



New England School Development Council
Celebrating over seventy years of service to education

April 2017

Dear Colleague:

The following is a message from NESDEC's Legal Services Division.

NESDEC affiliates have noted with interest, and possibly some confusion, recent developments relating to the handling of transgender issues within public school districts. In February, the Trump Administration revoked the Obama Administration policy that school districts must extend sex discrimination protections under Title IX to transgender students. Subsequently, the Supreme Court, due to consider the *Gloucester County School Board v. G.G.* in March, decided not to hear the pending transgender case reserving boys' restrooms for "biological males", sending it back to the Fourth Circuit for reconsideration. As such, it would appear that any action at the Supreme Court level has been forestalled for at least a couple of years.

Based on the recent Trump administration position rescinding previous guidance that included transgender protections under Title IX's prohibitions, the U.S. Departments of Justice and Education will not initiate enforcement activities such as complaint investigations or litigation to protect the rights of transgender students. This position leaves the issue of transgender student protection to the state law provisions in each of the fifty states. With transgender issues being the basis with students for significant verbal and social media abuse, physical violence, and suicides, we review the legal status of this issue among the New England states we serve.

State Guidance

For NESDEC affiliates, this shift in Administration policy toward treatment of transgender students may not result in a fundamental change in direction. The issue of permitting students to use the restrooms and locker rooms corresponding to their gender identity has been considered and fairly well-settled by many of the New England states with state laws and statutes that have been in place for some time. As discussed below, in New Hampshire, the issue is under reconsideration, and currently, public school districts can have differing policies.

In **Massachusetts**, the rights of transgender students in schools, following the adoption of "An Act Relative to Gender Identity" (Chapter 199 of the Acts of 2011) were protected by the law which went into effect in July 2012. As Massachusetts Department of Elementary and Secondary Education (DESE) guidance interpreting that law makes clear, students in Massachusetts must be permitted to use the restrooms and locker rooms corresponding to their gender identity.

In **Connecticut**, Governor Dannel Malloy has issued an executive order whereby Dianna Wentzell, Commissioner of the Connecticut Department of Education, will develop policies with local school districts to allow children to use the bathroom and locker room which is consistent with their gender identity at any given time. This executive order is consistent with CT state law which includes transgender among the classes protected under its anti-discrimination statutes since 2011.

In **Maine**, transgender students and their parents may continue to enforce their rights at the Maine Human Rights Commission as they have since 2014, as well as in state courts that have upheld LGBTQ rights for more than ten years.

Vermont has also prohibited gender identity discrimination in workplaces, housing, and places of public accommodation, which include schools, since 2007. This has been interpreted by the Vermont attorney general TJ Donovan to mean transgender students can use the bathroom of their choice.

In **Rhode Island**, the change in federal policy will have no effect, as Rhode Island state statutes disallowed discrimination based on transgender status in 2001. This position has been reaffirmed in memoranda by Department of Education Commissioner Ken Wagner.

Finally, in **New Hampshire**, while state-wide legislation (H.B. 478) has been recently introduced to include transgender protections under discrimination laws, the current NH state law does not include transgender among its anti-discrimination statute coverage. This leaves transgender student protections in public schools to treatment on a district-by-district basis. Currently, 17 of the 238 New Hampshire school districts have policies providing for protection of transgender students from harassment, bullying and other forms of discrimination. Those public school districts with explicit transgender-inclusive policies include Rochester, Dresden, Candia, Dover, Epping, Greenland, Hooksett, Monroe, Northwood, Oyster River, Portsmouth, Sanborn, Concord, Londonderry, Merrimack Valley, Somersworth, and Gilford.

District Compliance

With compliance of transgender issues covered by state statutes and other district requirements continuing to be addressed under Title IX and Title VII, steadfast attention to human resources compliance will remain important considerations for all public school districts. For NESDEC affiliates, one important starting point for Human Resource compliance is the Self-Assessment Inventory which we provided each affiliate as a cost-free benefit of membership earlier this year. It will provide the District with a roadmap to highlight and prioritize some of the goals included your school district's strategic plan for current and future years. If you need another copy of the Inventory, please do not hesitate to contact the NESDEC office.

If your analysis identifies a need for services related to Title IX, Civil Rights (Title VII), or Human Resource compliance, including personnel training, staff presentations, policy development, handbook review, compliance audits, or conducting investigations, these services are available at discounted rates for NESDEC affiliates. Please feel free to contact the NESDEC office or the office of Jeanne M. Colachico, Esq., if you would like to learn more about our Title IX (and/or Title VII) services, should any related immediate issues arise, or if we can be of further assistance.

Very truly yours,

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