

CLIENT NEWS BRIEF

AB 1266: New Gender Identity Bill on Hold

Last year, Governor Brown signed into law Assembly Bill (AB) 1266, which was set to have an effective date of January 1, 2014. However, since AB 1266 was signed, a referendum challenge was mounted to prevent AB 1266 from becoming law, and the referendum effort has caused the effective date to be put on hold. AB 1266 amends existing Education Code nondiscrimination provisions to require schools to allow a student to participate in sex-segregated school programs and use facilities consistent with the student's gender identity regardless of their biological sex ([see Lozano Smith Client News Brief No. 47](#)).

The California Constitution contains provisions allowing the electorate to prevent a bill from becoming law by gathering signatures to qualify the bill for a statewide referendum vote to bar enactment. The signature gathering effort to block AB 1266 has been completed, but the Secretary of State has yet to finalize the full signature review process, which is now set to be certified by February 25, 2014.

If the referendum fails to qualify for the ballot following the full signature review, AB 1266 will become law after the official announcement of the signature effort's failure from the Secretary of State. However, if the referendum qualifies for the ballot, the bill will remain on hold and we will not know if AB 1266 is the law until we have the final results of the November 4, 2014 general election vote.

The question of whether implementation of AB 1266 is on hold during the signature review process is a complicated matter. However, based on the text of the state constitution and applicable case law, we believe that AB 1266 is not currently in effect.

Districts should be cautioned that even though AB 1266 is not currently the law, and may be prevented from becoming law, California law already prohibits discrimination based upon gender identity (Ed. Code § 220), and both federal law as well as California Interscholastic Federation bylaws also apply to gender identity issues in schools. Thus, districts should not conclude that the referendum provides a vehicle to deny any rights afforded to transgender students under current law. Districts are advised to seek guidance on such issues on a case-by-case basis. Additionally, districts desiring to proactively address these issues should consider any policies carefully before adoption.

For further information regarding pupil rights with respect to sex-segregated school programs, facilities and activities, or for best practices that can be implemented with regard to these issues, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).

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Michael E. Smith
Partner
Fresno Office
msmith@lozanosmith.com



Benjamin C. Rosenbaum
Associate and Student
Practice Group Co-Chair
Fresno Office
brosenbaum@lozanosmith.com



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