

Concerned Parents and Educators of Fairfax County (CPEFC)



www.concernedparentsandeducators.org

2020 Parent Information Package

WHAT CAN I DO? As parents, we can protect our children by submitting the following opt out forms and letters this school year:

- (1) **LEARN ABOUT What is Happening in FCPS involving FLE (Sex Ed) and Gender Identity** – ([Click HERE for What Parents Need to Know](#))
- (2) **OPT OUT of All Lessons and Non-Consent Situations involving Gender Identity** – Submit a letter to your school principal using the template provided to opt out of all lessons and materials involving gender identity, as well as sharing of bathrooms and locker rooms with the opposite sex. ([Click HERE for letter template and legal opinion](#))
- (3) **OPT OUT of FLE (Sex Ed)** - Which far exceeds the facts of human reproduction. We've included a summary of content if you don't have time to review it yourself. ([Click HERE for FLE Opt Out forms](#))
- (4) **OPT OUT of Youth (Sex) Survey** – The Youth Sex Survey is used by school bureaucrats to justify more age inappropriate material in curricula. ([Click here for Opt Out forms for Youth Sex Survey](#))
- (5) **DECLINE TO SIGN the Student Rights & Responsibility (SR&R) Form** - How can we sign when we don't know what the new rules mean for our children? ([Click HERE for Opt Out form & directions](#))
- (6) **Say No to Policy 1450 (i.e., Boys in Girls Bathrooms)** - And its related regulations and curricula. Write, call, and meet with school board members (www.fcps.edu/school-board/school-board-members), Superintendent Brabrand (SSBrabrand@fcps.edu), and your school Principal to state your objections.

In addition, we encourage you to stay engaged and participate in the process:

Attend the next FCSB Meetings, Sept 3 and Sept 17 at 7pm – at Luther Jackson Middle School or On-line Video Equivalent. For more info or to speak at a FCSB meeting visit the fcps.edu web site. The FCSB also has a semi-public “Forum” at 6pm where they quietly do their dirty work that they hide from the regular meeting.

- The FCSB will likely move fast to implement many new harmful agenda items in the schools this year due to the many new detrimental laws rammed through in Richmond by radicals.

Join our Concerned Parents and Educators of Fairfax County (CPEFC) – You will receive news, updates, and calls to action for volunteers committed to quality education and good government.

- Organization created to protect children, ensure parental rights, raise community awareness, and hold officials accountable.
- For more info visit www.concernedparentsandeducators.org

FAIRFAX COUNTY PUBLIC SCHOOLS: WHAT PARENTS NEED TO KNOW

Question: Do schools allow boys in the girls' locker rooms, showers, and bathrooms?

Answer: YES, this is the new policy passed by the school board in May 2015.

- By adding "gender identity" to nondiscrimination Policy 1450, the school board opened girls' showers, locker rooms, bathrooms, and sports teams to male students who identify as female, and vice versa.
- The FCPS School Board made this controversial change to Policy 1450 with only two weeks' notice to the public. They gave no opportunity for most parents to comment on the proposal. No impact analysis was shared with the public, and no studies of safety or other concerns were offered for parents or stakeholders to review.
- FCPS allows accommodation of transgender students on a case-by-case basis, leaving the decision concerning access to bathrooms, showers, and locker rooms up to principals and administrators.

Question: How many boys have used girls' locker rooms in FCPS?

Answer: Our School Board won't tell us.

- The current FCPS policy is not to inform other parents or obtain parental consent when students of one sex use the private spaces of students of another sex. For example, a 6th grade transgender student (age 12-13) could share bathroom facilities with much younger students of the opposite biological sex. FCPS policy grants students who make these demands a right to privacy that supersedes the privacy and civil rights of everyone else.
- Parents have become aware of situations where boys claiming a female gender have used private spaces reserved for women or girls. If girls complain, the girls can be accused of discriminating against the (biologically male) transgender student based on his "gender identity." Further, an objecting girl could be subject to punishment (including suspension) per the Student Rights & Responsibilities Handbook. At best, girls who object to undressing in front of biological boys may be accommodated by removing the objecting girl to another bathroom, locker room, or shower.

Question: What's the problem with the Family Life Education (Sex Ed)? Don't kids need to know these things?

