

DISPELLING THE MYTHS

Title IX: Transgender Students and School Restrooms



Title IX is a federal law that prohibits discrimination on the basis of sex in any federally funded education program or activity.¹



myth 1

Title IX requires schools to allow transgender students in the restrooms and locker rooms of the opposite sex.

FACT: There is no such requirement in Title IX. In fact, Title IX recognizes the safety and privacy concerns with letting students use opposite-sex facilities and allows schools to “provide separate toilet, locker room, and shower facilities on the basis of sex.”²

myth 2

The U.S. Department of Education says Title IX requires schools to let transgender students use the restrooms and locker rooms of their choice.

FACT: The DOE did make this determination in a guidance letter.³ While such guidance letters are non-binding, the DOE is treating its inaccurate interpretation of Title IX as legally binding on schools. DOE, however, does not have the authority to redefine what Title IX means or to enforce its unlawful interpretation on schools. Only Congress has the power to alter the terms of Title IX.

Myth 3

Courts have ruled against schools that have refused to allow transgender students in the restrooms of their choice.

FACT: At least five federal and state courts, including the 9th Circuit Court of Appeals, have ruled that Title IX does NOT require schools to allow transgender students to use opposite-sex restrooms.⁴ The only outlier is the recent decision by the 4th Circuit Court of Appeals, which by a 2-1 vote upheld the DOE’s inaccurate interpretation of what Title IX requires. This decision is currently on appeal.

myth
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Schools will lose federal funding if they don't allow transgender students to use opposite-sex facilities.

FACT: No school has ever lost funding in the nearly 44 years since Title IX became law. And at least five courts have ruled that Title IX does not include gender identity. But if a judge were to rule against a school, they would still have 30 days to comply before losing funding.

myth
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Allowing transgender students in the restrooms of their choice does not violate student privacy.

FACT: Courts have recognized that this is not true. Children at school, employees at work, and even felons in prison have the right to bodily privacy –to change, use the restroom, and bathe unseen by members of the opposite sex.

myth
6

If transgender students use the restrooms consistent with their biological sex, they will be harmed.

FACT: Schools can accommodate students struggling with gender confusion by providing separate facilities that give them a safe, private location while also protecting other students' privacy.



Alliance Defending Freedom has a variety of resources, from model legislation to legal memos, on this topic. Please contact us at 1-800-835-5233 to learn more.

¹ The United States Department of Justice, <http://www.justice.gov/crt/overview-title-ix-education-amendments-1972-20-usc-1681-et-seq> (last visited Jan. 11, 2016).

² 45 CFR §618.410 (2016)

³ Letter from James A. Ferg-Cadima, Acting Deputy Assistant Secretary for Policy, Office for Civil Rights, U.S. Department of Education, to Emily T. Prince, Esq. (Jan. 7, 2015) (on file with the U.S. Department of Justice; also available at <http://www.justice.gov/sites/default/files/crt/legacy/2015/07/09/gloucestersoi.pdf>).

⁴ *Johnston v. Univ. of Pittsburgh of Com. Sys. of Higher Educ.*, 97 F. Supp. 3d 657 (W.D. Pa. 2015); *Kastl v. Maricopa County Community College District*, 325 F. App'x 492 (9th Cir. 2009); *Jeldness v. Pearce*, 30 F.3d 1220 (9th Cir. 1994); *Doe v. Clark Cty. Sch. Dist.*, 2008 WL 4372872 (D. Nev. Sept. 17, 2008); *R.M.A. v. Blue Springs R-IV Sch. Dist.*, 477 S.W.3d 185 (Mo. Ct. App. 2015).