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## TRANSGENDER AND GENDER NON-CONFORMING STUDENTS: RETROACTIVELY CHANGING NAME AND GENDER ON STUDENT RECORDS

*Former students who identify as transgender or gender non-conforming have the right to change their name and gender markers on their official student records retroactively, such as their official transcript or diploma. Note that current students already have similar rights regarding their student records and the use of pronouns.*

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AB 711 (2019), effective January 1, 2020, expressly requires school districts to have a process for updating a former student's name and gender marker on documents, such as official transcripts or diplomas and to reissue the revised documents upon request.

The ACLU has recently distributed a missive directing school districts to comply with AB 711. In order to avoid a viable claim of discrimination and regulatory non-compliance, district policies, practices, and staff trainings should incorporate AB 711 requirements. It is foreseeable that student advocacy organizations may begin auditing school district policies to determine compliance with AB 711.

The most recently updated sample CSBA board policies/administrative regulations, BP/AR 5125 (Student Records) and BP/AR 5145.3 (Nondiscrimination/Harassment), include the policy revisions necessary to satisfy the requirements of AB 711. If district board policies do not already incorporate the latest CSBA recommended revisions, steps should be taken to do so. Additionally, staff trainings regarding changes to student records and transgender/gender non-conforming students should include the policy/procedures set forth in BP/AR 5125 and 5145.3.

More specifically, AB 711 adds Education Code section 49062.5 and amends Education Code section 49070 to require that when a former student presents a driver's license, birth certificate, passport, social security card, court order, or a similar document with a new name and gender, the school district must change and reissue student's records, such as official transcripts and diplomas.

In addition, the following information must be included in the former student's cumulative file:

1. The date of the request;
2. The date the requested records were reissued to the former student;
3. A list of the records that were requested by and reissued to the former student;
4. The type of documentation, if any, provided to demonstrate a change to the student's name and gender;
5. The name of the employee who completed the request; and
6. The current and former name and gender of the student.

Note that California Code of Regulations, tit. 5, section 437, identifies a student's "legal name" as a "mandatory permanent pupil record." Sections 430 and 432 provide that "mandatory permanent pupil record" information must be kept by the school district "in perpetuity." Because the information required by AB 711 is inextricably intertwined with the student's legal name, it should also be maintained indefinitely.

Finally, if the former student is unable to provide supporting documentation, the changes may nevertheless be made through the process described in Education Code section 49070 and the district's AR 5125.3 - Challenging Student Records. In the context of a name/gender change, the Section 49070 process involves requesting the district superintendent, or his/her designee, to make the requested change because the student records in their current form are inaccurate, misleading, violate the former student's privacy, or violate some other right of the former student, such as the right to equal protection. If the request is denied, the former student may appeal to an ad hoc hearing panel formed by the school district, then to the governing board, and then, as may be necessary, seek a writ of mandamus.

The bottom line is, unless some sort of fraudulent purpose is evident, name and gender change requests must be honored.

Please contact me if you have questions or need further information on this topic.

- Alan B. Harris

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