



In Brief

ANALYSIS: PENNSYLVANIA SCHOOL RESTROOM AND LOCKER ROOM PRIVACY

July 2025

We show respect for the dignity of all people by providing separate space for males and females in instances where privacy between the two sexes is relevant, such as in restrooms, showers, locker rooms, and overnight accommodations like dorm rooms and hotel rooms on school trips. The distinctions between the two sexes are the reason our society has had separate locker rooms, showers, and restrooms since the advent of indoor plumbing.

A woman's privacy rights from a male (and vice versa) do not cease to exist or suddenly spring into existence on the basis of what a man believes about gender identity. A biological male's presence in the girls' locker room violates women's rights to bodily privacy, and that doesn't change depending on the male's internal motives for being there or whether additional bad acts occur. A woman's right to privacy doesn't depend on whether a man did some additional improper or illegal action, like recording or assaulting them, which would be wrong even if one woman did it to another woman.

Our expectation of privacy from persons of the opposite sex is so profound as to be found all across our laws, including the laws pertaining to our schools and in court decisions describing bodily privacy as a constitutional right. The violation of bodily privacy from the opposite sex is humiliating. Restrooms and locker rooms are the only places to go to undress or use bathrooms outside the presence of people of the opposite sex. Both Pennsylvania law and federal law require schools to provide privacy facilities on the basis of sex.

I. Pennsylvania laws require school districts to provide privacy facilities on the basis of sex.

Pennsylvania statute requires that school privacy facilities "shall be suitably constructed for, and used separately by the sexes." 24 P.S. § 7-740. In addition, the Pennsylvania code requires

schools to follow the provisions of Pennsylvania statutory law requiring separate dressing facilities, showers, lavatories, toilets and appurtenances for each sex.¹

Regulatory bodies, such as the Pennsylvania Human Relations Commission (PHRC), have not instituted a regulation or guidance addressing bathroom and locker room use in schools. Because state statute requires separation of privacy facilities based on sex, an agency would be prohibited from promulgating a regulation that forbids sex separation and mandates gender identity separation instead. Neither state regulations nor guidance from state agencies may contradict existing statutes enacted by the Pennsylvania legislature.

FAQ: PHRC has indicated it understands sex discrimination to include not only sex, but also pregnancy, sexual orientation, and gender identity. Does that affect Restrooms & Locker Rooms?

No. Separating privacy facilities on the basis of sex makes distinctions between males and females, which is legally required by law. Sex-based privacy facilities do not make any distinctions based on pregnancy, gender identity, or sexual orientation of an individual. All females, whether they are female and pregnant, female and same-sex attracted, or female and identify differently, are entitled to use the female bathroom and female locker room.

The Pennsylvania Human Relations Act, like *Bostock v. Clayton Cty.*, 590 U.S. 644 (2020) in the employment law context, requires schools to continue to treat all students well. As always, districts should continue to protect all students and staff from harassment or discrimination, whether because of membership in a protected class or for any other reason. School districts have a duty to hear all claims of discrimination and explore every appropriate opportunity to protect all students and encourage civility and safety in classrooms. But it is neither a violation of federal or state law to recognize the real differences between males and females when those differences matter, such as with restrooms and locker rooms.

II. Federal laws require school districts to provide facilities on the basis of sex.

Title IX prohibits sex discrimination in education, and also specifically permits separation of the sexes in common-sense circumstances in privacy facilities. Title IX explicitly envisions separate locker rooms, showers, and restrooms on the basis of sex. *See* 34 C.F.R. § 106.33 (“A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.”) Federal statute also protects educational institutions that separate the sexes in hotel and dorm rooms. 20 U.S.C. § 1686.

¹ 28 Pa. Code § 18.62 (“separate dressing facilities, showers, lavatories, toilets and appurtenances for each sex” at swimming pools); 25 Pa. Code § 171.16 (requiring schools to follow the provisions of the Public Bathing Law (35 P.S. §§ 672—680d); 28 Pa. Code Chapter 18 (requiring separate privacy facilities at swimming and bathing places).

Furthermore, President Trump's Executive Order of January 20, 2025, requires "that intimate spaces designated for women, girls, or females (or for men, boys, or males) are designated by sex and not identity." As such, a school that persists in separating bathrooms and locker rooms based on gender identity rather than sex risks federal investigation and enforcement. *See* § 4(d).² In April of 2025, the University of Pennsylvania was found to have violated Title IX for permitting males who identified as girls to use female privacy facilities. On July 1, 2025, UPenn agreed to no longer allow males to occupy women-only intimate facilities.

FAQ: Has the Third Circuit Court of Appeals ruled that schools must open restrooms and locker rooms to the opposite sex?

No. In *Doe v. Boyertown* in 2018, the Third Circuit denied preliminary relief, ultimately allowing

"A SCHOOL THAT PERSISTS IN SEPARATING BATHROOMS AND LOCKER ROOMS BASED ON GENDER IDENTITY RATHER THAN SEX RISKS FEDERAL INVESTIGATION AND ENFORCEMENT."

that school district to continue to separate facilities based on gender identity instead of sex while the lawsuit by students against the school for violating their privacy continued. The court did NOT rule that schools are forbidden from separating facilities based on sex. That

lawsuit was dropped and never went to trial. After that decision, many Pennsylvania schools continued to separate based on sex, and some decided to separate facilities based on gender identity instead of sex. However, the more recent enforcement action against UPenn demonstrates that schools that refuse to separate privacy facilities based on sex and permit males into female intimate facilities risk enforcement actions by the federal government.

DISCLAIMER: The information contained in this document is general in nature and is not intended to provide or be a substitute for specific legal advice for your individual circumstances. The use of this document is not intended to constitute advertising or solicitation and does not create an attorney-client relationship with Independence Law Center. Each situation can be different. For additional questions, contact the Independence Law Center: <https://independencelaw.org/request-help/>

² Previously, the Biden administration attempted to change Title IX regulations to prohibit educational institutions from separating privacy facilities based on sex, and mandated that they separate facilities based on gender identity instead. The new regulations were vacated (removed by the court) early 2025, *see Tennessee v. Cardona*, (E.D. Ky. Jan. 9, 2025), and were no longer enforceable against any school in the United States even before the new administration was sworn in or the new Executive Order went into effect.