

The District recognizes that transgender student issues raise significant concerns particularly with respect to the use of restrooms and locker rooms. The District does not discount and is not minimizing any of these concerns. However, as the District works through these issues, it is attempting to balance the rights of transgender students with the rights of the general student body. These issues are not theoretical in our district as we have transgender students in our student population. Furthermore, there are certainly legal requirements the District is obligated to satisfy and its efforts to date have been in recognition of its legal obligations under Title IX.

The following is the District's response to a compiled list of frequently asked questions and stated concerns as raised during the Community Forum and at recent Board meetings. The District is providing this response to assist with the exchange of information regarding transgender students and Title IX compliance issues.

I. Background

On May 13, 2016, the U.S. Department of Justice, Civil Rights Division, and the U.S. Department of Education, Office for Civil Rights, issued a "Dear Colleague Letter" which by its terms, "...summarizes a school's Title IX obligations regarding transgendered students and explains how the U.S. Department of Education (ED) and the U.S. Department of Justice (DOJ) evaluates a school's compliance with these obligations." A copy of the May 13, 2016 Letter is available through a link on the District's webpage. The letter states, "[a]s a condition of receiving Federal funds, a school agrees that it will not exclude, separate, deny benefits to, or otherwise treat differently on the basis of sex any person in its educational programs or activities unless expressly authorized to do so under Title IX or its implementing regulations." The letter provides that the ED and the DOJ "...treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations." The letter clearly states, "This means that a school must not treat a transgender student differently from the way it treats other students of the same gender identity." See May 13, 2016 Letter, at 2.

On the issue of restrooms and locker rooms, the letter reads as follows:

Restrooms and Locker Rooms. A school may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identity. A school may not require transgender students to use facilities inconsistent with their gender identity or to use individual-user facilities when other students are not required to do so. A school may, however, make individual-user options available to all students who voluntarily seek additional privacy.

See May 13, 2016 Letter, at 3.

On the advice of the then District Solicitor, the District made the decision to allow transgender students to use restroom and locker room facilities consistent with their gender identity. This decision was not made lightly and the direction taken by the District was based upon the direct advice and opinion of the then District Solicitor.

II. Summary of Questions and Responses

1. Response to questions regarding the change in policy.

While the term “policy” has been utilized when discussing the use of restrooms and locker rooms by transgender students, technically, the District did not institute a policy change. The Board did not vote on this issue and there has been no “policy” adopted. The legal advice the District received from its then solicitor was that it needed to follow the federal government’s guidance as set forth in the May 13, 2016 Letter to be compliant with Title IX.

2. Response to questions pertaining to pending litigation.

There is no pending litigation with the District regarding this issue (as of January 3, 2017).

3. Response to questions pertaining to the use of unisex restrooms and restrooms in the District.

The existing unisex restroom facilities at the middle school and high school are as follows. The middle school has two unisex restrooms and one unisex restroom in the nurse’s office which are available to all students. The high school has three restrooms which could be utilized as unisex restrooms and one unisex restroom in the nurse’s office.

There are individual stalls in all of the restrooms currently. Additional modifications and upgrades may be made in the future.

The advice the District received regarding the use of unisex restrooms was that, while unisex restrooms are an available option, the District could not require transgender students to use only those facilities when other students are not required to do so. The District continues to make unisex restrooms available and any student may use the available unisex restrooms.

While the District had made unisex restrooms available, following the legal advice of its then solicitor, the District implemented the guidance set forth in the May 13, 2016 Letter after being asked regarding the District’s position on the issue by the parents of a transgender student.

4. Response to questions pertaining to adult use of restroom and locker room facilities.

Each school in the District has adult restroom and locker room facilities. Adults use the adult/faculty restrooms and coaches’ offices during the day. In the evening, coaches use the

restroom in the locker room. Adult guests and visitors are directed to use the adult/faculty restrooms. Typically adult guests and visitors do not use locker rooms.

5. *Response to questions pertaining to identification of transgender students.*

For students under the age of 18, a student's parents or legal guardians must consent to the gender identity of their child. If necessary, the guidance office will work with a transgender student to arrange a meeting to assist the student in discussing gender identity with the parents or legal guardians. For children under the age of 18, the school will comply with the wishes of the parents or legal guardians.

6. *Response to questions pertaining to communication with teachers and staff regarding transgender students.*

For students over the age of 18, a student's permission is obtained before information is disclosed to teachers or staff. For students under the age of 18, the parents' or legal guardians' permission is obtained before information is disclosed to teachers or staff.

The District intends to continue to verify a student's gender identity before allowing access by a transgender student to restroom or locker room facilities different than that student's sex assigned at birth.

7. *Response to questions pertaining to students improperly using restroom and locker room facilities.*

Any student who intentionally and improperly uses a restroom or locker room as a prank or to harass other students will receive disciplinary consequences.

8. *Response to questions pertaining to the October letter informing parents and legal guardians.*

When questions arose regarding the use of restrooms and locker rooms by transgender students, the Board thought it better to let the public know directly how the District was handling the situation. The Board requested that the October letter be sent to parents and legal guardians. This letter from the Board was sent out against legal advice of the then solicitor.

All District staff had been informed on the issue on August 22, 2016.

9. *Response to questions pertaining to the availability of counseling services regarding this issue.*

The District is working through its school counselors to make sure any student impacted by this issue has available services.

10. *Response to questions pertaining to why the District handled this issue in this fashion.*

The District and the Board looks to its solicitor for advice on how best to interpret and implement the law. The then solicitor advised the District to follow the dictates of the May 13, 2016 Letter. The legal advice received was to simply implement what was necessary to follow the guidance contained within the May 13, 2016 Letter. When the level of public concern was discovered, the Board, against the advice of the then solicitor, directed that the October letter be sent.

There were a number of comments and questions directed as to why the District would implement this change in light of the fact that there are only a small number of transgender students in the District. The May 13, 2016 Letter states:

A school's Title IX obligation to ensure nondiscrimination on the basis of sex requires schools to provide transgender students equal access to educational programs and activities even in circumstances in which other students, parents, or community members raise objections or concerns. As is consistently recognized in civil rights cases, the desire to accommodate others' discomfort cannot justify a policy that singles out or disadvantages a particular class of students.

See May 13, 2016 Letter, at 2.

III. Conclusion

As stated above, the District understands the concerns expressed at the Community Forum and recent Board meetings. This response is to help provide some additional insight from the District's perspective to the questions and concerns which have understandably arisen regarding this issue. As noted above, the District is attempting to follow the law as advised by the then solicitor. The District will continue to monitor any new legal developments regarding this issue.