

CLIENT NEWS BRIEF

OCR Issues New Instructions on Transgender Student Complaints

The U.S. Department of Education's Office for Civil Rights (OCR) has issued new instructions to its regional directors regarding how to handle complaints involving transgender students. The document is intended to offer OCR staff additional guidance in light of recent court developments and the Trump Administration's withdrawal of the Obama Administration's guidance on transgender students. ([See 2017 Client News Brief No. 9.](#))

The instructions affirm that transgender students still have federal protections against discrimination, bullying and harassment and urge OCR investigators to "approach each case with great care and individualized attention" before dismissing and to look for a permissible jurisdictional basis for OCR to retain and pursue a complaint. They direct OCR staff to rely on Title IX regulations, federal court decisions and other OCR guidance in evaluating complaints of sex discrimination, whether or not an individual is transgender.

The instructions describe five scenarios in which OCR has jurisdiction over complaints involving transgender students, including:

- Failure to promptly and equitably resolve a transgender student's complaint of sex discrimination;
- Failure to assess whether sexual harassment or gender-based harassment of a transgender student created a hostile environment;
- Failure to take steps reasonably calculated to address sexual or gender-based harassment that creates a hostile environment;
- Retaliation against a transgender student after concerns about possible sex discrimination were brought to the recipient's attention; and
- Different treatment based on sex stereotyping.

Notably, failure to allow students to use the restroom consistent with their gender is not on the list. In fact, the instructions offer restroom access as an example of a type of case that might be dismissed. This is a clear shift in the approach set out in the Obama Administration's guidance, which required schools to allow transgender students access to bathrooms and locker rooms according to their gender identity.

Regardless of whether the instructions clarify the federal government's stance on transgender students' rights, pending a final judicial opinion interpreting federal laws, California school districts must continue to comply with the state's heightened anti-discrimination restrictions under California law. Since January 1, 2014, California's Assembly Bill (AB) 1266 has required that students be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with their gender identity, irrespective of the gender listed on a student's records. ([See 2014 Client News Brief No. 14.](#)) Other California laws additionally prohibit discrimination against students based on their gender identities.

Schools and local education agencies should ensure they have board policies and regulations which are designed to address the needs and legal rights of

July 2017
Number 36



Sloan R. Simmons
Partner and Co-Chair
Litigation Practice Group
Sacramento Office
ssimmons@lozanosmith.com



Sara E. Santoyo
Associate
Fresno Office
santoyo@lozanosmith.com



As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

CLIENT NEWS BRIEF

July 2017
Number 36

both transgender and non-transgender students. For further guidance on best practices with regard to transgender student issues, please contact the authors of this Client News Brief or an attorney at one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.