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State, U.S. government and NSBA provide transgender guidance

Schools have seen transgender issues emerge as one of the biggest challenges of 2016, and accordingly, new resources are providing guidance.

On May 5, the Oregon Department of Education (ODE) released **Guidance to School Districts: Creating a Safe and Supportive School Environment for Transgender Students***. The 15-page document includes federal and state laws, common terminology and recommended procedures. This guidance came a few weeks after the National School Boards Association released **2016 Transgender Students in Schools***, and was followed by joint guidance from the U.S. Departments of Education and Justice in the form of a **Dear Colleague Letter*** and **Examples of Policies and Emerging Practices for Supporting Transgender Students***.

As is noted in some of these documents, Oregon relies on two sets of laws regarding gender identity. As in other states, school districts receiving federal funding are obligated to follow federal law. This includes Title IX.

Most of us think of athletics when we hear Title IX, but Title IX has recently been at the heart of the discussion regarding transgender protections throughout the country. Title IX prohibits discrimination "on the basis of sex."

The Office of Civil Rights (OCR) has determined that this protection extends to transgender individuals. OCR stated in a **letter to a California district*** "all students, including transgender students and students who do not conform to sex stereotypes, are protected from sex-based discrimination under Title IX." OCR further explained their position in an **FAQ***, "[u]nder Title IX, a recipient generally must treat transgender students consistent with their gender identity in all aspects of the planning, implementations, enrollment, operation, and evaluation of single-sex classes."

Opponents have challenged this idea, saying that letters and guidance from OCR or other agencies do not carry the weight of law and such enforcement and implementation is an overreach of power. The federal Court of Appeals for the Fourth Circuit recently decided a

case on this issue, granting OCR interpretation "controlling weight."

Unlike some other states, Oregon has state statutory protections in place. **Oregon Revised Statute (ORS) 659.850*** prohibits discrimination in schools on the basis of "race, color, religion, sex, sexual orientation, national origin, marital status, age or disability." Sexual orientation is defined in **ORS 174.100(7)*** as "an individual's actual or perceived heterosexuality, homosexuality, bisexuality or gender identity..."

These Oregon laws protect students and staff at Oregon schools. ODE has advised that "[a] student who says she is a girl and wishes to be regarded that way throughout the school day should be respected and treated like any other girl." The same is true for a student who expresses a desire to be treated like a boy.

The guidance that has been released in recent months is consistent with procedures that have been in place in numerous districts for years and with recommendations

Transgender terms

The Oregon Department of Education (ODE) defines gender identity as "[a] person's internal sense of being male or female or some other gender..."

Other ODE definitions include:

- Transgender individuals are those whose "gender identity, gender expression, or behavior does not conform to that typically associated with the sex to which they were assigned at birth."
- Cisgender individuals are "people who, for the most part, identify with the sex they were assigned at birth."
- A transgender female is "a person whose assigned sex at birth is male but identifies and lives as a female."
- A transgender male is "a person whose assigned sex at birth is female but identifies and lives as a male."

*see **Links to resources** on next page

that have been provided by OSBA and Property and Casualty Coverage for Education (PACE). Some of the major questions come around pronouns, records and name changes, bathrooms and locker rooms, privacy rights of all students and what policies a district needs to have in place.

Pronouns, records and name changes

When a student or staff member requests that a nickname or pronouns be used, the school should accommodate that request. This may include changing the name used on records, including roll sheets that are provided to substitute teachers. It is important that the school not inadvertently reveal a student’s transgender status. Districts should follow the guidance provided by ODE for specific instructions on how to handle records issues.

Bathrooms and locker rooms

Perhaps the most public transgender battles throughout the country relate to the use of bathrooms and locker rooms. Students and parents on both sides of the issue have raised concerns. Oregon districts have dealt with these issues, although there is no binding Oregon court decision to provide direction.

There are, however, court cases from other states that offer some guidance and show how a court in Oregon might decide the issues. In **Doe v. Regional School Unit 26*** (2014 ME 11 (2014)), the court applied Maine state



law to a transgender female’s use of elementary school bathrooms. The girl had used the girls’ bathroom until a boy followed her there and demanded access.

