



Sample
Checklist
Inside

Protecting Transgender Students: Does Your School Have the Right Policies in Place?

Transgender and gender non-conforming students often encounter difficulties during interactions with peers, parents, and even teachers and school administrators due to their gender expression. In recent years, the rights of transgender and gender non-conforming students (generally, “transgender students”) came into the forefront with many well-known legal challenges to school policies and practices, leading many school districts across the U.S. to address key issues for this segment of the student population, such as bathroom facilities use, gender-related harassment, and sports participation.

Protecting the rights of transgender and gender non-conforming students has remained an important yet

complex topic with which school districts continue to grapple. Significant developments in the law and government policies have transpired since SLRMA first provided members with a self-audit checklist addressing this subject in 2014.

There is some disagreement among courts and even at the U.S. Department of Education’s Office for Civil Rights (“OCR”) and the U.S. Department of Justice (“DOJ”) about the scope of protections for transgender students under the Constitution and Title IX of the Education Amendments of 1972. For example, in 2016 one federal trial court in Texas enjoined OCR and DOJ from enforcing the Obama-era interpretation of Title IX. Other courts have ruled

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in favor of transgender students under either Title IX or Constitutional grounds. In addition, school districts have faced lawsuits brought by students who object to the presence of transgender individuals in sex-segregated facilities, typically on the basis of the right to privacy.

“We need to provide different supports to different students based on their unique needs, in order to help students achieve and develop into healthy adults prepared for their future. This is the definition of educational equity.”

Source: “The Case for Transgender-Affirming School Policies: What schools and parents need to know,” Elizabeth J. Meyer, Ph.D., Psychology Today, October 21, 2015. <https://www.psychologytoday.com/us/blog/gender-and-schooling/201510/the-case-transgender-affirming-school-policies>

During the Obama administration, OCR and DOJ entered into a series of resolution agreements and issued a number of guidance letters taking the position that Title IX protects transgender students. In May 2016, OCR and DOJ issued a formal Dear Colleague Letter (“DCL”), which detailed the nature and extent of a district’s obligations to transgender students under Title IX (the “2016 DCL”).

However, near the beginning of the Trump administration in February 2017, OCR and DOJ issued a new DCL, which explained that the departments had decided to “withdraw and rescind” the 2016 DCL to “more completely consider the legal issues involved” (the “2017 DCL”). At the same time, the 2017 DCL explained that the withdrawal “does not leave students without protections from discrimination, bullying, or harassment” and that “[a]ll schools must ensure that all students, including LGBT students, are able to learn and thrive in a safe environment.” Significantly, the Trump OCR and DOJ left in place a 2010 DCL on bullying and harassment that forbids harassment on the basis of failure to conform with sex-based stereotypes.

Fast Facts: School Climate Data related to Transgender & Gender Expression Issues:

75.3% Students who have experienced harassment for how they express their gender

85.1% Teachers who received professional development regarding bullying/harassment

23.6% Teachers who received professional development regarding transgender student topics

18.5% Teachers/Staff who intervened when hearing negative comments on gender expression

Source: “From Teasing to Torment: School Climate Revisited, A Survey of U.S. Secondary School Students and Teachers,” Greytak, Kosciw, Villenas, & Giga, 2016, Gay, Lesbian and Straight Education Network (GLSEN). https://www.glsen.org/sites/default/files/TeasingtoTorment%202015%20FINAL%20PDF%5B1%5D_0.pdf

To assist school districts in examining its policies addressing equal access to educational opportunities for transgender and gender non-conforming students, SLRMA presents to its membership the Transgender and Gender Non-conforming Student Practice and Policy Self-Audit Checklist for 2018. While many states have their own body of laws protecting transgender and gender non-conforming students, the focus of this checklist is exclusively on Federal laws and regulations. This updated checklist should be used to evaluate, review, and if necessary, make changes to existing policies or create new ones regarding transgender students.

When students assert gender identities different from their sex assigned at birth, school districts must consider how best to meet their needs in the school environment. With this 2018 checklist in hand, school districts will be well-prepared to do so.

Recent Updates from the Newsroom Available on SLRMA.org

Student activism after Parkland, Florida school shooting and First Amendment considerations

March 16, 2018

After the February 14, 2018 shooting at Marjory Stoneman Douglas High School in Parkland, Florida, students across the country took to the streets and scheduled school walkouts. Such demonstrations highlight the need to understand students' First Amendment rights. This discussion provides crucial considerations for school districts in addressing student activism.

Employee Speech and First Amendment Self-Evaluation Checklist

December 7, 2017

The First Amendment as applied to public school districts is as complex as the ways school districts interact with constituents. How far does a school district's ability to control speech of its employees go? Must a school district permit its football coach to take a knee during National Anthem? What about if a teacher talks politics in biology class? What about a teacher's speech outside of the classroom? This new self-evaluation checklist addresses one particular issue in the First Amendment kaleidoscope: freedom of speech when the school district is acting as an employer.

