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January 17, 2023

The Honorable Ken Paxton
Attorney General of the State of Texas
Office of the Attorney General
PO Box 12548
Austin, Texas 78711

Dear Attorney General Ken Paxton,

The Texas Association of School Boards (TASB) has recently issued guidance that will endanger children and encourage school districts to keep parents in the dark. We ask for your immediate review of this matter.

In its “Legal Issues Related to Transgender Students,” TASB says school districts must allow males to enter female restrooms or locker rooms per federal discrimination guidelines.¹ This directive is dangerous for girls, and runs counter to sound legal principles. Recently, the 11th Circuit Court ruled earlier this month that schools may require students to use bathrooms in accordance with their biological sex.²

“Moreover, under the Spending Clause’s clear statement rule, the term ‘sex,’ as used within Title IX, must unambiguously mean something other than biological sex — which it does not[...].”

This ruling demonstrates that Texas law has solid footing to maintain its commonsense view of the definition of sex, particularly in view of protecting girls and young women in schools.

What’s more, TASB doesn’t discourage districts from violating the state’s ban on males in female sports. The guidance advises school districts to review transgender athletes on a case-by-case basis, indicating that the federal government will ultimately work in their favor.

The guidance also allows school districts to subvert parental rights by granting discretion to educators on whether to report a child’s gender dysphoria. Most ominously, TASB advises districts to refer to a child by their preferred pronouns and gender identity at school, while referring to the child by their legal name in correspondence with parents. This guidance conflicts with Chapter 26 of the Texas Education Code.³

¹ https://www.tasb.org/services/legal-services/tasb-school-law-esource/students/documents/legal_issues_related_to_transgender_students.pdf

² <https://media.ca11.uscourts.gov/opinions/pub/files/201813592.2.pdf>

³ <https://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2022/kp-0406.pdf>

We already have witnessed the fruits of similar efforts elsewhere. If you recall, it was these types of policies that caused the tragic sexual assault of a young girl in a Loudoun County, Virginia school bathroom to not only occur but go unreported.⁴

The Texas Freedom Caucus humbly requests that your office issue immediate review of TASB's guidance and offer our school boards legal direction to ensure our schools remain safe and healthy environments.

Texas leaders must protect children and preserve the sanctity of the family. We are confident that you may take such action.

God Bless,

A handwritten signature in black ink, appearing to read "M. Schaefer", with a long horizontal flourish extending to the right.

Representative Matt Schaefer
Chairman

⁴ <https://www.dailywire.com/news/loudoun-county-schools-tried-to-conceal-sexual-assault-against-daughter-in-bathroom-father-says>