CALIFORNIA LOCAL ELECTED OFFICIALS

Considerations for AB 1955 while Litigation is Pending

On July 15, 2024, Gov. Gavin Newsom signed one of the most controversial pieces of legislation ever placed on his desk – Assembly Bill 1955 by Asm. Chris Ward (Chapter 95, Statutes of 2024). AB 1955 abrogates a parent's rights to know what is going on with their child in school. This bill also causes school districts to violate the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99) which grants parents access to information kept by educational institutions about their minor children. Districts that create dummy files to "support" a new identity for kids stand to lose federal funding.

Policies adopted in over a dozen California school districts require parental notification if a change is made to unofficial or official records, including a change to a child's name or pronouns. The legislature reacted by passing AB 1955 to codify the California Department of Education's ("CDE") illegal guidance on AB 1266[1], in which CDE instructs school officials to create dummy files hidden from parents.

While state and federal laws protect minor children's privacy from the public, children do not have a constitutional right to privacy that transcends their parents' well-established rights in over a century of United States Supreme Court jurisprudence.[2]

While AB 1955 won't be implemented until January 1, 2025, various parties have already begun suing for relief from this unconstitutional statute. Until the law is implemented and/or the courts have ruled on whether and how it can be implemented, school boards should consider the following principles.

- Make a districtwide announcement of the new law and its implications to parents, staff and teachers.
- Teachers *can* disclose changes in a child's behavior or concerning mental health concerns with parents, but they risk litigation if they disclose information pertaining to a child's sexual orientation or gender identity without the child's consent. A student may allege his/her (non-existent) constitutional right to privacy from their parents was violated.[3]
    - The Office of Attorney General (OAG) asserts schools cannot disclose student sexual orientation or gender identity to parents without permission: "[E]ven if you are 'out' about your sexual orientation or gender identity at school, if you're not 'out' to your parents at home, and you can reasonably expect that they're not going to find

[1] See FAQs 7 and 8.
[2] https://www.heritage.org/gender/report/public-school-gender-policies-exclude-parents-are-unconstitutional
[3] *See*, *e.g.,* AB 1955, Sec. 2, subdiv. (b), (g).

out, then school staff can't tell your family that you are LGBTQ+ without your permission. Being open about your sexuality in school doesn't mean you automatically give up your right to privacy outside school." https://oag.ca.gov/lgbtq/rights
    - This OAG guidance is based on *C.N. v. Wolf*, 410 F. Supp. 2d 894 (C.D. Cal. 2005), which found that a student has a reasonable expectation of privacy in keeping their sexual orientation private from their parents even if they are out at school. This district court case has no binding or precedential effect. The privacy interest was alleged under the California Constitution, Article I, Section 1.
    - Additionally, no parental notification policy is concerned with sexual orientation (whether a student is gay or lesbian). California school district notification policies are triggered by changes to unofficial and official records, including a name or pronoun.
    - Most districts that use an administrative regulation modeled on CSBA template Administrative Regulation 5145.3 instructing the district to create and keep separate files and require a child's consent prior to disclosing information about a child's intersex, nonbinary, transgender or gender-nonconforming status.
        - If your district has such a policy, then teachers may be open to legal consequences for disclosing this information to a parent even though the policy is arguably unlawful.
        - Rescinding this board policy as it pertains to concealing information from parents should be your first step.
        - You may replace that policy with a form at the beginning of the year that asks the parent which names and/or pronouns are acceptable for their child, open to the idea that a parent may already agree to a change. Such a policy can allow for changes to happen throughout the year when the parent requests the change.
- Teachers, district employees/contractors:
    - If a student has requested that they be referred to by a different name and/or gender, and this is documented (most likely in a confidential student support plan), then you *must* provide these records upon receipt of a request in compliance with FERPA and California Education Code sec. 51101(a)(10).
    - If you don't, you are jeopardizing federal funds. "No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children." 20 U.S. Code § 1232g(a)(1).
    - Do **not** create dummy files or separate "unofficial" records that are not disclosed in FERPA requests. Doing so "effectively prevents" the parents of students the right to inspect and review the education records of their children. You may be subject to litigation should a parent discover that these dummy files exist.

As always, neither California Policy Center nor California Local Elected Officials provides legal advice. We encourage board trustees to consult with a trusted attorney licensed to practice law in the state of California before proceeding with any policy changes.