



NEWS:

Proposed Transgender Student Regulation Dead

AUGUST 4, 2018 – A proposed controversial state regulation carving out rights for transgender students in public schools appears to be dead.

Late Thursday afternoon, the Delaware Department of Education (DOE) issued a press release saying it "will not be moving forward to finalize the current proposed version of Regulation 225."

"Recent court decisions have raised important legal questions regarding this issue, and the significant public comments make clear we still haven't struck the right balance," said Secretary of Education Susan Bunting. "For those reasons, we're not going to finalize the current proposed version of the regulation."

The push for the new rule began in July 2017 when Gov. John Carney sent a memo to Sec. Bunting directing her agency to craft it.

The [initial version](#) of "225 Prohibition of Discrimination," published in November, touched off heated deliberations throughout the state. Among other things, the original regulatory language sought to allow all public school students to self-identify their gender or race. Students would have had the opportunity to participate on the sports team consistent with their gender identity, and select a "preferred name" that school officials would have been obligated to use in their daily interactions. The most debated aspect of the rule would have allowed children of any age to make gender and racial identity decisions without parental input, notification, or consent.

That draft rule drew more than 11,000 public comments, with critical remarks outpacing supportive comments by a ratio of approximately seven-to-one.

In the face of that opposition, the Department of Education significantly recrafted the proposed regulation, publishing it in the June 2018 Register of Regulations and beginning another month-long comment period.

Under the [revised rule](#), parental notification and approval were incorporated into the process. The new proposal also eliminated imposing a state policy on school districts. Instead, it called for assisting local school officials to create their own policies. Additionally, the new draft language no longer gave transgender students the unfettered opportunity to participate on sports teams consistent with their gender identity, instead deferring to existing Delaware Interscholastic Athletic Association regulations covering the issue.

Despite the concessions, the new regulation still faced massive public resistance.

The DOE received more than 6,000 submissions during the public comment period that closed July 6th: eight pages that were "[generally supportive](#)" and 2,973 pages the "[expressed various concerns](#)."

"I want to thank Secretary Bunting for objectively weighing the public's comments on this issue and concluding that our citizens did not support this proposed regulation -- either this version or the original version," said [State Rep. Rich Collins, R-Millsboro](#).



State Rep. Rich Collins

"I think this outcome is a recognition that fundamental change should be the result of a process that reflects the concerns of everyone involved, not forced on all Delawareans by a small group of people that think they know best," he said. "I think these policies should be left in the hands of local school districts that are more accountable to the people they serve and will work in a collaborative fashion to craft acceptable solutions."

In a [prepared statement](#), Gov. Carney said he was factoring in the "recent Boyertown decision by the Third Circuit" as he considers his "next steps on Regulation 225."

In [Joel Doe, et al. v. the Boyertown Area School District](#), four students filed suit over a policy implemented at the high school in 2016 permitting transgender students to use the restrooms and locker rooms consistent with their gender identity. The district required the transgender student to meet with licensed counselors to evaluate each case individually. Once a transgender student was approved to use the bathroom or locker room consistent with his or her gender identity, the student was required to use only those facilities.

The plaintiffs sought a preliminary injunction against the policy claiming, among other things, that it "violated their constitutional right to bodily privacy."

A federal district court did not grant the injunction and an appeal to a three-judge panel of the U.S. Third Circuit Court of Appeals also came up short. The case is awaiting

[further appeal](#) to the entire Third Circuit Court of Appeals.

"The most important part of my job is to make sure each and every child in Delaware has an opportunity to be successful in the world," Gov. Carney said in his statement. "This is difficult work. And our work is not done. I look forward to continued discussions with members of the General Assembly, Delawareans, and Delaware families across our state about how best to make progress."

State House Minority Leader Danny Short, R-Seaford, said while the current incarnation of Regulation 225 is dead, he expects the administration to revisit the issue. "Given the governor's remarks, I think there is little doubt Delawareans will see more proposals on this topic in the near future."