



Federal Guidance on Transgender Students Rescinded

Emphasizing that there must be “due regard for the primary role of the states and local school districts in establishing educational policy,” the U.S. Department of Education (“ED”) and the U.S. Department of Justice (“DOJ”) have withdrawn previously issued policy guidance regarding transgender students. Such guidance, issued in 2015 and 2016, had advised districts that Title IX provides transgender students the right to access restroom and locker room facilities that conform to their gender identities.

In a joint *Dear Colleague Letter*, released on February 22, 2017, the ED and DOJ stated that the prior guidance was withdrawn “in order to further and more completely consider the legal issues involved” in the wake of recent litigation regarding school restrooms and locker rooms.

The ED and DOJ emphasized, however, that “this withdrawal of these guidance documents does not leave students without protections from discrimination, bullying, or harassment. All schools must ensure that all students, including LGBT students, are able to learn and thrive in a safe environment.”

How Does This Impact California?

While this news means that issues related to transgender students will continue to be in the national spotlight, the withdrawal of federal guidance does not impact—or in any way abrogate—California’s current laws affecting transgender students. It is likely that further light will be shed on this issue after the U.S. Supreme Court weighs in later this year.

Reacting to the revocation of federal guidelines, the California Department of Education issued a [press release](#) in which State Superintendent of Public Instruction Tom Torlakson reiterated his strong support for the rights of transgender students. The action by the federal government “does not roll back protections for California students and educators,” Torlakson stated. Specifically, Education Code section 221.5, subdivision (f), continues to require that students “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.” Section 221.5(f) will remain controlling law in California unless overturned by the courts or repealed through the voter referendum process.

Guidance from the U.S. Supreme Court is likely in 2017, as the Court accepted review of *G.G. v. Gloucester Cty. Sch. Bd.* (4th Cir. 2016) 822 F.3d 709, a case brought with support from the ACLU to challenge a school district’s refusal to allow a transgender student to use sex-segregated facilities consistent with the student’s gender identity.

If you have any questions regarding this matter, please call one of our six offices.

*F3 NewsFlash® prepared by Christopher D. Keeler, Jordan I. Bilbeisi and John W. Norlin.
Chris is a Partner in the F3 Inland Empire and San Diego offices.
Jordan is a Senior Associate in the F3 San Diego office.*

John is Special Counsel in the F3 San Diego office.

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7108 N. Fresno Street, Suite 270, Fresno, California 93720 Tel. 559.860.4700 Fax 559.860.4799
4160 Temescal Canyon Road, Suite 610, Corona, California 92883 Tel: 951.215.4900 Fax: 760.215.4911
6300 Wilshire Blvd., Suite 1700, Los Angeles, California 90048 Tel. 323.330.6300 Fax 323.330.6311
70 Washington St., Suite 205, Oakland, California 94607 Tel. 510.550.8200 Fax 510.550.8211
520 Capitol Mall, Suite 400, Sacramento, California 95814 Tel. 916.443.0000 Fax 916.443.0030
1525 Faraday Ave., Suite 300, Carlsbad, California 92008 Tel. 760.304.6000 Fax 760.304.6011

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