

CLIENT NEWS BRIEF

Amidst Nationwide Media Coverage, U.S. Departments of Education and Justice Issue Joint Guidance Regarding Transgender Student Rights in Schools

On May 13, the United States Departments of Education and Justice [issued joint guidance](#) to the nation's schools regarding the Departments' interpretation of transgender students' rights under Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.) and Title IX's implementing regulations. The joint guidance addresses various aspects of transgender student rights under Title IX, including their rights to use school facilities and participate in athletic activities based on their gender identity instead of their biological sex. The U.S. Department of Education also [issued a 25-page guide](#), "Examples of Policies and Emerging Practices for Supporting Transgender Students."

Notably, the Departments' joint guidance – while representing the Departments' views of the law and relied upon by them reviewing school districts' legal compliance – is not binding.

While California's State Superintendent of Public Instruction praised the Departments' joint guidance, no fewer than five lawsuits have been filed in other states regarding the federal government's interpretation that Title IX provides protections for transgender students. In Virginia, the federal Fourth Circuit Court of Appeals recently held that the Department of Education's interpretation that Title IX and its regulations provide protections for transgender students is entitled to "controlling weight." Lawsuits filed in Illinois and North Carolina challenge that view, arguing that the federal government's interpretation is inconsistent with Title IX and violates non-transgender students' privacy. The federal government has initiated a lawsuit against North Carolina, challenging that state's recently enacted law requiring individuals to use restrooms based upon their biological sex.

While the stage is set for further legal wrangling before there is nationwide clarity on this issue, California's Education Code provides protections for students based upon gender identity ([see 2014 Client News Brief No. 14](#)). Education Code section 221.5, subdivision (f) provides: "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." The California Department of Education has also issued a legal advisory and Frequently Asked Questions on Education Code section 221.5's application to California schools ([see 2016 Client News Brief No. 16](#)).

Lozano Smith will continue to provide updates as this issue develops. For more information on the new federal guidance and the implications for your school district, please contact one of our [nine 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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