

MODEL POLICY #42

# STUDENT PRIVACY IN RESTROOMS AND LOCKER ROOMS

## Why adopt this policy?

The School District is committed to providing a safe, respectful, and lawful educational environment for all students. This policy is intended to protect student privacy, comply with Title IX of the Education Amendments of 1972 and its implementing regulations, and provide clear guidance regarding the use of sex-separate facilities.

Title IX and its implementing regulations expressly permit schools to maintain separate toilet, locker room, and shower facilities on the basis of sex, provided that such facilities are comparable for students of each sex.

Nothing in Title IX requires a school district to permit students to access sex-separate facilities designated for the opposite sex. Courts have long recognized that protecting bodily privacy in intimate settings is a legitimate and important governmental interest.

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## Use of Sex-Separate Facilities

For purposes of this policy, "sex" means an individual's immutable biological classification as either male or female.

Sex-separate facilities designated for female students shall be used exclusively by female students.

Sex-separate facilities designated for male students shall be used exclusively by male students.

The District shall maintain sex-separate restrooms, locker rooms, and shower facilities for students. The District shall not eliminate or replace sex-separate facilities with gender neutral facilities.

This policy applies to all student restrooms, locker rooms, and shower facilities, including those used during the school day, extracurricular activities, and school-sponsored events.

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## Student Accommodations

The District recognizes that individual students may request accommodations related to facility use. Any such request shall be directed to the building principal. Any consideration of accommodations shall include the student's parents or legal guardians and shall occur on a case-by-case basis, consistent with this policy and applicable law. See legal analysis below.

The District may provide reasonable accommodations that do not permit access to facilities designated for the opposite sex, including, but not limited to, access to a single-user restroom or a private changing area. Any such accommodations shall respect the privacy and dignity of all students and minimize disruption to the educational environment.

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## Implementation and Oversight

The Superintendent or designee shall develop administrative procedures to implement this policy.

Staff shall receive training on responding to accommodation requests in a respectful, confidential, and legally compliant manner.

### Legal Analysis – National

See 34 C.F.R. § 106.33 (2020) ("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.")

The current legal framework under Title IX supports the definition of sex as male and female. Although the Biden administration attempted to redefine "sex discrimination" under Title IX to include discrimination on the basis of "gender identity," those 2024 Title IX regulations have been vacated nationwide. *State of Tennessee v. Cardona*, No. 2:24-cv-00072 E.D. Ky (Jan. 9, 2025). As a result, those regulations are legally void and unenforceable.

See also Executive Order 14168, "Defending Women from Gender Ideology Extremism and Restoring Biological Truth" (January 20, 2025) ("It is the policy of the United States to recognize two sexes, male and female. . . . Agencies shall effectuate this policy by taking appropriate action to ensure that intimate spaces designated for women, girls, or females (or for men, boys, or males) are designated by sex and not identity.")

Separate Courts have long found a privacy interest in shielding one's body from the opposite sex in a variety of legal contexts. *Adams ex rel. Kasper v. School Board of St. Johns County*, 57 F.4th 791, 805 (11th Cir. 2022) (listing cases); *Canedy v. Boardman*, 16 F.3d 183, 185 (7th Cir. 1994) ("The right to privacy is now firmly ensconced among the individual liberties protected by our Constitution."). Courts recognize a right to privacy both as to one's unclothed or partially clothed body. See, e.g., *Doe v. Luzerne Cnty.*, 660 F.3d 169, 176 (3d Cir. 2011) (listing cases); *Poe v. Leonard*, 282 F.3d 123, 138 (2d Cir. 2002) ("[T]here is a right to privacy in one's unclothed or partially unclothed body"). The U.S. Supreme Court has also observed that accommodations are necessary to afford members of each sex privacy from the other, particularly in living arrangements. *U.S. v. Virginia*, 518 U.S. 515, 551 (1996).