Answer: Many parents are unaware that FLE (Sex Ed) includes instruction containing gender identity, anal sex, needle drug use, and more.

- The FLE (Sex Ed) program is taught in grades K-12. FLE has expanded over the years to more than 80 hours per student of needlessly sexually explicit materials. This far exceeds Virginia Department of Education mandates.
- FLE (Sex Ed) in 9th grade is taught in Biology; "gender identity" lessons in that grade ignore the biological science of DNA by teaching ones "gender assigned at birth" may be different than one's biological sex.
- Most parents are shocked to learn of FLE's quasi-pornographic content, which includes four mentions of "anal sex" in one 8th grade lesson, needle sharing and sexually transmitted diseases is taught in the 5th grade.
- Many parents are unaware they can (and should) opt out of FCPS FLE (Sex Ed).

Question: If I opt my child out of FLE (Sex Ed), will he or she be protected from controversial material?

Answer: Maybe not.

- Assigning sexually explicit material consisting of graphic descriptions of bestiality, incest, pedophilia and gang rape is not uncommon in English literature classes. While book titles may be listed on a multi-page syllabus, teachers are not required to notify parents which of the assigned books contain sexually explicit material.
- Parents routinely complain of content so extreme the school board has discouraged reading aloud the offensive material at school board meetings, yet the same school board permits the content being taught to young kids.
- Parents have discovered reading assignments in middle and high school English classes that included graphic violence, drug use, sex between children, and more, often after their children have read the material.

Question: What's wrong with the Youth (Sex) Survey? We need to know what our kids are up to...

Answer: Youth (Sex) Survey questions are graphic, intrusive, and leading – suggesting to children that controversial behaviors are the norm.

- The Youth (Sex) Survey asks questions such as: how many times in the last month have children had sex; number of sex partners, oral sex history, heroin drug use, and other intrusive and debasing questions.
- Most parents are unaware that they can opt out of the Youth (Sex) Survey.

Question: Are school libraries a safe place for children?

Answer: Maybe not. Many schools in FCPS have controversial or age inappropriate material on shelves for students to read.

- For example, the controversial gender identity book George was removed from FCPS libraries after parent complaints. This book was secretly returned to elementary school libraries by FCPS Administration at the request of FCPS Librarians and staff. (The main character in the book George thinks he is really a girl and wants to be called “Melissa.”)
- I am Jazz, a picture book about a boy who lives as a transgender girl, is available to FCPS students. If a student fails to bring a book home from school or simply reads it in the library, parents may never know their child was exposed to this or other controversial material.

WHAT CAN YOU DO?

- Raise awareness – talk to friends and neighbors about what is going on
- Stay informed by joining groups at your school and in your community (like CPEFC)
- **OPT OUT AS MUCH AS POSSIBLE (Every Year):**
 - Send a letter to the principal of your school stating your objection and non-consent
 - Return the FLE (Sex Ed) Opt out Forms
 - Return Youth (Sex) Survey Opt Out Forms (grades 6, 8, 10 and 12)
 - Decline to sign SR&R Forms
- Send emails and letters, make phone calls, and meet in person with school board members
<https://www.fcps.edu/school-board/school-board-members>
- Attend school board meetings and participate in public comments
- **Support elected officials who share your values and replace school board members that do not**

OPT OUT OF ALL LESSONS AND NON-CONSENT SITUATIONS INVOLVING GENDER IDENTITY

CPEFC recommends submitting a letter to the School Principal, Counselor, et. al., stating your objection and non-consent to subjecting your children to any compromising situations (See sample of letter below).

To protect children from receiving any confusing and controversial messages and participating in non-consenting activities, parents can request their children be opted out of ANY lesson that includes Gender Identity and Sexual Orientation as a topic, including the SR&R handbook and video, School Classes, Guidance, etc. Simply write a letter to the school principal and school counselor stating your request to assert your rights as parents or guardians.

