



# ISSUE BRIEF

## Title IX and Transgendered Students

### U.S. Department of Justice and U.S. Department of Education Guidance to Schools Regarding Title IX and Self-Identified Transgendered Students (May 13, 2016)

- In 1972, Congress enacted a law to prohibit discrimination on the basis of “sex” in education. (This applies to any school that receives federal funding – which is the vast majority of them.) This provision was found in Title IX of the Education Amendments of 1972 (usually just referred to as “Title IX”).
- The Obama administration has adopted an interpretation of this law which concludes that “discrimination based on sex” includes discrimination based on “gender identity” (which is “an individual’s internal sense of gender.”)
- In fact, the administration argues that treating students differently in *any* way from any other student who shares the same gender identity is “discrimination” and violates Title IX. For example, if a biological male who identifies as female is offered the use of a single-user restroom or changing facility, it is still “discrimination” if the self-identified transgendered student is excluded from the multi-user facility used by other girls
- The Obama administration’s May 13, 2016 Dear Colleague [letter](#) states:
  - Requiring self-identified transgendered students to use the restroom, locker room, or shower that corresponds to their biological sex at birth, rather than their “gender identity,” may create a “hostile environment in violation of Title IX.”
  - School staff are required to “use pronouns and names consistent with a transgender student’s gender identity.”
  - Schools must allow self-identified transgendered students to use facilities consistent with their “gender identity.” This includes bathroom and locker room use.
  - Single-sex classes and activities “must allow transgender students to participate consistent with their gender identity.”
  - “A school must allow transgender students to access housing consistent with their gender identity and may not require transgender students to stay in single-occupancy accommodations.”
  - “Updating a transgender student’s education records to reflect the student’s gender identity and new name will help protect privacy and ensure personnel consistently use appropriate names and pronouns.”
- There is a clear threat that the administration may sue (as they [sued](#) the University of North Carolina on May 9) and/or cut off federal funding if a school district fails to comply with this “guidance.”
- Concurrent to issuing the Dear Colleague letter, the administration issued a document, [Examples of Policies and Emerging Practices for Supporting Transgender Students](#), which details sample policies related to self-identified transgendered students, like “that school staff consult with the student

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before reaching out to the student's parents." None of the materials produced by the administration advocate parental consent or involvement.

**Family Research Council's view:**

- The term "sex" as used in Title IX refers only to one's biological sex at birth. It does not refer to or include one's subjective, internal, psychological "gender identity."
- There is virtually no chance that the intent of Congress when it passed Title IX in 1972 was to protect "transgendered" people as such; and it certainly was not to protect their "right" to use the bathroom, locker room, or shower of their choice.
- The U.S. Supreme Court has never ruled that discrimination based on sex includes discrimination based on "gender identity."
- There is only very weak support from some lower courts for this interpretation, and several federal courts have ruled the opposite, saying "sex" does *not* include "gender identity."
- The administration has adopted this interpretation and is seeking to have it treated as binding without having gone through the required regulatory procedures (which include notice and comment in the Federal Register).
- Although "gender dysphoria" is treated as a mental disorder by the American Psychiatric Association, the administration's policy forbids schools to require a diagnosis by a competent medical authority before a student may assert "transgendered" status.
- Students with other special needs, however, such as Autism Spectrum Disorder (ASD), ADHD, or learning disabilities, *do* require a medical diagnosis before receiving the accommodations which they or their parents request. This means the administration's policy actually discriminates *in favor of self-identified transgendered students* over other students who may have unique and special needs.
- The administration's "guidance" does not even require schools to notify a student's parents that the student has adopted a transgendered identity.
- Several courts have ruled that people have an inherent right to "bodily privacy." Being forced to expose one's self to someone of the opposite biological sex, or having someone of the opposite biological sex expose themselves to you, is a violation of this right. (Note: "gender reassignment surgery" is not provided to minors. Virtually all "transgendered" minors still have the genitalia of their birth sex.)
- Such exposure could be particularly traumatic to someone (especially a minor) who has been a victim of sexual abuse.
- The administration's policy is an invitation to sexual predators or voyeurs to pose as transgendered in order to gain access to facilities of the opposite biological sex.