



## **Statement of the Ruth Institute on the Department of Justice Guidelines to Ensure the Civil Rights of Transgender Students**

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The Ruth Institute objects to these far-reaching Guidelines of questionable legality. Among our chief concerns:

- These Guidelines, if implemented, will not actually help real children, struggling with unique and complex issues, such as Intersex students and students who experience Gender Dysphoria. See the complete analysis below.
- The Guidelines permit students to present themselves as “transgender,” without the knowledge of their parents, and without any adult input at all.
- The Guidelines create a class of students called, “Transgender” which is a politically defined and not a medically defined class. The government has no competency to do such a thing.
- These Guidelines, if implemented, will certainly harm the millions of ordinary children who are not struggling with gender identity issues at this time.
- These far-reaching Guidelines from the Federal government encroach on the legitimate prerogatives of states, localities and families.
- These Guidelines were issued through a “Dear Colleague” letter, which may or may not be legally binding. Indeed, the 23 states that are suing the Department of Justice argue that such a letter is not binding on local schools.<sup>1</sup>
- School boards are well within their moral and legal rights to decline to participate in the federal government’s war against nature.

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<sup>1</sup> “10 More States Sue Obama Administration over Transgender Bathroom Directive,” Politico, July 8, 2016. <http://www.politico.com/story/2016/07/obama-transgender-bathrooms-states-sue-225303>

Below, we offer our reasons for believing these Guidelines do not serve the interests of the children of the United States.

## Intersex Students

Intersex is a medically diagnosable condition. According to the Intersex Society of North America, the term “intersex” “is a general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that doesn’t seem to fit the typical definitions of female or male.” The Intersex Society of North America does not advocate that intersex individuals be treated as a third gender or as having no gender.<sup>2</sup>

“There are at least two problems with trying to raise kids in a “third gender.” First, how would we decide who would count in the “third gender”? How would we decide where to cut off the category of male and begin the category of intersex, or, on the other side of the spectrum, where to cut off the category of intersex to begin the category of female? ...Second, and much more importantly, we are trying to make the world a safe place for intersex kids, and we don’t think labeling them with a gender category that in essence doesn’t exist would help them. ...

“What we *do* advocate is providing parents of intersex newborns—and within a couple of years, intersex children themselves—honest and accurate information about intersex, psychological counseling by professionals who are not intersex-phobic, medical help for any real medical problems, and especially referrals to other people dealing with the same issues.”

Intersex children do not need bathrooms that are open to everyone of any gender. Nor do they need school administrators concealing information from their parents, in the name of respecting their “civil rights.” The role of the schools should be confined to respecting the treatment plan the child’s parents and doctors have developed for that particular child.

School boards should be aware that single-occupancy restrooms available for all students are in fact, permitted by the Department of Justice Guidelines:

“At the same time, the guidance makes clear that schools can provide additional privacy options to any student for any reason. The guidance does not require any student to use shared bathrooms or changing spaces, when, for

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<sup>2</sup> The Intersex Society of North America, <http://www.isna.org/> See in particular, the FAQ page on third gender: <http://www.isna.org/faq/third-gender>

example, there are other appropriate options available; and schools can also take steps to increase privacy within shared facilities.”<sup>3</sup>

Open access restrooms and changing facilities are **not necessary for the benefit of Intersex students.**

## Students with Gender Dysphoria

Gender dysphoria (GD) describes the mental condition in which an individual experiences discordance between one’s gender identity (the awareness of being male of female) and one’s biological sex.<sup>4</sup> While Gender Dysphoria is a recognized medical condition, its diagnosis is an imprecise science. Its proper treatment remains controversial, even among professionals. A variety of acceptable treatment modalities exist.<sup>5</sup> People are sometimes misdiagnosed.<sup>6</sup> People who transition to another gender sometimes have serious regrets.<sup>7</sup>

It should go without saying that schools are not competent to practice either medicine or psychology.

Open access restrooms and changing facilities are **not necessary for the benefit of students with Gender Dysphoria.** Any children who suffer from Gender

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<sup>3</sup> From the Department of Justice News Release, **U.S. Departments of Justice and Education Release Joint Guidance to Help Schools Ensure the Civil Rights of Transgender Students**, Issued May 13, 2016. <https://www.justice.gov/opa/pr/us-departments-justice-and-education-release-joint-guidance-help-schools-ensure-civil-rights> Accessed July 19, 2016.

<sup>4</sup> American Psychiatric Association. (2013) Diagnostic and statistical manual of mental disorders (5th ed.) p. 451.

<sup>5</sup> See for instance the firing of highly respected Kenneth Zucker, and the widespread show of support for him. This incident illustrates that the treatment of GD remains controversial, even among professionals. Singal, J. "How the Fight Over Transgender Kids Got a Leading Sex Researcher Fired." (Feb. 7, 2016) New York Magazine. Available at <http://nymag.com/scienceofus/2016/02/fight-over-trans-kids-got-a-researcher-fired> Accessed July 19, 2016. Bancroft, J, et al. "Open Letter to the Board of Trustees of the Centre for Addiction and Mental Health." (Jan. 11, 2016) iPetition Available at <http://www.ipetitions.com/petition/boardoftrustees-CAMH> Accessed July 19, 2016.

