

I Meant What I Said: Transgender Student Rights In Connecticut In The Face Of The Latest Federal Court Developments

Education Law Notes

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As we have previously written, the United States Departments of Education and Justice issued joint guidance for school districts regarding transgender students via a May 13, 2016 “Dear Colleague Letter.” This guidance was based on their interpretation of Title IX of the Education Amendments of 1972, which is a federal law prohibiting gender-based discrimination in education programs receiving any federal financial support. This “Dear Colleague Letter” confirmed the Departments’ position that Title IX’s prohibition against gender discrimination also prohibits discrimination based upon a student’s transgender status. This “Dear Colleague Letter” addressed the hot button issues of gender-segregated facilities, and stated that schools must allow transgender students access to restrooms **and** locker rooms consistent with their gender identity.

Similarly, and as we have also previously noted, the courts have been extending gender discrimination protections to cover transgender students with respect to being able to use restrooms consistent with their gender identity. Indeed, just prior to the issuance of the Dear Colleague Letter, the United States Court of Appeals for the Fourth Circuit issued a decision affirming the rights of transgender students to use bathroom facilities corresponding with their gender identity rather than their biological sex. G.G. v. Gloucester County School Board, 822 F.3d 709 (4th Cir. April 19, 2016).

Recent Court Challenges to the Federal Guidance

The Dear Colleague Letter and the Fourth Circuit’s decision have sparked considerable action in the federal courts by parties seeking to overturn the federal guidance on transgender student and reverse G.G. Specifically, numerous states have filed lawsuits challenging this federal guidance, asserting that such guidance represents an over-expensive interpretation and implementation of Title IX. A federal court judge has granted a preliminary injunction that temporarily blocks the implementation of the federal guidance until these court cases are decided. In addition, the Gloucester School District has sought review by the United States Supreme Court of the Fourth Circuit’s holding in G.G. While the Supreme Court has yet to decide whether it will hear the case, it has issued an order temporarily staying the decision, thereby allowing Gloucester to keep in place its prior policy restricting access to school restrooms based upon biological gender. Gloucester County School Board v. G.G., 136 S.Ct. 2442 (Aug. 3, 2016).

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What Does This Mean for Connecticut School Districts?

As a result of these developments, we have repeatedly been asked whether the federal court rulings temporarily blocking the application of the federal guidance on transgender students have any effect on Connecticut school districts with respect to the issues of restrooms and locker rooms. The short and long answer is **NO**.

While the ongoing debate over whether federal gender discrimination statutes such as Title IX entitle transgender students to use the locker rooms and the restrooms of the gender with which they identify is interesting, it has no real effect on Connecticut school districts. Connecticut has enacted specific anti-discrimination protections based upon “gender identity” that apply to -- and provide additional protections for -- transgender students. These laws have been interpreted by Connecticut’s Commission on Human Rights and Opportunities and its Department of Education as specifically providing transgender students with the right to use the locker room and restroom that is consistent with their asserted gender identity.

These two state agencies, which would have jurisdiction over any potential claim of discrimination by a transgender student, have come to the same conclusion: **1) under no circumstances may a student be required to use a restroom or locker room that is inconsistent with that student’s asserted gender identity; and 2) transgender students may not be forced to use the restroom or locker room corresponding to their gender assigned at birth.** Thus, even a future federal court ruling that federal gender discrimination statutes do not extend to transgender students (and/or do not invest transgender students with rights pertaining to the use of a restroom or locker room) will **not** deprive transgender students in Connecticut of their rights under more expansive and specific state laws. In addition, the federal courts’ stay of the federal transgender student guidance has no effect on the obligations of Connecticut school districts to comply with state transgender discrimination statutes.

The legal challenges to the new federal guidance contained in the “Dear Colleague Letter” are relevant to the extent the guidance addresses new issues or otherwise provides additional rights, for example, the guidance’s potential extension of the rules involving locker rooms and restrooms to housing and overnight accommodations for field trips and similar activities. Nonetheless, the outcome of the federal law battles does not affect the obligations of school districts in Connecticut to accommodate transgender students under state law, especially with respect to allowing students to use the restroom or locker room consistent with their asserted gender identity.

Posted in Board of Education, CT General Statutes, Diversity, Federal Legislation, Higher Education, Privacy, Teachers, Title IX, Transgender

Tags: CT State Department of Education (CSDE), Dear Colleague Letter, School Districts, U.S. Department of Education