

Wednesday, November 18, 2015

Oregon School Boards Misled About Privacy Laws

The 2015 Oregon School Board Association (OSBA) annual conference titled "Celebrating the Promise of Oregon: Sharing Best Practices" was held last weekend in Portland Oregon. School Board members from around the state attended. One Saturday workshop titled 'Avoiding Discrimination of Transgender Students' and presented by Sarah Collins, OSBA, member services attorney and Spencer Lewis, board development and policy services specialist, provided a document on the OSBA website entitled '[Transgender Frequently Asked Questions](#)'. Within this document, it states that, "There are also federal laws that *may* [emphasis added] protect transgender students".

Oregon laws prohibit discrimination in Oregon schools (ORS 659.850(2); ORS 659.850(1); ORS 174.100(6)). Additionally, Oregon K-12 public schools are obligated to protect the privacy, safety and religious rights of students as well as support (not usurp) the parent-child relationship. To do otherwise, could expose a school district to potential legal liability.

It is important for elected school board members across Oregon to understand that pursuant to law [ORS 322.072](#), the school board members "have control of the district schools and are responsible for educating children residing in the district". Elected school board members have the duty to serve the parents and guardians of their community; they are responsible for adopting policies for their unique school district. This would include issues of students using opposite-sex bathrooms and locker rooms.

Some Oregon school districts are under the impression that Title IX protection calls for significant changes in a school district's policy as it relates to issues around transgender students. However, as noted in an August 24, 2015 document from Alliance Defending Freedom titled: [Schools Are Not Legally from Required to Allow Students to Use Opposite-Sex Restroom, Showers, and Changing Rooms](#), it states that:

"According to Title IX, "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681. Importantly, the regulations implementing Title IX specifically *allow* [emphasis added] schools to "provide separate toilet, locker room, and shower facilities on the basis of sex" 34 C.F.R. § 106.33."

"Accordingly, no court has ever interpreted Title IX as requiring schools to give students access to opposite-sex restrooms and changing areas. Rather, courts have consistently found that schools do not discriminate under Title IX when they limit use of sex-specific restrooms to members of the specified sex."