If you wish to provide additional reference material of legal opinions on protecting children from overreaching policies and programs, they may be found in Attachments #1 and #2 in the back of this package. Attachment #1 is a Legal Letter sent to the FCPS Superintendent on August 22, 2016 regarding declining to sign the Student Rights and Responsibility (SR&R) Handbook form on numerous grounds. Attachment #2 is a legal opinion written in May 2016 regarding school boards attempting to illegally add new categories to non-discrimination policies that may result in violating the civil rights of other students and parents. Finally, please note that nonprofit legal advocacy groups are willing to take action on behalf of parents, if a school proceeds to violate the parental requests.

(And remember, you must do this for each child. Also suggest saving copies for your private records.)

SAMPLE LETTER TO SEND TO SCHOOL PRINCIPAL, COUNSELOR, ET. AL.

August 26, 2020

Dear (Principal, Counselor, Homeroom Teacher, et. al.):

I object and do not consent to my child being subjected to any lessons or materials in any school subjects or classes that include the topic of Gender Identity or Sexual Orientation. This includes, but is not limited to, lessons regarding the Student Rights & Responsibilities Handbook and Video, or any school related subject, topic, or material where it may appear, including School Classes and Guidance. Please opt my child (NAME) _____ out of any and all of such lessons, topics, materials, guidance, and activities.

I also object and do not consent to my child sharing bathrooms, showers, locker rooms, or overnight hotel rooms (on school trips) with the opposite biological sex under any circumstance.

Sincerely,

Jane Doe

Parent of Johnny Doe, grade x, Name of School

Note – CPEFC is not affiliated with any specific legal foundation. CPEFC is an independent organization. We offer links to material here that has been previously released to the public and made available as a resource.

FLE (SEX ED) OPT OUT FORM(S) – BY GRADE

CPEFC recommends opting students out of ALL Family Life Education (FLE) Sex Ed lessons. We encourage parents to review the new FLE (Sex Ed) materials in SIS/blackboard and make their own judgments. The overall intrusiveness of the lessons, the inclusion of material not mandated by Virginia Department of Education FLE requirements, the age inappropriate material, and the sad lack of any concept of love and commitment as a part of human sexuality are reason enough to opt out of the curriculum entirely.

Quite simply, in FCPS FLE (Sex Ed), there are more harmful messages than helpful information. Highlights include: 4th graders learning of rape and incest; 5th graders learning needle sharing and STDs; 7th graders taught about oral sex and to question their “individual identity”; 8th graders taught about anal sex; and 9th graders taught to circumvent parent notification requirements for medical testing, the street names for date rape drugs, and more. They also are taught that gender is “assigned at birth” (and children can be any sex they feel like).

For these reasons, we recommend OPT OUT of all lessons. FLE (Sex Ed) Opt-Out forms and descriptions per Grade are found below. (And remember, you must do this for each child, and it is suggested to save copies for your records).

For FLE (Sex Ed) OPT-OUT Forms (in PDF files)

- FLE Opt Out forms for Kindergarten to 12th Grade may be found at <https://www.fcps.edu/node/31710>
- Includes Opt Out Forms in English, Spanish, Arabic, Chinese, Korean, Vietnamese, Farsi, and Urdu.

For FCPS FLE (Sex Ed) Program Descriptions:

- Kindergarten-6th Grade = <https://www.fcps.edu/academics/elementary-family-life-education-fle>
- 7-8th Grade = <https://www.fcps.edu/academics/middle-school-academics-7-8/family-life-education-fle>
- 9-12th Grade = <https://www.fcps.edu/academics/high-school-academics-9-12/family-life-education-fle>

YOUTH (SEX) SURVEY OPT OUT FORM(S)

CPEFC recommends Opting out of 2020 Fairfax County Youth (Sex) Survey.

Although the current Fairfax County Youth (Sex) Survey is anonymous it still asks nearly 80 intrusive, provocative, detailed, and degrading questions such as: frequency of sexual intercourse, whether a rape victim, oral sex, heroin usage, glue sniffing habits, suicide attempts, and their sex and gender spectrums.

Simply complete the Opt-Out form below (or use the original which should be provided at www.fcps.edu/resources/student-safety-and-wellness/youth-survey), and return it to your child's school counselor at the start of the school year (or the submission deadline date to be provided by the Student Safety and Wellness Office).

(And remember, you must do this for each child. Also suggest saving copies for your records.)

