

Date: November 19, 2015

To: Members, Assembly Committee on Education

From: Dee Pettack, Legislative Liaison, Department of Public Instruction

RE: Policy and Legal Considerations regarding AB 469

Schools have a responsibility to create a learning environment that meets and balances the needs of all kids and allows every student to succeed. For transgender students, this includes access to all school facilities, programs, and extracurricular activities in a way that is consistent with their gender identity.

It is essential to the health and well-being of transgender people for them to be able to live in accordance with their gender identity. Transgender students must be seen and be treated by others in a matter consistent with the person's gender identity in all aspects of life—restroom usage is a necessary part of that experience.

The Department of Public Instruction opposes Assembly Bill 469; it does not reflect the work that is being done in nearly 70 school districts around our state to support transgender and gender non-conforming youth.

Policy and Legal Considerations

We have a number of policy and legal concerns that are unaddressed in this bill and place all school districts at risk for federal noncompliance.

Conflicts with Title IX Requirements: On Tuesday, November 2, 2015 the Office for Civil Rights of the Department of Education notified the Palatine School District in Illinois that requiring a transgender student to use private changing and showering facilities was a violation of that student's rights under Title IX, a federal law that bans sex discrimination. The Palatine School District has 30 days to correct its policy or federal funds may be in jeopardy.

The U.S. Department of Justice and Department of Education have also filed briefs in support of a transgender teen in *G.G. v. Gloucester County School Board* in Virginia in part stating:

“Under Title IX, discrimination based on a person's gender identity, a person's transgender status, or a person's nonconformity to sex stereotypes constitutes discrimination based on sex. The term 'sex' as it is used in Title IX is broad and encompasses gender identity, including transgender status. ...”

Denying Access is Discrimination: In *Doe v. Regional School Unit (2014)*, the Maine Supreme Court held that a transgender girl had a right to use the women's bathroom at school. In a 5-1

ruling, the court found that denying bathroom access was discriminatory and the school had “treated [her] differently from other students solely because of her status as a transgender girl.”

Districts Cannot Compel Use of Alternative Facilities: Colorado’s Division of Civil Rights opined in favor of a 6-year-old transgender girl in *Mathis v. Fountain-Fort Carson School District 8 (2013)*, stating that barring transgender students from gender-segregated bathrooms in accordance with their gender identity may out an individual as transgender and invite the very harassment a school or employer is seeking to prevent. Providing individual bathrooms can be a solution; however, transgender students cannot be compelled to use them.

Providing Accommodations is a District Responsibility: In *Cruzan v. Special School District #1(2002)*, a Minnesota federal appeals court ruled that the onus for making accommodation does not rest with individual transgender people. The central issue was a teacher complaint about a transgender female teacher using the women’s restroom. The court found that employers need to offer an alternative to the concerned employee, such as an individual restroom, rather the transgender teacher.

Gender Ambiguity Unaddressed: Babies can be born with ambiguous sex organs and/or with XX chromosomes in certain cells and XY chromosomes in others. This legislation provides no provision for these students.

Conclusion

School districts across Wisconsin are working to meet the needs of all students; however, the school districts policies adopted vary significantly in their approach based on the needs of their local communities. The options available to faculty and students for accommodations will vary greatly depending on the school size and facility.

The bottom line is a one-sized fits all legislative encroachment will not meet the needs of students and districts. These are complicated and sensitive issues best resolved locally.