

Identifying Gender



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Identifying Gender



• Definitions

- According to a May 13, 2016 joint release by the U.S. DOE and U.S. DOJ:
- **Gender Identity:** Refers to an individual's internal sense of gender. (A person's gender identity may be different from or the same as the person's sex assigned at birth.
- **Sex Assigned at Birth:** Refers to the sex designation recorded on an infant's birth certificate should such a record be provided at birth.
- **Transgender:** Describes those individuals whose gender identity is different from the sex they were assigned at birth.
- **Gender Transition:** Refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth.

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- January 7, 2015 letter from U.S. Department of Education's Office for Civil Rights:
- “The Department’s Title IX regulations permit schools to provide sex-segregated restrooms, locker rooms, shower facilities, housing, athletic teams, and single-sex classes under certain circumstances. ***When a school elects to separate or treat students differently on the basis of sex in those situations, a school generally must treat transgender students consistent with their gender identity.***”

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- ***Sex Assigned at birth:*** Refers to the sex designation recorded on an infant's birth certificate should such a record be provided at birth.
- ***Transgender:*** Describes those individuals whose gender identity is different from the sex they were assigned at birth.
- ***Gender Transition:*** Refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth.
- ***Gender Identity:*** Refers to an individual's internal sense of gender. (A person's gender identity may be different from or the same as the person's sex assigned at birth.)

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- Title IX provides:
 - “[n]o person...shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

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- The regulations implementing Title IX provide:
 - Title IX permits the provision of “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.”

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- The crux of the debate is definitional
- “What [a school district] cannot do in the name of “privacy” is exclude a male student from the boys’ restroom and require him to use a separate restroom because he was assigned a different sex at birth than other boys.”
 - Brief for the United States in Grimm v. Gloucester County School Board

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- “Cry Havoc and Let Slip the Lawyers”
 - April 19, 2016: United States Court of Appeals, Fourth Circuit overturns District Court and holds that School District must permit transgender boy to use facilities consistent with his gender identity (cannot use gender neutral facilities).
 - August 3, 2016: United States Supreme Court issues a stay of the Fourth Circuit’s decision (via a 5-3 vote) pending a decision on whether to take up the case for review.



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- “Cry Havoc and Let Slip the Lawyers” (cont.)
 - August 21, 2016: U.S. District Court for Northern District of Texas issues a preliminary injunction barring the Department from enforcing its interpretation of “sex” to include gender identity.
 - Other cases and disputes pending in Illinois, Minnesota, West Virginia, South Carolina.

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- Alaska

- The Alaska School Activities Association (“ASAA”) policy regarding gender determination in sex segregated sports:
 - ✦ The Association will rely on a gender determination made by the student’s member school where the determination is based upon prior written and objective criteria adopted by the school; ASAA will not make separate gender identity determinations. However, once a member school determines a student may participate in an interscholastic activity which does not match the gender assigned at birth, the determination shall remain in effect for the duration of the student’s high school eligibility. A student attending a member school which does not have a prior written objective policy used to determine gender identity may only participate based upon the gender assigned at birth.

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- Alaska (Cont.)
 - ASAA policy places the decision making with the District.
 - District policy must be pre-existing and objective.
 - Default position is participation based on gender assigned at birth.
 - Allows one gender switch – can't change based on sport or at different time.

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- **QUESTIONS?**

Contact Information



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