

1 AN ACT relating to student accommodations in distinctly private facilities.

2 WHEREAS, the General Assembly recognizes that every student, indeed, every
3 person, has a fundamental right to bodily privacy, and that public school students always
4 have a legitimate expectation of privacy in their persons while at school; and

5 WHEREAS, the General Assembly recognizes that the Commonwealth has an
6 affirmative duty to protect the privacy, dignity, and well-being of all students while under
7 the care and control of public schools, including students who are uncomfortable using
8 multiple occupancy showers, locker rooms, and restrooms with other students of the same
9 sex; and

10 WHEREAS, the General Assembly believes that, just as public school officials
11 have long provided accommodations to students with special needs, religious convictions,
12 and even dietary restrictions, so too should officials provide reasonable privacy
13 accommodations to any student who requests them; and

14 WHEREAS, KRS 344.145 recognizes facilities such as restrooms, locker rooms,
15 shower rooms, and bath houses as "in their nature distinctly private";

16 NOW, THEREFORE,

17 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

18 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO
19 READ AS FOLLOWS:

20 **(1) For the purposes of this section:**

21 **(a) "Multiple-occupancy restroom or changing facility" means a room or**
22 **location under the control of a local board of education or public school**
23 **that is designated or designed to be used by more than one (1) person at a**
24 **time, where a person may customarily be in various stages of undress,**
25 **including a locker room, changing room, or restroom;**

26 **(b) "Multiple-occupancy sleeping quarter" means a sleeping quarter used by**
27 **more than one (1) person while participating in overnight school-sponsored**

1 activities;

2 (c) "Public school" means a common school as defined in KRS 158.030,
3 including any public charter school as defined in KRS 160.1590;

4 (d) "Sex" means a person's immutable biological sex as male or female
5 determined by a person's anatomy and genetics at the time of birth;

6 (e) "Single-occupancy restroom or changing facility" means a room or
7 location under the control of a local board of education or public school
8 designated or designed to be used by only one (1) person at a time where a
9 person may customarily be in various stages of undress; and

10 (f) "Undue hardship" means construction of new facilities, significant
11 modification of current facilities, or any monetary expenditure which
12 exceeds a minimal or incidental cost.

13 (2) Local boards of education and public schools shall provide a reasonable
14 accommodation to any student or employee unwilling or unable to use a multiple-
15 occupancy restroom or changing facility or multiple-occupancy sleeping quarter
16 reserved or designated for the person's sex.

17 (a) Students under the age of eighteen (18) who are not emancipated shall
18 require the written consent of a parent in requesting the reasonable
19 accommodation.

20 (b) Reasonable accommodation may include, but is not limited to:

21 1. Access to a single-occupancy restroom or changing facility; or

22 2. Access to a restroom or changing facility reserved for employee use.

23 (c) Reasonable accommodation shall not include access to a multiple-
24 occupancy restroom or changing facility or multiple-occupancy sleeping
25 quarter that is designated for use by the opposite sex.

26 (3) Nothing in this section shall be construed to prohibit public schools from
27 adopting policies necessary to accommodate persons protected by the Americans

1 with Disabilities Act, 42 U.S. C. § 12101.

2 (4) (a) Local boards of education and public schools shall require any multiple-
3 occupancy restroom or changing facility that is available for student use to
4 be clearly designated for exclusive use by persons of a single sex and to be
5 occupied only by persons of the designated sex.

6 (b) Local boards of education and public schools shall require any multiple-
7 occupancy sleeping quarter of a student to be reserved for persons of a
8 single sex and to be occupied only by persons of the designated sex, except
9 that a local board of education may permit a student to share a multiple-
10 occupancy sleeping quarter with a parent, spouse, or other related person.

11 (5) (a) Any student who encounters a person of the opposite sex in a multiple-
12 occupancy restroom or changing facility designated for the use of students
13 of the same sex shall have a cause of action against the local board of
14 education or public school, if the board of education or public school
15 permitted the person of the opposite sex access to the multiple-occupancy
16 restroom or changing facility in violation of subsection (4)(a) of this
17 section.

18 (b) Any student required to share a multiple-occupancy sleeping quarter with
19 an unrelated member of the opposite sex in violation of subsection (4)(b) of
20 this section shall have a cause of action against the local board of education
21 or public school.

22 (c) Any student denied a reasonable accommodation in violation of subsection
23 (2) of this section shall have a cause of action against the local board of
24 education or public school.

25 (6) A claim brought pursuant to subsection (5) of this section may be asserted in any
26 court of competent jurisdiction within two (2) years of the date of the violation. A
27 prevailing claimant may recover all damages arising from the violation,

1 including damages for emotional distress, reasonable attorney's fees, and
2 litigation costs.

3 (7) Nothing in this section shall be construed to limit or preclude any other lawful or
4 equitable remedies against a local board of education or other party arising from
5 or relating to a violation of subsection (4) of this section.

6 (8) If any provision of subsection (1), (2), or (4) of this section is held to be
7 unconstitutional or invalid, that provision shall not be severable, because it is the
8 intention of the General Assembly that subsections (1), (2), or (4) of this section
9 are so essentially and inseparably connected with and dependent upon one
10 another that this section would not have been enacted without the inclusion of
11 every provision of subsection (1), (2), or (4) of this section.

12 ➔Section 2. This Act shall be known as and may be cited as the Students' Right to
13 Privacy Act.