



Trump DOJ Drops Obama Administration's Transgender Bathroom Fight

Insights

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Last week, the Justice Department withdrew the pending legal challenge that had sought to reverse the federal court decision blocking the implementation of the Obama administration's transgender bathroom policy for public schools. By announcing it would drop the government's appeal (which was launched by the Obama Department of Justice), the Trump administration signaled that it will take a more conservative approach to the issue, allowing local school districts to develop their own bathroom and locker room policies without federal guidance. However, the Supreme Court will soon wade into the fray and could lay down new standards for public schools and their transgender policies.

DOJ Flip-Flops Position On School Transgender Issue

In May 2016, the Department of Education and the Department of Justice (DOJ) jointly issued a Dear Colleague Letter, directing schools to allow transgender students to use bathrooms, locker rooms, and other facilities that correspond with the student's gender identity. In response, a number of states, led by Texas, sued to enjoin the directive. In August 2016, a federal judge in Texas granted the state's preliminary injunction, blocking the Obama administration from asserting its directive on school districts nationwide.

After the injunction was ordered, the DOJ objected to the injunction by filing an appeal with the 5th Circuit Court of Appeals. The DOJ argued that preventing transgender students from using the bathroom of their choice is a violation of a law prohibiting sexual discrimination. It asked the court to limit the scope of the injunction to only apply in the states which are parties to the lawsuit.

But everything changed on January 20 when President Trump took office. By the time Jeff Sessions had been confirmed and assumed his role as the head of the DOJ on February 9, the writing was on the wall. On February 10, the DOJ withdrew the government's appeal and cancelled the oral argument which had been scheduled for February 14. Notably, the short motion stated, "The parties are currently considering how to best proceed in this appeal." The motion appears to establish that the Trump DOJ is not dedicated to enforcing the 2016 Dear Colleague Letter.

Analysis And Predictions

It was no surprise that the DOJ withdrew its appeal after Jeff Sessions was confirmed as Attorney General, as he indicated his opposition to the transgender school issue when he was a U.S. Senator.

His actions here may signal that the Justice Department's will take a similar hands-off approach when it comes to the federal government position on [North Carolina's bathroom law](#).

Next month, the U.S. Supreme Court will hear oral arguments in a case involving a female Virginia high school student who identifies as male and whether the school should allow the student to use boys' bathrooms and locker rooms while at school (*Gloucester County School Board v. G.G.*). The Court's decision in that case could play a major role in determining the future of this issue across the country, and we will provide a summary of the decision in that case immediately after it is published (expected by June 2016).

For more information, contact any member of our [Education Practice Group](#) or your regular Fisher Phillips attorney.

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