

The President Just Axed One of His Predecessor's Most Controversial Moves

Without President Donald Trump even lifting his pen, his administration has already followed through on White House Press Secretary Sean Spicer's assurances earlier this week that the Trump administration would roll back President Barack Obama's "transgender mandate" to schools.

The departments of Education and Justice issued a new two-page guidance letter on Wednesday evening stating that the Obama administration's interpretation of Title IX that defines "sex" to include gender identity and thus forcing them to allow transgender students to use the bathrooms and locker rooms of their choice did not "undergo any formal public process" prior to its release. In part, it states:

This interpretation has given rise to significant litigation regarding school restrooms and locker rooms. The U.S. Court of Appeals for the Fourth Circuit concluded that the term "sex" in the regulations is ambiguous and deferred to what the court characterized as the "novel" interpretation advanced in the guidance. By contrast, a federal district court in Texas held that the term "sex" unambiguously refers to biological sex and that, in any event, the guidance was "legislative and substantive" and thus formal rule-making should have occurred prior to the adoption of any such policy. In August of 2016, the Texas court preliminarily enjoined enforcement of the interpretation, and that nationwide injunction has not been overturned.

In addition, the departments believe that, in this context, there must be due regard for the primary role of the states and local school districts in establishing educational

policy.

In these circumstances, the Department of Education and the Department of Justice have decided to withdraw and rescind the above-referenced guidance documents in order to further and more completely consider the legal issues involved. The departments thus will not rely on the views expressed within them.

Please note that this withdrawal of these guidance documents does not leave students without protections from discrimination, bullying or harassment. All schools must ensure that all students, including LGBT students, are able to learn and thrive in a safe environment. The Department of Education Office for Civil Rights will continue its duty under law to hear all claims of discrimination and will explore every appropriate opportunity to protect all students and to encourage civility in our classrooms. The Department of Education and the Department of Justice are committed to the application of Title IX and other federal laws to ensure such protection.

This guidance does not add requirements to applicable law.

That language was in keeping with what Spicer said was the president's position on the matter: that states and local school districts should decide what is in the best interests of their communities.

Last May, the Obama-led Education and Justice departments sent its own directive informing schools that they must allow students who "identify as transgender" to use facilities that align with their gender identity, not their biological sex. It also required school districts to include gender identity as a protected class in all sexual discrimination matters—which resulted in biological boys competing against biological girls in interscholastic athletics.

Obama then threatened schools, districts, colleges and

universities with the loss of federal funds if they didn't comply with his administration's guidance. Nearly half of all states joined the lawsuit, claiming federal overreach, and the matter became one of several rallying cries for Republicans in the 2016 election.

After the letter was released, Attorney General Jeff Sessions issued the following statement:

The Department of Justice has a duty to enforce the law. The prior guidance documents did not contain sufficient legal analysis or explain how the interpretation was consistent with the language of Title IX. The Department of Education and the Department of Justice therefore have withdrawn the guidance.

Congress, state legislatures and local governments are in a position to adopt appropriate policies or laws addressing this issue. The Department of Justice remains committed to the proper interpretation and enforcement of Title IX and to its protections for all students, including LGBTQ students, from discrimination, bullying and harassment.

Secretary of Education Betsy DeVos added her own comments:

We have a responsibility to protect every student in America and ensure that they have the freedom to learn and thrive in a safe and trusted environment. This is not merely a federal mandate, but a moral obligation no individual, school, district or state can abdicate. At my direction, the department's Office for Civil Rights remains committed to investigating all claims of discrimination, bullying and harassment against those who are most vulnerable in our schools.

The guidance issued by the previous administration has given rise to several legal questions. As a result, a federal court in August 2016 issued a nationwide injunction barring the department from enforcing a portion of its application.

Since that time, the department has not enforced that part of the guidance, thus there is no immediate impact to students by rescinding this guidance.

This is an issue best solved at the state and local level. Schools, communities and families can find—and in many cases have found—solutions that protect all students.

I have dedicated my career to advocating for and fighting on behalf of students, and as secretary of education, I consider protecting all students, including LGBTQ students, not only a key priority for the department, but for every school in America.

We owe all students a commitment to ensure they have access to a learning environment that is free of discrimination, bullying and harassment. {eo}