

Trump's transgender decision skirts thorniest issues

By Caitlin Emma

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President Donald Trump's move to scrap an Obama directive on transgender student rights satisfied his evangelical base while avoiding the thorniest moral and legal issues — whether transgender students are protected by federal education law at all and whether they should be. Since taking action Wednesday night, the Trump administration has managed to send very mixed messages.

The letter to schools [rescinding the Obama directive](#) made its argument based on states' rights, saying, "there must be due regard for the primary role of the states and local school districts in establishing educational policy."

It didn't address the underlying legal issue at all — whether Title IX, the law prohibiting sex-based discrimination in educational programs, protects against gender identity discrimination. Conservative-led lawsuits against the Barack Obama directive argue that his administration unilaterally rewrote Title IX to include gender identity under "sex-based discrimination." But that argument wasn't raised in the Trump administration's letter.

With the Supreme Court set to hear a case on transgender rights next month, the Justice Department may have to clear up where it stands. The court on Thursday asked the parties in the case, a transgender high school senior seeking bathroom access and his Virginia school district, how they want to proceed based on the Trump administration's move. They must tell the court by March 1. Some legal experts believe the administration's

rescinding of Obama's directive could kick the case back to a lower court.

White House press secretary Sean Spicer offered sometimes conflicting answers as he was bombarded with questions on the issue at his daily briefing Thursday.

"I mean, there is no way that you can read Title IX from 1972 [when the law was passed] ... and say that was even contemplated back then," he said. "There is nobody possibly suggesting that the law that was passed in 1972 did that."

"The guidance put forward obviously sends a signal to the court on where the administration stands on this issue," he added.

But Spicer also said the president doesn't want to "force his issues or beliefs."

"It's a states' rights issue," he said. "That's entirely what he believes."

Tony Perkins, president of the conservative Family Research Council, accepted that the Trump administration made its argument in terms of states' rights, rather than in moral or religious terms.

"The White House won't be deciding the bathroom policies for schools and districts across the country," he said.

Joshua Block, senior staff attorney for the American Civil Liberties Union LGBT & HIV Project, described the administration letter as "odd." He noted that while it doesn't stake out a position on Title IX, it suggests that the law protects students from bullying.

Education Secretary Betsy DeVos reportedly pushed to include the bullying language.

Block also noted that the administration didn't pull back on a number of documents relevant to transgender student rights — for instance, a [document](#) on best practices for accommodating transgender students.

That document upholds policies from Washington state as an example, noting that “school districts should allow students to use the restroom that is consistent with their gender identity consistently asserted at school” and no student “should be required to use an alternative restroom because they are transgender or gender nonconforming.”

“It mostly seems like another example of confusion while these people try to do a lot in a short time and not really understanding the parameters of the policymaking process,” said David Bloomfield, a professor of education leadership, law and policy at Brooklyn College and The CUNY Graduate Center.

“At the same time, Trump has said positive things about trans and LGBT issues in general so it might reflect a degree of ambivalence,” he said.

DeVos was [reportedly at odds](#) with the Justice Department over rescinding the guidance — or at least the way it was done. And the apparent split was underscored by two very different messages pushed by the agencies Wednesday night, with DeVos firing off statements about the federal government’s duty to protect students.

“At my direction, the Department’s Office for Civil Rights remains committed to investigating all claims of discrimination, bullying and harassment against those who are most vulnerable in our schools,” DeVos said.

The Justice Department put out a more direct statement stressing that states and local governments are best equipped to deal with transgender rights.

But at the Conservative Political Action Conference Thursday, DeVos said Obama’s transgender directive was “a very huge example” of federal overreach. It was a “one-size-fits-all, federal government, top-down approach to issues that are best solved at a personal level, at a local level.”

While nearly half of states have sued over the issue, many blue states and

school districts across the country said Thursday they planned to uphold transgender student rights. And bills in state legislatures across the country to limit bathroom access are floundering, The Associated Press [reported](#) Thursday.

“All students deserve a safe and supportive school environment,” said California state Superintendent Tom Torlakson. “California will continue to work to provide that environment for our lesbian, gay, bisexual, and transgender students regardless of any misguided directives by the federal government and the Trump administration.”