

A photograph of two children, a boy and a girl, sitting on a school bench in front of a row of green lockers. The boy is on the left, wearing a plaid shirt and dark pants, looking towards the girl. The girl is on the right, wearing a light-colored shirt and dark shorts, holding a book and looking back at the boy. The scene is lit with a warm, yellowish light.

Transgender Issues 2.0 Best Practices for Working with Transgender Students

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The Basics

- ◇ The law does not expressly protect an individual against discrimination on the basis of his/her transgender status.
- ◇ Title IX has been interpreted to prohibit gender-based discrimination and harassment in schools based on gender stereotypes (or failure to conform to gender stereotypes).

The Basics

- ◇ OCR began recognizing gender-based harassment as a "form of sex discrimination to which a school must respond" as early as 2001.
- ◇ 2016 the OCR issued a Dear Colleague Letter stating transgender students must be allowed to participate in activities and access facilities consistent with their gender identity.

The Controversy

- ◇ In response, a lawsuit was filed by ten states (including Texas) against the U.S. Departments of Education, Justice and Labor, and the U.S. Equal Employment Opportunity Commission.
- ◇ The lawsuit alleges these agencies have rewritten both Title VII and Title IX inconsistent with Congressional intent

Dueling Letters: Caught in the Middle

- ◇ Texas Lt. Governor issued a letter to superintendents in Texas and requested that school districts wait to make policy or operational decisions regarding the Dear Colleague letter.
- ◇ The Texas Attorney General issued a letter to superintendents in Texas advising public school districts that they were under no obligation to change their policies to allow students to use "whatever intimate facility they choose."

Dueling Letters: Caught in the Middle

- ◇ AG's letter also cautioned school districts that "policy changes" must be made by the Board of Trustees in a public meeting.
- ◇ The ACLU issued a letter to Texas superintendents challenging the AG's characterization of the lawsuit's preliminary injunction and cautioned that transgender students can still file suit for discrimination under Title IX.

Also available as part of the eCourse

[Student Rights in 2017: Transgender Students, Special Education, Cameras in the Classroom, and More](#)

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