

CONTROVERSIAL ISSUES IN THE NEWS

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TITLE IX AND TRANSGENDER STUDENTS

CENTRAL QUESTION

Should the federal government use Title IX protections to mandate that schools make accommodations for transgender students?



INTRODUCTION

On March 23, 2016, the North Carolina General Assembly passed House Bill 2 (HB2), the Public Facilities Privacy and Security Act, which was signed into law by Governor Pat McCrory, R-N.C., the same day.¹ The law, which is sometimes referred to as the North Carolina bathroom bill, sparked heated debates about the rights of transgender adults and students, discrimination, the privacy of citizens, religious freedom, and the proper role of government. In this *Close Up in Class Monthly Policy Discussion*, we will examine the federal government's response to North Carolina's HB2 and explore the pros and cons of the various paths forward.

BACKGROUND

North Carolina's HB2 sets statewide standards that outlaw discrimination based on race, religion, color, national origin, age, handicap, and biological sex as designated on a birth certificate. The bill, which was passed in response to a Charlotte city ordinance that expanded discrimination protections to gay and transgender people, also makes it illegal for cities to expand upon the state discrimination protections and nullifies local laws that extend protections to the lesbian, gay, bisexual, and transgender (LGBT) community.²

The state law also explicitly says that in public facilities such as schools and government agencies, people are required to use the restrooms and locker rooms that match their biological sex, as designated on their birth certificate.³

In the aftermath of its passage, the law generated a storm of national controversy. Groups such as the NC Values Coalition, the Christian Action League, and the NC Family Policy Council hailed the law as a commonsense measure and a defense of religious freedom, but others insisted that it is a discriminatory attack on the LGBT community.⁴ Entertainers such as Cirque du Soleil, Boston, Bruce Springsteen, and Ringo Starr cancelled performances in North Carolina in protest, while PayPal abandoned plans to open a facility in Charlotte.⁵



HB2: A Video Timeline

TITLE IX AND TRANSGENDER STUDENTS

The federal government also weighed in on the debate over North Carolina's HB2 on May 13, as the Departments of Education and Justice together issued guidance for schools about how to treat transgender students. The guidance stated that according to the government's interpretation of Title IX of the Education Amendments of 1972, "A school must not treat a transgender student differently from the way it treats other students of the same gender identity."⁶ In response, 11 states filed a lawsuit against President Barack Obama's administration, asking the courts to block the new federal rules.⁷



States sue the Obama administration over rules regarding transgender students

KEY TERMS

Gender identity refers to an individual's internal sense of gender. A person's gender identity may be different from, or the same as, the person's sex assigned at birth.

Sex assigned at birth refers to the sex designation recorded on an infant's birth certificate.

Transgender describes individuals whose gender identity is different from the sex they were assigned at birth. A transgender male is someone who identifies as male but was assigned the sex of female at birth; a transgender female is someone who identifies as female but was assigned the sex of male at birth.

Source: U.S. Department of Justice and U.S. Department of Education, May 2016.

TITLE IX AND TRANSGENDER STUDENTS

THE CURRENT CONTROVERSY

Should the federal government use Title IX protections to mandate that schools make accommodations for transgender students?

So, what exactly is Title IX? This section of the Education Amendments of 1972 prohibits discrimination on the basis of sex in federally funded education programs or activities. The statute reads, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”⁸ Title IX is best known for providing women with equal access to intercollegiate athletics, but it has also affected student admissions, scholarships, and access to educational courses.⁹

In its letter outlining the school guidance for transgender students, the Obama administration stated that in compliance with Title IX, “As a condition of receiving Federal funds, a school agrees that it will not exclude, separate, deny benefits to, or otherwise treat differently on the basis of sex any person in its educational programs or activities unless expressly authorized to do so under Title IX or its implementing regulations. The Departments [of Education and Justice] treat a student’s gender identity as the student’s sex for purposes of Title IX and its implementing regulations.”¹⁰

According to the letter, schools are also obligated by law to:

- Provide “a safe and nondiscriminatory environment” for all students, including transgender students;
- Treat students “consistent with their gender identity” even if their education records or identification documents indicate a different sex;
- Allow transgender students to participate in sex-segregated activities and use sex-segregated facilities that are consistent with their gender identity, with some exceptions made for single-sex admission policies, fraternities, and sororities;
- Take “reasonable steps to protect students’ privacy” related to their transgender status.¹¹



Read the guidance letter from the Departments of Education and Justice

The directive sparked a debate about whether the Obama administration had overstepped its authority. Supporters of the administration’s Title IX stance argue that the federal government is obligated by law to protect citizens against sex discrimination—and that is exactly what this new guidance does. But opponents insist that the administration is flouting the democratic process by issuing blanket mandates on a delicate issue that should be decided by schools, local governments, or lawmakers in Congress.