OPT-OUT FORM FOR FAIRFAX COUNTY YOUTH (SEX) SURVEY

I do not give permission for my child to participate in the confidential 2020 Fairfax County Youth Survey. I understand that my child will be assigned to an alternative activity during the administration of the survey.

Student's Name (please print): _____

Student's School (please print): _____ Grade: _____

Signature of Parent or Guardian: _____

**If you do not wish for your child to participate in the Fairfax County Youth Survey,
please return at the start of the school year to Your Child's School Counselor
(or the submission deadline date to be provided by the Student Safety and Wellness Office).**

PARENT DECLINE TO SR&R FORM AND DIRECTIONS TO VOICE OPPOSITION

The FCPS requires all students to follow and adhere to the Student Rights and Responsibility (SR&R) handbook or possibly face a range of discipline penalties (including suspension). For a copy of the SR&R handbook go to <https://www.fcps.edu/srr/>.

They also require parents and guardians to sign an acknowledgement form at the start of the school. For a copy of the SR&R acknowledgement form go to <https://www.fcps.edu/sites/default/files/media/forms/SRR1920SignatureSheet.pdf> (Please note that the 2020/2021 form is not available online yet). (FCPS will also provide a copy of this form at the beginning of the school year buried among dozens of other forms and papers for parents to review and sign.)

The law firm Liberty Counsel provided the legal opinion on August 22, 2016 recognizing parents may not want to sign the SR&R handbook acknowledgement form at the start of the school year (See Attachment #1). It is said that the Fairfax County School Board has illegally created special classes of persons for anti-discrimination measures (by adding gender identity to Policy 1450), which may violate Title IX, as well as not be based on any legal or scientific authority. See May 2016 opinion included in Attachment #2.

Furthermore, the regulations supporting the policy have not been issued due to numerous unanswered legal questions submitted in July 2016, so students and their parents (or guardians) cannot even be certain to what the school requirements are that they would be agreeing to sign their name to. While the Virginia legislature recently passed new laws protecting sexual orientation and gender identity in the Spring of 2020, it would seem the FCPS still has not put in place the measures to address the concerns and ensure the protection and rights of those that do not consent to their children being infringed, harassed, or exploited by such new policies in the school system (including ensuring that the school system does not violate the First Amendment Rights of freedom of religion, assembly, speech, and press, as well as protecting against illegal coercion).

DECLINING TO SIGN THE SR&R FORM

It is said that the laws do not allow imposing penalties on parents and students for not signing the SR&R form. If a parent or guardian decides to not sign the SR&R form at the start of the school year (to voice non-consent or concerns), they can simply write on the unsigned form that the “Justification for not signing the SR&R is provided in the August 22, 2016 Letter from Liberty Counsel to the FCPS Superintendent” (which may be found in Attachment #1). It is then suggested to staple Attachment #1 to the unsigned SR&R form to provide further reference material.

(And remember, you must do this for each child. It is also suggested that you save copies for your private records.)

**OPTIONAL REFERENCE MATERIAL
TO ATTACH TO OPT OUT FORMS**

ATTACHMENT #1

***Legal Letter sent to FCPS Superintendent
on August 22, 2016 regarding declining to sign
the Student Rights and Responsibility (SR&R)
Handbook form***



Post Office Box 540774
Orlando, FL 32854-0774
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122 C St. N.W., Ste. 640
Washington, DC 20005
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Post Office Box 11108
Lynchburg, VA 24506-1108
Telephone: 434-592-7000
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liberty@LC.org

Reply to: Virginia

August 22, 2016

Via Email Only

Superintendent Karen Garza
Fairfax County Public Schools
Gatehouse Administration Center
8115 Gatehouse Rd.
Falls Church VA 22042
SuperintendentGarza@fops.edu

Re: Parental Rights regarding Student Rights and Responsibilities document

Dear Superintendent Garza:

Liberty Counsel has been contacted by a number of parents of students in Fairfax County Public Schools who are concerned about the School Board's decision to add "sexual orientation" and "gender identity" to the district's non-discrimination policy even though those categories are not protected under Virginia law. In particular, with the new school year starting, parents are concerned about the addition of "sexual orientation" and "gender identity" to the definition of "discriminatory harassment" and elsewhere in the 2016-17 Student Rights and Responsibilities guidelines, of which the parents have to acknowledge receipt.

