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PERSPECTIVE

## Transgender directive wasn't a rush job

By Sanford Jay Rosen

On May 13, news headlines, like one in the New York Times, screamed across the country that: "U.S. Directs Public Schools to Allow Transgender Access to Restrooms." The Times' headline was staid by comparison with conservative tabloid headlines and the rantings of conservative politicians and religious leaders.

But even the Times covered the story superficially, focusing on the bathroom issue, rather than taking a broader and more comprehensive look at new Justice Department policy on the rights of transgender students. That is just the way it is with headlines and rushes to print. Perhaps everyone can be forgiven since the particular issue of transgender access to restrooms that match their declared gender identities has been much in the news of late. Recent happenings in North Carolina and several other states about transgender people's use of restrooms are resulting in boycotts of the states by major corporations, entertainers and athletes, and have culminated for now in dueling suits between the federal and state governments.

I agree with the representatives from the lesbian, gay, bisexual and transgendered people's community that the joint letter from the U.S. Justice and Education Departments marks a huge leap forward in the extraordinary march to LGBT equality, and particularly in bringing the transgender community out of the shadows of even the LGBT community. Unfortunately, opponents of full rights for LGBT people continue a drum beat of bogus claims that efforts to allow transgender people to use restrooms that match their self-identified gender create danger to other people and loss of those people's privacy rights.

The Justice and Education Departments' eight-page letter was accompanied by an explanatory blog, which itself bears reading. The letter also references and was accompanied by a 19-page document summarizing "Examples of Policies and Emerging Practices for Supporting Transgender Students."

Read all the materials before leaping to any judgment about the government's directives. Use by transgender students of restrooms and locker rooms that match their gender identities is just one small part of the federal government's directive and advisory to school administrators concerning treatment of transgender students and their peers. Just the table of contents of the 19-page document is telling and should put to rest the hysteria about use of restrooms and locker rooms. The major subjects covered are: Student Transitions; Privacy, Confi-



Alexander Hamilton High in Los Angeles, where the school district is supporting the Obama administration's guidelines.

dentiality, and Student Records; Sex-Segregated Activities and Facilities; Additional Practices to Support Transgender Students; Terminology.

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Through the letter and the accompanying documents, the federal government has issued a comprehensive, compassionate and highly usable handbook or guideline to school administrators about how to comply with federal law in dealing with balancing rights and obligations on all sides and for all involved protecting the interests of all students. It is sensitive to the legitimate concerns and interest of all students, not just transgender students. For example, the letter recognizes and protects all students' legitimate privacy interests as to use of restroom and locker room facilities, stays in overnight facilities, their educational records and otherwise. The 19-page "Examples of Policies" document is peppered with policies and practices that are in place in several states and municipalities that can be used by others to address the appropriate subjects.

Any fair person who takes the time to review the full text of the Justice and Education Departments' joint letter will come away with an understanding of what the federal government really did by issuing the letter. Fair readers will figure out that the eight-page letter, which includes two and a half pages of footnotes of documentation, was not issued in

haste just to counter the recently enacted ill-advised transgender-phobic laws of North Carolina and several other states. The letter shows great care and consideration. It had to be long in the works before it was issued last week. Focusing just on its directives about restroom use is wrong-headed.

Pious concerns focusing only on restroom use by students provide a great launching pad for opponents of LGBT and transgender people's rights. To my ear, these complaints are pretty much the same as the racist diatribes we heard during the Civil Rights Revolution, that race mixing in the public schools would lead to the horrors of black men raping ever increasing numbers of white women and girls and to miscegenation.

Some critics complain that in issuing the letter the Obama administration is overreaching by attempting to control that which is in the province of the states. "States rights" too was a rally call during the Civil Rights Revolution of opponents to school desegregation and equal rights for blacks. To the contrary, Title IX was enacted by the Congress many years ago as a protection against gender-based discrimination. The administration's use of Title IX here is fully warranted under prior interpretations of its scope, as identified in the footnotes to the letter. It is soundly based in the tax and spending provision of the Constitution, just as Chief Justice John Roberts found that the Affordable Care Act was well founded under that provision.

I am reminded of an exchange in the movie "The American President," during which the president heard a complaint that his administration was enforcing Title IX to require equal allocations between male and female athletics. The president said something like, "but that is what Title IX says." The complainer declared somewhat astonished: "But they are enforcing it!" To which the president said something like: "It's a world gone mad."

I say: "Good for the Obama administration. Well done!"



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