

# Electronic Alert

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## **Don't Change Your Gender Neutral Bathroom Signs**

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Yesterday the U.S. Department of Education and U.S. Department of Justice issued a guidance formally withdrawing two recent Department of Education guidances on transgender students' rights. The guidances had been issued in 2015 and 2016 and addressed the position that laws prohibiting discrimination "on the basis of sex" protect individuals on the basis of their gender identity as well as biological sex. The withdrawal announcement cites the concern that the 2015 and 2016 guidances were issued without the support of extensive legal analysis and did not undergo the kind of public process that formal rulemaking would or should require.

The withdrawal announcement addresses a narrow slice of federal law, but does not have an impact on state law. The announcement reinforces the administration's view of the primacy of state and local laws governing education: "[T]he Departments believe that, in this context, there must be due regard for the primary role of the States and local school districts in establishing educational policy."

Oregon and Washington laws broadly protect gender identity in the employment and the educational contexts. In Oregon, ORS Chapter 659A states a public policy against discrimination on the basis of sexual orientation and OAR 839-005-003 defines sexual orientation to include gender identity. In Washington, RCW 49.60 does the same, and also includes gender expression as sexual orientation. OSHA, OrOSHA and WISHA address the need to provide reasonable bathroom access during employment, with varying levels of detail. Washington also adopted a transgender bathroom and locker room policy through Human Rights Commission regulations at the end of 2015 (which you can find at WAC 162-32-060). There are also state laws and guidelines specific to educators, including the Oregon Department of Education's May 2016 Guidance to School Districts and Washington's RCW Chapter 28A and WAC Chapter 392-400. If you are in a state other than Oregon or Washington, please check your state laws or give us a call for further guidance.