<sup>6</sup> Jennifer Roback Morse, "Euthanizing the Unhappy: the Urgent Need for Love," showing the "botched" sex change operation that led to a Belgian woman’s request for euthanasia was not botched at all. Rather, she wanted to be a man because her mother always wanted a son. This particular woman should not have been approved for sex change surgery. **The Public Discourse**, November 7, 2013. <http://www.thepublicdiscourse.com/2013/11/11113/> Accessed July 19, 2016.

<sup>7</sup> See generally, the work of Walt Heyer, including the website, Sex Change Regret: A site for people who regret changing genders. <http://www.sexchangeregret.com/> Accessed July 19, 2016.

Dysphoria can be accommodated in single stall bathrooms and changing facilities. All children can be taught to be kind to one another.

## Transgender Students

The Guidelines<sup>8</sup> define “Transgender” as follows:

Transgender describes those individuals whose gender identity is different from the sex they were assigned at birth.

The Guidelines define Gender Identity this way:

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.

The Guidelines further state:

Under Title IX, there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity.

Thus, for purposes of law, transgenderism is not a medically diagnosed condition: it is a personally diagnosed condition. Elsewhere, the Guidelines make it clear that the student, without telling their parents, may present themselves as transgender to their peers, teachers and school staff. Students can call themselves male or female as they wish, without medical evaluation or parental oversight or even knowledge. They can change their self-identification for any reason or no reason. The “Guidelines” offer no guidance whatsoever on this point.

Young people are not fully developed in their sense of identity, including their sense of gender identity. Children who are so confused about who they are that they identify as something other than their bodily gender need adult supervision, and greater bodily privacy, not less of each. They would benefit from the supervision and privacy afforded by use of a single stall or staff bathroom.

Mandating genderless bathrooms, to be accessed by any student is not helpful, even to the “transgender” student as defined by these guidelines. Open access restrooms and changing facilities are **not necessary for the benefit of self-defined “transgender” students.**

## Students who experience no dysphoria or discomfort with their biological sex

The vast majority of children will never experience any sense of discordance between their biological sex and their perceived gender. The Guidelines, if

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<sup>8</sup> The Dear Colleague letter, outlining these guidelines, may be found here: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>

implemented, will create an environment that could derail the normal developmental process in which the child's gender identity aligns securely with their biological sex. The Guidelines correspond to an extreme version of **“gender theory,” namely the theory that human beings exist independently of their bodies, and that a person's sex is “assigned” at birth and is not a biological reality.**

A school environment of carefully policed and constantly changing pronouns, and of genderless bathrooms will create confusion for children who would not otherwise be confused. The social infrastructure that will be needed to support the implementation of gender theory could potentially include forbidding teachers to use the terms “boy” or “girl,” including the censoring of health classes to remove gender references even from reproduction. Instead of saying “women have ovaries and produce eggs, men have testes and produce sperm,” teachers may be required to say “persons with ovaries produce eggs, persons with testes produce sperm.” Sharing space with any student of the opposite sex who claims to identify as “transgender” places the other children at risk for voyeurism and assault.<sup>9</sup> Ordinary children will certainly not benefit from genderless bathrooms.

## **The Transgender Political Movement**

If Intersex children and gender dysphoric children do not benefit from genderless bathrooms, if the “transgender” category of children invented by these guidelines are not helped by genderless bathrooms, and if ordinary children are not helped, who actually is helped by these far-reaching Guidelines? The transgender activist political movement benefits.

The transgender movement is controversial, even among the wider gay rights movement. Lesbian feminist professor [Sheila Jeffreys](#) describes male-bodied transgenders as invading women-only spaces and exercising a form of male privilege.<sup>10</sup> The Federal government should not be imposing any ideological agenda, much less taking sides in an internal quarrel within the larger gay rights movement.

The public schools have no business enlisting small children in an ideological crusade of any kind. Creating a day to day living environment that implements the most controversial plank of the transgender political regime does exactly that: enlists the children in an ideological crusade. Certainly, the federal government should not be conscripting every public school in America in an ideological movement, and drafting every public school child in America as its foot soldiers.

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<sup>9</sup> The voyeurism case may be found at the New York Times, “Transgender Woman Charged with Voyeurism at Target in Idaho,” July 14, 2016 [http://www.nytimes.com/2016/07/15/us/target-transgender-idaho-voyeurism.html?\\_r=2](http://www.nytimes.com/2016/07/15/us/target-transgender-idaho-voyeurism.html?_r=2) . The concerns about assault are carefully spelled out by a rape survivor at The Federalist, “A Rape Survivor Speaks Out about Transgender Bathrooms,” Kaeley Triller, November 23, 2015. <http://thefederalist.com/2015/11/23/a-rape-survivor-speaks-out-about-transgender-bathrooms/>

<sup>10</sup> Sheila Jeffreys, **Gender Hurts: A Feminist Analysis of the Politics of Transgenderism**, (London: Routledge, 2014).

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