

MEMORANDUM

TO: Vermont School Boards, Superintendents, Principals, and Heads of Independent Schools

FROM: Rebecca Holcombe, Secretary of Education 

SUBJECT: Restroom Access for Transgender Students

DATE: May 12, 2016

I am writing to update you on recent legal developments related to restroom access for transgender students. Please accept this memorandum as an update and supplement to the **Best Practices for Schools Regarding Transgender and Gender Nonconforming Students** that was issued by my office on March 15, 2016.

On April 19, 2016, the United States Court of Appeals for the Fourth Circuit ruled in the case of G.G. v. Gloucester County School Board that a school district policy banning G.G. (a transgender high school student that identifies as male) from the boys' restroom violated Title IX (of the Education Amendments of 1972).

The ruling of the Court in the G.G. case deferred to the Title IX implementation guidance of the U.S. Department of Education (US ED), Office of Civil Rights (OCR).

OCR's Title IX implementation guidance was set forth in an opinion letter dated January 7, 2015. In this guidance document, OCR interpreted a specific Title IX regulation (34 C.F.R. § 106.33). This regulation addresses access to facilities and how federal law applies to transgender students. OCR's implementation guidance states in relevant part:

"When a school elects to separate or treat students differently on the basis of sex (e.g. by maintaining gender specific restrooms) . . . a school generally must treat transgender students consistent with their gender identity."

In short, a transgender student must be allowed bathroom access to a gender specific bathroom for the gender that the student identifies with, if that is the preference of the student. Establishing single occupancy, gender neutral bathrooms may present an option for any student not wishing to use gender-specific bathrooms. However, no student should be required to use a gender neutral bathroom based on their gender identity.

Compliance with Title IX is a requirement for Vermont school districts and independent schools that wish to continue to receive federal financial assistance. For more information, please refer to US ED's website at ed.gov: http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html

As you may be aware, there is pending litigation in federal court in North Carolina that could further inform these and other related issues.