States Sue Over Transgender Bathroom Policy

By Elizabeth Whitehouse [1]

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A debate over the use of bathrooms by transgender individuals, which began in the states, has resulted in new guidance from the federal government. But a lawsuit by several states challenging the guidance suggests the issue may not yet be resolved.

The U.S. departments of Education and Justice released joint guidance on May 13 that directs schools to allow transgender students to use restrooms and other facilities appropriate to their gender identity. The guidance clarifies that the two federal agencies treat a student’s gender identity as the student’s sex for purposes of enforcing Title IX of the Education Amendments of 1972, which holds that schools receiving federal funding may not discriminate based on a student’s sex.

“No student should ever have to go through the experience of feeling unwelcome at school or on a college campus,” said U.S. Secretary of Education John B. King Jr., in a press release dated May 13. “This guidance further clarifies what we’ve said repeatedly—that gender identity is protected under Title IX. ... We must ensure that our young people know that whoever they are and wherever they come from, they have the opportunity to get a great education in an environment free from discrimination, harassment and violence.”

The guidance was issued just days after the U.S. Justice Department and North Carolina sued each other on May 9 over a state law requiring transgender people to use the public bathroom that corresponds to the sex on their birth certificate. The law applies to schools and many other public places.

The state of North Carolina passed legislation on March 23 that requires schools and public agencies to have gender-segregated bathrooms and to prevent people from using a bathroom that doesn’t correspond to their biological sex.

Many states are fighting the new federal guidance, specifically related to bathroom accommodations.

In a statement on the lawsuit, Louisiana Attorney General Jeff Landry said he worried that federal officials would “wreak further havoc on our schools,” stating that the administration’s guidance “puts the safety and security of all of our children in jeopardy.”

Louisiana joined the states of Alabama, Georgia, Oklahoma, Tennessee, Texas, Utah, West Virginia and Wisconsin, as well as the Arizona Department of Education and Maine Gov. Paul LePage, as plaintiffs in a suit filed in the U.S. District Court for the Northern District of Texas on May 25, challenging the Obama administration over the guidance directing federally funded schools to allow transgender students to use restrooms and other facilities that match their gender identities. In
addition, two school districts in Arizona were included in the lawsuit led by the state of Texas.

During a press conference announcing the lawsuit, Texas Attorney General Ken Paxton said, “Texas will continue to stand up to President Obama and his agencies whenever and wherever they attempt to circumvent the rule of law and ignore the voice of the people.”

As the lawsuits move forward, states and school districts across the nation are deciding the best ways to meet the needs of families and students in their states. On May 27, Kentucky Gov. Matt Bevin announced the Commonwealth of Kentucky would join the lawsuit against the federal government over the new guidance.

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