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Transgender students – new federal guidance mirrors existing California law

The United States Department of Justice (“DOJ”) and Department of Education (“DOE”) issued a “Dear Colleague” letter on Friday, May 13, 2016 providing guidance to schools throughout the nation about transgender student issues, terminology and compliance with the DOJ and DOE’s application of Title IX of the Education Amendments of 1972 (“Title IX”). Title IX is the requirement that schools receiving federal funds may not discriminate on the basis of sex. The DOJ and DOE’s guidance states that schools receiving federal funds are required to allow transgender students access to the restroom or locker room consistent with their gender identity under Title IX; and that they consider “sex discrimination” to include discrimination against transgender students.

While the issue and guidance may appear new to many school districts and charter schools, and while it is a matter of recent publicity in the media, California has statutorily required all public schools to accommodate a transgender student’s gender identity and expression since 2011, nearly six years ago. The California legislature amended Education Code section 220, the Student’s Civil Rights Act, to include “gender identity” and “gender expression” as protected characteristics. We note that a **mandatory** part of all charter petitions is the requirement that a charter school not discriminate against any student based on the characteristics listed in Education Code section 220. (Education Code §47605(d)(1).) Effective 2014, the “Sex Equity in Education Act” (AB 1266) clarified the responsibilities of all public schools in California to accommodate transgender students. Codified under Education Code section 221.5, the law states:

“(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.**” (*emphasis added.*)

Thus, California public schools are and have been required to permit transgender students to use restrooms and other facilities consistent with the student’s gender identity.

We encourage you to review the guidance provided by the DOJ and DOE, which mirrors the requirements of California law, and provides an overview of terminology, creating a non-discriminatory environment, identification in records and other areas, as well as guidance on sex-segregated facilities and programs. The full letter can be found here:

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

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If you should have any questions regarding this update, please contact Kristopher Carpenter at the Law Offices of Young, Minney & Corr, LLP at (916) 646-1400, kcarpenter@mycharterlaw.com. Or find us on the web at: www.mycharterlaw.com.

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