While the page to be signed and returned by parents states that they are only acknowledging receipt of the document and not agreeing with its contents, parents are concerned that by signing the form they will be seen as acquiescing to the inclusion of the new protected classes in the policy.

Under Virginia Code §22.1-279.3C, parents who sign the acknowledgement reserve their rights under the constitutions and laws of the United States and the Commonwealth of Virginia and retain their right to express disagreement with a school's or school division's policies or decisions.

While the SR&R acknowledgement form states that parents do not waive their rights, many parents are concerned that their disagreement with the additions to the discriminatory harassment provisions will not be acknowledged or respected. Furthermore, many are concerned that their objections to their children being held accountable for violating these additions which are not part of Virginia law will not be honored.

In response to their concerns, Liberty Counsel has provided parents with a one-page document outlining their rights under Virginia law and clarifying their disagreement with the school board's actions. Many parents have indicated that they will be presenting that document at the time that they return the SR&R acknowledgement form.

Parents want to be certain that the district understands that they are exercising their rights under Virginia law and objecting to the district's policies that add sexual orientation and gender identity to the definition of "discriminatory harassment" under the district's Student Rights and Responsibilities guidelines (SR&Rs).

To be clear, they and their children agree to follow the codes of conduct in the SR&Rs that do not involve potential discipline for "discrimination on the basis of sexual orientation and gender identity," which are not part of Virginia law.

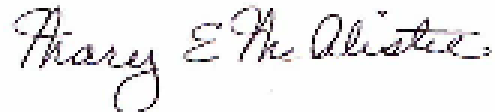
Parents also want the district to understand that their exercise of their rights under Virginia law on behalf of their children includes without limitation:

- Notification that they do not consent to their children being given information about sexual orientation and gender identity discrimination during classroom discussions, including discussions of or quizzes on the SR&Rs;
- Notification that the children will not be required to agree with the addition of sexual orientation and gender identity to the discriminatory harassment provision in the SR&Rs as a prerequisite to participation in any school programs, including, without limitation, athletics, band, student clubs and other extracurricular activities which require signing a participation policy to abide by all of the provisions of the SR&Rs.
- Notification that the children will not be denied a locker or other school resources if they or their parents do not sign the SR&R acknowledgement of receipt form as presented by the district which would signal acquiescence to the objectionable additions.

Superintendent Garza
August 22, 2018
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Liberty Counsel stands ready to assist the parents should their rights and the rights of their children not be respected.

Sincerely,

A handwritten signature in black ink that reads "Mary E. McAlister". The signature is written in a cursive style with a large, looped "M" and a long, sweeping underline.

Mary E. McAlister¹

Cc: Sloan Presidio sjpresidio@fcps.edu
Michelle Godart MAGodart@fcps.edu

¹ Licensed in Virginia, California and Florida

**OPTIONAL REFERENCE MATERIAL
TO ATTACH TO OPT OUT FORMS**

ATTACHMENT #2

Legal Opinion written in May 2016 regarding school boards attempting to illegally add new categories to non-discrimination policies that may result in violating the civil rights of other students and parents



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Legal Memo

School Districts Must Reject Obama Administration's Legally Baseless School "Transgender" Demands

© May 2016

Liberty Counsel is a non-profit litigation, education, and policy organization with an emphasis on constitutional law, with offices in Florida, Virginia, and Washington, D.C. Liberty Counsel provides *pro bono* legal representation to individuals, groups, and government entities, such as school districts, with a particular focus on religious liberty and other First Amendment issues.

On May 13, 2016, the Obama Administration's U.S. Department of Education, Office of Civil Rights ("OCR") and the U.S. Department of Justice ("DOJ") released a joint "Dear Colleague" "Letter on Transgender [sic] Students" ("Letter") claiming that Title IX¹ now requires sweeping new changes regarding accommodations for gender-confused students (so called "transgender," a misnomer). The Administration has taken a similar position for Title VII² and "transgender" employee accommodations.

Title IX and Title VII do not cover "transgender" student or employee demands to use opposite-sex bathrooms and lockers. The positions taken in the May 13, 2016 Letter are wholly without basis in the law. School districts should resist this overreach and protect students. No school district has lost federal funding on this issue.

