

OCR Provides Instructions on Transgender Student Investigations

As we have reported in previous Priority Briefings, the rights of transgender students have yet to be resolved. In the last several months, the federal government withdrew guidance that existed under the Obama Administration and federal courts have dismissed cases that could have clarified transgender students' rights nationwide. In light of these events, on June 6, 2017, the United States Department of Education's Office of Civil Rights ("OCR") issued instructions to its field offices to assist their investigations of complaints of sex discrimination against transgender students. In those instructions, OCR stated that investigators should "rely on Title IX and its implementing regulations, as interpreted in decisions of federal courts and OCR guidance documents that remain in effect." This statement will likely mean different things to different field offices, depending on the federal circuit in which the OCR investigator is located. The OCR guidance lists specific instances where

investigators might have specific jurisdiction, such as failure to use a student's preferred pronoun or a school or district's failure to fix an environment that is hostile toward transgender students. Notably, investigations into the denial of transgender students' right to use the bathrooms of their choice is not on that list. Instead, the memo states that, based on jurisdiction, some complaints might go forward while others, including those involving bathrooms, might be dismissed.

Illinois is located within the jurisdiction of the Seventh Circuit Court of Appeals, which has recently ruled that the statutory language of Title IX of the Civil Rights Act – even absent the Obama administration guidance – protects transgender students. The Seventh Circuit opted to take an expansive view of other courts' decisions which protected transgender people under Title VII of the Civil Rights Act and concluded that the rationale underlying those decisions applied to this case. Consequently, we predict that transgender students in Illinois will be among the most protected in the country. As we have mentioned previously, however, since the facts of each case may be unique, we encourage you to contact one of our attorneys in Oak Brook (630.928.1200) or Flossmoor (708.799.6766) if you have

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any questions regarding this topic or you are presented with a similar issue in your district.