



Ohio's New "Bathroom Ban" Law Restricts Transgender Student Access: 5 Things Schools Should Do

Insights

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Ohio Governor DeWine just signed into effect a law that will soon ban students from using school restrooms and other facilities that don't align with their sex assigned at birth – and your school will need to take steps to comply with the new standards. Senate Bill 104, dubbed the "Protect All Students Act," will restrict student use of bathrooms, locker rooms, changing rooms, and overnight accommodations. It will apply to most of Ohio's public and chartered nonpublic elementary and secondary schools, educational service centers, and institutions of higher education (but doesn't cover private K-12 schools not chartered by the Ohio Department of Education). This "bathroom ban" was signed on November 27 and goes into effect February 25, 2025 – what are the five things Ohio schools should do to ensure compliance?

Overview of New Law

The law contains precise language clearly intended to eliminate gender identity when it comes to student use of certain educational facilities. It prohibits schools and students from considering an individual's psychological, chosen, or subjective experience of gender when determining proper access to bathrooms and other private facility spaces. Instead, the decision will solely come down to the sex assigned to the student at their birth, regardless of transgender status.

New Designations for Bathrooms, Locker Rooms, and Changing Rooms

Moving forward, schools must designate each "multi-occupancy facility" – those accessible to more multiple people at the same time like student restrooms, locker rooms, and changing rooms – for the exclusive use of students of either the male or female biological sex. Schools are prohibited from constructing, establishing, or maintaining a non-gendered, multigendered, or open-to-all-gender multi-occupancy facility.

The law, however, does not prohibit schools from constructing, establishing, or maintaining a "family facility" – meaning a family restroom or shower room that does not have more than one toilet. Additionally, the law does not prohibit schools from providing accommodations such as controlled use of faculty facilities at the request of a student due to special circumstances.

Specific Requirements for Individuals to Use Designated Locations

The law mandates multi-occupancy facilities designated for students of the **male biological sex** can only be used by an individual who had a “biological indication of male” status at birth, including male sex chromosomes, naturally occurring male sex hormones, male gonads, and non-ambiguous male genitalia (internal and external).

Similarly, multi-occupancy facilities designated for students of the **female biological sex** can only be used by an individual who had a “biological indication of female” status at birth, including female sex chromosomes, naturally occurring female sex hormones, female gonads, and non-ambiguous female genitalia (internal and external).

In proving an individual’s biological sex, the law provides that individuals may use their official birth record – but only if the birth record was issued at or near the time of their birth.

Restrictions Extend to Overnight Accommodations

Going further, the new law also prohibits Ohio schools from allowing a member of a different biological sex to share hotel accommodations with a member of the opposite biological sex. Males at birth must room with other biological males, and females at birth must room with other biological females.

Narrow Exceptions

Only very narrow exceptions to the new multi-occupancy facility and overnight accommodation requirements will exist. These include:

- a person entering a location designated for a biological sex different from one’s own based on a reasonable belief a legitimate emergency requires their response;
- assisting a person with a disability;
- an employee whose job requires entry into the location designated for the opposite biological sex; and
- a parent, guardian, or family member assisting a minor under the age of 10.

Additional Requirements for Institutions of Higher Learning

The law places a higher burden on institutions of higher learning. They must post clear signage of the biological sex to which a location is designated exclusive use. They are also specifically prohibited from “knowingly permitting” use of a location designated for exclusive use by one biological sex by a person of the opposite biological sex. Moreover, institutions of higher education electing to establish and enforce a policy on the use of a multi-occupancy facility must provide an option for alternative accommodations, including the use of single-occupancy facilities or faculty facilities.

Be Wary of Employment Protections

Schools should not lose sight that this new law focuses exclusively on situations involving students and does not impact federal anti-discrimination workplace laws. The Equal Employment Opportunity Commission, Department of Labor, and several other federal agencies have interpreted sex discrimination law to cover gender identity or transgender status – as does the U.S. Supreme Court. Further, federal appeals courts have started to rule that gender dysphoria – a medical condition where an “incongruence between their gender identity and assigned sex” results in “clinically significant distress” – can be a disability under the federal Americans with Disabilities Act (ADA).

With respect to bathroom access, the Occupational Safety and Health Administration (OSHA) requires that employers provide employees with access to sanitary restrooms. According to the agency, restricting employee access to only restrooms that correspond with their gender assigned at birth, or segregating employees from other workers by requiring them to use gender-neutral restrooms, singles out employees and makes them feel unsafe. OSHA’s current guidance explains that such restrictions can result in employees avoiding using restrooms while at work, which can lead to serious health issues and a workplace safety violation.

5 Steps for Ohio Schools

These might be challenging times for your school and your students as you attempt to navigate the nuances of this new law. Here are five steps you can take to help guide you through the changes.

- Your administrators should work with those students previously allowed to use the bathroom aligned with their gender identity to **identify a plan** for how their specific situation will be handled before the law takes effect on February 25.
- Once the new law takes effect, **check in with these students** on a regular basis so they remain comfortable reporting any bullying they experience.
- **Seek legal counsel** to assess how your school can best balance requirements under this new law and Title IX anti-discrimination protections afforded to students based on gender identity.
- Develop a plan for **how to respond to student gender identity issues** that emerge after the new law takes effect. These plans should be student-centered, include Title IX considerations, and allow for individualization based on the child’s age, circumstances, and other relevant information.
- Consider the **longer-term implications** of the work you do now responding to this new law. It will likely help to ensure your female and LGBTQ+ students are best supported should the Title IX protections they enjoy now be removed by the new Trump administration.

Conclusion

We will continue to monitor these developments, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the authors of this Insight, any member of [our Education team](#), or any attorney in our [Cleveland](#) or [Columbus](#) offices.

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