The White House explains its reasoning behind the guidance letter

TITLE IX AND TRANSGENDER STUDENTS: DEBATE

Should the federal government use Title IX protections to mandate that schools make accommodations for transgender students?

YES: The federal government has a responsibility to protect the rights of transgender students.

“Our federal civil rights law guarantees all students, including transgender students, the opportunity to participate equally in school programs and activities without sex discrimination as a core civil right,” said Catherine Lhamon, the assistant secretary for civil rights at the Department of Education.¹²

And it is as simple as that. Title IX explicitly states, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” These Title IX protections are necessary to ensure that transgender students are allowed to live their lives at school without fear or unfair treatment.

“We must ensure that our young people know that whoever they are or wherever they come from, they have the opportunity to get a great education in an environment free from discrimination, harassment, and violence,” said Secretary of Education John King.¹³

It is more important than ever for the federal government to lead the way on transgender rights. “These groundbreaking guidelines not only underscore the Obama administration’s position that discriminating against transgender students is flat-out against the law, but they provide public school districts with needed and specific guidance,” said Chad Griffin, president of the Human Rights Campaign. “This is truly a significant moment not only for transgender young people but for all young people, sending a message that every student deserves to be treated fairly and supported by their teachers and schools.”¹⁴

The invocation of Title IX protections will go a long way in promoting understanding and acceptance of the transgender community—and it will discourage other states from implementing unjust laws like HB2. Just because one citizen holds religious beliefs that conflict with the LGBT lifestyle does not give that person the right to ignore another citizen’s civil rights. “As is consistently recognized in civil rights cases, the desire to accommodate others’ discomfort cannot justify a policy that singles out and disadvantages a particular class of students,” the letter from the Departments of Education and Justice reads.¹⁵

In the end, Title IX protections send a much-needed sign of support to the transgender community—and to transgender students in particular. “We see you,” said Attorney General Loretta Lynch. “We stand with you, and we will do everything we can to protect you going forward.”¹⁶

NO: The Obama administration has overstepped its authority and ignored the will of local communities.

“Most Americans, including this governor, believe that government is searching for a solution to a problem that has yet to be defined,” Governor McCrory said. “Now, both the federal courts and the U.S. Congress must intercede to stop this massive executive branch overreach, which clearly oversteps constitutional authority.”¹⁷

Governor McCrory is right when he calls this “guidance” from the Departments of Education and Justice a massive overreach by the federal government. As officials in 11 states said in their lawsuit, the Obama administration has “conspired to turn workplaces and educational settings across the country into laboratories for a massive social experiment, flouting the democratic process, and running roughshod over commonsense policies protecting children and basic privacy rights.”¹⁸

If the Obama administration wishes to expand protections for transgender students, it should allow the issue to be handled by the appropriate parties. “This is the kind of issue that parents, school boards, communities, students, and teachers should be allowed to work out in a practical way with a maximum amount of respect for the individual rights of all students,” said Senator Lamar Alexander, R-Tenn. “Insofar as the federal government goes, it’s up to Congress to write the law, not the executive departments.”¹⁹

By issuing this blanket edict, the Obama administration is merely bending existing laws to achieve a desired outcome—creating a weak and temporary policy prescription and ignoring the very real concerns of some schools and communities. Citizens are not wrong to worry that people with ill intentions could take advantage of laws aimed at protecting transgender individuals, which broaden access to single-sex public bathrooms and locker rooms.

“America has woken up to yet another example of President Barack Obama doing through executive fiat what he cannot get done through our democratic process,” Senator Ted Cruz, R-Texas, said. “Having spent many years in law enforcement, I’ve handled far too many cases of child molesters, of pedophiles, of people who abused little kids. The threats of predators are serious, and we should not facilitate allowing grown men or boys to be in bathrooms with little girls.”²⁰

“[President Obama] says he’s going to withhold funding if schools do not follow the policy,” said Lieutenant Governor Dan Patrick, R-Texas. “Well in Texas, he can keep his 30 pieces of silver. We will not yield to blackmail from the president of the United States.”²¹

TITLE IX AND TRANSGENDER STUDENTS: QUESTIONS TO CONSIDER

Do you believe the government should invoke Title IX to mandate that schools make accommodations for transgender students? Why or why not?

Which level of government, if any, should be responsible for considering protections for transgender students? Federal? State? Local? Explain your reasoning.

Do you support or oppose North Carolina's HB2? Explain your reasoning.
