

February [[xx]], 2017


Dear Colleague:

The purpose of this guidance is to inform you that the Department of Education and the Department of Justice are withdrawing the statements of policy and guidance reflected in:

- Letter to Emily Prince from James A. Ferg-Cadima, Acting Deputy Assistant Secretary for Policy, Office for Civil Rights at the Department of Education (OCR) dated January 7, 2015; and,
- Dear Colleague Letter on Transgender Students jointly issued by the Civil Rights Division of the Department of Justice (“DOJ”) and OCR dated May 13, 2016.

These 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., and its implementing regulations, see, e.g., 34 C.F.R. § 106.33, require access to sex-segregated facilities based on gender identity rather than biological sex.

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. That case is currently pending before the Supreme Court. By contrast, a federal district court in Texas held that the term “sex” unambiguously refers to biological sex and that, in any event, because the guidance was “legislative and substantive,” formal rulemaking should have occurred prior to the adoption of any such policy. The Texas court preliminarily enjoined enforcement of the interpretation, and that injunction currently remains in effect.



In addition, over the past two years, school administrators, parents, and students have expressed varying views on the legal issues arising in this setting. They have also struggled to understand and apply the statements of policy and guidance in the two documents identified above.

In these circumstances, OCR and DOJ have decided to withdraw and rescind the above-referenced guidance documents in order to further consider the legal issues involved. The Departments thus will not rely on the views expressed within them.

Please note that the withdrawal of these guidance documents does not diminish the protections from bullying and harassment that are available to

all students. Schools must ensure that transgender students, like all students, are able to learn in a safe environment.

This guidance does not add requirements to applicable law, but provides information about how OCR and DOJ will proceed in developing the appropriate approach for determining whether covered entities are complying with their legal obligations in this context. If you have questions or are interested in commenting on this guidance, please contact OCR at ocr@ed.gov or 800-421-3481 (TDD 800-877-8339); or DOJ at education@usdoj.gov or 877-292-3804 (TTY: 800-514-0383).

