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U.S. Departments of Justice and Education Withdraw Federal Transgender Student Guidance

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Late yesterday, the U.S. Departments of Justice and Education withdrew guidance for educational institutions, issued in 2015 and 2016, that took the position that the prohibitions in Title IX of the Education Amendments of 1972 and implementing regulations against discrimination on the basis of sex require access to sex-segregated facilities on the basis of gender identity rather than biological sex. In the February 22, 2017 *Dear Colleague Letter* rescinding the prior guidance, the U.S. Department of Education noted that interpreting “sex” as referring to gender identity rather than biological sex “has given rise to significant litigation regarding school restrooms and locker rooms.” A copy of the *Dear Colleague Letter* may be accessed at http://shipmangoodwin.com/files/guidance_letter_0.pdf.

At the same time that these federal agencies withdrew the prior guidance documents regarding transgender student rights, the two federal agencies affirmed the rights of transgender students to safety in school environments, stating 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.” Further, the agencies acknowledged their legal obligations to protect students from discrimination, noting that “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.”

Both the U.S. Attorney General and the U.S. Secretary of Education issued press statements explaining the rationale for the withdrawal of the guidance, each stressing the role of the states and local communities in providing protections for transgender students. Secretary of Education Betsy DeVos stated “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.” Attorney General Sessions similarly opined that “Congress, state legislatures, and local governments are in a position to adopt appropriate policies or laws addressing this issue.” Copies of the press statements may be accessed at the following links:



<https://content.govdelivery.com/accounts/USED/bulletins/1890330> and <https://www.justice.gov/opa/pr/statement-attorney-general-jeff-sessions-withdrawal-title-ix-guidance>.

Many states, including Connecticut, have already enacted state laws protecting transgender students from discrimination on the basis of gender identity or expression, and state agencies' guidance and enforcement actions mirror those described in the withdrawn federal guidance. An example of such state guidance is found in the 2012 guidance issued by the Connecticut Commission on Human Rights and Opportunities, *Guidelines for Connecticut Schools to Comply with Gender Identity and Expression Non-discrimination Laws*, a copy of which can be found at http://shipmangoodwin.com/files/Guidelines_for_Schools_on_Gender_Identity_and_Expression_final_4-24-12.pdf. For states such as Connecticut that have enacted non-discrimination laws protecting transgender students, the withdrawal of the federal guidance will have minimal impact on schools' legal obligations.

Questions or Assistance:

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