FAQ on Supporting Transgender and Non-Binary Students in K-12 Schools

BACKGROUND

According to a memo obtained by The New York Times, the Department of Health and Human Services is spearheading an effort to establish an anti-LGBTQ legal definition of sex under Title IX, the federal civil rights law that bans gender-based discrimination in education programs that receive government financial assistance. This proposal targets transgender people and would be especially harmful to transgender and non-binary students if adopted by the Department of Education, and it would have implications for discrimination on the basis of sexual orientation as well.

While this is alarming, it is important to note that no changes have been made at this time and that transgender and non-binary students continue to be protected in schools. Even if the new definition is ultimately adopted, the administration’s position does not and cannot change the case law underpinning the protections for transgender students.

WHAT SCHOOLS NEED TO KNOW

Transgender and non-binary students are protected by federal laws and constitutional rights.

See HRC’s Welcoming Schools resource list Summary of Supportive Federal Laws and Constitutional Rights For Transgender Students.

The law is consistently being interpreted to affirm transgender and non-binary students’ rights.

 Courts are consistently interpreting Title IX to support the rights of transgender and non-binary students to have their gender identity respected in terms of access to school facilities — including restrooms and locker rooms — and the use of their affirmed name and pronouns by school staff.

 HRC’s memo, Educational Institutions’ Obligations to Transgender Students under Title IX highlights such important cases as Whitaker v. Kenosha Unified School District (2017), Evancho v. Pine-Richland School District (2017), and Grimm v. Gloucester County School Board (2018)

 Schools and school districts are encouraged to institute supportive policies and procedures.

 HRC’s Schools In Transition: A Guide for Supporting Transgender Students in K-12 Schools is written for administrators, teachers, parents and other adults who work with transgender youth. The guide covers topics ranging from basic concepts of gender and the importance of affirming gender identity, to best practices for restroom access and working with non-affirming parents.

 It is critical for schools to enumerate gender, gender identity and gender expression in their anti-bullying, anti-harassment and non-discrimination policies.

PROFESSIONAL DEVELOPMENT

School districts often need help knowing how to best support transgender and non-binary students. HRC’s Welcoming Schools Program offers professional development trainings and free resources, including lesson plans and book lists to support schools in becoming gender inclusive and to directly support transgender and non-binary students.