

Are you getting the FACTS about Title IX?

WHAT THE LAW IS:

- ✓ Bodily privacy for students and others is a federal constitutional right. *Michenfelder v. Sumner*, 860 F.2d 328, 333 (9th Cir. 1988).
- ✓ Title IX regulations expressly allow for maintaining separate restroom, locker room and shower facilities (34 CFR 106.33).
- ✓ Schools boards have broad authority over operation of district schools and are responsible for educating children residing in the district. *Edwards v. Aguillard*, 482 US 578, 583 (1987). (ORS 322.072). Your school district is not required to treat sex as irrelevant to the restrooms, showers or locker rooms that students may access.
- ✓ The U.S. Supreme Court has repeatedly ruled that parents have the fundamental right to control their children's education and upbringing. *Troxel v. Granville*, 530 US 57, 66 (2000). *Wisconsin v. Yoder*, 406 US 205, 233 (1972).
- ✓ Oregon law (and often school policies) in a number of respects requires that parents be respected, notified, consulted or give approval when the health and safety of their children are involved.

THINGS TO KEEP IN MIND:

- ✓ The USDOE's "guidance" that "sex" under Title IX includes "gender identity" does not have the force of law.
- ✓ Even USDOE acknowledges its interpretation of Title IX concerning transgender policies is a "guideline", not the law.
- ✓ No school has ever lost Title IX funding.
- ✓ A school board is obligated to follow the law, not what someone (i.e., USDOE) wishes the law should be. Because there are so many unanswered questions, until this Title IX issue has been resolved, school districts can defer action (re Title IX "guidelines") until the law is clarified. Acting hastily is premature, disruptive and potentially expensive (i.e., creating other legal liabilities for the district and its staff), as well as perhaps impairing the primary education mission of Oregon public schools.
- ✓ Oregon school boards and superintendents need to remember whom they represent and serve. Oregonians are counting on local school officials to maintain a safe learning environment for all children.
- ✓ Reasonable accommodations can be made that protect the bodily privacy of all students.