



December 4, 2014

Re: Schools Are Not Legally Required to Allow Students to Use Opposite-Sex Restrooms, Showers, and Changing Rooms

Dear Friends:

It is our pleasure to provide you with information pertaining to the legal issues surrounding requests by transgender students to use school bathrooms, showers, and changing rooms. The information that follows will establish that federal law requires

for
and sufficient evidence demonstrating
gender.” Id. at 494 (emphasis added).
Federal caselaw thus permits school
g opposite-sex restrooms and locker

rooms for privacy and safety reasons without violating Title IX.¹

Courts' reasoning in Title VII cases, which involve

urinal. Likewise, use of the urinal requires a certain level of exposure to which female students should not be subject. Such revelations give rise to questions that most parents would deem inappropriate for younger students to ponder. Information concerning anatomical differences should be disclosed at home when parents deem appropriate, not ad-hoc in a school restroom. Respecting such parental choices requires school districts to prohibit students from accessing restrooms and locker rooms dedicated to the opposite sex.

Many state constitutions also provide strong protections to religious liberty. Religious students are precluded by basic modesty principles from sharing restrooms and locker rooms with members of the opposite sex. State courts faced with claims that school districts' actions violate students' right to the free exercise of religion frequently apply the compelling state interest/least restrictive means test. There is no real argument that providing students access to restrooms and locker rooms dedicated to the opposite sex could pass this test. No compelling interest supports this action and there are numerous less restrictive means of furthering any legitimate goals that school districts seek to promote.

**School Districts Should Not Sacrifice Students'
and Parents' Rights to Satisfy an Activist Agenda.**

Protecting every student's privacy and safety is important. It is simply unfathomable that a school district would cave to activist demands that students have access to restroom and locker room facilities dedicated to the opposite sex. Not only would such a policy endanger transgender students, it would also sacrifice the clearly established First and Fourteenth Amendment freedoms of 99.7% of their classmates. See Gates, Gary, How Many People are Lesbian, Gay, Bisexual and Transgender? (2011), Executive Summary at 5-6, available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf> (last visited Nov. 25, 2014) (estimating that only 0.3% of adults in the United States identify as transgender). The needs of transgender students' can easily be accommodated in other ways and school districts should use them rather than compromising others' rights.

CONCLUSION

Allowing students to use opposite-sex restrooms and locker rooms would seriously endanger students' privacy and safety, undermine parental authority, violate religious students' right of conscience, and severely impair an environment conducive to learning. These dangers are so clear-cut that a school district allowing such activity would clearly expose itself—and its teachers—to tort liability. Consequently, school districts should reject policies that force students to share

**protects other students' privacy and free exercise rights, and pa
educate their children, as well as insulates school districts from lega
school district adopts the attached policy and that policy is challe
Alliance Defending Freedom will defend it free of charge.**

**If you should have any questions regarding this matter,
hesitate to contact us at 1-800-835-5233. We would be happy to spe
your counsel and to offer any assistance we could provide.**

Sincerely,

**Jeremy D. Tedesco, Senior Leg
J. Matthew Sharp, Le
Rory T. Gray, Litigation Staff**