

Federal Government Issues Guidance to Schools on Title IX and Transgender Students

Hinshaw Alert | 2 min read

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In a move that made headlines across the country, two federal government agencies issued a significant guidance document last week interpreting Title IX's requirements for protecting transgender students' rights.

On May 13, 2016, the U.S. Department of Education's Office for Civil Rights (OCR) — in conjunction with the U.S. Department of Justice's Civil Rights Division — issued a "Dear Colleague Letter" (DCL) to educational programs receiving federal funds. The letter sets forth guidance on how such schools can comply with their Title IX obligations concerning transgender students. Although the DCL does not change the OCR's position on safeguarding transgender students' rights, it does demonstrate the agency's commitment to the issue and lays out the guidance in one relatively straightforward document.

The OCR states that "a school must not treat a transgender student differently from the way it treats other students of the same gender identity." To illustrate this point, it provides the following specific guidance:

Sex-Based Harassment

Harassment that targets a student based on gender identity or transgender status is harassment based on sex and is therefore prohibited under Title IX.

Identification Documents, Names and Pronouns

Schools must treat students consistent with their gender identity, regardless of the sex identified by their birth certificate. Schools should use pronouns and names consistent with the student's gender identity.

Restrooms and Locker Rooms

Schools must allow transgender students access to restrooms and locker rooms consistent with their gender identity.

Athletics

Schools may not broadly prohibit transgender students from participating on a sex-segregated athletic team that is consistent with their gender identity. However, schools may enforce requirements based on “sound, current, and research-based medical knowledge about the impact of the students’ participation on the competitive fairness or physical safety of the sport.”

Single-Sex Classes

Where single-sex classes are otherwise allowed by law, schools must allow transgender students to participate in those classes consistent with their gender identity.

Housing and Overnight Accommodations

Schools must allow transgender students to access housing consistent with their gender identity and may not require transgender students to stay in single-occupancy rooms or to disclose personal information (such as to potential roommates) when not required of other students.

Privacy and Education Records

Nonconsensual disclosure of a student’s birth name or sex assigned at birth may constitute a violation of the Family Educational Rights and Privacy Act (FERPA). Schools may not designate students’ sex — including transgender status — as directory information.

Although some of the positions set forth by the OCR in the DCL may cause some students or parents discomfort, the OCR states unequivocally that “the desire to accommodate others’ discomfort cannot justify a policy that singles out and disadvantages a particular class of students.”

The DCL is a guidance document that applies only to those schools receiving federal funds (e.g., public school districts, public colleges, private colleges receiving federally-funded tuition assistance), and it does not carry the force of law. However, schools challenged for taking a position inconsistent with the DCL likely would lose at the administrative level and may also lose their federal funding. Therefore, schools wishing to take positions inconsistent with this guidance should be aware that doing so carries significant risk.

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