

RESOLUTION FOR PROTECTING STUDENT PRIVACY IN THE USE OF FACILITIES AND PRESERVING COMPETITIVE INTEGRITY IN ATHLETICS FOR ALABAMA'S K-12 SCHOOLS

WHEREAS, the Alabama State Board of Education has a significant and compelling interest in maintaining a safe and distraction-free learning environment for students in Alabama's K-12 schools; and

WHEREAS, protecting student privacy is necessary to maintaining a safe and distraction-free learning environment for students in Alabama's K-12 schools; and

WHEREAS, the United States legal system has consistently recognized the legitimate and compelling interest an individual has in his or her own bodily privacy and that the need for such privacy is inherent in the nature and dignity of humankind; and

WHEREAS, an individual's interest in his or her own bodily privacy is rooted in legitimate biological differences between the sexes and not in social, cultural, or psychological conventions or stereotypes; and

WHEREAS, Title IX of the Education Amendments of 1972 and corresponding federal regulations permit recipients of Title IX funds to "provide separate toilet, locker room, and shower facilities on the basis of sex . . ." and that "such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex." 34 C.F.R. § 106.33; and

WHEREAS, a plain and congruent reading of Title IX of the Education Amendments of 1972 and corresponding federal regulations requires that the term "sex" be given its traditional, plain, and ordinary meaning of "biological sex"; and

WHEREAS, the Alabama State Board of Education recognizes the significant importance of preserving competitive integrity and safety for students participating in athletic programs in Alabama's K-12 schools; and

WHEREAS, the Alabama State Board of Education acknowledges Rule III, Section 6 of the Alabama High School Athletic Association Bylaws which states that, "[i]f a girls team is provided in a sport, girls may not participate on the boys team in that sport" and that "[b]oys are not permitted to participate on a girls' team under any circumstances."

NOW, THEREFORE, BE IT RESOLVED, that the Alabama State Board of Education hereby establishes the following default policies for Alabama's K-12 Schools:

1. Any student enrolled in Alabama's K-12 Schools shall, when utilizing a multiple-occupancy restroom, locker room, or shower room on School property, utilize the facility corresponding to that student's biological sex, as recorded on the student's birth certificate.
 - a. Nothing herein shall prohibit a school from designing or designating restroom or locker room facilities for use by one (1) person at a time. Such facilities may be designated for use by both sexes.

- b. Nothing herein shall prohibit a person entering a restroom or locker room facility designated for use by a particular sex:
 1. For custodial, maintenance or inspection purposes;
 2. For rendering medical or emergency assistance;
 3. For accompanying a person needing assistance; or
 4. Where a facility has been temporarily designated for use by individuals of the opposite sex as defined herein.
2. Any student enrolled in Alabama's K-12 Schools shall, when participating in an athletic program offered by the School, participate on the team that corresponds with the student's biological sex, as recorded on the student's birth certificate, except that a biologically female student may seek to qualify to participate on a male team if a female team is not available for that sport.
3. Any student whose external biological sex characteristics are irresolvably ambiguous may utilize the facility or participate on the sports team appropriate to the student's physical condition upon submission of a signed statement by a physician stating that the student was born having 46,XX chromosomes with virilization, 46,XY chromosomes with undervirilization, or both ovarian and testicular tissue, or that the physician has otherwise diagnosed a disorder of sexual development (DSD) wherein the physician has determined through genetic testing that the student does not have the normal sex chromosome structure for a male or female.

Done this ____ day of _____ 2016