

TITLE IX AND AB 1266: AGENCIES RELEASE GUIDANCE ON PROTECTIONS FOR TRANSGENDER STUDENTS

Guidance regarding the treatment of transgender students has recently been issued, both on a state and a federal level. On May 13, 2016, the U.S. Department of Justice (DOJ) and the U.S. Department of Education (ED) jointly issued new guidance in response to questions the departments have received regarding civil rights protections for transgender students. The guidance takes the form of a Dear Colleague Letter and a document entitled *Examples of Policies and Emerging Practices for Supporting Transgender Students*. The federal guidance provides information and examples to inform and aid schools in complying with their obligations under Title IX of the Education Amendments of 1972 (Title IX). The California Department of Education (CDE) has also recently issued guidance in the form of a Legal Advisory and FAQ regarding compliance with California legal protections for transgender students.

FEDERAL GUIDANCE

May 13, 2016 Dear Colleague Letter

Title IX and its implementing regulations prohibit discrimination on the basis of sex in the education programs and activities of recipients of federal funds. Title IX is applicable to all educational institutions which receive federal funds at all levels of education. The Dear Colleague letter reiterates prior federal guidance which states that the Title IX prohibition against sex discrimination also prohibits discrimination based on a student's gender identity, including transgender status. It reminds schools that they are required to comply with Title IX to continue to receive federal funds. The letter then proceeds to detail the ways in which a recipient of federal funds is required to comply with regard to transgender students, including:

- Providing a safe and nondiscriminatory environment;
- Using names and pronouns consistent with a transgender student's gender identity;
- Allowing transgender students to participate in sex-segregated activities and facilities consistent with their gender identity; and
- Protecting transgender students' privacy relating to their transgender status, including their birth name or sex assigned at birth.

Examples of Policies and Emerging Practices Document

The second document provides examples of policies and emerging practices that some schools are already using to support transgender students in the following areas:

- Student transitions
- Privacy, confidentiality and student records
- Sex-segregated activities and facilities

- Terminology
- Additional practices to support transgender students

Among the policies cited by the DOL and ED as examples are the California Interscholastic Federation (CIF) Guidelines for Gender Identity Participation and the Los Angeles Unified School District policy entitled Transgender Students – Ensuring Equity and Nondiscrimination.

CALIFORNIA LAW

California law provides similar protections to transgender pupils and the CDE has published its own guidance for compliance.

The California Education Code provides:

It is the policy of the State of California to afford all persons in public schools, regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code, equal rights and opportunities in the educational institutions of the state (Educ. Code § 200).

It also states:

No person shall be subjected to discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is contained in the definition of hate crimes set forth in Section 422.55 of the Penal Code in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid.

In 2013, California passed AB 1266 (Chapter 85, Statutes of 2013) which specifically requires that a pupil be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records.

On January 29, 2016, the CDE published both Legal Advisory and Frequently Asked Questions (FAQ). The Legal Advisory outlines the California statutes that state the requirements for compliance with California's prohibition on gender identity discrimination. The FAQ answers common questions regarding AB 1266 and includes links to other guidance published by the California School Boards Association (CSBA) and the California Interscholastic Foundation (CIF), among other information.

LINKS FOR ADDITIONAL INFORMATION

Federal Law

Dear Colleague Letter:

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>

Examples of Policies and Emerging Practices for Supporting Transgender Students:

<http://www2.ed.gov/about/offices/list/oese/oshs/emergingpractices.pdf>

California

CDE Legal Advisory: <http://www.cde.ca.gov/re/di/eo/legaladvisory.asp>

CDE FAQ: <http://www.cde.ca.gov/re/di/eo/faqs.asp>

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