

CURRENT FEDERAL GUIDANCE ISSUED ON TRANSGENDER STUDENTS

On May 13, 2015, the U.S. Departments of Justice and Education issued a joint “Dear Colleague” letter containing significant guidance summarizing schools’ obligations under Title IX with regard to transgender students. In the letter, the Departments define “gender identity” as:

individual’s internal sense of gender. A person’s gender identity may be different from or the same as the person’s sex assigned at birth.

The Departments define “transgender” as:

those individuals whose gender identity is different from the sex they were assigned at birth. A transgender male is someone who identifies as male but was assigned the sex of female at birth; a transgender female is someone who identifies as female but was assigned the sex of male at birth.

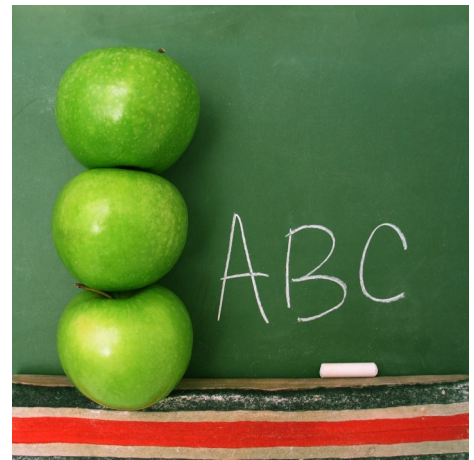
The Departments define “gender transition” as:

the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth. During gender transition, individuals begin to live and identify as the sex consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity. Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly or over a long duration of time.

Under Title IX schools cannot “exclude, separate, deny benefits to, or otherwise treat differently on the basis of sex any person in its educational programs or activities unless expressly authorized to do so under Title IX or its implementing regulations.”

Under this Guidance, the Departments treat a student’s gender identity as the student’s sex under Title IX. Schools’ obligations to treat a student according to the student’s gender identity begins when a student or the student’s parent or guardian notifies the school administration that the student is asserting a gender identity different from what the student previously represented. From that date forward, the Guidance indicates that schools must treat the student according to the student’s gender identity.

For more information about matters discussed in this issue, please contact any one of the KTJ School Law Attorneys.



Klein, Thorpe & Jenkins, Ltd.

Chicago

20 N. Wacker Drive, Suite 1660
Chicago, IL 60606
T 312.984.6400 F 312.984.6444

Orland Park

15010 S. Ravinia Avenue, Suite 10
Orland Park, IL 60462
T 708.349.3888 F 708.349.1506

www.ktjlaw.com

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Schools may not require medical documentation or official documentation regarding the student's gender identity as a precondition to recognizing the student's gender identity. The Departments note that transgendered students often have trouble obtaining official documentation or medical documentation reflecting their gender identity. The Departments also note that schools must be nondiscriminatory on the basis of a student's gender identity even where other students, parents, or the community objects.

The Departments further commented on particular issues regarding transgender students, including:

1. Schools must take effective steps to prevent and stop harassment on the basis of gender identity.
2. Schools must treat students consistent with their gender identity even if the students' education records reflect a different sex.
3. Schools must allow transgender students to use restrooms and locker rooms consistent with the students' gender identity.
4. Schools must update transgender students' education records when requested in the same manner as schools typically process and update education records when requested by students.



The letter from the Departments further clarifies schools' obligations regarding transgender students under Title IX. We expect further developments in this area of law over the coming years, as school boards, State and Federal legislators, and the courts weigh in on the issue of transgender students and their rights under State and Federal law.

A copy of the Guidance can be viewed at:

[U.S. Departments of Justice and Education Release Joint Guidance to Help Schools Ensure the Civil Rights of Transgender Students](#)

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Orland Park, IL 60462
T 708.349.3888 F 708.349.1506