

Equal Education, Nondiscrimination and Sex Equity

The District will make equal educational opportunities available for all students without regard to race, color, national origin, ancestry, sex, ethnicity, language barrier, religious belief, physical or mental handicap or disability, economic or social condition, actual or potential marital or parental status, or, in accordance with binding guidance of the Federal Office of Civil Rights regarding the scope of Title IX's sex discrimination prohibition.

No student, on the basis of sex or, in accordance with binding guidance of the Federal Office of Civil Rights regarding the scope of Title IX's sex discrimination prohibition will be denied equal access to programs, activities, services, or benefits or be limited in the exercise of any right, privilege, or advantage, or denied equal access to educational and extracurricular programs and activities.

Inquiries regarding discrimination or intimidation should be directed to the District Title IX Coordinator. Any individual may file a complaint alleging violation of this policy by following the Uniform Complaint Procedure (Policy 1700).

The District, in compliance with federal regulations, will notify annually all students, parents, staff, and community members of this policy and the designated coordinator to receive inquiries. This annual notification will include the name and location of the coordinator and will be included in all handbooks.

The District will not tolerate hostile or abusive treatment, derogatory remarks, or acts of violence against students, staff, or volunteers with disabilities. The District will consider such behavior as constituting discrimination on the basis of disability, in violation of state and federal law.

Procedural Review:

The inclusion of "gender identity, sexual orientation, or failure to conform to stereotypical notions of masculinity or femininity" as protected classes under this discrimination policy is optional for each school district. The option is included based on guidance provided by the Office of Civil Rights of the U.S. Department of Education (OCR), and represents OCR's position with regard to what Title IX requires regarding discrimination against transgender students. The OCR's assertion of authority for transgender issues is based on the prohibition in Title IX from discrimination on the basis of gender. There is nothing in the text of Title IX or the rules implementing Title IX, however, that specifically prohibits discrimination under Title IX on the basis of transgender status.

Worth considering, however, is the process that occurs when a complaint is made to OCR. If a complaint is made alleging that a district has discriminated on the basis of gender, OCR will conduct an investigation. If the investigator concludes that a violation of federal law has occurred or is ongoing, OCR is required to attempt to resolve the matter informally. OCR accomplishes informal resolution by generating a list of requirements that the school district must meet in order to achieve compliance with federal law – basically a corrective action plan. Compliance is purely voluntary, but

failure to comply results in the case being set for hearing. The hearing is conducted in Washington, DC, at the OCR offices, and the point of the hearing is to determine whether the district has violated or is in violation of a federal law. If the hearing officer determines that a violation has occurred or is

STUDENTS

3210
Page 2 of 2

occurring, the hearing officer has the authority to suspend all federal financial assistance to the school district until the school district complies with the requirements set forth in the hearing officer's order.

Upon receipt of an adverse OCR decision, a school district can request a review by the US Secretary of Education, or can request judicial review by a federal district court. A stay of the suspension of federal funding pending judicial review is not automatic. Rather, it is within the discretion of OCR to postpone suspension of funding, or not. The federal judge is authorized to stay suspension of funding only when necessary to prevent "irreparable injury" (5 USC § 705). Thus, it is possible that the impacted school could be left entirely without federal funding pending court review of the adverse OCR decision. The federal district court would have the authority to either uphold or reverse the order of the OCR, but that decision does not necessarily bring the matter to a conclusion, as the court's decision could then be appealed by either party to the appropriate appellate circuit, and then to the US Supreme Court.

Because of the onerous OCR complaint process, the related expense of possibly protracted litigation, and the potential for loss of all federal funding (at least temporarily) as a result, it is advisable to consult with the district's legal counsel when making the policy decision of whether or not to include transgender status as a protected class under district policy. It is also advisable to inquire with the district's insurance carrier as to whether or not the district has coverage for the above-described legal proceedings. Many standard school district policies include exclusions from coverage for injunctive proceedings with no money damages, which could likely include the OCR complaint process and subsequent judicial review litigation.

Cross Reference: 1700 Uniform Complaint Procedure

Legal Reference: Art. X, Sec. 7, Montana Constitution- Nondiscrimination in education
§ 49-2-307, MCA Discrimination in education
24.9.1001, et seq., ARM Sex Discrimination in Education
Title IX of the Educational Amendments, 20 U.S.C. § 1681, et seq.
34 CFR Part 106 Nondiscrimination on the basis of sex in
education programs or activities receiving
Federal financial assistance
OCR's Questions and Answers on Title IX and Sexual Violence:
<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

Policy History:

Adopted on: February 17, 1998

Revised on: February 12, 2002

Revised on: August 10, 2010

Revised on: February 9, 2016