

Education Alert
May 2016

TRANSGENDER STUDENTS' RIGHTS

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On May 13, 2016, the United States Department of Education's Office for Civil Rights ("OCR") and the United States Department of Justice ("DOJ") issued a Dear Colleague Letter reinforcing their prior interpretation that Title IX of the Education Amendments of 1972 ("Title IX") and its implementing regulations prohibit discrimination based on a student's gender identity, including discrimination based on a student's transgender status. OCR and the DOJ informed school districts that as a condition of receiving Federal funds, a school district must adhere to the Dear Colleague Letter.

The Dear Colleague Letter requires the following:

- When a student or parent notifies the school of a student's gender identity, the school will begin treating the student consistent with the student's gender identity and using the pronouns and names consistent with the student's gender identity.
- A school must address harassment based on gender identity through its harassment and discrimination procedures.
- Transgender students must be able to access the restrooms and locker rooms consistent with their gender identity. Transgender students cannot be required to use individual-user facilities. However, a transgender student can choose to use individual-user facilities.
- If a school offers single-sex classes, the school must allow transgender students to participate, consistent with their gender identity.
- For overnight accommodations, such as on a field trip, a school must allow transgender students to access accommodations consistent with their gender identity and cannot require that transgender students stay in single-occupancy accommodations. However, a transgender student can choose single-occupancy accommodations.
- A school may not disclose a student's transgender status, including their birth name or sex assigned at birth, without the consent of the student's parent or the student, if the student is of age.

These requirements are consistent with Federal court cases, including the recent decision from the Fourth Circuit Court of Appeals on April 19, 2016 in G.G. v. Gloucester County School Board, upholding OCR's interpretation of Title IX and requiring a school district to allow a transgender boy to use the boys' restroom.

Several states have pushed back on this guidance from OCR and the DOJ. The Attorney Generals from Texas, Oklahoma, and West Virginia sent a letter to OCR and the DOJ questioning whether an entity receiving federal funding must adhere to the Dear Colleague Letter to continue to receive funding.

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Politicians in Texas and Arkansas stated that they would defy the law, potentially leading to a loss of funding.

It is important to note for Massachusetts schools that a separate state law, Chapter 199 of the Acts of 2011, requires what is outlined in the Dear Colleague Letter. Therefore, irrespective of the debate over the Dear Colleague Letter, Massachusetts schools are obligated under state law to provide the accommodations listed to transgender students.

If you have any questions about this issue, please contact Felicia Vasudevan or the attorney responsible for your account, or call (617) 479-5000.

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