

# **Student Physical Privacy Act**

**Section 1. Name.** This provision shall be known and may be cited as the [NAME OF STATE] Student Physical Privacy Act.

## **Section 2. Findings.**

A. Children and young adults have natural and normal concerns about physical privacy when they are in various states of undress, and most wish for members of the opposite sex not to be present in those circumstances.

B. Parents have a reasonable expectation that public schools in this State will not allow their minor children to be viewed in various states of undress by members of the opposite sex, nor allow their minor children to view members of the opposite sex in various states of undress.

C. Public schools in this State have a duty to protect the dignity, health and welfare of the students in their care.

D. Allowing students to use restrooms, locker rooms, and showers that are reserved for students of a different sex will create a significant potential for disruption of school activities and unsafe situations.

E. Allowing students to use restrooms, locker rooms, and showers that are reserved for students of a different sex will create potential embarrassment, shame, and psychological injury to students.

F. Public schools have a duty to respect and protect the privacy rights of their students. Courts have recognized a constitutional right to privacy that includes a right not to be compelled by the Government to undress or be unclothed in the presence of members of the opposite sex. *See, e.g., Cumbey v. Meachum*, 684 F.2d 712 (10th Cir. 1982); *Lee v. Downs*, 641 F.2d 1117 (4th Cir. 1981); *York v. Story*, 324 F.2d 450 (9th Cir. 1963).

## **Section 3. Purpose.** The purposes of this Act are:

A. To further the State's interest in protecting all students in public schools in this State;

B. To provide for the privacy needs of all students in public schools in this State; and

C. To maintain order and dignity in restrooms, locker rooms, showers, and other facilities where students may be in various states of undress in the presence of other students.

**Section 4. Definitions.** As used in the Student Physical Privacy Act:

A. "Sex" means the physical condition of being male or female, which is determined by a person's chromosomes, and is identified at birth by a person's anatomy.

B. "Public school" means a school subject to [INSERT RELEVANT CODE PROVISION AUTHORIZING THE CREATION AND SUPERVISION OF PUBLIC SCHOOLS]. Public schools do not include any schools not subject to [THAT PROVISION], including private schools, religious schools, and home-educating families.

**Section 5. Students' physical privacy to be protected.**

A. Designation and Use of Public School Facilities.

1. Every public school student restroom, locker room, and shower room accessible by multiple students at the same time shall be designated for use by male students only or female students only.

2. In all public schools in this State, student restrooms, locker rooms, and showers that are designated for one sex shall be used only by members of that sex.

3. In any other public school facility or setting where a student may be in a state of undress in the presence of other students, school personnel shall provide separate, private areas designated for use by students based on their sex.

B. Accommodation for Certain Students.

1. Students who consistently assert to school officials that their gender is different from their sex, and whose parent or legal guardian provides written consent to school officials, shall be provided with the best available accommodation, but in no event shall that accommodation be access to student restrooms, locker rooms, or shower rooms designated for use by students of the opposite sex while students of the opposite sex are present or could be present.

2. Acceptable accommodations may include, but are not limited to: access to single-stall bathrooms; access to uni-sex bathrooms; or controlled use of faculty bathrooms, locker rooms, or shower rooms.

**Section 6. Private cause of action and penalties provided.**

A. Students who access a public school restroom, locker room, or shower room designated for use by their sex have a right not to encounter a person of the opposite sex.

B. Students who, while accessing a public school student restroom, locker room or shower room designated for use by their sex, encounter a person of the opposite sex, have a private cause of action against the school if:

(1) the school gave that person permission to use facilities of the opposite sex; or,

(2) the school failed to take reasonable steps to prohibit that person from using facilities of the opposite sex.

C. Any claims arising pursuant to this Section shall be brought in the state or federal trial court in whose jurisdiction either the student or the school resides at the time of filing.

D. All civil actions brought pursuant to this section must be initiated within four years after the violation occurred.

E. Students aggrieved under this section who prevail in court may recover from the offending public school \$2,500 for each instance in which they encountered a person of the opposite sex while accessing a public school student restroom, locker room, or shower room designated for use by the aggrieved students' sex. They may also recover monetary damages from the offending public school for all psychological, emotional, and physical harm suffered.

F. Students who prevail on a claim brought pursuant to this Section shall be entitled to recover reasonable attorney fees and costs from the offending public school.

G. Nothing in this Section shall limit other remedies at law or equity available to the aggrieved student against the school.

**Section 7. Effective date.** This act becomes operative upon its enactment.

**Section 8. Severability.** If any subsection or portion of this act is declared invalid, that declaration shall not affect the validity of the remaining portions.