



Education Law Update

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AB 1266

PUPIL RIGHTS: SEX-SEGREGATED SCHOOL PROGRAMS AND ACTIVITIES

Governor Brown signed AB 1266 into law this week with an effective date of January 1, 2014. AB 1266 requires that:

"[A] pupil 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."

We expect more information to be forthcoming that will provide more guidance to school districts on complying with the AB 1266 mandate (i.e., CSBA expects to issue revised policy guidance no later than December). In the meantime, school districts are receiving inquiries from parents, the press and other interested groups concerning the school board's stance on AB 1266 and how students will be impacted. School district compliance with AB 1266 is mandatory, not permissive. How school districts implement the requirements of AB 1266, in the absence of governing regulations, should be a local decision. In this regard, it will be important to treat each transgender request under AB 1266 on an individual basis.

Schools Legal Service will provide updates on AB 1266 compliance as information becomes available. We are available to present information to districts that provides an overview of AB 1266 requirements and how transgender accommodation requests have been addressed in other school districts.

Attached is a memorandum developed by the Kern County Superintendent of Schools that sets forth some talking points.

If you have any questions concerning this or related issues, do not hesitate to contact our office.

– Timothy L. Salazar

Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.

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As you are probably well aware, Governor Brown signed into law Assemblyman Tom Ammiano's Assembly Bill 1266 this week. The new law requires that public schools respect a student's gender identity, specifically allowing transgender students to participate in gender-segregated school programs and activities, such as athletic teams, and be permitted to use facilities consistent with the student's gender identity.

While AB 1266 is the first of its kind in the country to be passed into law, school districts have been dealing with this issue for some time on a case-by-case basis to ensure that everyone's rights are protected, both in terms of privacy and access. Some large districts statewide, like Los Angeles Unified and San Francisco Unified, already protect transgender students through similar policies that have been in place for many years without problems.

Surely, there are still many conversations to be had around this issue as districts around the state transition toward complying with the new law that will go into effect on January 1. As public school districts, we are obligated to abide by the law, but more than that, to serve each and every student, and to ensure that every student in Kern County feels safe, secure and comfortable while they are on our many campuses.

As evidenced by news stories that have come out this week, this is clearly a sensitive topic. Therefore, it is important to have a clear understanding of the rights of all students and keep the lines of communication open and honest with those who oppose the new law.

Below are a few talking points that may help you in your communication to parents.

- Districts are **not** required to establish a written policy on this issue.
- While rare, gender identity matters in our schools aren't new.
- Both Federal and State law already prohibit discrimination in schools on the basis of gender identity and gender expression. As a result, schools already have the responsibility of protecting the rights of all students.
- Transgender accommodations have generally been handled on a case-by-case basis with the student and his or her parents to ensure that privacy and access rights are met.
- We will abide by the law, but instead of a broad, one-size-fits all strategy, we will continue to address relevant concerns on an individual basis to ensure the rights and needs of all students are met.
- Transgender policies have been in place for many years at some of California's largest school districts without problems.
- We may look to California districts, which already have long-standing policies to accommodate transgender students, for guidance.

Please advise us if there are ways the Kern County Superintendent of Schools office can help further.