

Dispelling Myths About Distinct Restrooms for Boys and Girls

MYTH NO. 1: Title IX, a federal statute that prohibits sex discrimination by schools that receive federal funds, requires opening restrooms and changing rooms to all students regardless of their sex.

FACT: Title IX does not require schools to eliminate distinct facilities for boys and girls. Recently, a federal court in Pennsylvania rejected a transgender student’s claim that Title IX required a college to allow her to use male restrooms and locker rooms because she identified as a male. After a thorough analysis of the relevant case law, the court noted that every court to consider the issue has held that single-sex restrooms and locker room facilities are permitted under Title IX. In fact, Title IX’s implementing regulations specifically allow 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 issued a “significant guidance document” in April 2014 regarding Title IX that requires schools to allow students struggling with sexual identity to use the restrooms and changing areas of their choice.

FACT: The “significant guidance document” merely sets out the department’s nonbinding view that Title IX protects against discrimination based on gender identity. This document does not mention access to restrooms. And it does not change binding Title IX regulations authorizing schools to create “separate toilet, locker room, and shower facilities on the basis of sex.” Moreover, federal regulations expressly state that significant guidance documents have no binding legal authority.

MYTH NO. 3: Schools desiring to maintain distinct facilities for boys and girls must prove that it is absolutely necessary to designate restrooms, locker rooms and showers by sex.

FACT: For sensible and obvious privacy and safety reasons, our society has always required single-sex access to restrooms, locker rooms and showers. These concerns are elevated in the school context because students are compelled by law to attend and are deprived of the careful oversight of their parents. Parents’ fundamental right to control their children’s education and upbringing includes the extent of their children’s knowledge of the differences between the sexes. Forcing vulnerable children into interactions with opposite-sex students in secluded restrooms and locker rooms would violate students’ and parents’ basic rights.

The burden is on those seeking to impose a radical social change—one that tears down the fundamental distinctions between male and female—on the youngest and most vulnerable members of society.

MYTH NO. 4: Schools cannot deny transgender students equal access to the restroom or locker room of their choice.

FACT: Transgender students currently have equal access to school facilities based on their sex. The fact that a few students struggle with sexual identity issues is not a reason to make sex

completely irrelevant to the use of school facilities. Instead, schools have broad discretion to manage these matters based on their unique needs and facilities. They can continue to handle them on a situational basis or adopt a version of ADF's policy that accommodates students with unique privacy needs, including transgender students, by providing alternative facilities, while also protecting other students' rights. These solutions expressly accommodate transgender students without exposing all students to members of the opposite sex in school facilities against their will.

MYTH NO. 5: Denying a transgender student access to the restroom consistent with his or her gender identity harms the student.

FACT: Forcing students, including vulnerable elementary school children, 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 it was 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.

MYTH NO. 6: Failing to provide a transgender student access to the restroom consistent with his or her gender identity exposes him or her to ridicule and bullying by other students.

FACT: School officials should protect all students, including those struggling with gender confusion, from bullying. If any student is being bullied for any reason, he or she should report it to school authorities who can investigate and take any remedial action necessary. In fact, allowing a transgender student to use the restroom consistent with his or her gender identity will likely increase the chances that the student is exposed to ridicule and bullying, not lessen them.