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Department of Justice and Office of Civil Rights Issue Dear Colleague Letter on Transgender Students

On Friday, May 13, 2016, the U.S. Departments of Education and Justice released joint guidance entitled *Dear Colleague Letter on Transgender Students* (“Guidance”) (The *Dear Colleague Letter* is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>). This guidance is provided pursuant to the Departments’ enforcement authority under Title IX of the Education Amendments of 1972 (“Title IX”), and is designed to assist educators with information needed to ensure that schools provide equal access to education, and a safe, nondiscriminatory educational environment, for transgender students.

The Guidance explains that when students or their parents, as appropriate, notify a school that a student is transgender, the school must treat the student consistent with the student’s gender identity. According to the Guidance, a school may not require transgender students to have a medical diagnosis, undergo any medical treatment, or produce a birth certificate or other identification document before treating them consistent with their gender identity. The Guidance provides that Title IX protects transgender students from discrimination; thus, a school that treats transgender students differently from other students of the same gender identity is in violation of federal law.

The Guidance provides a variety of information relative to a school’s obligation to provide equal access and to prohibit discrimination on the basis of gender identity. For example, the Guidance instructs schools to:

- Respond promptly and effectively to sex-based harassment of all students, including harassment based on a student’s actual or perceived gender identity, transgender status, or gender transition;
- Treat students consistent with their gender identity even if their school records or identification documents indicate a different sex;
- Allow students to participate in sex-segregated activities and access sex-segregated facilities consistent with their gender identity; and
- Protect students’ privacy related to their transgender status under Title IX and the Family Educational Rights and Privacy Act (“FERPA”), which may include amending student records when requested.

In addition to the Departments’ Guidance, the Department of Education’s Office of Elementary and Secondary Education also released *Examples of Policies and Emerging Practices for Supporting Transgender Students* (The *Examples* are available at <http://www2.ed.gov/about/>



[offices/list/oese/oshs/emergingpractices.pdf](#)), a compilation of policies and practices that public schools across the country are already using to support transgender students. The document includes questions and answers on topics such as school records, privacy, and terminology, and shares samples from districts across the country.

In light of the release of the guidance and related media coverage, we anticipate questions from stakeholders regarding transgender students and discrimination issues, as well as heightened scrutiny from OCR and the DOJ related to complaints of discrimination raised by transgender students. In addition to the recent guidance from the federal government, Connecticut public schools should also be sure to review the *Connecticut Safe School Coalition's Guidelines for Connecticut Schools to Comply with Gender Identity and Expression Non-Discrimination Laws* (The *Guidelines* are available at [http://www.ct.gov/chro/lib/chro/Guidelines for Schools on Gender Identity and Expression final 4-24-12.pdf](http://www.ct.gov/chro/lib/chro/Guidelines%20for%20Schools%20on%20Gender%20Identity%20and%20Expression%20final%204-24-12.pdf)), which provides guidance on Connecticut's Public Act No. 11-55, prohibiting discrimination on the basis of gender identity or expression in all areas and contexts in which the laws already prohibit discrimination on the basis of sex.

We recommend that boards of education (and colleges and universities receiving federal funds) review existing policies and procedures to ensure compliance with the Guidance. Moreover, while we believe that existing policies concerning Title IX, bullying/safe school climate, and non-discrimination are likely sufficient to ensure compliance with the Guidance, boards of education may find a specific policy on transgender students to be helpful in clarifying the board's position on this issue and providing guidance to school personnel. We are in the process of developing a model policy for public schools, in compliance with the Guidance.

Questions or Assistance:

If you have questions regarding the Guidance, or other issues concerning transgender or gender non-conforming students in schools, please contact Anne Littlefield at alittlefield@goodwin.com or 860-251-5715, or Gwen Zittoun at gzittoun@goodwin.com or 860-251-5523.

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