Transgender Debate: What's Next?

The Obama administration’s guidance to schools on the rights of transgender students has provoked protests from conservative governors and drawn a forceful legal challenge from 11 states that are seeking to block the directive. The U.S. departments of Justice and Education assert that, under Title IX, which prohibits sex discrimination in educational settings, schools must allow transgender students to access restrooms, locker rooms, and sex-segregated classes that align with their gender identity, even if it differs from their sex at birth.

Answers to some common questions on the guidance:

How many transgender students are there?

No data sources track how many students’ gender identity differs from their sex at birth.

At the urging of student-advocacy groups, federal agencies have worked in recent years to improve data collection on school climate for gay and lesbian students, but information on transgender students still lags.

In fact, little official data exists on the size of the transgender population as a whole. The Williams Institute at the University of California, Los Angeles, has estimated that about 0.3 percent of U.S. adults are transgender.

Transgender-advocacy groups have speculated that greater awareness of gender issues may lead to more children “coming out” or expressing interest in transitioning at earlier ages. Regardless of the size of the transgender-student population, all schools are required to adhere to the administration’s Title IX guidance.

How should schools identify when a student needs these accommodations?

The guidance says schools must ensure that a student’s treatment aligns with his or her gender identity "when a student or the student’s parent or guardian, as appropriate, notifies the school administration that the student will assert a gender identity that differs from previous representations or records."

The Justice and Education departments did not provide further advice for how this process should work. In most schools that had transgender-student policies before the guidance was issued, accommodations generally started after notification from parents. But many schools allow exceptions for students who decide to transition on their own, without support from their parents or guardians, because they view it as a civil right.

Schools can only require an assertion of gender transition. Requiring a diagnosis or treatment before a student is considered transgender may be unfair to lower-income students without access to such options, advocacy groups say.

Are restrooms really that big a deal?
Transgender students say they need a range of supports to feel safe and supported at school, including being called by proper pronouns and ensuring privacy about their transition unless they choose to share that information with their peers.

Using the appropriate restrooms and locker rooms is a key part of successfully transitioning between genders, the American Psychological Association has said. And facilities are a central issue, students say, because they can amplify existing issues like bullying. Transgender girls, for example, often report feeling unsafe using boys' restrooms. And many transgender students say that when a school restricts facilities access, it can feel like it is condoning bullying.

Before North Carolina passed restrictions on school restroom and locker room access in March, Sky Thomson, a 15-year-old transgender boy, said in a legislative hearing that forbidding him from using the boys' restroom "gives bullies all the more reason to pick on us."

Thomson's mother said some transgender students she's met refuse to drink water at school to avoid using a restroom that doesn't align with their gender identity.

**Why can't schools just send transgender students to single-stall or faculty restrooms?**

Some schools that have rejected the federal interpretation of Title IX have argued that providing transgender students access to staff or single-stall facilities is an adequate solution.

But federal agencies argue that treating a transgender boy differently from a boy who is biologically male in any way is a form of discrimination.

And students who've fought for access in state courts say it is stigmatizing to use separate facilities from their peers.

**What if students are uncomfortable sharing restrooms with transgender students?**

Some schools that have implemented transgender policies have made a single-stall or staff restroom available for students who are uncomfortable sharing facilities with their transgender peers.

**What about this bill my state is considering? What if the governor is telling schools to defy the Obama administration?**

Federal civil rights laws supersede state-level statutes and regulations. If courts uphold the federal assertion that Title IX requires schools to respect a student's gender identity, it's unlikely a state law could counteract that.

**Is this guidance the final word on Title IX and transgender students?**

No. The future of the guidance is in the hands of the federal courts, including one considering a challenge by 11 states, which will soon decide whether to uphold or overturn the federal interpretation of Title IX.

A three-judge panel of the 4th Circuit Court of Appeals, which has jurisdiction over five states, has previously ruled that Title IX could apply to either biological sex or gender identity and that a lower court should have
deferred to the federal interpretation, gender identity, when it ruled on a Virginia student's restroom-access case. But the school district at the heart of that case has appealed the ruling to the full court. Soon, a federal court in Illinois will hear the case of suburban Chicago parents who argue that their children's school violated their privacy rights when it allowed a transgender girl access to the girls' locker room in compliance with a federal order.

If two appeals courts issue different rulings on the issue, it could be bound for the U.S. Supreme Court, school law experts have said. And, as a dissenting judge in the 4th Circuit case noted, a future presidential administration may interpret Title IX differently.