

School Districts' Obligations to Transgender Students Under Scrutiny as Another School District Settles With OCR

In October 2014, we [reported](#) on the increasing attention given by the U.S. Department of Education's Office for Civil Rights (OCR) to the issue of discrimination against transgender students in public schools. Over the past year, this issue has become a battle ground before OCR and the courts across the nation.

This dispute was triggered by OCR's interpretation of Title IX as extending to claims of discrimination against transgender students despite the fact that discrimination based on gender identity is not explicitly covered by Title IX or any federal law. In July 2015, the New York State Education Department (NYSED) took a position on the controversial issue when it released a [Transgender and Gender Nonconforming Guidance](#) document advising New York schools on how to handle various issues related to transgender students. For instance, NYSED advised schools on initiating the use of the student's preferred name and pronouns that correspond to the student's gender identity, as well as issues related to the use of restrooms and locker rooms. While N.Y.'s Dignity for All Students Act (DASA) obligates schools to respond to discrimination and harassment based on a student's gender identity or expression, NYSED seemed to rely, at least in part, on OCR's interpretation of Title IX.

On December 2, 2015, OCR entered into a [settlement](#) with a school district in Illinois in a case that has gained national attention in the debate over whether transgender students must be permitted to use the restroom and/or locker room that corresponds to their gender identity. That case involved a student who was born male but who identifies as female. Just last month, OCR issued its [findings](#) that the school's refusal to allow the transgender female student unrestricted access to the girls' locker room violated Title IX and gave the school a thirty day deadline to settle the case or face the potential loss of federal funding. Under the resolution agreement, the school district agreed to allow the transgender female to use the girls' locker room "based on her representation" that she would change in private changing areas in the locker room. The school district also agreed to set up privacy curtains in the locker room for the transgender student and any other students who want greater privacy. This case does not, however, provide much guidance to other schools where the transgender student might insist on changing in the open with other girls. It is also notable that the resolution agreement does not explicitly require the school district to adopt any district-wide policies or practices that would apply to other transgender students. The American Civil Liberties Union, which represents the student, has criticized the settlement for these reasons.

In addition to allowing the student at issue access to the locker room and installing privacy curtains, the school district also agreed to arrange for this transgender student to have access to locker rooms and facilities at other schools during District-sponsored activities; establish a support team with a student-specific support plan to ensure that the student can address any particular issues she or her parents might have; publish a revised notice of nondiscrimination on the basis of sex, and hire a consultant to assist the district and the student in implementing the settlement.

While this case highlights the sensitivity and fierce debate over the particular issue of restroom and locker room access, schools face several other complex issues in accommodating transgender students. For instance, schools must balance transgender students' confidentiality against the rights of parents, some of whom might not support their child's transgender status. Schools are also left navigating the laws relating to the privacy of school records and requirements associated with obtaining a legal name change. OCR and NYSED advise schools to use a student's preferred name, as opposed to his/her birth name, in school records,

regardless of whether the student has undergone a legal name change. This, however, fails to address the legality of such a practice or even the practical implications of a student's school records not matching their social security number or other identification documents when the student applies to college. These are just some of the issues that are still unresolved in this rapidly developing area of the law. School districts are advised to proceed with caution when addressing accommodation requests from transgender students and to be mindful of OCR's position that transgender students should, for all intents and purposes, be treated in a manner consistent with their gender identity.

If you have any questions regarding your school district's obligations towards transgender students or under Title IX in general, please contact [Christa Cook](mailto:cookc@bsk.com) at 315.218.8321 or cookc@bsk.com.



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