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U.S. Departments of Education and Justice Release Guidance Explaining Schools' Obligations Toward Transgender Students in Light of Federal Laws

On May 13, 2016, the U.S. Departments of Education (“DOE”) and Justice (“DOJ”) jointly released a statement of guidance and best practices (“Guidance”) explaining how federal laws which prohibit discrimination based on sex affect schools’ obligations with regards to transgender students. Educators, parents, and students have increasingly requested the Departments provide guidance on the issue which is becoming a source of contentious litigation and concern nationwide.

The Guidance provides a summary of schools’ Title IX obligations and explains how the DOE and DOJ will evaluate compliance. Title IX of the Education Amendments of 1973 operates to prohibit schools receiving federal money from discriminating against a student based on sex. The Guidance makes clear that a student’s gender identity shall be treated as the student’s sex for Title IX purposes. A school is on notice of a student’s gender identity when students, or their parents, notify the school that the student is transgender. No medical diagnoses, medical treatments, or identifying documents are necessary to trigger a school’s Title IX obligations.

The Guidance includes a separate document with examples of policies implemented by school districts, state education agencies, and high school athletics associations across the country which serve to ensure that transgender students enjoy supportive and nondiscriminatory school environments.

The Guidance highlights the appropriate measures for certain sensitive areas with regards to Title IX compliance, including such topics as the following:

- Creating a safe and nondiscriminatory environment free of harassment;
- Treating students consistently with regards to their gender identity in terms of identification documents;
- Allowing participation and access to sex-segregated activities and facilities; and
- Protecting students’ privacy and education records under Title IX and the Family Educational Rights and Privacy Act.

More information is available at: <https://www.justice.gov/opa/pr/us-departments-justice-and-education-release-joint-guidance-help-schools-ensure-civil-rights>.

The statement of joint guidance is available in full at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.