women's privacy does not spring into existence, or cease to exist, based on the internal beliefs or motives, of a man. Her right to privacy belongs to her, and isn't dependent on a biological man's mindset.



# Sample Letter to School Board

To (your school's name) School Board Members,

*I am writing as a resident of (your city/township name) asking you to protect each student in our district by maintaining a policy that keeps sex-specific locker rooms and bathrooms, athletic competition as well as any overnight accommodations all based on biological sex.*

*It is right for schools to have policies that protect students' right to bodily privacy in places where they are most vulnerable.*

*There is no federal or state law that demands the removal of biological distinctions for school facilities. In fact, the Pennsylvania School Code requires separate facilities on the basis of sex. President Trump has rescinded a previous order by the Obama administration that had encouraged school districts to abandon policies protecting privacy rights.*

*Most courts have protected privacy based on biological sex. In the case Gloucester County School Board v. G.G., the Supreme Court permitted the school district to continue protecting the bodily privacy of all students by maintaining bathrooms, locker rooms, and shower facilities on the basis of biological sex while on appeal. The U.S. Supreme Court had initially decided to take this case on appeal but recently sent it back to the lower court; in part due to the new directives by President Trump.*

*Courts have also held prisoners have a right to privacy from members of the opposite sex. Children in schools have at least the same right to bodily privacy. A policy that protects privacy on the basis of biological sex is consistent with the Equal Protection Clause, since all students are treated identical to other students of the same sex.*

*You should continue to stand firm and fulfill your duty as a school board member to protect the privacy and safety of all students. Opening restrooms and locker rooms to those of the opposite biological sex is wrong and has resulted in litigation for violating students' right to bodily privacy.*

*All students should feel safe. When students compete, stay in hotels or use bathrooms, locker rooms, and showers, they should have the confidence knowing they do so with students of the same biological sex. Reasonable accommodations should be made for students uncomfortable with this policy, such as the use of single-user restrooms.*

*We can respect every student without taking away privacy from anyone.*

# 6 MYTHS ABOUT ALLOWING STUDENTS WHO IDENTIFY WITH THE OPPOSITE SEX TO USE RESTROOMS OF THE OPPOSITE SEX

- By Matt Sharp | February 16, 2016

On Tuesday, February 16, 2016, South Dakota could be the first state to put into law protections for the privacy of all students. The bill requires that students use the restrooms and shower facilities in accordance with their biological gender, while providing a separate facility for any students questioning their gender.

No federal law requires public schools to allow boys into girls' restrooms or girls into boys' restrooms. In fact, schools and school districts could be exposing themselves to legal liability for violating students' privacy rights.

"Schools have a duty to protect the privacy, safety, and dignity of all students," said ADF Senior Legal Counsel Jeremy Tedesco. "No child should be forced into an intimate setting – like a bathroom or a locker room – with a child of the opposite sex. Our model policy provides a solution that prevents children from being exposed to threats to their privacy and safety and prevents schools from being exposed to liability."

Although media coverage of the legislation often repeats myths about these policies, let's set the facts straight:

## MYTH 1

***Title IX, a federal statute that prohibits sex discrimination, requires schools to allow transgender students to use the restrooms and locker rooms of the opposite sex.***

### Fact

Title IX does not require schools to eliminate distinct facilities for boys and girls. It recognizes that there are privacy and safety concerns justifying the distinctions. Title IX allows schools to "provide separate toilet, locker room, and shower facilities on the basis of sex" without committing sex discrimination.

## MYTH 2

***The U.S. Department of Education determined that Title IX requires schools to allow students struggling with sexual identity to use the restrooms and changing areas of their choice.***

### Fact

The Department of Ed's determination was set out in a nonbinding letter. The letter does not change binding Title IX regulations authorizing schools to create "separate toilet, locker room, and shower facilities on the basis of sex."

## MYTH 3

***Courts have ruled against schools that refused to allow a transgender student to use the restrooms of the opposite sex.***

### Fact

In 2015, federal courts in Pennsylvania and Virginia rejected transgender students' claims that Title IX required their schools to allow them to use opposite-sex restrooms. The Pennsylvania court ruled that "the University's policy of requiring students to use sex-segregated bathroom and locker room facilities based on students' natal or birth sex, rather than their gender identity, does not violate Title IX."

