

Transgender Bathroom Information

Sample email to School Boards:

As you know, President Obama recently released “guidance” to public schools that directs schools to allow transgender students to use the bathroom of their choice or face the possible loss of federal education funding. President Obama’s so-called “guidance” is yet another example of executive overreach. The President is trying to rewrite the law from his desk in the oval office and force his liberal ideology onto communities across this country.

I believe, like most parents, that boys should use the boy’s restroom and girls should use the girl’s restroom. Whether you’re a boy or girl depends on your biological sex. If a student feels uncomfortable using a sex-specific bathroom, schools should make reasonable accommodations for the student – like a unisex or staff restroom.

This is not a question that should be dictated by the President or the federal government. This is a question of commonsense that should be decided by parents and local elected school boards to help keep our children safe.

Please maintain common-sense policies to protect all of our kids.

General background information:

- There is an ongoing political debate and ongoing litigation over which bathrooms transgender students should use at public schools. The question is whether requiring a student to use the bathroom that corresponds with their biological sex violate federal law, which prohibits discrimination “on the basis of sex.”
- This is not a question that should be decided by the federal Department of Education or the Courts; this is a question of commonsense that should be decided by parents and elected school boards.
- Boys should use the boy’s restroom and girls should use the girl’s restroom. Whether you’re a boy or girl depends on your biological sex.
- If a student feels uncomfortable using a sex-specific bathroom, schools should make reasonable accommodations for the student – like a unisex or staff restroom.
- President Obama’s so-called “guidance” to public schools and the threat to withdraw federal funding is yet another example of executive overreach. The President is trying to rewrite the law from his desk in the oval office and force his liberal ideology onto communities across this country.
- Local school boards should adopt a policy that is best for our community. This decision should be made by parents and local elected leaders, not President Obama. We should apply commonsense and keep our children safe.

Title IX

- In 1972 Congress passed what is known as “Title Nine,” a federal law prohibiting discrimination on the basis of sex in public education.
- Over the years, Title IX has been used to enact federal regulations governing men’s and women’s sports teams at colleges and universities, the use of dorms, and how institutions must provide health care services.
- In 2014 President Obama’s Department of Education issued guidance declaring that transgender students are protected by Title IX, and that students must be treated in accordance with their “gender identity” rather than their biological sex.
- In May of 2016, President Obama issued guidance to public schools directing them to allow students to use the bathroom that matches their gender identity.¹ The Department of Education’s guidance also included an implicit threat: if schools do not comply, they could lose federal funding.

¹ “U.S. Directs Public Schools to Allow Transgender Access to Restrooms,” New York Times, 5/12/16

Virginia School Controversies:

Two high-profile flashpoints in this debate are here in Virginia.

- In Gloucester County, a high school student who is biologically female but identifies as a male wants to use the boy's restroom. This case is currently being litigated. A lower court issued an injunction preventing the student from using the boy's restroom, but the Fourth Circuit Court of Appeals overruled the lower court, which now must decide the case on the merits.
 - After parents raised concerns, the Gloucester County school board adopted a policy requiring transgender students to use the restroom of their biological sex or an alternative private restroom provided by the school.²
 - The ACLU filed a complaint with the U.S. Department of Education and the U.S. Department of Justice on behalf of Grimm.³ Grimm later filed a federal lawsuit against the School Board, which later came with the backing of the federal government.⁴
 - Grimm asked a federal district court for an injunction allowing him to use the boy's restroom during the 2015-2016 school year and argued the policy violated Title IX and the Constitution's Equal Protection Clause.
 - The district court denied the injunction and dismissed the discrimination claim under Title IX.
 - In April of 2016, Grimm and the ACLU appealed to the Fourth Circuit Court of Appeals. The Court of Appeals ordered the lower court to reconsider the injunction and consider the discrimination claim under Title IX on its merits.
- In Stafford County, a fourth grade student at Hartwood Elementary School who is biologically male but identifies as a female wants to use the girl's restroom. The Stafford County School Board adopted a policy requiring the student to use a staff restroom or the boy's restroom.
 - Stafford County Schools initially allowed the student to use the girl's restroom, citing the Department of Education's official guidance on Title IX.
 - However, the Stafford County School Board voted 6-0 to adopt a policy requiring the student to use a single-stall restroom, a staff bathroom, or the restroom of the student's biological gender.⁵

2016 General Assembly

- [Delegate Mark Cole introduced legislation](#) in the 2016 General Assembly requiring students to use the bathroom that corresponds to the biological sex listed on the student's birth certificate.
 - The legislation also required schools to provide reasonable alternative accommodations to students who were not comfortable using the restroom for their biological sex.
 - The legislation failed in committee because of ongoing litigation surrounding the issue.
- [Delegate Dave LaRock introduced legislation](#) defining "sex" and requiring all state agency, local government and school board non-discrimination policies be consistent with Virginia code.
 - The legislation was tabled and referred to the [Virginia Code Commission](#) for further study this summer/fall
- [Delegate Bob Marshall introduced legislation](#) clarifying that for the purposes of the Virginia Human Rights Act, an "unlawful discriminatory practice" shall not include conduct that violates any federal administrative policy, rule, or regulation adopted on or after January 1, 2012.
 - The legislation was tabled and referred to the [Virginia Code Commission](#) for further study this summer/fall

² "Gloucester School Board OKs policy restricting transgender students from using boys' restroom," Daily Press, 12/10/14

³ "Gloucester student challenges new transgender policy," Daily Press, 12/19/14

⁴ "Transgender student files lawsuit against schools over bathrooms," Washington Post, 6/1/15

⁵ "Stafford schools reverse restroom stance for transgender student," Free Lance-Star, 3/25/15