

TRANSGENDER STUDENTS: CALIFORNIA STATE LAW PROTECTIONS STILL IN EFFECT

On February 22, 2017, the U.S. Department of Education and U.S. Department of Justice issued a joint “Dear Colleague” letter, withdrawing Obama administration guidance on the rights of transgender students at schools under Title IX of the Education Amendments of 1972 (Title IX).

The rescinded federal guidance included rules on:

- Treating a student consistent with their gender identity, even if their records or identity documents indicate a different sex;
- Permitting transgender students to access sex-segregated facilities consistent with their gender identity; and
- Ensuring against the disclosure of personally identifiable information from a student’s records regarding his or her sex.

CALIFORNIA STATE PROTECTION LAWS STILL IN EFFECT

It is important to note that this decision does not impact state laws that provide protections to transgender students. Since 2014, California law has provided statutory protection to transgender students through California Education Code section 221.5, which provides, “It is the policy of the state that elementary and secondary school classes and courses, including nonacademic and elective classes and courses, be conducted, without regard to the sex of the pupil enrolled in these classes and courses.” California law requires that “A pupil shall 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.” California schools must still observe California legal protections for transgender students, regardless of the status of federal guidance.

The California Department of Education (CDE) has published Frequently Asked Question (FAQ) guidance on its website on the rights of transgender students. It provides guidance on questions such as:

- How should a school district, teacher, school administrator or other employee define gender, transgender, or gender identity?
- How can a teacher or school administrator determine whether a student is transgender or not?
- May a student’s gender identity be shared with the student’s parents, other students, or members of the public?
- What steps should a school or school district take to protect a transgender or gender nonconforming student’s right to privacy?

- What is a school or school district's obligation when a student's stated gender identity is different than the student's gender marker in the school's or district's official records?
- How does a school or school district determine the appropriate facilities, programs, and activities for transgender students?

Districts seeking advice on how to implement policies regarding transgender students should seek the guidance of the CDE. The CDE's guidance can be found at:

<http://www.cde.ca.gov/re/di/eo/faqs.asp>.

Please contact your Keenan Account Manager for questions regarding this *Briefing*.

Keenan & Associates is not a law firm and no opinion, suggestion, or recommendation of the firm or its employees shall constitute legal advice. Clients are advised to consult with their own attorney for a determination of their legal rights, responsibilities and liabilities, including the interpretation of any statute or regulation, or its application to the clients' business activities.