

“School Success and Opportunity Act”

AB 1266

February 2014

Agenda

- ▶ Critical Definitions
 - ▶ AB1266 Roadmap
 - ▶ Legal Framework
 - ▶ Key Issues
 - ▶ Q & A's
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Gender

- ▶ **Education Code** section 210.7 defines “gender” as sex, and includes a person’s gender identity and gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth
- ▶ **California Code of Regulations** defines “gender” as “a person’s actual sex or perceived sex and includes a person’s perceived identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with a person’s sex at birth” (5 CCR 4910(k).)

Transgender

A person whose gender identity does not match the sex assigned to him or her at birth...

- ▶ *Gender Identity*: A person's deeply-felt internal sense of being male or female
- ▶ *Gender Expression*: A person's external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, mannerisms, speech patterns, and social interactions

Roadmap

- ▶ Existing legal framework regarding transgender students
 - ▶ AB 1266
 - ▶ Key Issues
 - Implications
 - Opposition
 - ▶ Practical Tips
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Legal Framework

- ▶ Right to Privacy under California Constitution
- ▶ State and Federal laws prohibit the discrimination of students based on their actual or perceived gender

(Ed. Code 220, 260; 42 U.S.C., 200d–200e–17; 42 U.S. C., 2000h–2000h–6; 20 U.S.C. 1681)

Legal Framework cont.

- ▶ Ed. Code Section 230 defines “harassment” and other discrimination on the basis of sex as including, in relevant part
 - (a) on the basis of sex, exclusion of a person or persons from participation in, denial of the benefits of, or subjection to harassment or other discrimination in, any academic, extracurricular, research, occupational training, or other program or activity.
 - (c) on the basis of sex, exclusion from participation in, or denial or equivalent opportunity in, athletic programs. For purposes of this section, equivalent means equal or equal effect

Legal Framework cont.

- ▶ Ed. Code section 201(b) further provides that school districts have an affirmative obligation to combat sexism and other forms of bias, and a responsibility to provide equal educational opportunity to all pupils

Legal Framework cont.

- ▶ In sum:
 - Duty to prevent and correct discrimination or harassment of students on the basis of gender, whether at school or at school-sponsored events
 - Duty to ensure incidents involving discrimination, harassment, or violence are given immediate attention

AB 1266

- ▶ Signed by Governor on August 12, 2013 (effective January 1, 2014)
- ▶ Known as “School Success and Opportunity Act”
- ▶ Adds subdivision (f) to Ed. Code 221.5
 - (f) 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

Key Issues

- ▶ School and Official Records
 - ▶ Names/Pronouns
 - ▶ Restroom Accessibility
 - ▶ Sports Teams/Gym Classes
 - ▶ Locker Rooms/School Facilities
 - ▶ Parent, Student, and Staff Opposition
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Key Issue: SCHOOL RECORDS

▶ School Records

- “Colin” starts the new school year as “Colleen.” Her parents demand that the district/school change her official records to reflect her new sex and name.
- How should the district/school handle the request?

*Keep in mind:

- District is required to maintain mandatory permanent records that includes a student’s legal name and legal gender
- So ask...is there a court order changing Colin to Colleen?

Key Issue: SCHOOL RECORDS

- ▶ If YES, comply with request
 - Does the district have to change existing records or just new records?
- ▶ If NO, district should not change official records
 - However, district should address the student as “Colleen” and use the correct subject and object pronouns

Key Issue: NAMES/PRONOUNS

- ▶ **Students** shall have the right to be addressed by a name and pronoun corresponding to their gender identity consistently asserted at school
- ▶ **Students** are not required to obtain a court ordered name and/or gender change or to change their official records as a prerequisite to being addressed by the name and pronoun that corresponds to their gender identity
- ▶ **Student's** preferred name shall be included in the electronic student record system along with the student's legal name in order to inform teachers of the name/pronoun to use when addressing the student

Key Issue: RESTROOM ACCESSIBILITY

- ▶ Student (biologically female) has a history of being bullied for his status as a transgender student. School staff is very worried about his safety in the boys' restroom and offers use of a unisex restroom. Student declines.

Can the district require/force student to use unisex bathroom for his safety?

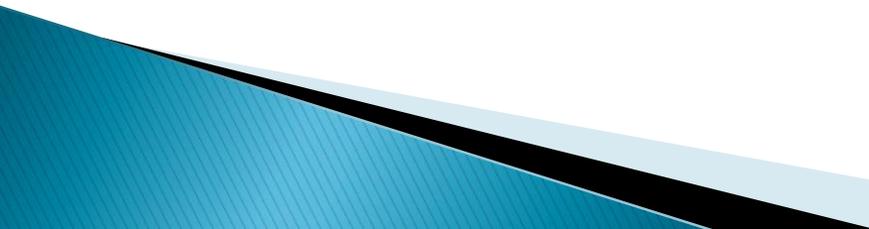
Key Issue: RESTROOM ACCESSIBILITY

- ▶ NO...the district cannot require a student to use a unisex bathroom or a facility that does not conform to his/her gender identity
 - ▶ What other options does the district have?
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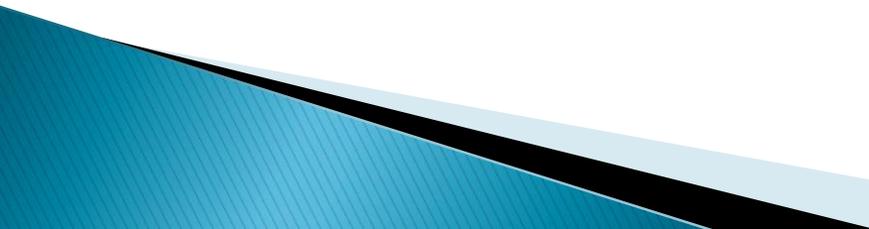
Key Issue: RESTROOM ACCESSIBILITY

- ▶ What if student (who identifies as a male) wants to continue using the girls' restroom?

