



U.S. Department of Justice

Office of the Solicitor General

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Washington, D.C. 20530

February 22, 2017

Honorable Scott S. Harris  
Clerk  
Supreme Court of the United States  
Washington, D.C. 20543

Re: Gloucester County School Board v. G.G., No. 16-273

Dear Mr. Harris:

This case, which is scheduled for argument on March 28, 2017, involves a question about the proper application to transgender students of the prohibition on sex discrimination under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, and its implementing regulations, see 34 C.F.R. 106.33, in the context of sex-segregated facilities such as bathrooms and locker rooms. In the decision below, the court of appeals deferred to the interpretation of Title IX and its implementing regulations reflected in administrative guidance issued by the United States Department of Education. See *Auer v. Robbins*, 519 U.S. 452 (1997).

This letter is to inform the Court that, on February 22, 2017, the Department of Education, in conjunction with the Department of Justice's Office for Civil Rights, announced their decision to withdraw that guidance and a subsequent joint guidance letter, not to rely on the views expressed in the guidance, and instead to consider further and more completely the legal issues involved. Enclosed is a copy of the document withdrawing the guidance.

We would appreciate it if you would circulate copies of this letter and attachment to the Members of the Court.

Sincerely,

A handwritten signature in black ink that reads "Edwin S. Kneedler".

Edwin S. Kneedler\*  
Deputy Solicitor General

cc: See Attached Service List

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\* The Acting Solicitor General is recused from this case.



U.S. Department of Justice  
Civil Rights Division



U.S. Department of Education  
Office for Civil Rights

**Dear Colleague Letter**  
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**U.S. Department of Justice**  
*Civil Rights Division*



**U.S. Department of Education**  
*Office for Civil Rights*

February 22, 2017

Dear Colleague:

The purpose of this guidance is to inform you that the Department of Justice and the Department of Education 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 dated January 7, 2015; and
- Dear Colleague Letter on Transgender Students jointly issued by the Civil Rights Division of the Department of Justice and the Department of Education 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. 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. By contrast, a federal district court in Texas held that the term “sex” unambiguously refers to biological sex and that, in any event, the guidance was “legislative and substantive” and thus formal rulemaking should have occurred prior to the adoption of any such policy. In August of 2016, the Texas court preliminarily enjoined enforcement of the interpretation, and that nationwide injunction has not been overturned.

In addition, the Departments believe that, in this context, there must be due regard for the primary role of the States and local school districts in establishing educational policy.

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

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. The Department of Education and the Department of Justice are committed to the application of Title IX and other federal laws to ensure such protection.

This guidance does not add requirements to applicable law. If you have questions or are interested in commenting on this letter, please contact the Department of Education at [ocr@ed.gov](mailto:ocr@ed.gov) or 800-421-3481 (TDD: 800-877-8339); or the Department of Justice at [education@usdoj.gov](mailto:education@usdoj.gov) or 877-292-3804 (TTY: 800-514-0383).

Sincerely,

/s/

Sandra Battle  
Acting Assistant Secretary for Civil Rights  
U.S. Department of Education

/s/

T.E. Wheeler, II  
Acting Assistant Attorney General for Civil Rights  
U.S. Department of Justice