The purpose of this legal memo is therefore to offer assistance in defending school districts if they continue to maintain gender-appropriate restroom, locker room, and shower room policies. Schools that allow boys to use girls facilities or vice versa face the risk of actually violating Title IX and other rights to privacy and personal security of students who clearly have the right to use such facilities consistent with their birth sex. School districts which bend to the "transgender" demands expose themselves to liability from lawsuits filed by parents of students whose rights are violated by the school district's implementation of this lawless directive.

The May 13 OCR/DOJ directive is designed to force school districts across the country to enact policies recognizing "gender identity," "gender expression," "gender nonconformity," "transgender," and other subjective, invented categories as protected classes. The directive and previous "guidance" purports to require teachers and/or students to address gender-confused students

¹ Title IX of the Educational Amendments of 1972, 20 U.S.C. § 1681(a).

² Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352) (Title VII), as amended, as it appears in volume 42 of the United States Code, beginning at section 2000e. Title VII prohibits employment discrimination based on race, color, religion, sex and national origin.

by false names and pronouns, and permit gender-confused students unfettered entry into opposite-sex lockers, showers, restrooms, and sports programs, and sleep in the bedrooms of opposite-sex students on overnight field trips, typically without notice to the other students and their parents. The May 13 directive purports to require additional "private spaces" within facilities that have, by their nature, always been private. In so doing, the Obama Administration treats the vast majority of gender-congruent students and their parents desiring to protect *status quo* privacy rights as somehow aberrant, abnormal, or bigoted.

Nothing in federal law supports or requires such "gender identity" policies, nor does anything in the law of most states. School districts should be wary of implementing any recommendations regarding "sexual orientation" or "transgender" issues based upon the "guidance" of the U.S. Department of Education, Office of Civil Rights or the position of the current administration's Department of Justice. Parents should scrutinize school district sources for any draft policies of this nature.

No Scientific Authority

There is much disinformation on the "gender identity" and "transgender" issue from pro-homosexual sources. Actual science shows that the vast majority of gender-confused students who are not labeled or pigeonholed by parents, teachers, or government authorities; are affirmed in their masculinity or femininity; or are otherwise not subjected to misleading propaganda, will simply outgrow their confusion, and will achieve congruence with their biological sex. As observed by Dr. Paul McHugh, former chief psychiatrist at Johns Hopkins Hospital, "[when children who reported transgender feelings were tracked without medical or surgical treatment at both Vanderbilt University and London's Portman Clinic, over 70%-80% of them spontaneously lost those feelings.](#)" Dr. McHugh's findings are emphatically confirmed by the DSM-V, which shows as many as 97.8% of gender-confused boys and 88% of gender-confused girls eventually accept their biological sex after naturally passing through puberty.³

Moreover, principled scientists and physicians are rejecting the false policy positions of professional associations captured by homosexual activists. A recent [position statement of the American College of Pediatricians](#)⁴ (signed by Dr. McHugh) urges caution by educators and legislators, to avoid harming both gender-confused and gender-congruent children. It is a grave disservice to gender-confused children (not to mention the majority of gender-congruent children) to enact a policy which affirms a false notion of reality, and which violates the other children's fundamental rights to privacy, modesty, safety, and religious practice accommodated by restroom separation between biological males and females.⁵

³ American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*, Arlington, VA, American Psychiatric Association, 2013 (451-459). See page 455 re: rates of persistence of gender dysphoria.

⁴ <http://www.acpeds.org/the-college-speaks/position-statements/gender-ideology-harms-children>

⁵ Paul McHugh, *Transgender Surgery Isn't the Solution*, THE WALL STREET JOURNAL, June 12, 2014, available at <http://www.wsj.com/articles/paul-mc-hugh-transgender-surgery-isnt-the-solution-1402615120>.

