



School Bathroom Access for Transgender Students

By Joellen Kralik

Concerns about protecting the privacy of students in schools have arisen as the transgender community is gaining visibility. State legislators are working to balance students' privacy and safety with concerns about nondiscriminatory access to public facilities, including bathrooms.

When Governor Pat McCrory signed [House Bill 2](#) in March 2016, North Carolina became the first state to enact legislation limiting access to multiuser bathrooms, locker rooms and other sex-segregated facilities based on a definition of sex or gender consistent with sex assigned at birth or "biological sex."

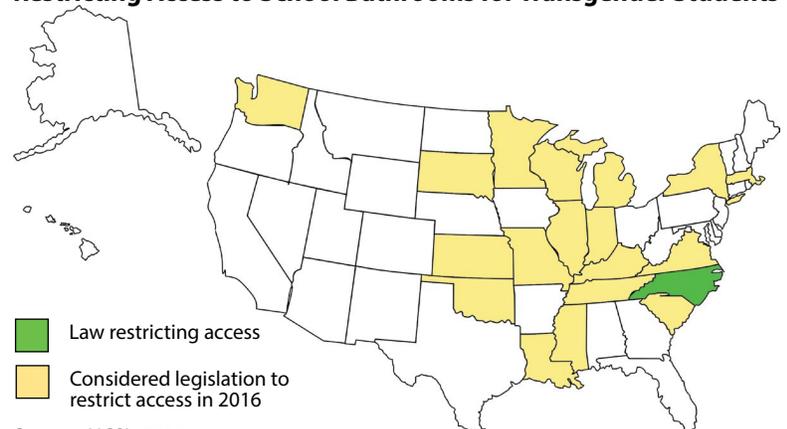
Supporters of legislation like HB 2 are concerned that criminals will use gender identity as an excuse to enter restrooms with intent to harm women and children. Those opposing this legislation argue there is a lack of documentation of the problem and cite concerns for providing nondiscriminatory access to public facilities on the basis of gender identity. The legislation also has sparked a debate in North Carolina about state versus municipal authority and governance.

State Action

Restricting Access. Nineteen states considered "bathroom bill" legislation in 2016 that would restrict access to multiuser bathrooms, locker rooms and other sex-segregated facilities on the basis of a definition of sex or gender consistent with sex assigned at birth or "biological sex." More than half of those states introduced legislation aimed specifically at addressing sex-segregated facilities in schools. Of those 19 states, bills in North Carolina and South Dakota passed out of the first chamber. [South Dakota's bill](#) passed in both chambers but was vetoed by the governor.

This is not the first year bathroom bills were introduced in state legislatures. Colorado, Florida, Kentucky, Massachusetts, Minnesota, Missouri, Nevada, Texas and Wisconsin considered bathroom bills in 2015. None of these bills was enacted. Arizona also introduced a bathroom bill that failed to pass in 2013.

Restricting Access to School Bathrooms for Transgender Students



Source: NCSL, 2016

Did You Know?

- The first known gender-segregated bathrooms were established in 18th-century Paris.
- Researchers are unsure of how many Americans identify as transgender, but one estimate puts the number at about 700,000, or about 0.3 percent of U.S. adults.
- Officials from 11 states are challenging federal government rules clarifying Title IX protections for transgender students.

Increasing Access. Some states have taken action moving in another direction. California enacted [Assembly Bill 1266](#) in 2013. It provided that “a pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil’s records.” Similar legislation was proposed in [Pennsylvania](#) this year.

In July 2016 [Massachusetts](#) became the most recent state to extend gender identity protections to establishments such as restaurants and other businesses where the public uses bathrooms and locker rooms. Eighteen other states, including California, have [public accommodation](#) nondiscrimination laws that include protections for gender identity.

Federal Action

In 2014 and 2015, the U.S. Department of Education (ED) released [multiple Title IX guides](#) stipulating that Title IX of the Education Amendment of 1972, which bans sex discrimination in schools, also protects students from discrimination on the basis of gender identity. In April 2016, the Fourth Circuit U.S. Court of Appeals [ruled](#) in favor of a transgender student’s right to use facilities consistent with his or her gender identity, deferring to ED’s interpretation of Title IX. As a result, the U.S. Department of Justice (DOJ) informed officials in North Carolina that the state is risking the loss of federal education funding because HB 2 violates Title IX, as well as Title VII (which prohibits sex discrimination in employment) and the Violence Against Women Reauthorization Act of 2013.

In May, North Carolina and DOJ initiated lawsuits against each other. North Carolina’s lawsuit asks the federal courts to issue a declaratory judgment that the state is not in violation of federal law. DOJ’s lawsuit alleges that North Carolina is discriminating against transgender individuals in violation of federal law as a result of the state’s compliance with and implementation of HB 2.

ED and DOJ also issued [joint guidance](#) to all schools in May 2016 summarizing schools’ Title IX obligations regarding transgender students and clarifying how the departments evaluate a school’s compliance with the obligations.

A [resolution](#) was introduced in Congress aimed at blocking the guidance and ensuring that schools do not lose federal funding if they do not allow students to use bathrooms and locker rooms corresponding to their gender identity.

Officials from 22 states have joined forces in two different lawsuits aimed at blocking the federal government from enforcing the guidance on Title IX. The [Texas-initiated lawsuit](#) was filed in May 2016. Texas is joined by Alabama, the Arizona Department of Education, Georgia, Louisiana, Maine Governor Paul LePage, Mississippi, Oklahoma, Tennessee, Utah, West Virginia, Wisconsin, and two school districts. The [Nebraska-initiated lawsuit](#) was filed in July 2016. Nebraska is joined by Arkansas, Kansas, Michigan, Montana, North Dakota, Ohio, South Carolina, South Dakota and Wyoming.

Since the ED guidance was released, the Kansas Senate adopted a resolution encouraging public schools to disregard the federal guidance, and the Oklahoma House adopted a resolution instructing schools that they may disregard the federal guidance.

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[Bathroom Bill Legislative Tracking](#)

[State Public Accommodation Laws](#)