3D Printer Give-Away

Log in during March, April and May for a Chance
to Win a 3D Printer

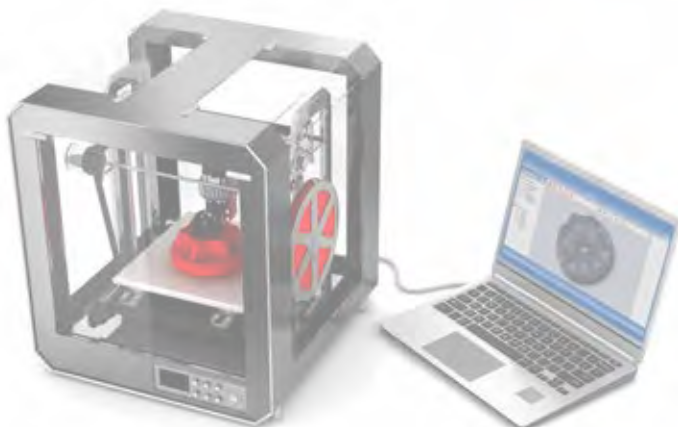


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2018 Top 4 Downloads

- 1) Due Process Requirements for Out of School Suspension Checklist
- 2) Employee Speech & First Amendment Checklist
- 3) Hogan Lovells Memo on Change In The Scope of OCR Investigations
- 4) Cloud Computing Checklist

SLRMA UPDATE | March 2018

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The Mission of the School Leaders Risk Management Association (SLRMA) is to assist public school districts (K-12) with supplemental risk management support. We help you accomplish your own mission of risk avoidance in a number of ways.

- We provide pro-active, timely tools to help prevent unwanted and unwarranted school board legal liability claims.
- We keep members informed of the current legal issues that will likely affect your school district through our work with the Federal Legislation Insurance Committee (FLIC).
- We give members access to special reports featured in our Newsroom. The topics are specific to the School Board Legal Liability school boards face today and will in the future.

Members are equipped with an array of self-audits and checklists to help ensure you are in compliance with the latest requirements and guidelines which govern school boards and school districts. We are a not-for-profit and are governed by a Board of Directors. The Board consists of current Executive Directors of State School Boards Associations.

Checkout slrma.org to see all the benefits of membership.

SCHOOL LEADERS RISK MANAGEMENT ASSOCIATION

Transgender & Gender Non-conforming Student Practice and Policy: Self-Audit Checklist and Best Practices

This self-audit checklist is intended for use by public school district personnel who wish to evaluate, review, and if necessary, make changes to existing policies or create new ones regarding transgender students.

I. Does the district's policy state its scope? Notice Requirement		
	<u>Yes</u>	<u>No</u>
◆ Does the policy state that it applies to activities within the school or on school property?		
◆ Does the policy state that it applies to school-sponsored functions and activities, on school transportation, or at designated bus stops?		
II. Has the district developed a vocabulary for discussing issues that arise involving transgender students?		
	<u>Yes</u>	<u>No</u>
◆ Does the policy establish a common vocabulary for school personnel to use when discussing these topics?		
◆ Does the policy define the following terms: <ul style="list-style-type: none"> • gender expression • gender identity • transgender • gender transition • gender nonconforming • gender stereotype • intersex • sex-specific facilities and • sex assigned at birth? 		
◆ Does the policy state the basis or source for the definitions provided?		
◆ Does the policy clarify that gender identity is different from sexual orientation?		
◆ Does the policy state that students do not have to prove their gender (for example, by using a doctor's letter), and that only the student's self-identification is relevant?		
◆ Does the policy define prohibited discrimination to include failure to comply with sex-based stereotypes?		

Best Practice: Federal law does not mandate that districts adopt specific definitions for terms related to transgender and gender non-conforming students. However, each district should (i) define key terms used in their policies, (ii) state the basis or source for each of the definitions, and (iii) if the district altered language in the definition that it obtained from a particular source, state the reason(s) for such change(s).

When drafting or revising their policies, districts may want to consider the definitions for key terms used in any controlling state statutes or federal or state legal opinions. Districts may also want to consider the definitions provided in the 2016 DCL or in the Resolution Agreement, executed July 24, 2013, among OCR, DOJ, and Arcadia Unified School District ("Arcadia"). See Arcadia Resolution Agreement (July 24, 2013), available at <http://www.justice.gov/crt/about/edu/documents/arcadiaagree.pdf>.

The 2016 DCL used the following terms:

- “*Gender identity* refers to an individual’s internal sense of gender. A person’s gender identity may be different from or the same as the person’s sex assigned at birth.”
- “*Sex assigned at birth* refers to the sex designation recorded on an infant’s birth certificate should such a record be provided at birth.”
- “*Transgender* describes those individuals whose gender identity is different from the sex they were assigned at birth. A *transgender male* is someone who identifies as male but was assigned the sex of female at birth; a *transgender female* is someone who identifies as female but was assigned the sex of male at birth.”
- “*Gender transition* refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth. During gender transition, individuals begin to live and identify as the sex consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity. Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly or over a long duration of time.”

The Arcadia Resolution Agreement used the following additional terms:

- “‘Gender-based discrimination’ is a form of sex discrimination, and refers to differential treatment or harassment of a student based on the student’s sex, including gender identity, gender expression, and nonconformity with gender stereotypes, that results in the denial or limitation of education services, benefits, or opportunities. Conduct may constitute gender-based discrimination regardless of the actual or perceived sex, gender identity, or sexual orientation of the persons experiencing or engaging in the conduct.”
- “‘Gender expression’ refers to external cues that one uses to represent or communicate one’s gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics.”
- “‘For purposes of this Agreement, a ‘transgender student’ is a student who consistently and uniformly asserts a gender identity different from the student’s assigned sex, or for which there is documented legal or medical evidence that the gender identity is sincerely held as part of the student’s core identity.”
- “‘Gender stereotypes’ refers to stereotypical notions of masculinity and femininity, including expectations of how boys or girls represent or communicate one’s gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics.”
- “‘Gender nonconformity’ refers to one’s gender expression, gender characteristics, or gender identity that does not conform to gender stereotypes.”
- “‘Sex-specific facilities’ refers to facilities and accommodations used by students at school or during school-sponsored activities and trips, and include, but are not limited to, restrooms, locker rooms, and overnight facilities.”