

TALKING POINTS FOR ADMINISTRATORS REGARDING TRANSGENDER STUDENTS

Brief Legal History (if you're interested...)

- Congress passed Title IX in 1972, which prohibits discrimination on the basis of sex in schools receiving federal funds (ie, all public schools).
- The Department of Education falls under the executive branch of government that promulgates rules and enforces laws applicable to agencies under its jurisdiction, ie, all public schools. The Office for Civil Rights (OCR) is an arm of the Department of Education (DOE).
- Courts fall under the judicial branch and are responsible for interpreting laws like Title IX.
- A student who feels discriminated against could either file a complaint with OCR or file lawsuit in court or both. The difference between an OCR complaint and a lawsuit is primarily in the remedy: the DOE can withhold federal funds if a school is found in violation of Title IX; a court can order the defendants to pay damages, issue injunctions, and/or declare policies invalid. The procedures followed in a complaint and a lawsuit are also different.
- For several years, OCR and the DOE have interpreted Title IX's prohibition of sex-related discrimination to include discrimination on the basis of sexual orientation and gender identification. OCR complaints around the country have generally been resolved in favor of the gay/lesbian/transgender students, including complaints about the use of restrooms for transgender students.
- Courts are less consistent in their response to lawsuits on this issue.
- In September, 2015, a federal district court in Virginia upheld a school board's resolution that restrooms must be used according to a student's sex, not gender. The court acknowledged the DOE's interpretation of Title IX "on the basis of sex" to include gender, but stated the DOE does not get to interpret Congress' intent when it passed the law in 1972. Parents appealed.
- In April, 2016, the case was reversed by the 4th Circuit which said, the DOE does get to interpret Title IX, as the DOE is the agency responsible for enforcing the law and promulgating rules under the law.
- In March, North Carolina passed a law requiring individuals to use the restrooms that correspond to their sex, not gender, while in government buildings, including schools. On May 9, 2016, the Department of Justice sued North Carolina over the law.
- On May 13, the Department of Education and the Department of Justice (which enforces Title VI, the employment non-discrimination federal law) issued a joint "Dear Colleague Letter", stating federal funds will be withheld if schools do not extend protection to transgender students under Title IX, including use of restrooms that correspond to gender, not sex.
- On May 23, 11 states, including Utah, sued the Obama administration challenging the Dear Colleague Letter. Ten more states filed suit on July 8, 2016 in a separate district court.
- On August 3, 2016, the United States Supreme Court issued a "stay" on the 4th Circuit's grant of a preliminary injunction in the Virginia case, which would have allowed the transgender student to use the boys' bathroom despite the resolution the school board in Virginia passed. In other words, the resolution is enforceable and the transgender boy cannot use the boys' bathroom until the Supreme Court decides whether to review the case on its merits.
- The Virginia school board has not yet filed an appeal with the Supreme Court but is in the process of doing so.

- The Supreme Court does not have to take a case on appeal. With an 8-justice court (4 conservative and 4 liberal), it is unlikely that the Court will grant the appeal and hear the case anytime soon. Until a 9th justice is appointed, it is likely that this issue will remain in limbo with the courts.
- August 21, 2016, the Texas federal district court where the first multi-state lawsuit challenging the “Dear Colleague Letter” (“Letter”) was filed issued a preliminary injunction against the Obama administration’s directives in the Letter. The ruling prevents the DOE from implementing the guidance in the Letter.

What To Say to the Public

- Weber District is committed to its policy of non-discrimination towards all employees and students in the District. The policy complies with Title IX, which prohibits sex discrimination in educational programs and activities operated by recipients of Federal financial assistance. It is the District’s intention to continue its practice of enforcing its non-discrimination policy while also balancing the privacy interests of all its students.
- The Dear Colleague Letter which was issued Friday May 13, 2016 by the Department of Education and the Department of Justice provides guidance for public schools in ensuring that transgender students, like all other students, are treated in a non-discriminatory manner. The guidance is not law. It provides information about how the Department of Education will evaluate whether school districts are complying with their legal obligations under Title IX.
- As the Letter states, as a condition of receiving Federal funds, a school agrees that it will not 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. The Departments treat a student’s gender identity as the student’s sex for purposes of Title IX and its implementing regulations.
- Neither the Supreme Court, the 10th Circuit, nor any other governing court in Utah have ruled on the issue of whether a student’s gender identity carries the same meaning as a student’s sex for the purposes of Title IX and its implementing regulations. This means there is no controlling law in Utah on this issue. The Dear Colleague Letter, though not controlling, is, however, a clear indication of where the Departments of Education and Justice stand and these executive agencies have enforcement responsibility. If found in violation, these agencies have authority to withhold federal funds.
- Weber District understands and respects the concerns of parents, students, and families who disagree with the substance of the Dear Colleague Letter. While the District is committed to ensuring no students are discriminated against, regardless of gender identification, so too is it committed to the privacy rights of all of its students. Balancing these rights is of utmost importance to the District and will require fair and open-minded discussion by the all involved. For now, the District intends to maintain its current practice of non-discrimination on a case by case basis while taking under advisement the guidance from the Dear Colleague Letter in an effort to find that fair balance.
- Parents are encouraged to meet with administrators and district personnel to discuss any issues or concerns.