



Alerts

Trump Administration Rescinds Guidance on Title IX and Transgender Students

February 23, 2017

Hinshaw Alert

On February 22, 2017, the U.S. Departments of Education and Justice published a [Dear Colleague Letter](#) (DCL) rescinding previous guidance that had sought to protect transgender students' rights. This rolling back of guidance issued under the Obama Administration by the Trump Administration was swift, but not unexpected. Questions remain as to whether the Trump Administration will target other guidance documents previously issued on the interpretation and implementation of Title IX, such as those applying Title IX to sexual violence and harassment. The choice of the Trump Administration to issue this DCL also raises the question of whether the move forecasts a broader policy agenda on the administration's part to target other gains made by LGBTQ individuals in the areas of workplace and other protections.

The guidance on transgender students rescinded by the DCL was [originally issued in May 2016](#). Although the guidance was primarily known for requiring schools receiving federal funding to allow students to access restrooms and locker rooms consistent with their gender identities, it covered many other topics as well. The main message of the original guidance was that "a school must not treat a transgender student differently from the way it treats other students of the same gender identity."

The DCL, in rescinding the original guidance, noted that courts have disagreed with the guidance's equation of "sex" under Title IX with "gender identity." It further stated that the original guidance documents did not "contain extensive legal analysis or explain how the position is consistent with the express language of Title IX," nor did they undergo any formal public process." It therefore rescinded the guidance "in order to further and more completely consider the legal issues involved."

Notably, the DCL did not provide any specific opinions contrary to the original guidance with respect to the measures schools should take to protect transgender students' rights. Therefore, the DCL alone does not prevent schools from continuing to follow the original guidance if they wish to do so. The DCL further warns: "All schools must ensure that all students, including LGBT students, are able to learn and thrive in a safe environment."

It is also important to remember that guidance from federal agencies is not the only source of authority on Title IX compliance; rather, courts in various jurisdictions have weighed in and continue to review questions on the application of Title IX. The case of [Gloucester County School Board v. G.G.](#) — currently pending before the U.S. Supreme Court and scheduled to be heard on March 28 — involves a high school student's right under Title IX to use bathroom facilities consistent with his gender identity. The outcome of that case will carry more weight than guidance documents, which do not carry the force of law.

For further information, please contact [Lora L. Zimmer](#) or your regular [Hinshaw attorney](#).

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