CURRENT LEGAL ISSUES IN EDUCATION

2016 PACTA Summer Leadership Conference
July 27, 2016
Kim chairs the Education Law Group and practices in the Litigation Group.

Kim represents universities, colleges, school districts, charter schools, and other providers of educational services. She regularly provides counsel on matters involving student and faculty rights and compliance with federal and state laws. Kim assists educational institutions with policy development and provides training on liability risk avoidance. Kim has extensive experience with the Family Educational Rights and Privacy Act (FERPA), the Campus Security Act, the Higher Education Opportunity Act (HEOA), the Americans with Disabilities Act (ADA), and the Individuals with Disabilities Education Act (IDEA). Kim also represents educational institutions in litigation.

Kim’s litigation practice focuses on business disputes and estate and fiduciary matters. She represents corporations and business owners in disputes involving contracts, warranties, real estate, and business torts. Kim also represents estate executors, trustees, and other fiduciaries in matters involving duties to beneficiaries of estates and trusts. Kim advocates for clients in the trial and appellate state and federal courts, in arbitrations, and before administrative agencies.
DCL – Gender Equity in CTE
June 15, 2016

- Significant Guidance
  - no new requirements
  - inform how DOE evaluates compliance
- Issued pursuant to Title IX
  - antidiscrimination law – sex
- Office of Career, Technical, and Adult Education and Office of Civil Rights
DCL – Gender Equity in CTE
June 15, 2016

- Disproportionate Gender Enrollment ≠ Violation
- Admission, Recruitment, Counseling Practices must be nondiscriminatory
- Respond to disproportionate enrollment with REVIEW
  - Policies
  - Practices for counseling
- Eliminate sex discrimination or stereotypes
DCL – Gender Equity in CTE
June 15, 2016

- Advancement of Equity
- Disproportionate Access to CTE Programs
- Gender Pay Gap
DCL – Gender Equity in CTE
June 15, 2016

Plumbers
- Men: 98%
- Women: 2%

Electricians
- Men: 97%
- Women: 3%

Nurses
- Men: 91%
- Women: 9%
RECRUITMENT

- promotional EFFORTS cannot perpetuate sex-based stereotypes
- promotional MATERIALS cannot perpetuate stereotypes
  - Recommendation – materials show males or females in programs where underrepresented
- Use recruiters of different sexes
**ADMISSIONS**

- Admissions criteria cannot discriminate based on sex
  - Cannot give preference based upon sex
  - Cannot rank applicants in separately on the basis of sex
  - Cannot use entrance tests that disproportionately exclude on sex

**Cannot offer SINGLE-SEX classes in Co-ed school**
COUNSELING

- Guidance and admissions counselors cannot discriminate based on sex
- Cannot use separate assessments, based upon sex for appraising student career interests
NOTICE REQUIREMENTS

• Publish annually a nondiscrimination notice on website and by posting

• Include notice in bulletins, recruitment materials, catalogs, application forms

• Notify students and employees of Title IX officer
  • Name or Title, Office address
  • Phone number, Email address
TITLE IX OFFICER

- At least one employee must be designated at Title IX Coordinator
- **Suggested Actions of Title IX Coordinator**
  - Review recruitment and admissions processes
  - Work with data to address sex disparities
  - Interview students of underrepresented sex who did not complete training programs
  - Education, awareness, Training
GRIEVANCE PROCEDURES

• Prompt and equitable resolution of sex discrimination complaints
• Be aware of data from grievance procedures that shows trends in programs or processes

ADDRESS SEXUAL HARASSMENT

• Particular concern for students of underrepresented sex
PREGNANCY/PARENTAL STATUS

- Students cannot be excluded from any part of a program based on pregnancy or parental status
- Absences for pregnancy/child birth must be excused with doctor’s note
- Students must be returned to same status after leave for child birth
TOOLS AND RESOURCES PROMISED BY OCTAE

- within the next few months
- will be posted at cte.ed.gov
Pitfalls for the Unwary

• Single-gender pronouns in materials
• Single-gender student recruiters
• Exclusionary effect of prerequisite requirements
• Field experiences/internships/externships
• Failing to observe and analyze trends
• Student-to-student harassment
• Good intentions, gone bad
  - safety of pregnant students
  - single-sex classes for underrepresented sex
QUESTIONS
DCL – Transgender Students
May 13, 2016

- **Significant Guidance**
  - no new requirements
  - inform how DOE evaluates compliance

- **Issued pursuant to Title IX**
  - antidiscrimination law – sex

- **Office of Civil Rights**
  - Supporting letter from Office of Elementary and Secondary Education
Title IX prohibits discrimination based upon gender identity

Student’s gender identity = Student’ sex

- transgender student must be treated the same as all other students of that sex
- no medical diagnosis or medical treatment is required
Pronouns

Names

Restrooms and Locker Rooms

- Student must be allowed to use the facilities consistent with gender identity
- Cannot require transgender students to use individual/private facilities, but can make them available
Discomfort/Objection of Community cannot control

School dances, yearbook photos, homecoming/prom king/queen

Athletics

- sex segregation must be based upon competitive skill or because contact sport
  - Cannot rely on broad generalizations or stereotypes
DCL – Transgender Students
May 13, 2016

- Protection of Privacy
  - Reasonable steps to protect the privacy of a student’s transgender status
    - Use preferred name, rather than legal name, when possible (ID cards, email names, etc.)
    - Prevent disclosure of birth name & birth sex
  
School can maintain records re: legal name and gender, but these records must be kept confidential

*Sex and transgender status are not “directory information” under FERPA
G.G. v. Gloucester County School Board
4th Cir. (VA) – April 19, 2016

G.G. – transgender boy

- changed legal name
- hormone therapy
- generally perceived as a boy
- used boys’ restroom and locker room with administration’s approval

Community interest was raised
School Board Proposed Policy

Use of male and female restroom and locker room facilities “shall be limited to the corresponding biological genders, and students with gender identity issues shall be provided with an alternative appropriate private facility”

Adopted by 6-1 vote

School also created 3 unisex restrooms
G.G. v. Gloucester County School Board
4th Cir. (VA) – April 19, 2016

G.G. sued in federal court

Court dismissed his claim, finding that Title IX did not protect against discrimination based upon gender identity

Appeals Court reversed – deferred to DOE’s guidance saying it interprets Title IX as prohibiting discrimination based upon gender identity

Case may be appealed to U.S. Supreme Court – or maybe not...
QUESTIONS
WHAT’S ON THE HORIZON?

MEDICAL MARIJUANA

- Drug Free Schools Acts
- Federal v. State Law
- Storage and/or Administration by School Nurse
35 P.S. § 10231.2104

The Department of Education shall promulgate regulations within 18 months of the effective date of this section regarding the following:

(1) Possession and use of medical marijuana by a student on the grounds of preschool, primary school and a secondary school.

(2) Possession and use of medical marijuana by an employee of a preschool, primary school and a secondary school on the grounds of such school.