



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority
serving school and
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throughout the state.*

5350 Skylane Boulevard
Santa Rosa, CA 95403

Tel: (707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org
www.sclscal.org

General Counsel
Carl D. Corbin

Attorneys
Monica D. Batanero
Nancy L. Klein
Damara L. Moore
Jennifer E. Nix
Steven P. Reiner
Mia N. Robertshaw
Loren W. Soukup
Patrick C. Wilson
Frank Zotter, Jr.

Of Counsel
Robert J. Henry
Janna L. Lambert
Margaret M. Merchat
Virginia A. Riegel

LEGAL UPDATE

May 19, 2016

To: Superintendents, Member School Districts (K-12)

From: Carl D. Corbin *CDC*
General Counsel

Subject: Students Allowed to Participate in Programs and Activities and Use Facilities Consistent with the Students' Gender Identity
Memo No. 15-2016

On May 13, 2016, the United States Department of Education, Office for Civil Rights ("OCR"), and the United States Department of Justice, Civil Rights Division ("DOJ"), issued a "Dear Colleague" letter advising schools of their responsibilities towards transgender students. While the letter did not create any new law, the letter provides "significant guidance" on the interpretation of existing law (in particular Title IX¹) by OCR and DOJ. A few highlights from the letter:

- Schools are required to provide a safe and non-discriminatory environment for all students, including transgender students;
- There is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity;
- Students should be able to use facilities (restrooms, locker rooms, etc.) and participate in athletics consistent with their gender identity;
- School staff should refer to students using pronouns consistent with the students' gender identity; and
- A school may make available to students individual-user restrooms/locker rooms for students that voluntarily seek additional privacy.

Also, accompanying the letter is a "Question and Answer" document that provides practical guidance on addressing student transgender issues.

While the guidance from OCR and DOJ is "new" to many States, a few states have already adopted laws that are essentially in accordance with the guidance including California. California Education Code sections 200 and 210.2 require California school districts to not discriminate against any person on the basis of, among other

¹ 20 U.S.C. sections 1681-1688; 34 C.F.R. sections 106.4, 106.31(a).



things, gender, gender identity, and gender expression, including the perception that a person has any of those characteristics.

Additionally, as described in our Office’s Legal Update Memo No. 13-2013, California adopted Assembly Bill (“AB”) 1266, effective on January 1, 2014, that amended Education Section 221.5 to add the following:

(f) A pupil shall 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.

Therefore, California school districts are already required under state law to ensure that a student is not discriminated against on the basis of gender identity and to allow transgender students to use facilities and participate in athletics in accordance with their gender identity. Our office encourages school districts to review their policies to ensure compliance with California Education Code sections 210 and 210.2, AB 1266, and the guidance from OCR and DOJ. We also encourage school districts to review the “Question and Answer” document as it contains practical advice on addressing transgender student issues.

The OCR and DOJ “Dear Colleague” letter may be found at:

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

The nineteen page “Examples of Policies and Emerging Practices for Supporting Transgender Students may be found at:

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

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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