

LABOR & EMPLOYMENT**OBAMA-ERA GUIDANCE ON TRANSGENDER STUDENT RIGHTS REVERSED BY DEPARTMENTS OF EDUCATION AND JUSTICE**

by Sherry D. O'Neal

On February 22, 2017, President Donald Trump's administration issued a two-page "Dear Colleague" letter that formally rescinded the Obama administration's interpretation of transgender student rights as an extension of Title IX.

In May 2016, former President Barack Obama's Education Department issued guidance in the form of a letter instructing public schools that they must allow transgender students to use the restrooms and locker rooms that align with the student's gender identity. The guidance covered other issues, including the importance of addressing transgender students by their preferred names and pronouns and schools' responsibility to prevent harassment and bullying of transgender children. The guidance was issued in response to queries from school districts across the country about how to accommodate transgender students in gender-segregated bathrooms, and as an interpretation of Title IX, which prohibits gender discrimination in education.

The Trump administration's letter withdrew the Obama administration's May 2016 guidance and interpretation of transgender rights as an extension of Title IX. The letter explained that the Obama administration's guidance failed to "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". The letter does not offer new guidance, but does advise that the Trump administration wants to "further and more completely consider the legal issues involved" and that there must be "due regard for the primary role of the States and local school districts in establishing educational policy." The letter also advises that "schools must ensure that all students, including LGBT students, are able to learn and thrive in a safe environment." In support of the letter, Education Secretary Betsy DeVos stated that the decision was needed to "protect every student in America and ensure they have the freedom to learn and thrive in a safe and trusted environment." Secretary DeVos added that the transgender student bathroom issue is one that is "best solved at the state and local levels. Schools, communities, and families can find – and in many cases have found – solutions that protect all students."

In September 2016, Michigan's Board of Education issued voluntary guidance addressing the transgender student bathroom issue. The Board's guidance recommended that school districts allow students to use bathrooms in conformity with their gender identity. The guidelines were drafted in response to requests from educators across the state. The guidance also shares best practices already in place at many schools across Michigan.

Though the Trump administration's letter is set to go to the nation's public schools, it will not have an immediate affect as the Obama

administrations' policy was blocked by a federal court shortly after its issuance. Additionally, the U.S. Supreme Court is set to hear oral arguments in a case dealing with the issue of transgender student rights (*Gloucester County School Board v. GG*) on March 28, 2017.

This client alert is published by Dickinson Wright PLLC to inform our clients and friends of important developments in the field of employment law. The content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions or concerns relating to any of the topics covered in here.

FOR MORE INFORMATION CONTACT:



Sherry D. O'Neal is a Member in Dickinson Wright's Detroit office. She can be reached at 313.223.3871 or soneal@dickinsonwright.com.



Jeffrey E. Ammons is a Member in Dickinson Wright's Troy office. He can be reached at 313.223.3122 or jammons@dickinsonwright.com.



Christina K. McDonald is Member in Dickinson Wright's Grand Rapids office. She can be reached at 616.336.1039 or cmcdonald@dickinsonwright.com.



Carmen L. Dorris is an Associate in Dickinson Wright's Detroit office. She can be reached at 313.223.3031 or cdorris@dickinsonwright.com.