The school became worried and required the girl to use a private single-stall restroom. The Maine

Supreme Judicial Court determined that based on Maine law, the school unlawfully discriminated against the girl. Maine law is very similar to Oregon’s, prohibiting discrimination based on sexual orientation, which includes gender identity.

Another well-known situation came out of a school district in Illinois. A transgender female was referred to using the feminine pronouns, used girls’ bathrooms and even played on girls’ athletic teams. But the district refused to allow her unrestricted access to the girls’ locker rooms.

OCR demanded that the district allow her access and threatened to withhold funding if it did not. After hours of deliberating, an **agreement*** was reached to allow the girl access to the locker rooms where she would change in a private changing station.

Perhaps the most publicized case has come out of Virginia, **G.G. v. Gloucester County Sch. Bd.***, No. 15-2056, slip op. (4th Cir. Apr. 19, 2016). In this case, a

*** Links to resources in this article**

Oregon Department of Education:

- *Guidance to School Districts: Creating a Safe and Supportive School Environment for Transgender Students*
www.ode.state.or.us/groups/supportstaff/hklb/schoolnurses/transgenderstudentguidance.pdf

National School Boards Association:

- *2016 Transgender Students in Schools*
www.nsba.org/nsba-faqs-transgender-students-schools

U.S. Departments of Education and Justice:

- *Dear Colleague Letter*
www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf
- *Examples of Policies and Emerging Practices for Supporting Transgender Students*
www2.ed.gov/about/offices/list/oese/oshs/emergingpractices.pdf

Office of Civil Rights:

- *Letter to a California district*
www2.ed.gov/documents/press-releases/downey-school-district-letter.pdf
- *FAQ*
www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf
- *Agreement between Illinois school district and OCR*
www2.ed.gov/documents/press-releases/township-high-211-agreement.pdf

Oregon Revised Statutes:

- *ORS 659.850*
www.oregonlegislature.gov/bills_laws/ors/ors659.html
- *ORS 174.100(7)*
www.oregonlegislature.gov/bills_laws/ors/ors174.html

Court decisions:

- *Doe v. Regional School Unit 26*
www.courts.maine.gov/opinions_orders/supreme/lawcourt/2014/14me11do.pdf
- *G.G. v. Gloucester County Sch. Bd.*
www.ca4.uscourts.gov/opinions/published/152056.p.pdf

transgender male attended a school that permitted him to use the boys’ bathroom.

The school board then passed a policy segregating bathroom use by “biological gender.” The trial court found that Title IX did not require that transgender individuals be allowed to use the bathrooms that aligned with their gender identity. On appeal, that decision was reversed,

finding for the student and deferring to OCR guidance in the interpretation of Title IX.

Privacy rights of all students

One of the most common concerns resulting from transgender individuals using bathrooms and locker rooms that align with their gender identity is the privacy rights of cisgender students in those facilities. Privacy of all students must be a primary concern for all schools nationwide. In addressing these concerns, schools should make alternative facilities, such as a single-stall restroom or stalls or curtains in a locker room, available for all students who desire additional privacy.

The safety of all students should also be a priority. If a school is aware of bullying, harassment, or other safety threat to any student, the school must take prompt action to reduce the risk.

Policy

At OSBA, staff are often asked for sample policies regarding transgender students, or asked when transgender policies will be released. The answer is: Schools don't need a separate transgender policy.

Most districts have a nondiscrimination policy, typically found in policy AC. This policy prohibits discrimination based on a variety of groups, or protected classes, including sexual orientation.

Such policies also may include a footnote that notes the inclusion of gender identity within sexual orientation under Oregon law. Just as separate policies are unneeded for each of the other protected classes (color, religion, age, etc.), schools don't need a separate policy prohibiting discrimination based on transgender status.

Some other states or districts are adopting transgender policies. The majority are coming in states that do not have laws protecting transgender individuals, and may not include them in the nondiscrimination policies.

OSBA is currently working with PACE to provide additional guidance to school administrators as they develop internal procedures that will be needed to comply with applicable laws and in protecting the rights and safety of all students. Districts may choose to provide training to staff and/or students regarding transgender issues.

The information contained in this article should not be construed as legal advice. Any specific questions can be directed to Spencer Lewis at OSBA, slewis@osba.org, or ODE.