No Legal Authority

In addition to the lack of scientific authority for current policy demands regarding the "gender identity" issue, **there is no legal authority** for the claim that federal law requires students to be given "gender identity" access to opposite sex restrooms, facilities, and programs. Such assertions are meritless, for the following reasons:

First, Title VII (covering employees) and Title IX (in the education context, covering students) only prohibit discrimination between males and females based on biological "sex," but they do not require the abolition of personal privacy. Neither statute requires or supports the idea that males *are* females, that females *are* males, or the recognition of "gender identity" or "expression." Congress has rejected multiple attempts to amend Title VII and Title IX, over the 40+ year history of these statutes, where these attempts tried to include specific recognition of "sexual orientation" and "gender identity." Neither statute requires admission to opposite-sex restrooms, lockers, showers, or other traditionally private places. On April 7, 1975, for that matter, Supreme Court Justice Ruth Bader Ginsburg, then a professor at Columbia Law School, wrote in *The Washington Post*, "Separate places to disrobe, sleep, perform personal bodily functions are permitted, in some situations required, by regard for individual privacy."⁶

Second, the right to bodily privacy has long been recognized in U.S. law. *See, e.g., Doe v. Luzerne County*, 660 F.3d 169, 177 (3d Cir. 2011) (holding that bodily exposure may meet "the lofty constitutional standard" and constitute a violation of one's reasonable expectation of privacy); *Brannum v. Overton County School Bd.*, 516 F.3d 489, 494 (6th Cir. 2008) (holding that a student's "constitutionally protected right to privacy encompasses the right not to be videotaped while dressing and undressing in school athletic locker rooms"); *Poe v. Leonard*, 282 F.3d 123, 138-39 (2d Cir. 2002) ("there is a right to privacy in one's unclothed or partially unclothed body"); *York v. Story*, 324 F.2d 450, 455 (9th Cir. 1963) ("We cannot conceive of a more basic subject of privacy than the naked body."). Violations of the right to bodily privacy are most acute when one's body is exposed to a member of the opposite sex. *See Doe*, 660 F.3d at 177 (considering whether "Doe's body parts were exposed to members of the opposite sex" in deciding whether her reasonable expectation of privacy was violated); *Brannum*, 516 F.3d at 494 ("the constitutional right to privacy... includes the right to shield one's body from exposure to viewing by the opposite sex"); *York*, 324 F.2d at 455 (highlighting that the exposed plaintiff was female and the viewing defendant male); *Poe*, 282 F.3d at 138 (citing with approval the Ninth Circuit's emphasis on the different genders of defendant and plaintiff in *York*). Thus, the proponents of "gender identity" or "transgender" admission to opposite-sex restrooms, lockers and other places completely ignore this long-standing right to bodily privacy.

Third, prior to the May 13 letter, OCR's much-vaunted "[Questions and Answers on Title IX and Sexual Violence](#)"⁷ had been frequently referenced as an authority by proponents of school "gender identity" policies. However, the "Q&A" **failed to cite any legal authority - case law or statutory** - for the claim that Title IX now applies to students claiming to be the opposite sex for purposes of access to the opposite sex's restrooms and locker rooms.

⁶ <https://www.washingtonpost.com/news/voicelock-conspiracy/wp/2016/05/09/prominent-feminist-bans-on-sex-discrimination-emphatically-do-not-require-unisex-restrooms/>

⁷ <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

Fourth, even the decision by a three judge panel of the Fourth Circuit Court of Appeals in *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, No. 15-2056, 2016 WL 1567467 (4th Cir. Apr. 19, 2016) (which has no controlling effect outside of North Carolina, South Carolina, Virginia, West Virginia and Maryland) has not addressed the ultimate issue relating to whether Title IX applies to "gender identity." The ruling only went so far as to hold that the trial court should have given deference to the Department of Education's "novel" interpretation of Title IX, and then sent the case back to the trial court for further proceedings. The panel stopped short of requiring a policy of wholesale admittance into the restrooms and lockers of the opposite sex, requiring only that the district court give greater consideration to administrative agency "interpretation" of the statutes. The court did not even undertake to define the term "sex" under Title IX, or the implications for sex-based protections, if subjective mental belief or claim can override such protections. **Aside from the Obama administration, and this three judge panel, no other administration's Department of Education, and no federal court, has reached this conclusion.** This decision is currently under appeal to the entire *en banc* Fourth Circuit, and other than this one case, there remains no legal authority - case law or statutory - for the claim that Title IX now applies to students claiming to be the opposite sex for purposes of access to the opposite sex's restrooms and locker rooms.

