



# Federal Judge Blocks Obama Administration's Transgender Bathroom Policy

SCHOOLS FORCED TO ADJUST ON CUSP OF NEW ACADEMIC YEAR

Insights

8.23.16

A federal judge in Texas has dealt a serious blow to the Obama administration's transgender school bathroom directive, barring the federal order which required schools to allow transgender students to use bathrooms, locker rooms, and other facilities according to their gender identity. U.S. District Judge Reed O'Connor granted a preliminary injunction in an order published late Sunday, August 21, the night before most schools begin their school year in Texas. However, the ruling does not just apply in Texas; it prevents the administration from asserting its guidelines on school districts nationwide.

## States Took Issue With Federal Transgender Initiatives

Arguably one of the most important civil rights matters for the Obama administration is furthering transgender rights. Thus, in May 2016, the U.S. Department of Education and Department of Justice jointly published a Dear Colleague Letter instructing educational institutions to allow transgender students to use bathrooms, locker rooms, and other facilities that correspond with the student's gender identity. The failure to comply could impact the institution's federal funding. This guidance applied to public, charter, and private schools that receive federal financial assistance.

In response, 13 states, headed by Texas, sued to enjoin the directive. The additional states involved in the action are Alabama, Arizona, Georgia, Kentucky, Louisiana, Maine, Mississippi, Oklahoma, Tennessee, Utah, Wisconsin, and West Virginia. Another 10 states have filed suit separately over the guidelines.

## Judge Halts Implementation Of New Directive

In a 38-page order, Judge O'Connor granted the states' request for a preliminary injunction and ordered the parties to "maintain the status quo, meaning that the administration is currently blocked from enforcing its guidelines. The judge ruled that the administration exceeded its authority and failed to comply with proper notice and comment requirements under the Administrative Procedures Act.

As a result, schools should continue to operate with the bathroom policies they have in place until a final ruling is made on the merits of the lawsuit.

## **Stay Tuned For Next Round In This Conflict**

Litigation regarding both transgender issues and the legality of the Obama administration's issuance of "guidance" through the Department of Education Office of Civil Rights on various Title IX issues is winding its way through the federal courts now, and will presumably be settled by the U.S. Supreme Court. Earlier this month, the Supreme Court signaled that it may be prepared to weigh in on the issue when it stayed a lower court's order preventing a Virginia school board from enforcing a policy that bans transgender students from using bathrooms and locker rooms that match their identity (*Gloucester County School Board v. G.G.*).

The administration is reviewing its options, but will likely proceed on the merits of this action. In the meantime, educational institutions should continue implementing their current bathroom policies.

Lawyers and educational institutions are looking for clear guidance as these important issues become more prevalent in society and their institutions. For further discussion, join us at Fisher Phillips' next webinar on the topic of Title IX Developments to be held in November. Stay tuned for information about registration for the event, which will be included in our next Education Update newsletter published on October 1.

For more information, visit our website at [www.fisherphillips.com](http://www.fisherphillips.com), or contact any member of our [Education Practice Group](#) or your regular Fisher Phillips attorney.

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