Promise update: Glencoe High robotics video in editing stages

Videography has been completed and the editing stages have begun on the next planned video in the Promise of Oregon campaign, focusing on Glencoe High School's (Hillsboro School District) robotics team.



Glencoe's Team Shockwave has ranked among the top teams in state and national competitions.

Team Shockwave has ranked among the top teams in the Pacific Northwest and the nation. The new video is scheduled to debut this fall on the Promise website at www.promiseoregon.org.

The Glencoe High video is one of four planned 2016 videos showcasing cutting-edge programs – in science, technology, engineering and mathematics (STEM), career and technical education (CTE), the arts and more – that support students in reaching their potential.

During its first year, the Promise campaign celebrated the accomplishments of Oregon students and helped galvanize support for increased funding for public schools. Legislators ultimately settled on a State School Fund figure of \$7.4 billion for 2015-17 – up \$850 million from the last biennium.

To date, the Promise of Oregon campaign's social media presences have:

- Facebook: 4,517 likes
- Twitter: 421 followers
- Facebook and Twitter interactions: 47,700
- Unique users reached via Facebook and Twitter: 40,800
- Potential Facebook and Twitter impressions: 7.2 million

In the Loop

OSBA work group tackles longstanding revenue reform issue

The OSBA revenue reform advisory work group, led by OSBA President-elect Betty Reynolds and Deputy Executive Director Jim Green, was created to address an issue brought to the forefront during the 2015 OSBA Fall Regional meetings. Then, local school board members statewide voiced their support of revenue reform to address an issue Oregon has grappled with for decades: school funding adequacy and stability. The reality of what that might look like, however, is much more challenging.

The work group has been charged with bringing a recommendation for the structure of a revenue reform package that school board members could support. Ten board members from across the state have participated in

multiple meetings to discuss reform options including IP 28, Sen. Mark Hass' plan, property tax reform, a retail sales tax and other ideas.

The group agreed that any plan must provide the following four things:

1. Adequate, stable and equitable funding to public schools in Oregon
2. Funding dedicated to K-12 public schools in Oregon
3. New, additional revenue for public schools (cannot be revenue-neutral)
4. Address cost drivers (the Public Employees Retirement System [PERS] and health insurance) in the educational system to allow funds to be directed to the classroom



Betsy Miller-Jones
Executive Director

The work group has agreed that a core focus of the plan must include an amendment to the Oregon Constitution, Article VIII, Section 8, subsection 1. This section was added to the Constitution by the voters in 2000 requiring the Legislature to fund schools with adequate resources to meet the Quality Education Model.

But the language of this section provides the Legislature with an "out." That "out" states that if the Legislature

does not appropriate the necessary funds to meet the goals, the Legislature can simply write a report. Since 2001, the Legislature has written a report each biennium.

To hold the Legislature to the funding requirement, which is what most Oregonians thought they were voting on in 2000, the recommendation is to eliminate the "out" for the Legislature. A ballot measure would need to be created, either through the Legislature or through the initiative petition process, to require a statewide vote.

The work group continues to discuss the ways to raise new, dedicated revenue for public schools and address the cost drivers of PERS and healthcare. Green and Legislative Specialist Lori Sattenspiel continue to work with legislators and education partners to address these challenging topics.

The work group's efforts are in direct response to the issues you raised at last year's Fall Regional meetings. Stay tuned for recommendations from the work group later this summer and more information at the Fall Regional meetings in September and October.

'Summer Camp' in Bend offers Leadership Institute credits

Time is running out to register for "Summer Camp for School Boards," coming up July 15-17 at the newly renovated Riverhouse on the Deschutes in Bend. Registration deadline is July 8.



Besides the opportunity to learn more about critical issues facing Oregon's schools, the conference offers certification at the Leadership Institute's bronze, silver and gold levels. OSBA's Leadership Institute recognizes board members who have advanced through a series of courses offered online and at workshops and conferences, and those who complete new levels are recognized at OSBA's Annual Convention in November.

Workshop topics include handling difficult bargaining issues, a systems approach to student achievement, school finance, and an update on legislative issues and ballot initiatives.