## MYTH 4

***Schools will lose federal funding if their policies are inconsistent with the Department of Educ.'s interpretation of Title IX.***

### *Fact*

No school has ever lost funding in the 40 years since Title IX became law. Before a school can be stripped of its federal funding, it is entitled to have a federal judge hear its case. And, as shown in Myth No. 3, federal courts are ruling for schools that maintain separate facilities based on sex. Even if a school fights and loses, Title IX gives the school 30 days to comply with the decision and, if it does, it won't lose funding.

## MYTH 5

***It does not violate student privacy to allow transgender students to use the restrooms of the gender with which they identify.***

### *Fact*

Courts across the country recognize that there is a constitutional right to bodily privacy—to not be viewed unclothed by those of the opposite sex. It has been upheld for children at school, employees at work, and even convicted felons in prison. It doesn't matter whether a male in the girls' bathroom identifies as a male or female; if he is biologically a male, his presence immediately violates the bodily privacy rights of every girl forced to share facilities with him.

## MYTH 6

***Denying a transgender student access to the restroom consistent with his or her gender identity harms the student.***

### *Fact*

Forcing students to use the restroom with members of the opposite sex harms all students by violating their right to privacy and making them participate in situations that most adults would object to if they were imposed upon them. Accommodating students struggling with gender confusion by providing them a single-stall restroom, changing room, or a similar alternative, gives them a private location and avoids violating other students' rights.

"Our recommended policy demonstrates that schools can accommodate the desires of a small number of students without compromising the rights of other children and their parents," added ADF Senior Counsel Kevin Theriot. "Any privacy and safety policy should respect all children because every child matters. No policy should be tailored to a few students at the expense of all the others."

We have a variety of resources, from model legislation to legal memos, explaining why it is best for certain facilities to remain separated on the basis of birth sex while providing private accommodations for transgender students. Please contact us to learn about these resources.

*Matt Sharp, Esq., serves as legal counsel with Alliance Defending Freedom, where he plays a key role on the Freedom of Conscience Team.*

## 06... PRIVACY - FAQ

### **HOW IS PRIVACY A CIVIL RIGHT?**

The right to privacy belongs to each student who is being viewed against their will by a member of the opposite sex.

### **WHY DOES THIS MATTER IF NOTHING ILLEGAL HAPPENS IN PRIVATE SPACES?**

A girl's right to privacy doesn't depend on whether the boy or man viewed her secretly or whether he physically assaulted her or took photos or even what he personally believes about the nature of gender. No boy gets to decide for the girl whether her privacy is violated or not.

### **ISN'T KEEPING A SEX-SPECIFIC POLICY ON BATHROOMS AND LOCKER ROOMS THE SAME AS THE SEGREGATION OF RACE?**

No, the opposite is true. Race has nothing to do with bathrooms. Beliefs about gender identity have nothing to do with bathroom/locker rooms. We don't have separate facilities based on what we wear, personal beliefs, or color of skin. Biological sex is the only valid reason to have separate showers and restrooms in the first place because in these settings, our anatomical differences are often revealed. If this didn't matter, we'd have one locker room the way we have one water fountain for all human beings. This analogy is flawed because supporters of these changes are not asking for one bathroom for everyone. Instead, they want a system of segregation, one that separates restrooms and locker rooms based on subjective beliefs about gender identity rather than objective factors like biological/anatomical sex.

### **WHAT ABOUT PEOPLE WHO ARE SINCERE IN THEIR TRANSGENDER BELIEFS – ARE YOU SAYING TRANSGENDER KIDS ARE A SAFETY HAZARD TO OTHER STUDENTS?**

A biological male's presence in the girls' locker room violates our student's civil rights to bodily privacy, and that doesn't change depending on whether they have proper or improper internal motives. Example: Maintenance workers presence in a girls' locker room while girls are using it would still violate the girls' right to bodily privacy even if they are nice men and just there to unclog a drain and would never dream of doing anything wrong.

CONTACT US: [INFO@DEFENDMYPRIVACY.ORG](mailto:INFO@DEFENDMYPRIVACY.ORG)

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