



Written by [Raven Clabough](#) on June 16, 2016

## Kansas Board of Education Votes to Ignore Obama's Transgender Directive

The Kansas Board of Education has voted unanimously to ignore the Obama administration's policy that students should be permitted to use the bathroom of their choice, regardless of their biological sex, and to allow the individual school districts to decide how to proceed. The school board contends it is vital that policies such as these are left to the local schools to decide, not the federal government.



On May 13, Vanita Gupta, head of the Justice Department's Civil Rights Division, and Catherine Lhamon, assistant secretary of education for civil rights, issued a controversial directive asking schools to allow transgender students full access to bathrooms and locker rooms of the opposite sex.

In response to the unconstitutional federal overreach, numerous states have filed lawsuit against the federal government. Kansas Attorney General Derek Schmidt announced this month that his state will be suing the U.S. Departments of Justice and Education over its directive, but has not decided whether Kansas would join the 11-state lawsuit or sue separately. Likewise, the Republican-led Senate of Kansas issued a nonbinding resolution that rebukes the federal directive.

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But while it's commendable that the states are banding together to challenge this stark example of federal overreach, constitutionalists recognize that appealing to the federal courts so that that one branch of the federal government will limit the overreach of another sets a dangerous precedent. In a piece written for *The New American* earlier this month, Dr. Duke Pesta, academic director of The John Birch Society's FreedomProject Academy, observed that there is a better alternative for the states than suing the federal government:

States have the right to nullify nonsensical federal bathroom policies within their borders. They must do so. The answer lies not in government, but in our collective willingness to pull our kids from these government schools, and the willingness of the states to exercise their constitutional prerogative and just say "no."

In Kansas, the approach by the Board of Education to disregard the directive is a positive step in the right direction, as it asserts that education should remain local. The *Washington Post* reports that the resolution adopted by the school board says as much. It reads:

The Kansas State Board of Education believes that every child has the right to a high quality education delivered within a safe, inclusive and supportive school system.

In Kansas, like many other states, our schools have been addressing transgender student needs with sensitivity and success for many years. Just as every child is unique, so too is every school community. With that understanding, we are firm in our belief that decisions about the care, safety and well-being of all students are best made by the local school district based on the needs and



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desires of the students, parents and communities they serve.

The recent directive from the civil rights offices of the United States Department of Education and the U.S. Department of Justice regarding the treatment of transgender students removes the local control needed to effectively address this sensitive issue. We must continue to provide our schools the flexibility needed to work with their students, families and communities to effectively address the needs of the students they serve.

While the federal directive is said to be non-binding, districts that do not comply may lose education funding. Some are concerned that the vote could cause the state to lose \$479 million in federal aid allocated for the state's education budget, but Scott Gordon, general counsel for the state's education department, told the Associated Press that he does not believe the entire state would lose funding. Gordon contends that the fact that only one transgender student has filed a discrimination complaint with the Office of Civil Rights in 2015 is proof that districts already have adequate policies in place. Therefore, it is unlikely that the federal government would feel compelled to cut federal funding to the state.

Critics of the federal directive assert that the state should take a stance, regardless of the threat of losing federal dollars. Republican U.S. Rep. Tim Huelskamp, for example, encouraged western and central Kansas school leaders in letters he sent last Friday to ignore the guidelines, despite the threat of losing federal funding.

"Neither our girls or boys should be forced to undress in the presence of individuals who are of the opposite biological sex," Huelskamp wrote, adding, "Our children should also not be subjected to a greater risk of threats from predators who seek to do them harm."

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