



Trump Rescinds Transgender Bathroom and Locker-room Rules

On the evening of February 22, the Trump administration's Departments of Justice and Education announced that they were withdrawing and rescinding the federal guidelines put in place by the Obama administration specifying that public schools must allow transgender students to use the bathrooms and locker rooms of their chosen gender.

The change in policy was outlined in a "Dear Colleague" letter the departments are in the process of sending to the nation's public schools.

The letter began by informing its intended recipients that the Department of Justice and the Department of Education are withdrawing the statements of policy and guidance reflected in two letters sent out by the Obama administration in 2015 and 2016.

The 2016 letter stated: "As a condition of receiving Federal funds, a school agrees that it will not exclude, separate, deny benefits to, or otherwise treat differently on the basis of sex any person in its educational programs or activities unless expressly authorized to do so under Title IX or its implementing regulations."

The letter instructed the nation's schools, "A school may not require transgender students to use facilities inconsistent with their gender identity or to use individual-user facilities when other students are not required to do so."

It also made clear that the accommodation of transgender students applied not only to restrooms but to locker rooms, stating: "Restrooms and Locker Rooms. A school may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identity."

It then cavalierly dismissed the concerns of parents who did not want their children exposed to intimate visual contact with members of the opposite sex whose delusions led them to believe that they were boys instead of girls (or vice versa): "As is consistently recognized in civil rights cases, the desire to accommodate others' discomfort cannot justify a policy that singles out and disadvantages a particular class of students."

In reaction to this policy, former Arkansas governor and ordained Southern Baptist minister Mike Huckabee stated that if such policies had been in effect when he was in school, "I'm pretty sure I would've found my feminine side and said, 'Coach, I think I'd rather shower with the girls today.'"

The Trump DOJ/DOE letter observed that the Obama administration's guidance documents take the position that the prohibitions on discrimination "on the basis of sex" in Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 et seq. ... require access to sex-





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segregated facilities based on gender identity. These guidance documents do not, however, 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.

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.

Anticipating that many advocates of providing civil-rights protections to transgender students would charge that the rescission of the Obama guidelines would leave such students vulnerable to ill treatment, the latest letter stated:

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.

While social conservatives will understandably breathe a sigh of relief that this latest action by the Trump administration will undo some of the bizarre social engineering enacted by progressive politicians in the name of “equality,” an article published by *Breitbart* on February 23 made a case that it leaves an important point unsettled. The article stated:

The new policy does not reaffirm federal support for the long-standing civic and legal practice of defining men and women by their biology. Instead, it is silent on the revolutionary claim by gay and transgender activists that each person’s legal sex should be defined by their adopted “gender identity,” not by their biology.

As *Breitbart* noted, “Trump’s policy discards Obama’s policy, but it does not formally reject the transgender ideology of gender over biology.”

Because the issue of “transgender” rights is relatively new compared to civil rights based on race or national origin, the very terminology used in the arguments on both sides of the issue is often confusing. An article published by *The New American* last June, [“Sex Vs. Gender. Yes, There Is a Difference!”](#), sought to define some of this terminology in order to make sense of the claims made by some that they “identified” as male or female when biologically they are the opposite.

The writer observed that, until relatively recently, “gender” was mainly used in grammar, pertaining to the categories into which words are divided, such as masculine, feminine, and neuter, and was not traditionally used in reference to people.

Because of language manipulation by activists, however, many people have been misled into abandoning the traditional concept that there are only two sexes, based on biology. The biological distinction was at one time the only thing people accepted. Getting people to think of “gender” changed that, however. The article went on the state:

Once the term caught on and most everyone accepted that a person could have “gender” — and once a minority had accepted that there could be more than two — the next step was to add to the



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concept the notion that a person could be “*transgender*” and transition from one to another. It’s incrementalism; step by step, inch by inch. [Emphasis in original.]

The argument over transgenderism will not likely be settled overnight, however. And the federal government (whether the executive, legislative, or judicial branches) is hardly the place to settle it. The authors of our Constitution wisely did not grant the federal government any voice in social and moral matters such as marriage and sexuality, and therefore left any discussion of such matters “to the states respectively, or to the people,” in the language of the 10th Amendment.

Several statements made by Trump administration officials are encouraging, in this regard.

When asked at a February 22 press briefing to provide “an update on the administration’s plans with regard to transgender bathrooms in schools,” Press Secretary Sean Spicer answered, in part:

The President, as I said yesterday, is a firm believer in states’ rights. When you look at the guidance that was issued under the Obama administration — first of all, let’s remember, to the best of my knowledge, that was stalled and never fully implemented. And I think there were various reasons for that — several legal reasons and several procedural reasons. And so the Department of Education and the Department of Justice, both who jointly issued that guidance back during the Obama administration, are now working together again under a Trump administration, they’ve been reviewing the guidance that was signed, the basis by which it was put through.

While short on specifics, Spicer’s answer does imply that Trump prefers that this issue be settled at the state, not the federal, level.

This viewpoint was confirmed by a statement issued by Education Secretary Betsy DeVos on February 22 that noted:

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.

While De Vos’s recognition that the issue is best solved at the state and local level is encouraging, the second part of her statement is equally troubling.

When did it become the responsibility of the secretary of education to protect *any* students, whether “LGBTQ, “ or any other category? Isn’t that responsibility also best handled at the state and local level? And where does the Constitution grant such responsibility to the federal government?

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