Fifth, a federal court in *Johnston v. Univ. of Pittsburgh* held in March 2015 that a "policy of requiring students to use sex-segregated bathroom and locker room facilities based on students' natal or birth sex, rather than their gender identity, **does not violate Title IX's prohibition of sex discrimination.**" (emphasis added). *Johnston v. Univ. of Pittsburgh of Com. Sys. of Higher Educ.*, No. CIV.A. 3:13-213, 2015 WL 1497753 (W.D. Pa. Mar. 31, 2015).

Sixth, the decisions of the trial courts in *Gloucester* and *Johnston* are consistent with how numerous other courts have dismissed cases of alleged "discrimination" brought by "transgender" individuals claiming "gender identity" access to private facilities. See, e.g., *Etsitty v. Utah Transit Auth.*, 502 F.3d 1215, 1228 (10th Cir.2007); *Brown v. Zavazar*, 63 F.3d 967, 971 (10th Cir.1995); *Brannburg v. Coalinga State Hosp.*, No. 1:08-cv-01457-MHM, 2012 WL 3911910, at *8 (E.D.Cal. Sept.7, 2012) ("it is not apparent that transgender [sic] individuals constitute a 'suspect' class"); *Jamison v. Davus*, No. 8-11-cv-2056 WBS, 2012 WL 996383, at *3 (E.D.Cal. Mar.23, 2012) (so-called "transgender" individuals do not constitute a 'suspect' class, so allegations that defendants discriminated...are subject to a mere rational basis review"); *Kaso-Tomaselli v. Butts*, No. 11-cv-00670 LEK, 2013 WL 399184, at *5 (D.Haw. Jan.31, 2013) (noting the plaintiff's status as a claimed "transgender" person did not qualify the plaintiff as a member of a protected class and explaining the court could find no "cases in which transgender [sic] individuals constitute a 'suspect' class"); *Lopez v. City of New York*, No. 05-cv-1032-NRB, 2009 WL 229956, *13 (S.D.N.Y. Jan.30, 2009) (explaining that because such individuals are not a protected class for the purpose of Fourteenth Amendment analysis, claims that a plaintiff was subjected to "discrimination" based on his status as a transvestite are subject to rational basis review).

Sex separate bathroom and locker rooms are required to protect the rights of all students. A policy of limiting bathroom and locker room facilities on the basis of birth sex is "substantially related to a sufficiently important government interest." *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir.2011) (quoting *Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 446-47, (1985)). Such a policy is based on the need to ensure the privacy of students to disrobe, shower or use the restroom

outside of the presence of members of the opposite sex. This justification has been repeatedly upheld by courts. *See, e.g., Estritz v. Utah Transit Auth.*, 502 F.3d 1215, 1224 (10th Cir.2007) (the use of women's public restrooms by a biological, cross-dressing male could result in liability for employer, and such a motivation constitutes a legitimate, nondiscriminatory reason).

Finally, consistent with the historic interpretation of Titles VII and IX in the above cases, parents in the Cook County Township High School District 211 in Illinois filed suit on May 4, 2016, against District 211, the U.S. Department of Education, and Attorney General Loretta E. Lynch, for violating their gender-congruent children's civil rights. Similar lawsuits are being drafted as of the date of this memo, and should prevail, as the OCR and DOJ "interpretation" is a wholesale circumvention of statutorily defined terms and existing case precedent.

Conclusion

Nothing in the text of Title IX requires school districts to allow students to use the restroom, locker room, and shower room of their choice. The rights of privacy and the protection of personal safety should be paramount. A school district may not, under any circumstances, require other students, upon pain of official sanction, to use obviously incorrect pronouns when referring to a gender-confused student.

Beyond students with gender confusion, teachers are in a position of authority and influence over impressionable children, and may not impose their own lifestyle upon them in contravention of their healthy development of their own personal identity. Teacher cross-dressing in the classroom is confusing, misleading, and harmful to children, who are in their formative years and are beginning to learn appropriate behavior and roles from those placed in positions of authority over them.

Liberty Counsel is prepared to assist school districts and provide guidance in this area. Should you have questions about any of the points contained in this memo, please call 407-875-1776 or email Liberty@lc.org.