

Dear School Board Member,

I am writing to strongly request that you defend the safety and privacy of our community's daughters (and sons), by refusing to follow the Obama administration's May 13, 2016, Dear Colleague Letter, which advises public schools to implement mixed-gender bathrooms, locker rooms, showers, and hotel rooms.

Common sense and decency should reveal this advice exposes our daughters (and sons) to a potentially traumatic loss of privacy, safety, and dignity.

As for the law, however, not only have the courts consistently rebuffed the Obama administration's interpretation of Title IX, but precedent and legal representation stand ready to defend those schools that decline the administration's misguided direction.

On August 21 of this year, for example, a federal judge in Texas issued an injunction, barring the administration from enforcing the new guidelines or even investigating a school for ignoring them (<http://www.politico.com/story/2016/08/texas-judge-temporarily-blocks-obamas-transgender-directive-227267>). According to the judge's official ruling, "The Court concludes this injunction should apply nationwide."

Please also note the following summary statements from Alliance Defending Freedom, a national legal organization that advocates for the right of religious students to freely exercise their rights to speak, associate, and learn on an equal basis with other students:

1. Federal law allows schools to have sex-specific restrooms, showers, and changing areas.
2. Allowing students to access facilities dedicated to the opposite sex violates the fundamental rights of the vast majority of students and parents.
3. Schools have broad discretion to regulate the use of school restrooms, showers, and changing areas.
4. Granting students access to opposite-sex changing areas could subject schools to tort liability for violating students' and parents' rights.
5. As a practical matter, a public school will not lose federal funding for non-compliance with Title IX.

For detailed legal analysis of this issue and a model Student Physical Privacy Policy, please see <http://www.adfmedia.org/files/DurhamPublicSchoolsLetter.pdf> (ignoring the portions specifying North Carolina law.)

Please also note these direct quotes from that legal analysis (emphasis added):

The regulations implementing Title IX specifically allow schools to 'provide separate toilet, locker room, and shower facilities on the basis of sex.' 34 C.F.R. § 106.33. Accordingly, both federal and state courts have almost uniformly rejected arguments suggesting that Title IX requires schools to give students access to opposite-sex restrooms and changing areas. Rather, these courts have found that schools do not discriminate under Title IX when they limit use of sex-specific restrooms to members of the specified sex. ...

The regulations implementing Title IX, along with the vast majority of caselaw interpreting Title IX, explicitly permit school districts to regulate access to restroom and locker room

facilities based upon students' biological sex without violating transgender students' rights under Title IX.

Furthermore, Alliance Defending Freedom notes (emphasis added):

Allowing students to use opposite-sex restrooms and locker rooms would seriously endanger students' privacy and safety, undermine parental authority, violate religious students' free exercise rights, and severely impair an environment conducive to learning. These dangers are so obvious that a school district allowing such activity would clearly expose itself to tort liability. Consequently, school districts should reject policies that force students to share restrooms and locker rooms with members of the opposite sex.

Instead, we advise school districts to continue to handle these matters as they arise utilizing the advice given in this letter or to adopt ADF's model policy or a substantially similar policy. ADF's policy allows schools to accommodate students with unique privacy needs, including transgender students, while also protecting other students' privacy and free exercise rights. It also serves to better insulate school districts from legal liability. If a district adopts our model policy and it is challenged in court, Alliance Defending Freedom will review the facts and, if appropriate, offer to defend that district free of charge.

If you should have any questions regarding this matter, please do not hesitate to contact ADF at 1-800-835-5233. We would be happy to speak with you or your counsel and to offer any assistance we could provide.

Please only consider policies for accommodating transgender students that do not also jeopardize the safety and privacy of other students.

Sincerely,