

CLIENT NEWS BRIEF

U.S. District Court in Texas Issues Preliminary Injunction Enjoining Federal Departments of Justice and Education's Joint Guidance on Transgender Student Rights in Schools under Title IX

A United States District Court in Texas has issued a preliminary injunction barring the United States Department of Justice (DOJ), Department of Education (DOE) and other federal agencies from enforcing the DOJ and DOE's May 13, 2016 joint guidance regarding the rights of transgender students in schools under Title IX of the Education Amendments of 1972 (Title IX) and Title IX's regulations (Joint Guidance). ([See 2016 Client News Brief No. 31.](#)) (*State of Texas v. United States* (N.D. Tex. Aug. 21, 2016, No. 16-00054).) The plaintiffs in the case include the states of Texas, Alabama, Wisconsin, West Virginia, Tennessee, Arizona, Maine, Oklahoma, Louisiana, Utah, Georgia, Mississippi, and Kentucky.

While only certain states are plaintiffs in this case, and the issuing court is located in Texas, the preliminary injunction states that it applies to "all states," thus appearing to enable states across the nation to "invoke" the preliminary injunction as a basis to halt DOJ and/or DOE actions regarding enforcement of the joint guidance. This said, the injunction also expressly notes that its effect does not reach state laws on point. At this time, it is unclear how the federal government will proceed with regard to states and school districts within states that are not parties to this litigation, including California and its school districts. An emergency appeal of the court's preliminary injunction by the defendant federal agencies is anticipated.

Perhaps most importantly for California school districts, as most are aware, California's Assembly Bill (AB) 1266 has been in effect in this state since January 2014. AB 1266 provides that a student must be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the student's records. The California Department of Education issued a legal advisory and FAQs on complying with AB 1266 earlier this year. ([See 2016 Client News Brief No. 16.](#)) Thus, regardless of whether this most recent federal court order may halt federal agency enforcement of the joint guidance related to transgender students, school districts in California must continue to comply with state law under AB 1266 (Ed. Code, § 221.5, subd. (f).)

As a final note, the United States Supreme Court recently signaled that it may be poised to grant review in a case out of the United States Court of Appeals, Fourth Circuit, which directly involves the DOJ and DOE's interpretation of Title IX and its regulations relative to transgender students, and as stated in the joint guidance. The Fourth Circuit ruling at issue held that the federal interpretation of Title IX and its regulations relative to transgender student rights and restroom/locker room access was entitled to "controlling weight." If the United States Supreme Court were to grant review in the case, it remains unclear whether any ultimate opinion in that case relative to federal law would have any impact on California's AB 1266.

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Sloan R. Simmons
Partner and Co-Chair
Litigation Practice Group
Sacramento Office
ssimmons@lozanosmith.com



Aimee Perry
Associate and Co-Chair
Student Practice Group
Sacramento Office
aperry@lozanosmith.com

LS Lozano Smith
ATTORNEYS AT LAW

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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If you have questions about this preliminary injunction order discussed above, or state or federal law regarding transgender student rights, please contact the authors of this Client News Brief or an attorney at one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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