Federal Government directs public schools to allow transgender students to use bathroom that matches their gender identity

May 13, 2016

Categories:

Publications

Authors:

Alexander L. Ewing
Jack B. Hemenway II
W. Joseph Scholler

Today the Department of Justice and Department of Education distributed a dear colleague letter directing all public schools in the United States to allow students to use the bathroom matching their gender identity. The letter states that requiring transgender students to use the restrooms and locker rooms based on their sex at birth violates Title IX of the Education Amendments of 1972, the federal law that prohibits discrimination based on sex in educational programs or activities. The letter also provides that publicly disclosing a transgender student's birth name or biological sex violates the Family Educational Rights and Privacy Act of 1974 (FERPA), and that schools must change a student's gender on school records when asked by a parent without requiring production of medical records or a birth certificate.

The letter was issued in response to inquiries from educators, parents and students requesting clarification on their obligations, and best practices regarding transgender students.

The letter states that a school's obligation to ensure nondiscrimination on the basis of sex requires providing transgender students equal access to educational programs and activities "even in circumstances in which other students, parents, or community members raise objections or concerns," and that "[a]s is consistently recognized in civil rights cases, the desire to accommodate others' discomfort cannot justify a policy that singles out and disadvantages a particular class of students."

Attached to the letter is a document outlining best practices for schools to accommodate transgender students, including allowing the use of alternate facilities, installing privacy curtains, and adjusting schedules to allow them to change when no one else is using the locker room. The letter also addresses transgender

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

students' right to participate in sports and extracurricular activities. Schools may have sex-segregated teams, but eligibility for those teams must not rely on overly broad generalizations and stereotypes about the differences between transgender students and other students of the same sex.

This letter does not have the force of law and is not binding on your school district. Rather, it explains how the Departments of Education and Justice interpret and plan to enforce Title IX. Future court cases and legislation will ultimately determine what is binding on your school. It is not mandatory to comply with this letter at this time, but school districts should carefully consider how this development impacts their community.

What you need to know

The scope of transgender rights is a highly charged issue that is being contested in courts across the country. While this letter is not binding on state or federal courts, it clearly outlines the Department of Education's position on transgender rights in schools. Schools should review the letter and analyze their current policies and practices regarding transgender rights. Please feel free to contact your attorneys at Frost Brown Todd to discuss transgender issues relative to your school.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons