

Trump Administration Rescinds Federal Guidance on Transgender Bathroom Use

Yesterday evening, on February 22, the Trump administration issued a two-page letter to schools withdrawing guidance that had previously been issued by the Obama administration regarding transgender students' use of rest rooms and locker rooms.

This action by the Trump administration rescinds the January 2015 *Letter to Emily Prince* and the May 2016 "Dear Colleague" letter issued during the Obama administration. These documents directed school districts, colleges, and universities that receive federal funding to allow transgender students to use facilities that correspond with their gender identity as opposed to their biological sex. This guidance was based upon the Obama administration's interpretation that Title IX, the federal law that bans sex discrimination in schools, includes gender discrimination based upon gender identity.

Yesterday's "Dear Colleague" letter came in the form of joint guidance by the U.S. Department of Education and the U.S. Department of Justice, and it asserts that the previous guidance documents do not "contain extensive legal analysis or explain how the position [taken by the Departments under the Obama administration] is consistent with the express language of Title IX, nor did they undergo any formal public process." Instead, under this new administration, "the Departments believe that...there must be due regard for the primary role of the States and local school districts in establishing educational policy."

It is presently unclear how the withdrawal of the Obama administration's guidance will impact the courts' interpretations of pending cases regarding transgender students. At the time of the writing of this memo, the U.S. Supreme Court is still poised to consider the case of Gavin Grimm, a 17-year-old transgender student from Virginia who sought to use the bathroom that corresponds with his gender identity. Oral argument in the *Grimm* case is scheduled to be heard on March 28 and, if the justices choose to decide the case rather than sending the case back to the lower courts to consider the new guidance issued by the Trump administration, there may be further changes to the law and the Departments' guidance.

The issue of restroom access for transgender students continues to be an ever changing legal landscape. Therefore, school districts, colleges and universities that receive federal funding should proceed with caution. Despite the Departments' rescinding of their previous guidance, schools should be mindful that the U.S. Department of Education's Office for Civil Rights (OCR) will "continue its duty under law to hear all claims of discrimination" which, theoretically, may include claims of discrimination by transgender students based upon a school's failure to allow an individual to use certain facilities such as bathrooms and locker rooms. Furthermore, in New York, the mandates of the Dignity for All Students Act (DASA) continue to remain in effect to protect students from discrimination, bullying and harassment.

The guidance memorandum from the New York State Department of Education that mirrored the Obama administration's view on bathroom access has not been rescinded. Until such time as New York State changes its position, the July 2015 State Guidance remains in effect.

If you have any questions about this Information Memo, please contact [Candace J. Gomez](#), or any of the [attorneys](#) in our [School Districts Practice](#), or the attorney in the firm with whom you are regularly in contact.



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