Keynote speaker is Kip Motta, a principal and math teacher whose resume includes assistant coaching and scouting positions with the Portland Trail Blazers and three other National Basketball Association teams. Motta will discuss how school boards can "effect positive change in student learning."

Attend the pre-conference on July 15 and you can learn more about equity conversations, closing the achievement gap and addressing transgender issues. Once again we will offer a networking reception for conference attendees and a guest at 4 p.m. July 15.

An Administrative Professionals' Workshop will also be held on July 15, including sessions on public meetings and records, labor negotiations and differing communication styles.

Registration materials are at: www.osba.org/Calendar/Events/Summer_board_conference-2016.aspx

Find out more about Leadership Institute at: www.osba.org/li

Reynolds elected to NSBAC Board

Betty Reynolds, OSBA president-elect, was elected May 5 by the National School Boards Action Center Board of Directors to serve on the NSBAC Board. Reynolds, a member of the West Linn-Wilsonville School Board, was also elected treasurer of NSBAC. The NSBAC election was based on Reynolds' nomination by the National School Boards Association (NSBA) Board of Directors.



Betty Reynolds
OSBA President-elect

The NSBAC was founded by NSBA to ensure, through legislative, legal and public advocacy, that federal policy supports and strengthens the nation's 14,000 public school systems serving 50 million public school students.

As president-elect of OSBA, Reynolds will automatically become president in 2017. She has served on numerous statewide boards and groups, and is

currently a member of an Oregon Department of Education Every Student Succeeds Act work group, and the Attorney General's Public Records Reform Task Force. She was vice president of the Oregon PTA from 2013-15, and is a retired state executive.

"In this era of education reform I'm thrilled to be involved in education policy at the state and national levels advocating for public education and kids," Reynolds said, "and working to close the opportunity gap so that all students can fulfill their promise."

Betsy Miller-Jones, executive director of OSBA, congratulated Reynolds on the accomplishment.

"Betty is an active voice for Oregon children, and I'm glad to see that advocacy moving to the national level," Miller-Jones said.

Deadline looms to return PACE Joinder to Trust Agreement

School districts, community colleges and education service districts have until the end of this month to renew membership in the PACE self-insured, property and liability program and return a signed copy of the **Form of Joinder to Trust Agreement**

(<http://pace.osba.org/~media/PACEFiles/Resources/Property/FormOfJoinderToTrustAgreementForMembers.pdf?src=%7B84FBF8F4-59C8-4F42-A2DF-3BC5FA3F0300%7D>).

The PACE Board of Trustees updated the Trust Agreement (<http://pace.osba.org/trust>) earlier this year. To continue receiving PACE benefits, member school districts



and ESDs must have their boards adopt a resolution by copying and pasting the following wording and customizing it to their districts:

Whereas, **INSERT DISTRICT NAME** is a member of Property and Casualty Coverage for Education (PACE), a self-insured, property and liability program with Oregon School Boards Association (OSBA);

Whereas, the OSBA Board of Directors has approved a new PACE Declaration of Trust;

Whereas, it is required for all PACE members to adopt the PACE Declaration of Trust to enter into an intergovernmental agreement with PACE and continue to receive PACE benefits;

Therefore, be it resolved that the **INSERT DISTRICT NAME** Board of Directors adopts the PACE Declaration of Trust and Form of Joinder to Trust Agreement.

In addition, all PACE member entities must **return a signed copy of the Form of Joinder to Trust Agreement** to PACE before renewing in the PACE self-insured, property and liability program:

- **No later than June 30, 2016**
- **Via email (PDF) to underwriting@sdao.com or FAX to (503) 371-4781**

If you have questions about the new Trust Agreement, read PACE's memo and FAQ

(<http://pace.osba.org/~media/PACEFiles/Resources/Property/MemoJoinderOfTrustAgreement.pdf?src=%7B2C436FE9-4892-4A23-BD7B-E2769A3B5F45%7D>), or contact PACE Administrator Lisa Freiley at lfreiley@osba.org or 1-800-578-6722.

Upcoming OSBA Events

2016 NSBA Advocacy Institute
June 12-14, 2016

2016 OSBA Summer Board Conference
July 15-17, 2016

2016 NSBA Summer Leadership Seminar
August 11-14, 2016

OSBA 70th Annual Convention
November 10-13, 2016