



Dispelling the Myths: Schools Don't Have To Allow Transgender Students to Use Restrooms of the Opposite Sex



MYTH NO. 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 NO. 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 was written after several failed attempts to amend Title IX to add gender identity. 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 NO. 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 NO. 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 NO. 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 NO. 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.



Alliance Defending Freedom has 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 at 1-800-835-5233 to learn about these resources.