

Restroom Access & Transgender Students in Utah:

Examining document- LEGAL GUIDANCE ON TRANSGENDER STUDENTS' RIGHTS June 2016 provided by the NEA page 10:

I. Title IX

A. Office for Civil Rights and Justice Department enforcement actions Title IX of the Education Amendments of 1972 provides that no person shall “be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity” receiving federal assistance “on the basis of sex.” 20 U.S.C. § 1681(a). Under Title IX’s implementing regulations, a recipient may not, on the basis of sex, deny any person such aid, benefit, or services; treat an individual differently from another in determining whether the individual satisfies any requirement or condition for the provision of such aid, benefit, or service; provide different aid, benefits, or services or provide aid, benefits, or services in a different manner; subject any person to separate or different rules of behavior; or otherwise limit any person in the enjoyment of any right, privilege, or opportunity. Title IX is enforced through administrative actions and litigation initiated by either the Department of Justice, the Department of Education’s Office of Civil Rights (OCR), or both.

Examining document: 2016 Transgender Students in Schools Frequently Asked Questions and Answers for Public School Boards and Staff published by National School Boards Association pages 14-15

Question: How should schools handle restroom or locker room use?

This question is one that many schools are grappling with in the face of a dearth of federal law, widely differing state laws and conflicting signals from federal courts and OCR. You should approach this question with caution and a careful understanding of the law in your state.

On the federal side, the Title IX regulations issued by the U.S. Department of Education allow schools to provide separate, but comparable bathrooms, locker rooms and facilities on the basis of sex.

In May of 2016, the Obama administration issued guidance indicating that Title IX requires school districts to provide transgender student with full access to locker rooms and restrooms that are consistent with the students’ gender identity

On February 22, 2017, the Trump administration rescinded that guidance and has advised school districts that the U.S. Departments of Education and Justice will not find them to be in violation of Title IX if they refuse to accommodate a transgender student’s request to use a bathroom or locker room consistent with the student’s gender identity.

Many lawsuits have been filed challenging the Obama administration’s interpretation of Title IX. The United States Supreme Court recently vacated an order in favor of a transgender student and remanded the case to the Fourth Circuit Court of Appeals to consider the it “in light of” the Trump administration’s

rescission of a May 2016 Department of education and Department of Justice guidance opining that Title IX applies to transgender students.

While there is no definitive national legal authority on the issue, federal courts in non-school cases have recognized a fundamental right to privacy or acknowledged the legitimacy of safety concerns in cases involving individuals undressing, using the restroom, or showering in an area to which a member of the opposite birth sex has access. Moreover, a federal district court recently asked the question whether a university engages in unlawful discrimination in violation of Title IX or the Constitution when it prohibits a transgender male student from using restrooms and locker rooms designated for men on campus. The court concluded: “The simple answer is no.”

Question: Can a school require a transgender student to use a single occupant restroom/private changing area instead of the group restroom or locker room?

Yes, unless there is a state statute, state department of education regulation or district policy that prohibits it.

Examining Utah Code:

Definitions: 1. “Assigned gender.” This is the gender designated at the time of birth and may also be thought of as the gender corresponding to the individual’s original physiology, or biological gender. 2. “Gender identity.” This is the individual’s internal sense of gender, and “identified gender” refers to the gender that matches this internal sense. Gender identity can be shown by information including but not limited to medical history, care or treatment of the gender identity, consistent and uniform assertion of the gender identity, or other evidence that the gender identity is sincerely held, part of a person’s core identity, and not being asserted for an improper purpose. 3. “Gender expression” means the external cues or indications used to communicate gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics. 4. “Transgender” means that an individual’s assigned gender differs from the individual’s gender identity. 5. “Transgender boy” (or “transgender man”) is an individual whose assigned gender is female but whose gender identity is male. 6. “Transgender girl” (or “transgender woman”) is an individual whose assigned gender is male but whose gender identity is female. Utah Code § 34A-5-102 (1)(o). *In addition, although the Utah Antidiscrimination Act prohibits discrimination in the employment context based on gender identity, it is not governing in the context of public education students. In addition, with regard to sex-specific facilities, including restrooms, shower facilities, and dressing facilities, the Act specifically provides that employers may have sex-specific facilities so long as the employer affords reasonable accommodations to all employees based on gender identity, Utah Code § 34A-5-110*

Facilities: In determining which gender-segregated school facilities (restrooms and locker rooms) are to be used by transgender students, the school administrator shall take into consideration the desires of the individual transgender student and of the student’s parents as well as the privacy interests of other students. In addition to having the transgender student use the facilities corresponding with the gender identity, potential Transgender Students - FAB Issue Date: Page 2 of 2 accommodations include use of single user restrooms or changing spaces - or using facilities at a different time than other students. If the desired use by the transgender student is in significant conflict with privacy interests of other students, the school administrator should consult with the superintendent and as appropriate with legal counsel.

Examining OSD Board Policy:

9.300 Student Rights and Responsibilities

It is the policy of the Board of Education of Ogden City School District that students are afforded personal rights guaranteed under federal and state constitutions and statutes. It is the policy of the Board of Education of Ogden City School District that students are informed of their legal rights and the legal authority of the Board to make and delegate Authority.

Legal Ref.: Utah Code § 53E-9-203
Utah Admin. Code R277-105
20 U.S.C. 1232g.
Approved by the Board of Education, June 28, 2006

9.301 Nondiscrimination

It is the policy of the Board of Education of Ogden City School District that the Ogden City School District shall provide equal educational opportunity and treatment for all students in all aspects of the academic and activities program without regard to race, creed, color, national origin, gender or qualified individuals with disabilities.

Legal Ref.: 34 CFR 104
Approved by the Board of Education, June 28, 2006

SUMMARY

Based upon review of the information referenced above, it is the findings that;

- The recommended request be that the individual transgender student(s) use the accommodation of an individual public faculty restroom is taken after consideration of the desires of the individual transgender student(s) and of the student's parents as well as the privacy interests of other students and is a reasonable request.
- This request is not clearly defined as a violation of Title IX; especially with the February 22, 2017 action taken by the Trump administration and the referencing of this action by the US Supreme Court.
- There is no Utah State Code or statute prohibiting this request.
- There is no OSD Board Policy prohibiting this request