

NYSED GUIDANCE ON TRANSGENDER STUDENTS

By Jacinda H. Conboy, Esq., General Counsel, The Council



On July 13, 2015, the New York State Education Department (NYSED) issued guidance with respect to Transgender and Gender Nonconforming Students. The guidance gives a number of very clear directives and information for compliance with the law regarding transgender and gender nonconforming students.

Identifying Transgender Youth

The guidance provides that the student has the ability to identify their gender without any confirmation or documentation from a parent or medical care provider. In fact, the guidance specifically provides that if a student does not want their parents to know about their transgender status, the district must determine on a case-by-case

basis what is in the best interest for the health and safety of the student balanced against what should be disclosed to their parents or guardians.

Student Records

Records with the student's birth name should be kept in a confidential file and all student records should be updated with the student's identified name and appropriate pronouns that are consistent with the student's gender identity.

Restrooms & Locker Rooms

While restrooms and locker rooms may be the most challenging issue, the guidance is clear in this area. Districts must allow students to use restrooms that match their gender identity; to refuse to do so is sex discrimination under Title IX. In addition, if a student requests an alternative restroom, such as a private restroom or a unisex restroom, one should be provided, however, a student should never be required to use a private or alternate restroom and a private or alternative restroom should not be the only option. Students should also be entitled to use the locker room that matches their gender identity and private changing areas should be an option for any student wishing to use them.

Districts are required to provide training for their staff and must make sure that their policies and codes of conduct comply with DASA. Fifty-one percent of transgender students, (according to a 2011 national survey) who were harassed or bullied reported attempting suicide. Districts play an important role in supporting their transgender students.