



**Re: Title IX Dear Colleague Letter**

On May 13th, the U.S. Departments of Education and Justice issued a “Dear Colleague” Letter claiming that Title IX requires every school district to treat students consistent with their gender identity, including allowing students to access locker rooms, restrooms, and similar facilities of the opposite sex. This would allow a male student who asserts that he is female to immediately gain access to girls’ locker rooms and restrooms, and vice versa.

The “Dear Colleague” Letter is wrong. The advice conflicts with Title IX and the rulings of several federal and state courts, and it violates students’ constitutional right to privacy.

**Title IX authorizes schools to maintain separate locker rooms and restrooms on the basis of biological sex, without placing federal funding at risk.**

- Title IX states that “nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.” 20 U.S.C. § 1686.
- Title IX’s regulations further state that “[a] recipient may provide separate toilet, locker room, and shower facilities on the basis of sex.” 34 C.F.R. § 106.33.

**5 out of 6 courts have ruled that it does not violate Title IX to maintain separate restrooms and locker rooms on the basis of sex (and the one outlier case is currently being appealed).**

- Under Title IX, “institutions may have separate toilet, shower and locker room facilities.” *Jeldness v. Pearce*, U.S. Court of Appeals for the Ninth Circuit (1994).
- “[T]he 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’s prohibition of sex discrimination.” *Johnston v. University of Pittsburgh*, Federal Court for the Western District of Pennsylvania (2015).
- A female student has “no existing, clear, unconditional legal right which allows [her] to access restrooms or locker rooms consistent with [her male] gender identity.” *R.M.A. v. Blue Springs R-IV Sch. Dist.*, Missouri Court of Appeals (2015).

**The West Virginia, Arizona, Kansas, Nebraska, Texas, Utah, Mississippi, and South Carolina Attorneys General determined that sex-specific facilities do not violate Title IX.**

These six attorneys general recently filed friend-of-the-court briefs in the case of *G.G. v. Gloucester County School Board*. In their briefs, they conclude that Title IX allows separate restrooms and locker rooms on the basis of biological sex and that nothing in Title IX “extends beyond discrimination based on biological sex.”

## **Students have a constitutional right of privacy, and schools have a duty to protect it.**

- “An individual has a legitimate and important interest in bodily privacy such that his or her nude or partially nude body, genitalia, and other private parts are not involuntarily exposed.” *G.G. v. Gloucester Cty. Sch. Bd.*, U.S. Court of Appeal for the Fourth Circuit (2016).
- “Shielding one’s unclothed figure from the view of strangers, particularly strangers of the opposite sex, is impelled by elementary self-respect and personal dignity.” *Michenfelder v. Sumner*, U.S. Court of Appeals for the Ninth Circuit (1988).

## **Students, parents, and school districts can take a principled stand for student privacy.**

Many students, parents, and school officials are rightfully upset by the federal government’s actions. Not only does this “Dear Colleague” letter threaten to strip students of their right to privacy and conflict with over 40 years of how courts across the country have interpreted Title IX, but it is yet another example of the federal government dictating policy to local schools and threatening to strip away vital funding that students, teachers, and schools need.

**Don’t be bullied into submission.** Alliance Defending Freedom is assisting students, parents, and school boards who are taking a principled stand for privacy. We recently filed lawsuits on behalf of students and parents in Palatine, Illinois<sup>1</sup> and on behalf college students, high school & elementary students, and their parents in North Carolina<sup>2</sup> against the Departments of Education and Justice for making federal student aid and educational funding dependent on students sharing restrooms and locker rooms with the opposite sex. We will likely be filing several more lawsuits like these across the country, and we are looking for school boards willing to make the case that all students’ privacy must be protected.

If you are interested in learning more about Title IX, student privacy rights, the ongoing cases, and how you can take a stand for student privacy, please visit [www.safebathrooms.org](http://www.safebathrooms.org).

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<sup>1</sup> <http://www.adfmedia.org/News/PRDetail/?CID=89931>.

<sup>2</sup> <http://www.adfmedia.org/News/PRDetail/?CID=90072>.