

# LEGAL ALERT

February 23, 2017

## **Trump Administration Withdraws Guidance on Transgender Students' Use of Bathrooms**

*By Katherine A. Gilfillan*

On Wednesday, February 22, 2017, the U.S. Departments of Education and Justice issued a "Dear Colleague" letter which withdrew previously-issued statements of policy and guidance relative to transgender public school students. In May of 2016, the two departments told public school districts and colleges that the anti-discrimination protections afforded by Title IX extend to claims based on gender identity and therefore transgender students must be permitted to use the bathrooms and locker rooms which corresponds to the gender with which they identify.

In the two-page letter, the departments simply withdrew the prior guidance; no new guidance was provided. The stated rationale for the withdrawal was the lack of legal analysis as to how the adopted position was consistent with the express language of Title IX.

Citing the "significant litigation" which resulted from the prior guidance, the Administration highlighted the primary role of the States and local school districts in establishing such policies.

The reversal in the U.S. Department of Education's position however will not change policy and operations for public schools in New Jersey as the State's Law Against Discrimination ("LAD") requires schools to permit transgender individuals to use those facilities which correlate to the gender with which the student identifies.

It is unclear whether the Administration's roll back of the prior guidance will impact the Supreme Court's decision to take up the case of *Gavin Grimm* which challenged the weight which such "guidance documents" should be afforded and whether the Department's interpretation of Title IX should be given effect.

Despite the withdrawal of the prior guidance documents, Education Secretary Betsy DeVos assured parents and students that the Education Department's Office of Civil Rights "remains committed to investigating all claims of discrimination, bullying and harassment against those who are most vulnerable in our schools."

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