Suggestions:

- ▶ Meet with parents and student to discuss student's restroom and locker room use
 - ▶ Offer unisex bathroom and locker room – allow gender specific facilities if preferred
 - ▶ If safety is an issue, offer alternative schedule or provide discreet supervision
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Key Issue: SPORTS AND PHYSICAL EDUCATION CLASSES

- ▶ Student (biologically male) decides to try out for the girl's basketball team. The coach balks and tells student to try out for the boys' team. Can the coach do that?
 - ▶ It depends...
 - Does student identify as a boy or a girl?
 - How does a student establish his or her "gender identity?"
 - Has the student consistently asserted his or her gender identity?
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Key Issue: SPORTS AND PHYSICAL EDUCATION CLASSES cont.

- ▶ California Interscholastic Federation (CIF)
 - Bylaw 300(d), Gender Identity Participation
 - Approved February 2013, effective July 2013
- ▶ Districts may utilize CIF's Guidelines for Gender Identity Participation to facilitate process
- ▶ Transgender students shall not be denied the opportunity to participate in PE or extracurricular activities (*participation in competitive athletic activities and contact sports are to be addressed on a case-by-case basis*)

Key Issue: LOCKER ROOMS OR OTHER FACILITIES

- ▶ Must provide student access to a locker room facility that corresponds to the gender identity the student consistently asserts at school
- ▶ Reasonable alternatives include:
 - Use of private area (e.g., a nearby restroom stall with a door, an area separated by a curtain, an office in the locker room, or a nearby health office restroom)
 - A separate changing schedule (utilizing the locker room before or after the other students)

Key Issue: SEX-SEGREGATED FACILITIES

- ▶ Ed. Code section 231 states that schools may continue to maintain separate bathroom facilities for biologically male and female students
 - Nothing herein shall be construed to prohibit any educational institution from maintaining separate toilet facilities, locker rooms, or living facilities for the different sexes, as long as comparable facilities are provided

Key Issue: SEX-SEGREGATED FACILITIES cont.

- ▶ District has discretion to accommodate transgender and other students by offering unisex restrooms and locker rooms
 - ▶ Districts must, however, avoid policies or practices that discriminate against transgender students or force the students to conform to sex or gender stereotypes
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Key Issue: PARENT OPPOSITION

- ▶ Several parents learn there is a transgender student who will potentially share the restroom with their children. These parents co-author a letter demanding their children be given access to a unisex restroom so as to respect their children's right to privacy

What should/must the district/school do?

- Does the school have to make unisex restrooms available to everyone? *No, but could be a considered strategy*
- If that is impractical, does the school have to convert an existing restroom to be unisex? *No, but could be a considered strategy*

Key Issue: STUDENT OPPOSITION AND BULLYING

- ▶ Can a student's or a group of students' refusal to share facilities with a transgender student constitute bullying or sexual harassment?

AB 9 (Seth's Law) requires that school district's anti-bullying policies include a requirement that, if school personnel witness an act of discrimination, harassment, intimidation or bullying, they take immediate steps to intervene when safe to do so (Ed. Code 234.1)

Key Issue: STAFF OPPOSITION

- ▶ Staff/Teacher consistently refuses to use the correct pronoun/name of a transgender student (each time this happens, the staff/teacher is corrected by the student); the staff/teacher claims it is a mistake

What actions can/must the district/school take?

Key Issue: STAFF OPPOSITION cont.

- ▶ Utilize interactive process with the teacher to:
 - Investigate and determine if it is an honest mistake
 - Remind the teacher of the law
 - Follow up meetings with the staff if the concerns persist
- ▶ Other actions can include:
 - *Train staff at faculty meetings*
 - *Develop bulletin/memo for staff regarding the district's practices*
 - *Review district policies and procedures*
 - *Engage staff, parents, and students often and early*

Request for Information

- ▶ A parent who heard about AB 1266 contacts the district/school to ask if there are any transgender students at her child's school
 - Parent is concerned about her child sharing a restroom and/or changing in a locker room with a transgender student

What should the district/school do?



Request for Information cont.

- ▶ Remember FERPA!!
 - Disclosure could violate FERPA as well as set up the transgender student as a target for bullying/harassment

AB 1266 Summary Notes

▶ Names/Pronouns

- Students shall have the right to be addressed by a name/pronoun corresponding to their gender identity that is exclusively and consistently asserted at school

▶ Official Records

- District shall change a student's official records to reflect a change in legal name or gender upon receipt of documentation that such legal name and/or gender have been changed pursuant to CA legal requirements

▶ Restroom Accessibility

- Students shall have access to the restroom that corresponds to their gender identity that is exclusively and consistently asserted at school

▶ Locker Room Accessibility

- Transgender students shall not be forced to use the locker room corresponding to their gender assigned at birth

▶ Sports and Gym Class

- Transgender students shall not be denied the opportunity to participate in sports and gym classes

▶ Dress Codes

- Students shall have the right to dress in accordance with their gender identity that is exclusively and consistently asserted at school, within the constraints of the dress codes adopted at their school

▶ Gender Segregation in Other Areas

- As a general rule, in any other circumstances where students are separated by gender in school activities, students shall be permitted to participate in accordance with their gender identity exclusively and consistently asserted at school

Comments, Questions

Please refer any questions to
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