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MEMORANDUM

TO: Superintendents, Principals, Independent School Headmasters
FROM: Dr. Rebecca Holcombe, Secretary of Education 
SUBJECT: Recent 5th Circuit Case – Transgender Students in Schools
DATE: August 23, 2016

You may have been reading about the recent 5th circuit case in which a federal district court judge entered an injunction that is intended to be a nation-wide injunction against enforcement by the US DOE and DOJ of their interpretation of Title IX and Title VII as they apply to transgender students in schools.

The holding is based on the court's view that the "guidance" issued by US DOJ/DOE is legally binding guidance and the Departments did not go through APA and follow rule-making processes. Please note this is a preliminary injunction, which sets the status quo of the parties to the lawsuit while the case proceeds to trial or until further action from the 5th Circuit Court of Appeals.

Within the injunction, there is a carve-out for states with laws that protect students based on gender identity: *"This Court concludes this injunction should apply nationwide. As the separate facilities provision in §106.33 is permissive, states that authorize schools to define sex to include gender identity for purposes of providing separate restroom, locker room, showers and other intimate facilities will not be impacted by it. Those states that do not want to be covered by this injunction can easily avoid doing so by state law that recognizes the permissive nature of §106.33. It therefore only applies to those states whose laws direct separation."*

Vermont law protects students from discrimination in schools, including students who identify as transgender.

When we sent out our best practices for transgender youth last year, we observed that the law was evolving. This case may ultimately be appealed and may be unresolved until the Supreme Court rules on the Title IX dispute on which the outcome depends.

That said, our guidance is based on Vermont statute which protects students from discrimination based on their gender identity, and so we do not anticipate any change in practice in Vermont, based on the recent injunction.

We wish you all a smooth and positive start to your school year.