

TRANSITIONING DISTRICTS:

UNDERSTANDING TRANSGENDER ISSUES IN OUR SCHOOLS

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GENO ZAMORA, ESQ.

TONY F. ORTIZ, ESQ.

GABRIELA M. STEWART, ESQ.

TOPICS

- Non-Discrimination and the Courts
- U.S Department of Education – Office of Civil Rights
- Students, Facilities and Programs
- Terminology

IMPORTANT COURT DECISIONS

- Noted Discrimination Cases:
 - **Brown v. Board of Education (U.S. Sup. Ct. 1954)**
 - Ended racial segregation of students in schools
 - *"[Education] is a principal instrument in awakening the child to cultural values, in preparing [the child] for later professional training, and in helping [the child] to adjust normally to [her/his] environment."*
 - *"[Educational] opportunity ... is a right which must be available to all on equal terms."*
 - **Mendez v. Westminster School Dist. Of Orange County (U.S.D.C. Cal. 1946)**
 - *Ended language-based segregation in schools*
 - *"[English language deficiencies] do not justify the general and continuous segregation in separate schools of the children of Mexican ancestry from the rest of the elementary school population."*
 - **Doe v. Regional School Unit 26 (Sup.Ct. Maine 2014)**
 - *Ended State of Maine transgender student segregated use of facilities*
 - *State Human Rights Act violation to treat a student differently based on transgender status*

U.S. DEPARTMENT OF ED OFFICE OF CIVIL RIGHTS

- **May 12, 2016 Dear Colleague Letter: Title IX prohibits “discrimination based on a student’s gender identity, including discrimination based on a student’s transgender status”**
 - Safe and non-discriminatory environment
 - Use names and pronouns consistent with gender identity
 - Access to sex-segregated activities and facilities (restrooms, classes, clubs, athletics, overnight accommodations)
 - Privacy and educational records – FERPA protects disclosure of status
 - Amendment/correction of Education Records
- **April 29, 2014 Q&A on Title IX and Sexual Violence**
 - Title IX prohibits sex discrimination based on gender identity and sexual orientation
 - Context: bullying and harassment

UPDATE – 2/22/17 OCR-DOJ LETTER

- February 22, 2017 Dear Colleague Letter:
 - DOJ and DoEd “withdrawing the statements of policy and guidance” in May 12, 2016 letter and January 7, 2015 letter (restroom access), but not April 12, 2014 Q&A
 - “Withdrawal ... 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”
 - OCR “will continue its duty under law to hear all claims of discrimination and will explore every appropriate opportunity to protect all students and to encourage civility in our classrooms”
 - Does not create any prohibitions
 - Agencies defer to states and school districts

CURRENT CASE PENDING

- **G.G. ex rel. Grimm v. Gloucester County School Board (Virginia)**
 - Mother of transgender teen sued under Title IX and Equal Protection Clause of the U.S. Constitution
 - School Board Policy: requiring students to use restroom consistent with birth-assigned sex
 - U.S. District Court: dismissed case
 - U.S. Court of Appeals (4th Circuit 2006): Department of Ed interpretation of its own regulations governs, Title IX prohibits gender identity discrimination
 - U.S. Supreme Court: Accepted the Case for hearing in 2017
- **Trump Administration:** Indicating change of interpretation to a State issue, not a Federal mandate
- **New Mexico Constitution:** "Equality of rights under law shall not be denied on account of the sex of any person."

STUDENTS

- **Goal: Cultivate a safe and positive learning environment for all students**
- **School Board Policies – Non-Discrimination**
 - Courts/OCR - Gender identity protected under sex discrimination
- **School Board Policies – Bullying, harassment and hazing**
 - OCR – includes bullying, harassment, hazing, or intimidating based on gender identification
- **Gender identification/transgender discrimination concerns:**
 - Preferred name and proper pronoun use – including student records and diplomas
 - Access to facilities - consistent with gender identity, with gender neutral options for all students
 - Site staff training - add to current sex discrimination training

FACILITIES AND PROGRAMS

- General Rule: Equal access to facilities and programs
- Facilities: Equal Alternatives (not “separate but equal”)
 - Bathrooms: single user, multiple user, nurse’s office
 - Changing rooms/locker rooms: same or alternate schedules
 - New construction and renovations
 - Partitions, separate shower stalls, more single user restrooms
- Programs including athletics
 - NMAA
 - NCAA
 - Travel

UNDERSTANDING TERMINOLOGY

- **Gender identity**: one's internal sense of gender, consistently asserted, which may differ from sex assigned at birth
 - Sex assigned at birth: gender listed on one's original birth certificate
- **Gender expression**: External cues communicating one's gender to others (e.g. clothing, behavior, mannerisms)
- **Gender transition**: the duration of the experience of moving from living as one's assigned sex to living and identifying consistent with one's gender identity
- **Transgender**: describes a person whose gender identity is different from the individual's sex assigned at birth
 - Transgender male: assigned female at birth, has male gender identity
 - Transgender female: assigned male at birth, has female gender identity
- **Gender non-conforming**: expression, characteristics, and/or identity do not conform to gender stereotypes
- **Intersex**: a person born with reproductive or sexual anatomy and/or a chromosome pattern that can't be classified as typically male or female

****Terms not dependent on completion of medical treatments or procedures****

MORE TERMINOLOGY

- Preferred name: the requested name that corresponds with one's gender identity
- Pronouns: the pronouns corresponding to one's gender identity (she/her/hers or he/him/his)
- Official governmental records: reflect the legal name of the individual (birth certificates, social security cards, some school records) either from birth or as name and/or gender is legally changed (typically court orders or other government documentation)

OTHER RESOURCES

- Students: US Dept. of Ed. Office of Safe and Healthy Students
 - May 2016 – Examples of Policies and Emerging practices for supporting transgender students
<http://www2.ed.gov/about/offices/list/oese/oshs/emergingpractices.pdf>
- Students: US Dept. of Ed. Office for Civil Rights
 - Resources for Transgender and Gender-Nonconforming Students
<http://www2.ed.gov/about/offices/list/ocr/lgbt.html>
- Employees:
 - 2015 EEOC ruling *Lusardi v. McHugh*: disparate treatment and harassment to deny common restroom access and misuse pronouns
 - US Dept. of Labor: OSHA Guide to Restroom Access for Transgender Workers <https://www.osha.gov/Publications/OSHA3795.pdf>

TRANSGENDER ISSUES - OTHER



QUESTIONS?

- Non-Discrimination Laws/Rulings
- Students, Facilities, Programs
- Terminology

Geno Zamora – geno@ortiz-zamora.com

Tony Ortiz – tony@ortiz-zamora.com

Gabriela Stewart – gabriela@ortiz-zamora.com

(505) 986-2900

